

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-COM No.126 of 2017
Date of Decision: 17.05.2017

Deepak Builders

....Petitioner

Vs.

Union of India and others

....Respondent

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Ajay Jain, Advocate,
for the petitioner.

Mr.Udit Garg, Advocate,
for respondent No.1.

Mr.Chetan Mittal, Sr. Advocate, with
Ms.Anita Balyan, Advocate,
for respondents No.2 & 3.

Mr.Akshay Bhan, Sr. Advocate, with
Mr.Vivek Singla, Advocate,
for respondent No.4.

RAKESH KUMAR JAIN, J. (ORAL)

The Institute of Nano Science and Technology, which is an autonomous body under the Ministry of Science and Technology, Government of India, invited tenders for construction and development of campus of Institute of Nano Science & Technology Campus (Package-I) at Knowledge City, Sector 81, Mohali, by way of two bid system in which Part A was pertaining to 'Technical/Eligibility Bid, Notice Inviting Tender, Eligibility Criteria and General Conditions Of Contract', Part B comprises of Special Conditions Of Contract, Additional Conditions, Particular

Specifications, Approved Makes & Tender Drawings and Part C comprises of ‘Financial Bid’. In Part A, dealing with the ‘Technical/ Eligibility Bid’, following information was provided for the prospective bidders: -

“2.2 Information and Instructions for Bidders for tendering forming part of bid document (Applicable for inviting two bid system) The director, Institute of Nano Science & Technology, Mohali (INST), on behalf of Nano Science & Technology Mohali invites percentage rate composite bids from eligible firms/contractors in two bid system for the following work:

Sr. No.	Name of work & Location	Estimated cost put to tender in crores (Rs.)	Earnest Money Deposit (EMD) in Lacs (Rs.)	Date & Time of pre-bid meeting	Last date & time for submission of bids	Date and time of opening of Technical /Eligibility bid
1	2	3	4	5	6	7
1	Construction of Institute of Nano Science & Technology Campus (Package-I) at Knowledge City Sector - 81, Mohali (Punjab) – 140306. SH: Research, Academic & Admn Buildings, Hostel Buildings, Residential Building and Utility Buildings including Water supply, Sanitary Installations, Drainage,	Rs.162.18 Cr.	Rs.1.72 Cr.	29.03.2017 at 2:30 PM	Up to 3:00 PM on 10.04.2017	10.04.2017 at 3:30 PM

	Electrical, Lifts, HVAC, Fire Alarm & Fire Fighting System and External development work etc.					
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The petitioner, one of the prospective bidders, submitted both technical and financial bid after depositing the earnest money of ₹1.72 crores. The petitioner participated in the pre-bid meeting and ultimately vide the impugned order dated 28.4.2017, it was informed that in view of the report of Tender Evaluation Committee and recommendations of Building Works Committee, the competent authority has not found its firm technically qualified under Clause No.8(a) of the NIT. This led to the filing of this petition.

The petitioner has alleged that there is a misreading on the part of the respondents of Clause 8(a) of the NIT otherwise the petitioner is fully eligible for being considered for the technical bid. The petitioner has referred to Clause 8(a) of the NIT and the works it had executed in para 10 of the petition, which are reproduced as under: -

“8. Contractors/bidders who fulfill the following minimum criteria shall be eligible to apply. Joint ventures/consortium are not accepted.

(a) Should have satisfactorily completed the works as mentioned below during the last date of submission of bids.

(i) *Three similar completed works
each costing not less than
Rs.64.9 cr. Or*

*Two similar completed works,
each costing not less than
Rs.97.3 Cr.*

*One similar completed work of
aggregate cost not less than
Rs.129.7 Cr.*

*Similar work shall mean work of
“Construction of Institutional/Educational
buildings Campus with minimum five storeys
RCC framed structure building including
electrical, plumbing, fire fighting, HVAC
works under composite contract executed in
India in a single contract.*

*Components of work executed other than
those included in definition of similar work
shall not be considered while calculating
cost of similar work. Bidder shall submit
abstract of cost of work in support of this.*

*The value of executed works shall be
brought to current costing level by
enhancing the actual value of work at simple
rate of 7% per annum; calculated from the*

date of completion to previous day of last

date of submission for bids.”

<i>Sr. No</i>	<i>Name of work</i>	<i>Completion date</i>	<i>Current cost after addition of 7% per annum</i>	<i>Remarks</i>
<i>1</i>	<i>Construction of District Administrative Complex at Sector – 76, SAS Nagar, Mohali</i>	<i>31.03.2016</i>	<i>Rs.97.76 Cr. Current enhanced value as per clause 2.2.4 Rs.97.76 cr x 107% + Rs.104.60 Cr.</i>	<i>It has basement plus 5 storeys RCC framed structure</i>
<i>2</i>	<i>Construction of Office Building of Punjab Mandi Board, Phase-11, SAS Nagar, Mohali</i>	<i>05.10.2011</i>	<i>Rs.62.65 cr. Current enhanced value as per clause 2.2.4 Rs.62.25 cr x 114% =70.96 cr</i>	<i>It has basement plus six storeys RCC framed structure</i>
<i>3</i>	<i>Construction of Jang-e-Azadi Memorial Project at Kartarpur, Jalandhar (Phase-1)</i>	<i>16.03.2015</i>	<i>Rs.172.32 cr.</i>	<i>It has height of 42 meters i.e. more than 8 storeys RCC framed structure.</i>
<i>4</i>	<i>Construction of Judicial Court Complex at Sector 76, SAS Nagar, Mohali</i>	<i>23.12.2015 : 14 courts out of 25 courts were inaugurated on 23rd Dec, 2015 and are functioning from the building. Work of Phase 2 for remaining courts in progress.</i>	<i>Work of Rs.75.28 cr. was completed upto 31.03.2017 and balance work in progress</i>	<i>It has basement plus 5 storeys RCC framed structure.</i>
		<i>Total value</i>	<i>Rs.423.16 cr.</i>	

According to the petitioner, similar work has been defined in Clause 8(a) of the NIT to mean work of construction of Institutional/Educational buildings Campus with minimum five storeys RCC framed structure building including electrical, plumbing,

fire fighting, HVAC works under composite contract executed in India in a single contract.

Learned counsel for the petitioner has submitted that in the past the petitioner had raised construction of District Administrative Complex at Sector-76, SAS Nagar, Mohali, Construction of Office Building of Punjab Mandi Board, Phase-11, SAS Nagar, Mohali, Construction of Jang-e-Azadi Memorial Project at Kartarpur, Jalandhar (Phase-1) and Construction of Judicial Court Complex at Sector 76, SAS Nagar, Mohali, which are all 5 storeys RCC structures along with the electrical, plumbing, fire fighting, HVAC works etc. It is, thus, submitted that the exclusion of the petitioner in view of Clause 8(a) of the NIT at the instance of the Tender Evaluation Committee and recommendations of Building Works Committee, is patently erroneous and illegal and thus the impugned order may be set aside.

After notice, the respondents have filed their reply.

It is submitted by the respondents that the reason for rejecting the technical bid of the petitioner on the ground of eligibility is that the petitioner has not executed similar work. It is further submitted that the work which has to be executed has been specifically mentioned in the information given to the parties, who were interested in bidding. It is also submitted that the parties are required to construct Institute of Nano Science and Technology Campus i.e. an Educational and Research Institution, which not only requires the electrical, plumbing, fire fighting, HVAC works but also the research, academic and administrative buildings, hostel buildings,

residential buildings, amenity building and utility buildings including water supply, sanitary installations, drainage, electrical, lifts, HVAC, fire alarm & fire fighting system and external development works etc.

The petitioner has not averred in the petition of having executed such type of work in the past. It is also submitted that had it been a case of construction of administrative block then the matter would have been different but since the bid was for the construction of an educational and research campus for which the petitioner was not found having enough experience in the past, therefore, the technical bid of the petitioner was rejected. In support of his submission, learned counsel for the respondents has also relied upon a Division Bench judgment of this Court rendered in "*Shivji Singla & Sons Vs. State of Punjab and others*" 2016(1) BC 467. It is also submitted by learned counsel for the respondents that the technical evaluation of the work having been executed by the petitioner in the past has been evaluated first by the Project Management Consultant (M/s Tata Consulting Engineers Ltd.) and then by the Technical Evaluation Committee, specifically set up for this purpose comprising of Engineers, Scientists and Administrators and finally by the Building Works Committee of the Institute (duly appointed by the Board of Governors of the institute), which comprises of highly experienced engineering consultants. All these committees, during their evaluation found that the petitioner is ineligible for having not meeting the criteria advertised through the NIT as mentioned in Clause 2.2 read with Clause 8(a) of the NIT.

I have heard both the learned counsel for the parties and examined the available record with their able assistance.

The only issue involved in this petition is *“as to whether the technical bid of the petitioner has rightly been rejected by the respondents in terms of Clause 8(a) of the NIT”*?

Clause 8(a) of the NIT has already been reproduced in the earlier part of the order in which it is specifically provided that similar work would mean the work of construction of institutional/educational buildings campus. This itself would be sufficient to hold that the petitioner is not eligible because in the chart given in para 10 of the writ petition, where the petitioner has mentioned the work executed by it, does not show even a single work executed by the petitioner of constructing institutional/educational building campus. All that has been done by the petitioner in the past is the construction of building being administrative building, judicial complex or a memorial project but the work for which the bid has been given is specifically for the construction of Institute of Nano Science & Technology Campus which not only requires the construction of the building of the administrative block but also of research and academic buildings, hostel buildings, residential building and utility buildings etc. The petitioner is definitely lacking in experience in this regard and thus, after consulting the case of the petitioner with the specialist namely, M/s Tata Consulting Engineers Ltd., Technical Evaluation Committee and Building Works Committee, it was found that it is not safe to include the petitioner in

the bid because of not having the requisite experience of the work which is being offered by way of NIT.

Thus, in my considered opinion, there is no error on the part of the respondents in passing the impugned order and hence, the present petition is hereby dismissed being devoid of any merit.

(RAKESH KUMAR JAIN)
JUDGE

17.05.2017

Vivek

Whether speaking/reasoned Yes/No

Whether reportable Yes/No