

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

**CWP-6930-2018 (O&M)
Date of Decision: 21.05.2018**

M/s Dhotra Construction Company

... Petitioner

Versus

State of Punjab & others

... Respondents

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

HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Rajeev Dev Sharma, Advocate for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

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TEJINDER SINGH DHINDSA, J.

1. Petitioner has filed the instant petition under Articles 226/227 of the Constitution of India for issuance of a writ of certiorari to quash letter dated 30.01.2018 (Annexure P-8) issued by the Chief Engineer, Ranjit Sagar Dam Construction, Shahpur Kandi, Pathankot and in terms of which the tender work has been allotted in favour of respondent No.6.

2. Briefly, it may be noticed that the Punjab Irrigation Department issued tender notice dated 24.04.2017 inviting e-tenders in two tier system from approved and eligible class 2 Contractors/agencies registered with the Punjab Irrigation Department and Cooperative and Labour & Contractive Societies registered with PWD (B&R) Department for the following work:

“Construction of re-aligned approach road (RCC) from

hair pin bend of left side road to Dalla Nallah Bridge from RD 10.00 to RD 296.00 mat RSD Project.”

3. The estimated cost of work was Rs.3200897/-. In the tender notice itself, the conditions for pre-qualification (for two tier system) were stipulated. Condition No.3 would be relevant to the issue at hand and reads as follows:

“Contractors/Consortiums who have successfully completed at least two major works of similar nature valuing not less than the amount of work of this tender, during the last three consecutive calendar years, shall only be considered. A documentary proof issued by an officer not below the rank of Executive Engineer of the concerned department should be attached.”

4. Precise case set up on behalf of the petitioner is that inspite of respondent No.6 not fulfilling the condition afore-noticed as regards prior experience of having successfully completed at least two major works of similar nature i.e. valuing not less than the amount of work of the tender in question, yet the work has been allotted vide impugned order dated 30.01.2018 (Annexure P-8). In support of such contention, learned counsel has placed heavy reliance upon communication dated 31.05.2017 (Annexure P-23) from the office of Superintending Engineer, RSD, Civil Circle, Shahpur Kandi Township and addressed to the Chief Engineer, RSD Irrigation Department, Punjab, wherein, it was stated that M/s Birkuli Co-op. L&C Society Limited (respondent No.6 herein) is not eligible inasmuch as the copies of the work experience certificate relied upon by the society are not in accordance with the pre-qualifications terms. It is vehemently contended that under such circumstances, the action of the

respondent/department in having issued work order in favour of respondent No.6 cannot sustain.

5. Per contra, learned State counsel submits that in response to the notice inviting tender, three agencies including the petitioner had submitted their online tenders. After scrutinizing the documents only one firm i.e. the petitioner-company was found to be fulfilling the pre-qualification conditions. Respondent No.6 submitted a representation relying upon a Punjab Government Cooperative Society Department Notification dated 02.10.2014 (appended as Annexure R-1 along with the reply filed on behalf of the State) and wherein certain relaxations were granted for skilled work upto Rs.40 lakhs called through e-tender system for the Co-operative Labour and Contractive Societies alone. It is contended on behalf of the State that in view of the relaxation envisaged under the Punjab Government Notification dated 02.10.2014, respondent No.6 was also considered eligible and its bid having been found to be the most competitive, work order was issued.

6. Counsel for the petitioner as also for the State have been heard at length. It may be noticed that even though respondent No.6/Society stands duly served but no representation has been caused on its behalf.

7. The scope and extent of exercise of power of judicial review in matters relating to tenders and award of contracts came up for consideration before the Supreme Court in **Jagdish Mandal Versus State of Orissa and others, (2007) 14 SCC 517**. It was observed that evaluating tenders and awarding contracts are essentially commercial functions and principles of equity and natural justice stay at a distance. If the decision relating to award of contract 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. It was further held that judicial review of administrative action is intended to prevent arbitrariness, irregularity, unreasonableness, bias and *mala fides*.

8. Even though, scope of interference by this Court in exercise of its extraordinary writ jurisdiction in matters relating to award of contracts would be minimal, yet in the facts and circumstances of the present case, we are of the considered view that the respondent/authorities while issuing the impugned work order in favour of respondent No.6 have acted in an arbitrary and irrational manner.

9. In the tender notice dated 24.04.2017, the conditions for pre-qualification were laid down. Condition No.3 clearly envisaged that a contractor/agency to be considered eligible, must possess experience of having successfully completed at least two major works of similar nature valuing not less than the amount of work of this tender during the last three consecutive calendar years. It is the conceded position before us that respondent No.6 did not fulfil such essential condition for pre-qualification. Acting on a representation having been submitted by respondent No.6, the respondent/authorities have granted relaxation in its favour on the strength of a notification dated 02.10.2014 issued by the Cooperative Society Department, State of Punjab.

10. We have no hesitation in holding that such course of action adopted by the respondent/authorities was impermissible in law and contrary to public interest. If any relaxation was to be granted in favour of Cooperative Labour and Contractive Societies then the

respondent/authorities ought to have entered such stipulation in the tender notice. No power of relaxation was indicated in the tender notice. Admittedly, the notification dated 02.10.2014 does not even find a mention in the e-tender. By not doing so, the respondent/authorities have pre-empted many other Cooperative labour and Contractive Societies from participating in the tender process and who have not submitted their bid in the light of condition No.3 for pre-qualification and being not in knowledge that a relaxation would have been available as has been shown to favour respondent No.6. Action of the respondent/authorities is contrary to the dictum laid down by the Supreme Court in **Air India Limited Vs. Cochin International Airport Limited, (2000) 2 SCC 617** and wherein it was held that the State or a public sector corporation while awarding a contract was free to grant relaxation only if the tender conditions permit such a relaxation.

11. That apart, we may notice that a situation was created whereby the tender process was made less competitive and which can never be construed to be a prudent commercial decision. A perusal of the communication dated 31.05.2016 (Annexure P-23) from the Superintending Engineer, RSD, Civil Circle Shahpur Kandi Township and the contents whereof are not disputed by the State, respondent No.6 had been stated to be ineligible and the present petitioner was the sole entity to have been successful at their pre-qualification stage. Accordingly, the Superintending Engineer had recommended to re-tender the cited job work. In our considered view, such recommendation made by the Superintending Engineer should have been accepted by the competent authority/Chief Engineer, RSD and who has proceeded in an arbitrary fashion to act upon a

representation and has granted benefit of relaxation in favour of respondent No.6 contrary to the conditions for pre-qualification cited in the tender notice.

12. For the reasons recorded above, the impugned dated 30.01.2018 (Annexure P-8) allotting the work in question in favour of respondent No.6 cannot sustain.

13. We may notice that at the stage of issuance of notice of motion on 20.03.2018, this Court had directed that if work has not already commenced, no further steps shall be taken pursuant to the allotment of work in favour of respondent No.6 without leave of the Court. Mr. Avinit Avasthi, learned State counsel has informed the Court that even though the work order had been issued in favour of respondent No.6 but work has not commenced.

14. In view of the above, the present petition is allowed. The impugned order dated 30.01.2018 (Annexure P-8) is quashed. Respondent/ authorities are directed to resort to re-tendering the work in question by adopting process as per law.

15. Petition is allowed.

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

21.05.2018
harjeet

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |