

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

**CWP-12403-2018 (O&M)
Date of Decision: 22.05.2018**

Subodh Kakkar & another

... Petitioners

Versus

Union of India & others

... Respondents

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE.**

HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Arun Jain, Senior Advocate with
Mr. Amit Jain, Advocate for the petitioners.

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TEJINDER SINGH DHINDSA, J.

1. Principal Commissioner, Central Excise and Service Tax Commissionerate, Ludhiana issued tender notice dated 17.05.2017 (Annexure P-1) inviting applications for hiring of office accommodation for GST Divisions and Range Offices across various Districts including District Ferozepur.

2. Challenge in the instant petition is to the order dated 05.12.2017 (Annexure P-7), whereby the tender in question for hiring office building at Ferozepur stands withdrawn. Further challenge is to the notice dated 20.04.2018 (Annexure P-10) and in terms of which a process of re-tendering has been initiated.

3. It is the case of the petitioners that being eligible and competent as per tender notice dated 17.05.2017, they had submitted the technical bid

for Ferozepur through their Power of Attorney holder, namely, Ashok Kumar. It is averred that 9 bidders had submitted their technical bids out of which 5 including the petitioners had qualified. Thereafter, financial bid was submitted by the petitioners and inspite of their bid being the most competitive, the same has not been accepted.

4. Learned counsel has argued that action of the official respondents in having not accepted the bid of the petitioners and having withdrawn the tender is unjust, discriminatory and against the principles of natural justice. Non-acceptance of a financial bid which was the lowest is contrary to the tender conditions and cannot sustain in law. *Mala fides* have also been alleged by stating that the tender has been withdrawn at the behest of respondent No.3 and with the oblique objective to have the same allotted to private respondent No.4 for illegal gains. Building on the submission of *mala fides*, learned senior counsel urges that Condition No.20 in the tender notice dated 17.05.2017 and which required the building in question to be ready for occupation has been deleted in the subsequent tender process initiated on 20.04.2018 and the same has been done only to favour respondent No.4.

5. We have heard learned senior counsel at length and have perused the case paper book.

6. In **Air India Limited Versus Cochin International Airport Limited (2000) 2 SCC 617**, law relating to award of contract by State and public Sector Corporations was dealt with and it was held that the award of contract, whether it is by a private party or a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision

considerations which are paramount are commercial considerations. It is open for the State or its instrumentality not to accept the offer even though it happens to be the highest or the lowest. Even though, such a decision would not be amenable to judicial review still the Court can examine the decision making process and interfere if it is found vitiated by *mala fides*, unreasonableness and arbitrariness.

7. In the present case, petitioners claim that their technical bid had been evaluated and thereafter their financial bid was the lowest. However, no material/document has been placed on record to reflect that the bid submitted by the petitioners was accepted. In other words, there was no concluded contract between the petitioners and respondent No.2. No vested right, as such, had accrued to the petitioners in relation to tender notice dated 17.05.2017.

8. We have perused the communication dated 28.12.2017 (Annexure P-8) issued by the office of Deputy Commissioner, Excise and Tax Division (Ludhiana Central) and which had been issued in the name of Power of Attorney holder, Ashok Kumar and which contains a number of objections as regards the office premises that had been offered by the petitioners at Ferozepur in response to the tender notice dated 17.05.2017. The objections may be summarized as follows:

- (i) The premises offered by the petitioners were stated to have only one entry and one exit point and which would have resulted in a traffic hazard.
- (ii) As per Condition No.20 contained in the tender notice dated 17.05.2017, the premises offered should have been

ready to occupy including facilities such as lift, running water supply for sanitation, sewerage, fire fighting equipment etc. and the hand over time could be extended in appropriate cases for valid reasons. Objection raised is that condition No.20 had not been met fully.

(iii) The bid had been submitted by the petitioners through their Power of Attorney holder, namely, Ashok Kumar but in the Power of Attorney executed on 17.05.2017, the word 'plot' has been applied and not 'building'.

(iv) Even though, the technical/financial bids had been submitted by the petitioners but the process relating to change in land used, issuance of CLU certificate and approval of map of CLU was done belatedly and in the months of May, June and July, 2017.

(v) The Nagar Council, Ferozepur had issued notice dated 30.06.2017 under Sections 195 and 195-A of the Punjab Municipal Act, 1911 in relation to the premises in question and on account of which construction work remained suspended from 30.06.2017 to 27.07.2017.

(vi) Officials of the office of respondent No.2 had inspected the premises on 21.09.2017 and had noticed that basic structure of 2nd floor was still under construction and the requirement of providing lift, running water supply for sanitation, electricity connection had not been met.

9. We are of the considered view that the afore noticed objections

raised by respondent No.2 cannot be taken as irrelevant. Judicial review by this Court while exercising the extraordinary writ jurisdiction under Articles 226/227 of the Constitution of India pertaining to cancellation of the earlier tender notice dated 17.05.2017 would be limited to the decision making process and not to the decision itself. We do not find any patent infirmity in the action of respondent No.2 in having withdrawn the tender notice dated 17.05.2017 and having chosen to initiate a process of re-tender particularly in view of the fact that no concluded contract had been entered into between respondent No.2 and the petitioners.

10. The submission raised by learned senior counsel as regards there being violation of principles of natural justice in having cancelled the tender process is without merit. In **Jagdish Mandal Versus State of Orissa & others (2007) 14 SCC 517**, the Apex Court had held that in the matter of evaluating tenders and awarding contracts which are essentially commercial functions, principles of equity and natural justice stay at a distance. If the decision relating to award/cancellation thereof is *bona fide* then the 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. It was further held that scope of interference in matters of tender at the hands of the Court was minimal.

11. As regards the scope of interference by the Courts in tender matters on the ground of *mala fide* is concerned, the Supreme Court in **Ratnagiri Gas & Power Private Limited Versus RDS Projects Limited & others, (2013) 1 SCC 524** had observed as under:

“50. *Mala fides* means want of good faith, personal bias,

grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

51. The action taken must, therefore, be proved to have been made mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.”

12. The petitioners have raised vague and bald allegations of *mala fides* in the present petition. It has merely been stated that respondent No.3 is personally interested in having the work allotted to respondent No.4. Such averment by themselves would not establish *mala fides*. There is no material to substantiate the assertion that respondent No.3 has any nexus and proximity with respondent No.4. Even the submission as regards Condition No.20 contained in the tender notice dated 17.05.2017 having been deleted in the subsequent tender notice dated 20.04.2018 to favour respondent No.4 is not well founded. We find that in the subsequent tender notice dated

20.04.2018 (Annexure P-10) Condition No.12 is almost to the same effect i.e. the premises in question to be ready for possession and occupation within one month of the acceptance of the offer excluding a reasonable time required to carry out any changes or modifications as per directions of the department.

13. Petitioners have miserably failed to establish *mala fide* exercise of power at the hands of respondent No.3.

14. For the reasons recorded above, we find no merit in the present writ petition and the same is accordingly dismissed.

15. Petition dismissed.

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

22.05.2018

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |