IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 23142 of 2017
Date of decision: 08.05.2018

The Haryana Co-op Labour and Construction Society Limited.

……Petitioner

Vs.

Food Corporation of India, Panchkula and others.

…..Respondents

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

HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Sanjiv Gupta, Advocate for the petitioner.

Mr. K.K. Gupta, Advocate for FCI

Mr. Anurag Chopra, Advocate for respondent no. 4 (in CWP No. 23142 of 2017)

Mr. Mohit Kakkar, Advocate for Mr. Bhupinder Ghai, Advocate for respondent no.4. (in CWP No. 23185 of 2017)

Ajay Kumar Mittal, ACJ.

1. This order shall dispose of CWP Nos. 23142 and 23185 of 2017 as according to learned Counsel for the parties, the issue involved in both these petitions is identical. However, the facts are being extracted from CWP No. 23142 of 2017.

2. CWP No. 23142 of 2017 has been filed by the petitioner under Articles 226/227 Constitution of India, for quashing the recommendations of the committee, Annexure P.11 vide which its tender was rejected. Further prayer has been made for quashing the impugned communication dated 03.10.2017, Annexure P.12, whereby the financial bid of private respondent

No. 4 has been accepted and the petitioner's technical bid has been rejected. Direction has also been sought to the official respondent to accept the bid of the petitioner and to award contract of Mandi Labour at Kaithal Mandi by opening the financial bid of the petitioner.

3. A few facts relevant for the decision of the controversy involved as narrated in CWP No. 23142 of 2017 may be noticed. The petitioner is a duly registered society. With respect to Kaithal Mandi, District Kaithal in Food Corporation of India, Kurukshetra, online tenders were invited from financially sound parties having business competency for appointment of Mandi Labour Contractor at Kaithal Mandi in the Food Corporation of India (FCI), District Kurukshetra, for a period of one year w.e.f. 01.10.2017 to 30.09.2018, extendable for further period of three months upto 31.12.2018 at the option of FCI. The petitioner submitted its tender form complete in all respects prior in time. According to the petitioner, there was nothing adverse against it as it was having solvency certificate, Annexure P.3. The petitioner also submitted information regarding its bank account and the work experience. It also submitted the Income Tax return for the years 2015-16 to 2017-18 alongwith audited report for the period from 01.04.2015 to 31.12.2016. To the utter surprise of the petitioner, on 01.10.2017, a message was received to the effect that its bid for the tender had been rejected during technical evaluation by the duly constituted committee. The petitioner approached the respondents to obtain the technical report which was provided to it. It was inter alia stated that the petitioner firm had no cash credit limit and no duly audited profit and loss account and therefore, it was not having financial soundness. Thus, the technical bid of the petitioner was rejected. On 03.10.2017, Annexure P.12, it was communicated that bid of respondent No. 4 was accepted and that of the petitioner firm was rejected. Hence, the instant petitions by the petitioner.

4. A written statement has been filed by Area Manager, Food Corporation of India, District Kurukshetra on behalf of respondent No. 1 to 3 wherein it has inter alia stated that in support of financial soundness, the tenderer was required to give details of Cash Credit Limit/ facilities enjoyed alongwith the certificate from the bank, whereas the petitioner had uploaded only the solvency certificate. Even in that certificate, the bank had clarified that the same was only information furnished without any risk and responsibility on its part. To the contrary, respondent No. 4 to whom the contract had been awarded had not only furnished the solvency certificate but also the Cash Credit Limit Certificate of ₹ 76 lacs issued by the Punjab National Bank. The bank had clarified that against the original title deeds respondent No. 4 was enjoying the aforesaid amount of cash credit limit. The petitioner was also required to furnish duly audited profit and loss account and balance sheet for preceding three years, whereas the petitioner had furnished the profit and loss account and balance sheet containing the serious financial objections by the statutory auditors. The petitioner had not submitted the audit report of the said account containing the removal of such objections. On these premises, prayer of dismissal of the petition has been made.

5. We have heard learned counsel for the parties.

6. Admittedly, online tenders under two bid system i.e. technical and financial bid were invited from financially sound parties having business competency for appointment of Mandi Labour Contractor at Kaithal Mandi in FCI, District Kurukshetra for a period of one year w.e.f. 01.10.2017 to 30.09.2018 and extendable for further three months upto 31.12.2018 at the option of the FCI. The petitioner submitted its tender after completing all the requisite formalities and submitting the relevant documents. On 01.10.2017,

the petitioner received a message that its bid had been rejected during technical evaluation by the duly constituted committee. It was stated that as per terms and conditions, the petitioner had no cash credit limit and no duly audited profit and loss account and thus it was not having financial soundness. Through another communication dated 03.10.2017, the petitioner came to know that bid of respondent No. 4 was accepted.

7. Examining the scope of judicial intervention in the matters of allotment of tenders, the Supreme Court in ***Jagdish Mandal v. State of Orissa and Others, (2007) 14 SCC 517,*** had held that the contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision in such matters is bona fide and is in public interest, 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. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The Court should exercise judicial restraint unless illegality or arbitrariness on the part of the Government in these matters is apparent. In other words, interference is permissible if the process adopted or decision made is malafide or intended to favour someone or the same is so arbitrary and irrational that no responsible authority acting under the law could have arrived at it or it affected the public interest.

8. In the present case, the period of the work allotment was with effect from 01.10.2017 to 30.09.2018. The maximum period of the work i.e. seven months out of one year has already gone. Further, nothing was pointed out by the learned counsel for the official respondents that there was anything

about performance in the working of respondent No.4. Keeping in view the legal dictum enunciated by the Apex Court in ***Jagdish Mandal's*** case (supra), at this stage, this Court is of the view that it would not be in the public interest to set aside the work contract already allotted. The petition is disposed of accordingly. However, the issue with regard to the eligibility of the petitioner is left open for adjudication in an appropriate case as and when the occasion arises.

(Ajay Kumar Mittal)
Acting Chief Justice

May 08, 2018 **(Tejinder Singh Dhindsa)**
'gs' **Judge**

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