IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-7714-2017 (O&M)
Date of Decision: 16.05.2018

Khurana Vineet Associates ... Petitioner

Versus

The Punjab State Cooperative Supply and Marketing Federation Ltd. & another

... Respondents

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

HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Manish Jain, Advocate for the petitioner.

Mr. Mehardeep Singh, Advocate for respondent No.1.

Ms. Adrija Dass, Advocate for
Mr. Amar Vivek, Advocate for respondent No.2/ICAI.

...

<u>TEJINDER SINGH DHINDSA, J.</u>

Petitioner is a firm of Chartered Accountants and has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking issuance of a writ of certiorari for quashing of tender notice (Annexures P-1 and P-2) issued by the Punjab State Cooperative Supply and Marketing Federation Limited (MARKFED) for appointment of statutory and concurrent Auditors.

We have been apprised at the very outset by learned counsel appearing for the parties that contract that had been awarded in pursuance to the impugned tender notices issued in the month of March, 2017 has already expired. In view of the above, the prayer for quashing of tender notice at Annexures P-1 and P-2 does not survive.

We, however, find that the petitioner/firm has raised an issue which would require consideration.

Learned counsel appearing for the petitioner/firm has adverted to the Code of Ethics prescribed by the Bombay Chartered Accountants' Society at Annexure P-7 to contend that a practising Chartered Accountant cannot pay earnest money/security deposit in areas which are exclusive to Chartered Accountants as per law. Argument raised is that the pre-condition of deposit of earnest money in the impugned tender notice issued by MARKFED was against the Code of Ethics.

The Institute of Chartered Accountants of India (in short 'the Institute') has filed a written statement to the writ petition. It has been stated that a Notification dated 07.04.2016 has been issued and as per which a member of Institute in practice shall not respond to any tender issued by an organization or user of professional services in areas of services which are exclusively reserved for Chartered Accountants, such as audit and attestation. However, such restriction would not be applicable where minimum fee of the assignment is prescribed in the tender document itself or where the areas are open to other professionals along with Chartered Accountants. Insofar as the issue of deposit of earnest money is concerned, learned counsel representing the Institute submits that the Code of Ethics, 2009 issued by the Institute do not envisage any prohibition for deposit of earnest money/security deposit while responding to tender. It is submitted that such matter had been considered by the Institute and it had been decided that interference with the condition for requirement of earnest money/security deposit is not required at the level of the Institute since such conditions are insisted upon to ensure transparency in the tender process. However, it was considered feasible that upon receiving any complaint of exorbitant earnest money/security deposit, the Ethical Standard Board which is one of the non-standing committees of the Institute would look into the matter on a case to case basis.

The Notification dated 07.04.2016 issued by the Institute of Chartered Accountants of India reads as follows:

"7th April, 2016

NOTIFICATION

Guideline No.1-CA(7)/03/2016-In exercise of the powers conferred on its under Item (1) of Part II of the Second Schedule of the Chartered Accountants Act, 1979, the Council of the Institute of Chartered Accountants of India hereby issue the following guidelines for compliance by the members of the Institute-

(i) A member of the Institute in practice shall not respond to any tender issued by an organization or user of professional services in areas of services which are exclusively reserved for chartered accountants, such as audit and attestation services,. However, such restriction shall not be applicable where minimum fee of the assignment is prescribed in the tender document itself or where the areas are open to other professionals along with the Chartered Accountants.

(ii) This Guidelines shall come into force with immediate effect.

(V. Sagar)
Secretary"

The language of the Notification is couched in clear and unambiguous terms.

We are of the considered view that the respondent/Federation ought to have issued the tender notice in conformity with the Notification dated 07.04.2016.

While disposing of the instant writ petition as infructuous, we direct that respondent No.1/MARKFED in the eventuality of initiating any tender process for availing services which are exclusively reserved for Chartered Accountants such as audit and attestation services would ensure compliance of the Notification dated 07.04.2016 issued by the Institute of Chartered Accountants of India and the tender notice to be issued in the future would be construed as valid only if it falls within the exception carved out in the Notification itself.

Disposed of accordingly.

(AJAY KUMAR MITTAL) **(TEJINDER SINGH DHINDSA)**
ACTING CHIEF JUSTICE **JUDGE**

16.05.2018
harjeet

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No