IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-29761-2018 (O&M)
Date of decision:- 27.11.2018

Surinder Kumar Jindal

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present:- Mr. Rajesh Kumar Girdhar, Advocate,
for the petitioner.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab,
for respondents No. 1 to 4.

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KRISHNA MURARI, C.J. (ORAL)

Petitioner has approached this Court invoking the powers conferred by Article 226 of the Constitution of India in this Court to challenge the rejection of his technical bid on the ground that audited financial reports are not attached.

2. Learned counsel for the petitioner vehemently contended that under Section 44 AB of the Income Tax Act, 1961, only in case the total sales, turnover or gross receipts, as the case may be, in business exceeds ₹ 1 crore in any previous year, then only the accounts are to be audited by a certified Chartered Accountant. Since in the case in hand, the condition set-forth in the tender document was that person applying should have an experience of having carried out similar work(s) of value not less than ₹ 10 lacs during previous years and the approximate value of works for which tender was invited was ₹ 12.50 lacs, as such the requirement of filing audited financial reports was wholly misconceived and in fact a method

devised to oust the petitioner and such other similarly situated person(s). It is further submitted that this is what has actually happened. There were three bidders out of which the technical bid of the petitioner and one other bidder has been rejected and, thus, only one bidder survives. It is also pointed out that the petitioner made a representation stating that since his annual turnover is less than ₹ 1 crore, as such he was not required to submit audited financial reports. The said representation has been rejected vide order dated 20.11.2018 without even addressing to the objection raised by the petitioner on the ground that in terms of clause 2.1 of the approved DNIT since financial audit reports have not been submitted online and as such there is failure on the part of the petitioner to have complied with the condition of DNIT and, thus, his technical bid has been found to be non-responsive.

3. After hearing learned counsel for the petitioner and having found that the condition was totally unreasonable, we required learned State counsel appearing for respondents No. 1 to 4 to seek instructions in the matter. In response thereof, today when the matter is called out, on the basis of instructions received from Mr. Rajinder Singh, Chief Engineer (South), Department of Water Supply & Sanitation and Mr. Gurpreet Singh, Executive Engineer, Barnala, Ms. Monica Chhibber Sharma, learned Senior Deputy Advocate General, Punjab states that the decision to reject the technical bid of the petitioner and other tenderer shall be reviewed in the light of the fact that there is no requirement in law to file the financial audit reports in case the turnover is below ₹ 1 crore. An undertaking has been given before us that before proceeding to open the financial bid, the technical

bid of the petitioner and other similarly situated person shall be taken into consideration and it is only thereafter the financial bid shall be opened.

4. In view of the aforesaid statement made by learned State counsel on the basis of instructions from Mr. Rajinder Singh, Chief Engineer (South), Department of Water Supply & Sanitation and Mr. Gurpreet Singh, Executive Engineer, Barnala, cause of action in the petition does not survive any further and the same is accordingly consigned to the record room.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

27.11.2018
Amodh

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