

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No.1101 of 2018(O&M)

Date of Decision: 23.02.2018

Sahil Duhan and others

.....Petitioners

versus

Deputy Commissioner, Hisar, Haryana

.....Respondents

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE AVNEESH JHINGAN, JUDGE

Present: Mr. Sanchit Punia, Advocate for the petitioners.
Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

AVNEESH JHINGAN, J.

The petition has been filed with the prayer for quashing the second tender notice dated 17.01.2018 and recommendation dated 18.12.2017 rejecting the quotation of the first tender and ordering re-tender. Further prayer has been made for direction to the respondents to consider the tender of the petitioners as per seniority in the first tender notice.

The respondents are (i) the Deputy Commissioner, Hisar, Haryana; (ii) City Magistrate, Hisar, Haryana and (iii) Welfare Centre for Hearing and Speech Impairment, Hisar.

The respondents issued notice inviting tender dated 21.09.2017 for providing the vehicles on contract basis for one year to Hearing and Speech Impairment Welfare Centre for driving test. The bids were to be submitted before 28.09.2017 on the basis of sharing percentage of fee. The persons who have no vehicle for undergoing the driving test for regular license are to be provided vehicles on payment of fee.

The petitioners submitted their quotations. Twenty-two forms were found dully filled and seniority list accordingly was prepared for each type of vehicle. The seniority list was sent to respondent No.2 for evaluation and for further processing. Respondent No.2 rejected the seniority list as the quotations received were low and fresh quotations were ordered to be called for.

Pursuant to the decision taken, a fresh tender notice dated 17.01.2018 was issued. The petitioners approached this Court after issuance of this tender notice.

The grievance of the petitioners is that the second tender notice has been issued without abandoning the first tender.

The issuance of second tender notice itself is a cancellation of earlier tender. There is no requirement in such proceedings to pass a formal order abandoning the first tender. The subsequent notice issued is an implied cancellation of the first tender.

In a short reply filed before this Court, the respondents have taken a stand that they have even abandoned the second notice as the quotations received are also on the lower side. A fresh tender notice would be issued and a clause of minimum sharing percentage would be introduced.

Such a clause is not alien to tenders. The party inviting the tender is entitled to stipulate the terms and conditions including for the purpose of ensuring the quality of the work to be performed. In order to attain good results and to maintain a particular level of quality, such term and condition can be inserted. To ensure quality, the introduction of terms and conditions is a process of trial and exploring. Sometimes it is a past experience or the feasibility of the quality which works as an input for such

improvements.

We may hasten to add that we are in no way commenting upon the quality of the vehicles or services to be provided by the petitioners. We have no basis to doubt the same. Terms and conditions, however, are not stipulated for a particular party but qua all eligible bidders. Such a case where the party inviting tender has to maintain balance between the revenue to be collected and quality to be maintained cannot be decided on individual basis. It is the party inviting the tender who has to take such decisions. There may be different modes of ensuring the suitability of a bidder for doing the work. It is, however, for the party inviting tenders to decide which of these methods ought to be adopted. The court cannot substitute its choice for that of the party inviting tenders. The court has no role in stipulating the terms and conditions unless arbitrariness or unreasonableness is established.

Learned counsel for the petitioners relied upon Condition No.7 of the NIT to argue that the petitioners have been prejudiced by the cancellation of the tender, as they have purchased new vehicles in order to get priority in acceptance of their tender.

Condition No.7 of the Terms and Conditions is quoted below:

"The applicant of New Model of vehicle will be given priority".

The contention put forth by the petitioner has no foundation. The clause nowhere states that new vehicles would be given priority. The requirement is that the vehicle should be of '*new model*'. There is a difference between a '*new model*' vehicle and '*new vehicle*'. New model would be the latest model introduced by the manufacturer of the vehicle. It nowhere relates to date of purchase of the vehicle. The vehicle of an older model which has not been discontinued can be purchased even now. It will

not qualify for the term new model of the vehicle.

It would be pertinent to take notice of the fact that the respondents in their short reply have stated that if the petitioners, apply afresh in the new tender, they will not have to submit the tender fee again.

The petitioners are endeavouring to get a direction from this Court for acceptance of their tender through writ petition. Court under normal circumstance cannot pass such mandatory orders directing issuance/entrustment of work to a particular person. It is the respondents who have to decide in a fair and transparent manner that to whom the work is to be allotted. It is not normally within the scope of writ Court to pass such directions.

With regard to scope of interference in the writ jurisdiction, we may refer to the decisions of the Supreme Court. In case of **Michigan Rubber (India) Limited Versus State of Karnataka and others**, AIR 2012 SC 2915, it was held as under:

"23) From the above decisions, the following principles emerge:

(a) the basis requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities:

(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited:

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded

to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government."

In **Tata Cellular Versus Union of India**, AIR 1996 SC 11, the

Supreme Court has held as under:

" 108. The principles deducible from the above are:

xx xx xx xx

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fairplay in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by *mala fides*.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

The petitioners have not been able to point out any unreasonableness or arbitrariness. The decision taken by the respondents is not effected by any bias and policy decision has not been taken for the purpose of defeating the rights of the petitioners. The decision taken by the respondents is in public interest.

In view of the above discussion, no case is made out by the petitioners. It has not been established that the minimum sharing percentage clause in the fresh tender notice causes any prejudice to the petitioners.

The writ petition is dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

23.02.2018
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Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No