

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(116)

CWP-9275-2017

Decided on: May 03, 2017.

S.M. Enterprises

.... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Inder Pal Goyat, Advocate, for the petitioner.

M.M.S. BEDI, J (ORAL)

Petitioner challenges order Annexure P-4 dated 19.04.2017 cancelling the tender of the petitioner for maintenance and operation of Children Park in Kaithal. The said order has been communicated by Deputy Commissioner, Kaithal to the Executive Officer, Municipal Council, Kaithal.

Learned counsel for the petitioner has submitted that order Annexure P-4 is non-speaking; passed without any jurisdiction; without the competence of the Deputy Commissioner as the service agreement was signed on behalf of Governor of State of Haryana and without giving any opportunity of hearing to the petitioner.

I have heard learned counsel for the petitioner and considered the contentions of learned counsel for the petitioner regarding the illegalities committed while passing order Annexure P-4 but perusal of service agreement Annexure P-3 indicates that there is an arbitration clause in para 24.

In view of existence of arbitration clause, it will not be feasible for this Court to enter into the disputed questions of fact.

Learned counsel for the petitioner, at this stage, submits that since irreparable loss will be caused to the petitioner on account of the illegal order passed in violation of rules of natural justice and the petitioner cannot claim any interim relief for staying the operation of the impugned order, in arbitration proceedings.

I have considered the said contention and I am of the opinion that plea for interim relief can always be raised as per the provisions of the Arbitration and Conciliation Act, 1996 before the appropriate forum.

Counsel for the petitioner has placed reliance on the judgments in **Union of India V/s. Tania Construction Pvt. Ltd., 2011(4) Recent Apex Judgments (R.A.J.) 254** and **Harbanslal Sahnia and another V/s. Indian Oil Corporation Ltd. and others, 2003 AIR (SC) 2120** and contended that there is no absolute bar for invocation of the writ jurisdiction of the High Court or the Supreme Court without exhausting the alternate remedy.

I have considered the contention of learned counsel for the petitioner in this regard as well. There is no dispute regarding the legal proposition on the basis of judgments of the High Court including the judgment of **Whirlpool Corporation V/s. Registrar of Trade Marks (1998) 8 SCC 11** that the powers vested with the High Court or Supreme Court cannot be defeated by any alternative remedy available to the authorities. But the discretion of the High Court in the exercise of powers under Articles 226 and 277 have to be exercised in the light of totality of the circumstances, in a particular case. In the present writ petition, the petitioner has not mentioned even a single factor in the writ petition as to how the alternative remedy available to the petitioner would not be an

efficacious remedy warranting interference in the disputed questions of fact involved in the case. It is pertinent to mention here that no mention has been made about the arbitration clause existing in the agreement of work contract, in the writ petition.

In view of said circumstances, this Court has opted not to exercise the writ jurisdiction and to relegate the petitioner to the alternative remedy.

This petition is disposed of as not maintainable without prejudice to the right of the petitioner to avail any other legal remedy available to it.

(M.M.S. BEDI)
JUDGE

May 03, 2017
harsha

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No