

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 8697 of 2017

Date of Decision: 24.7.2017

M/s Indian Security Services (Regd.), Ludhiana

....Petitioner.

Versus

Punjabi University, Patiala

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE AMIT RAWAL.**

PRESENT: Mr. S.S. Randhawa, Advocate for the petitioner.

Mr. GBS Dhillon, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. In this writ petition under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing Tender Notice dated 12.4.2017 (Annexure P-10) and all the consequent proceedings arising therefrom as the same has been re-floated without rejecting the first tender process initiated vide tender notice dated 22.3.2017 (Annexure P-6). Further, a writ of mandamus has been sought directing the respondent to decide the first tender process initiated vide tender notice dated 22.3.2017 (Annexure P-6).

2. Put shortly, the facts necessary for adjudication of the instant petition as narrated therein may be noticed. The petitioner is doing the business, all over India, in the field of providing man powers to various Government organizations, public sector undertakings, Government and

Private Universities and the private reputed companies and institutions. As per the certificate dated 20.10.2016 (Annexure P-1), the audit of the petitioner was being carried out. The contract of the petitioner for providing the services to the respondent which was to expire on 31.3.2017 was extended upto 30.4.2017. The services provided by the petitioner to the respondent had been found to be satisfactory which is discernible from a perusal of the certificate dated 27.3.2017 (Annexure P-2). The petitioner had been issued various experience certificates and appreciation letters by various Government organizations, PSUs, Government and private Universities including the certificates dated 10.8.2016 (Annexure P-3) issued by the Doordarshan Kendra, Patiala and dated 8.5.2012 (Annexure P-4) issued by the Punjab Technical University, Giani Zail Singh Campus, Bathinda. Since the contract of the petitioner for providing security and allied services was going to expire on 31.3.2017, the respondent floated a fresh e-tendering process vide tender notice dated 22.3.2017 (Annexure P-6). In pursuance thereto, the petitioner submitted its tender vide letter dated 28.3.2017 (Annexure P-5). The petitioner paid the tender processing fee of ₹ 2300/-, tender form fee of ₹ 10,000/- and the earnest money of ₹ 5 lakhs vide receipts dated 24.3.2017 and 27.3.2017 (Annexures P-7 to P-9, respectively). On receipt of the earnest money from the petitioner and other tenderers, the respondent re-floated the same very tender vide e-tender notice dated 12.4.2017 (Annexure P-10) without deciding the first tender process initiated vide tender notice dated 22.3.2017 (Annexure P-6). Accordingly, the petitioner moved a representation dated 12.4.2017 (Annexure P-11) to the respondent for deciding its first tender process initiated vide tender notice, Annexure P-6, but to no effect. Hence, the

present writ petition.

3. After hearing learned counsel for the parties, we do not find any merit in the writ petition.

4. A perusal of narration of facts shows that the contract of the petitioner for providing security and allied services was going to expire on 30.3.2017, therefore, the respondent floated a fresh e-tendering process vide tender notice dated 22.3.2017 (Annexure P-6). In response thereto, the petitioner submitted its tender vide letter dated 28.3.2017 (Annexure P-5) along with the processing fee, tender form fee and the earnest money. However, as per the communication dated 12.4.2017 (Annexure P-11), addressed by the petitioner to the respondent, the contract of the petitioner had been extended upto 30.4.2017. For the period from 1.5.2017 to 31.3.2018 the respondent had re-floated the tender vide e-tender notice dated 12.4.2017 (Annexure P-10). It was claimed by the petitioner that without deciding the first tender process initiated vide tender notice dated 22.3.2017 (Annexure P-6), the respondent could not re-float the same tender on 12.4.2017. It was within the domain of the respondent to have re-floated the same very tender vide the E-Tender Notice, Annexure P-10, and to call for the fresh E-Tender. The petitioner has not been able to demonstrate that the respondent had taken the decision for fresh E-Tender Notice which was not in the best interests of the University or was taken with malafide intention to favour any particular person. Thus, the decision taken by the respondent has not been shown to be suffering from any arbitrariness or malafides. In such a situation, the re-floating of the tender by the respondent-University cannot be faulted. Further, no letter was issued to the petitioner awarding contract in its favour and, therefore, no legally

enforceable right had accrued in favour of the petitioner.

5. The Supreme Court in **Jagdish Mandal v. State of Orissa and others 2007(14) SCC 517** had held that the contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.

6. Learned counsel for the petitioner could not point out any illegality or perversity in the E-Tender Notice dated 12.4.2017 (Annexure P-10) issued by the respondent warranting interference by this Court under Articles 226/227 of the Constitution of India. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

July 24, 2017
gbs

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes