IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 18749 of 2017 (O&M)

Date of Decision: 21.03.2018

M/s Laggar Industries Limited through its authorized officer Sh.S.B.Sharma

…..Petitioner

versus

State of Haryana and others …..Respondents

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

Present : Mr. Sunil Chadha, Senior Advocate with
Ms. Swati Verma, Advocate, for the petitioner.

Mr. Sandeep Moudgil, Additional Advocate General, Haryana.

Mr. Anand Chibbar, Senior Advocate with
Mr. Vaibhav Sahni, Advocate, for the applicant in
CM No. 12203-CWP-2017.

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S.J.VAZIFDAR, CHIEF JUSTICE

CM No. 12203-CWP of 2017

This is an application for impleading M/s Swadeshi Khadi Gramodhyog, Village Kishanpura, Rohtak Road, Jind, Haryana, through its Proprietor as respondent No.4.

Heard. For the reasons mentioned in the application, the same is allowed and the applicant is ordered to be impleaded as respondent No.4 in the petition.

CWP No. 18749 of 2017 (O&M)

The petitioner has challenged the respondents' decision to abandon the tender process. The petitioner has also sought a writ of mandamus directing the respondents to allot the tender in its favour.

2. In June-2016, the respondents invited tenders on line for various types of furniture. The petitioner submitted a bid. On 07.10.2016, the respondents held the petitioner's bid to be ineligible. The petitioner's representation against the same having been rejected it filed Civil Writ Petition No. 22148-2016 challenging the same. By an order and judgment dated 24.10.2016, the Division Bench disposed of the petition by directing the respondents to take a decision on the petitioner's representation and to pass a speaking order in respect thereof after affording the petitioner an opportunity of being heard.

3. The respondents accordingly heard the petitioner and passed an order dated 21.11.2016 reiterating its decision that the petitioner's bid was not as per the terms of the Notice Inviting Tender (NIT).

The petitioner challenged this decision by filing CWP-COM No. 36 of 2016. By an order and judgment dated 17.01.2017 the learned Single Judge allowed the petition. The learned Judge held that the rejection of the petitioner's bid was illegal and directed the petitioner's financial bid to be considered by the respondents. It must be noted that the learned Judge did not direct the work to be issued to the petitioner. The private respondent in that petition, namely, Swadesh Khadi Gramudhyog filed a review petition which was withdrawn on 27.03.2017. A second review petition was dismissed on 25.04.2017. LPA No. 125 of 2018 is filed by Swadeshi Khadi Gramodhyog against the order and judgment dated 17.01.2017.

4. Further steps were taken by the respondents in respect of the said tender process. The financial bids were opened. The petitioner's bid was indeed the lowest. The petitioner was invited for negotiations and clarifications as per the policy. These events took place between 20.01.2017 and 29.03.2017.

5. However, by a letter dated 31.03.2017, the petitioner was informed that an agenda for finalization of the tender was put up before the High Powered Purchase Committee (HPPC) in its meeting held on 20.03.2017; that the draft proceeding was submitted to the competent authorities for their approval and signatures and that the petitioner would be informed about the decision.

6. The petitioner thereafter received a letter dated 25.04.2017 from the Director, Supplies and Disposals, Haryana-respondent No.2 which reproduced the relevant part of the decision of the HPPC taken at the meeting held on 20.03.2017. The extract quoted in the letter reads as under:-

> "……..The Administrative Secretary to Government, Haryana School Education Department informed the High Powered Purchase Committee that the budget allocation in FY 2016-17 for the present case of arranging Rate Contract for the purchase of School Furniture items has already lapsed and hence will re-tender the same in the next financial year which was accepted by the Committee.
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> The Committee further observed that a number of references/complaints have been made in the case by the bidding firms as well as non bidders related to fulfillment/non-fulfillment of Qualifying Requirements (QRs) by various bidders. In view of the complaints/representations, the Eligibility criteria of the tender may be reviewed so that the supplies are obtained in quite transparent manner, hence there is a need to look into the Eligibility Criteria of the tender in general and specially in terms of the situation where the bidding firms is declared technically valid as per DNIT but do not supply the tendered material from its own unit. The Indenting Departments, Supplies & Disposals, Department and experts (if required) may look into the same. After detailed deliberations, it was considered appropriate to close the present tender……."

7. The question is whether the respondents were entitled to abandon the tender process despite the aforesaid facts.

8. The mere fact that a party's bid is the most competitive does not entitle it to be awarded the work. A Notice Inviting Tenders is not an offer. It is not an invitation to offer. The bids/tenders submitted constitute an offer. It is only upon the acceptance of the bid by the party inviting tenders that an agreement can be said to have been entered into between the parties. Absent anything else, the respondents are not bound to accept the most competitive bid which in this case is that of the petitioner. The decision to abandon the tender process can be challenged if it is *mala fide*. It may in some cases even be open to challenge on the ground that it is ex-facie unreasonable or unjust.

9. To ascertain whether the decision in this case is *mala fide* or ex-facie unreasonable or unjust, it is necessary to consider the record and especially an agenda note and the report of the HPPC.

The agenda note for the meeting to be held on 20.03.2017 under the Chairmanship of the Finance Minister, Haryana, states *inter-alia,* as follows:-

The contract was for a period of one year extendable for two years. The approximate value of the contract was Rs. 167.50 crores. The Advocate General, Haryana, advised filing a Letters Patent Appeal against the order and judgment dated 17.01.2017. It was decided to open the financial bids on the basis that if the petitioner becomes the lowest bidder, the respondents' stand to save money. The note also states that "it was also decided that instead of going for unnecessary litigation, efforts should be made which gives a genuine price of the product". The financial bids were forwarded to the Director Secondary Education and Director Elementary

Education (Indenting Departments) with a request to look into the matter and state whether the agenda note for the finalization of rate contract is to be put up before the High Powered Purchase Committee. It instructed the office to take action accordingly.

It is important to note that the Indenting Department was required to furnish the information regarding the then prevalent market rates in the meeting of the HPPC for the justification of rates.

10. The case was accordingly submitted before the HPPC for consideration and a decision in that regard. The HPPC held a meeting in this regard on 20.03.2017. We set out the relevant part of the Minutes of the Meeting while referring to the letter dated 21.04.2017.

11. We are unable to state that the impugned decision is arbitrary or *mala fide*. The relevant facts and circumstances were taken into consideration. The HPPC noted that a number of references/complaints had been made relating to the fulfillment/non-fulfillment of the qualifying requirements by various bidders. The eligibility criteria was sought to be reviewed. A party inviting tenders is always entitled to do so in any event before an agreement is entered into. The eligibility criteria must be left to the party inviting tenders. It was decided to direct the experts to look into these issues. As mentioned earlier, it was also observed that it was not desirable for the respondents to enter into protracted litigation. To avoid all these difficulties and in view of the above considerations, the decision was taken to close the present tender process.

12. In these circumstances, it is not possible for this Court to direct the respondents to enter into a contract with the petitioner especially considering the fact that the rates pertain to the period two years ago. It

would be unfair to compel the respondents to enter into a contract against their wishes.

13. The petition is, therefore, dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

21 .03 .2018
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Whether speaking/reasoned	√Yes/No
Whether reportable	Yes/No√