

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

CWP-9895-2017 (O&M)

Date of decision:- 23.05.2017

Chandigarh Government Electrical Contractors
Association and another.

...Petitioners

Versus

Union Territory of Chandigarh through its Secretary,
Engineering Department, Deluxe Building, Sector 9,
Chandigarh and others.

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Dhiraj Chawla, Advocate,
for the petitioners.

Ms. Deepali Puri, Advocate,
for the respondents.

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S.J. VAZIFDAR, C.J. (ORAL)

The petitioners have sought a writ of mandamus directing the respondents to permit them to submit their bids in respect of a Notice Inviting E-Tenders without submission of the work experience certificate and affidavit.

2. The main Notice Inviting E-Tenders contains the following clauses:-

"4. Qualification criteria for Bidder.

4.1.0. The intending tenderer must have experience of having successfully completed similar nature works, during last 7 (seven) years ending last day of month previous to the month, in which bid applications are invited (i.e. eligibility period) should be either of the following:-

4.1.1. "Three similar completed works" each of value not less than 40% of the estimated cost put to tender.

4.1.2. "Two similar completed works" each of value not less than 60% of the estimated cost put to tender.

4.1.3. "One similar completed works" each of value not less than 80% of the estimated cost put to tender.

4.5 The intending bidder must upload documentary evidence, duly self attested in support of qualifying the eligibility criteria, as stated above i.e. work order(s) completion certificate(s) of completed works and financial turn over etc."

3. The Notice Inviting E-Tenders at the end states:

NIT Document S.No.	Document Name	Description
1	NIT_1.pdf	tender documents"

The petitioners further state that this item opens a document titled "Chandigarh Electricity Department Chandigarh Administration". Serial No. 3 of this document is the "CPWD-6 for e-Tendering". We will presume that the same, therefore, incorporates the terms and conditions of the "CPWD-6 for e-Tendering". The petitioners rely upon clause 1.2.3 thereof which in so far as it is relevant reads as under:-

"CPWD-6 For E-Tendering

1.2.3 When bids are invited from non CPWD contractors and CPWD class II contractors as per provisions of clause 1.2.1 above, it will be mandatory for non CPWD contractors and CPWD class-II contractors to upload the work experience certificate(s) and the affidavit as per the provisions of clause 1.2.2.

But for such bids, Class-I contractors of CPWD are eligible to submit the bids without submission of work

experience certificate and affidavit. Therefore, CPWD class-I contractors shall upload two separate letters for experience certificate and affidavit that these documents are not required to be submitted by them. Uploading of these two letters is mandatory otherwise system will not clear mandatory fields."

4. The petitioners rely upon the second sub-para of clause 1.2.3 of CPWD-6 quoted above to contend that they are not liable to submit the work experience certificate and affidavit. The petitioners do not contend that they are not liable to have the work experience stipulated in clause 4 of the tender notice quoted earlier. They merely contend that they are not bound to submit the work experience certificate and affidavit.

5. This submission is not well founded for the second sub-paragraph opens with the words "But for such bids, Class-I contractors of CPWD....." (emphasis supplied). The petitioners claim to be Class-I contractors, but are admittedly not registered with the CPWD. The petitioner No. 1 and their members are, therefore, non CPWD contractors. The exemption in the sub-paragraph is only to Class-I contractors of CPWD meaning thereby Class-I contractors registered with the CPWD.

6. Faced with this, it was contended that the members of petitioner No. 1 are registered with the Union Territory, Chandigarh and that as the tenders have been invited by the Union Territory, Chandigarh, the reference to "Contractors of CPWD" in clause 1.2.3 of CPWD-6 must be altered to read "Contractors of Union Territory, Chandigarh".

7. We are not entitled to alter, amend or modify the clause to read "Contractors of Union Territory, Chandigarh" in the place of "Contractors of CPWD". It is for the party

inviting tenders to stipulate the eligibility conditions including any relaxation thereto or modification thereof or exemption therefrom. The party inviting tenders is entitled to stipulate the eligibility criteria. The registration of a person with a specified organization or enterprise as a condition of eligibility is often required. The party inviting tenders would obviously have acquainted itself with the qualification required for registration with the specified organization or enterprise and considered those qualifications to be adequate for the due performance of the work in respect of which it invites tenders. The party cannot be compelled then to accept the accreditation by registration with another enterprise or organization. It may not be familiar with requirement for registration with the other organization or if familiar may not consider the same suitable for the performance of its work. Courts cannot compel a party inviting tenders to accept the registration with a particular organization or enterprise as fulfilling the eligibility criteria.

8. The petition is, therefore, dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

23.05.2017

Amodh

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No