

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 6947 of 2018 (O&M)
Date of Decision: 3rd April, 2018

M/s Patter Transport Company

.....Petitioner

versus

Director, Food Civil Supplies & Consumer Affairs Department, Haryana and others

....Respondents

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

Present: Mr. Anurag Chopra, Advocate for the petitioner.

Mr. S.K.Verma, Advocate, for respondent No.1.

Mr. Deepak Balyan, Addl. Advocate General, Haryana,
for respondent No.2.

S.J.VAZIFDAR, CHIEF JUSTICE

The petitioners seek a writ of mandamus directing respondent Nos.1 to 3 the official respondents, to consider their technical bid, to open their financial bid and to consider them for the allotment of the work. The petitioners also seek an order restraining the official respondents from finalizing a contract with respondent No.4 i.e. private respondent.

2. Respondent Nos.1 to 3 i.e. the official respondents invited e-tenders from various transporters and transport unions for transporting food grains from Mandi/storage points for the year 2018-19.

3. The petitioners and the private respondents, among others, submitted their bids. The petitioners' bid was rejected. The reason for the rejection was communicated only on 22.03.2018 i.e. after this writ petition

was filed. The petitioners' technical bid was rejected on the ground that it did not meet the requirements of Clause 4(ix) of the terms and conditions which admittedly formed a part of the Notice Inviting Tenders (NIT). Clause 4(ix) reads as under:-

“ix) Statement of Assets with valuation certificate from valuator along with documentary proof of immovable property other than residential house, which may not be less than 10% of the cost of contract value.”

The value of the contract is about Rs. 1.83 crores, 10% whereof is Rs.18.30 lacks. The Naib Tehsildar issued a certificate dated 02.02.2018 valuing the property for the purpose of clause 4(ix) relied upon by the petitioner at about Rs.52 lacs. Absent anything else this met the requirement of clause 4(ix). The official respondents, however, rejected the technical bid on the ground that the Punjab National Bank held a lien in respect of the property to the extent of Rs.1.85 lacs. The property, therefore, was unencumbered to the extent of over Rs.50 lacs. The question is whether this met the requirement of clause 4(ix). We think it did.

4. Clause 4(ix) does not create a security in favour of the official respondents. It is not even the respondents' case that a lien or charge or a mortgage was created in respect of the said land. The official respondents in any event, therefore, could not proceed to recover any claim that they may have had against the petitioner by proceeding against the said property except as unsecured creditors. Had the requirement been to furnish unencumbered security it may have been a different matter altogether.

5. There is nothing to indicate that clause 4(ix) was to enable the official respondents to recover future dues, if any, against the petitioners. Had that been the intention the NIT would have provided for the creation of a security in respect of the property. The clause is also consistent with the

official respondents i.e. the parties inviting tenders, being satisfied as to the financial capacity and ability of the bidder. The rejection of the bid, therefore, merely on the ground that the Punjab National Bank held a lien to the extent of Rs.1.80 lacs is not valid.

6. The private respondent contends that irrespective of the circumstances the petition ought to be dismissed as a contract has already been entered into between the official respondents and themselves.

7. In the facts and circumstances of this case, this ought not to deprive the petitioners an opportunity of being considered in the tender process. The official respondents issued a work order dated 09.03.2018 in favour of the 4th respondent. An agreement was entered between them on 17.03.2018. The work was to commence only on 01.04.2018 i.e. after the interim order. Prior thereto on 20.03.2018 we passed an interim order inter-alia to the effect that any steps taken hereafter would be subject to further orders in the writ petition. As we noted earlier the impugned order was served upon the petitioners only on 22.03.2018. There is nothing to indicate that between 17.03.2018 and 20.03.2018 the private respondents altered their position to such an extent as to the warrant the dismissal of the writ petition although the petitioners have otherwise succeeded.

8. The fact that the petitioners had earlier filed a civil suit before Civil Judge (Junior Division), Hisar and that an interim order dated 09.03.2018 was passed therein is irrelevant. The interim order merely required the official respondents to proceed in the matter in accordance with the terms and conditions of the NIT. Pursuant thereto the official respondents proceeded with the tender process which has now been

impugned in this petition. The suit itself has been withdrawn. The issues on-merits were never dealt with by the Court.

9. In the circumstances, the petition is allowed. The petitioners' technical bid shall be considered in accordance with the terms and conditions of the NIT. If the technical bid is valid, the petitioners' financial bid shall also be considered along with other bids. It is clarified that the technical bid cannot be rejected on the ground that clause 4(ix) was not complied with.

It is also clarified that we have not directed the official respondents to issue the work order in favour of the petitioners or to any other party. That is for the official respondents to decide. The official respondents are not bound to accept any bid. They are also at liberty to invite fresh bids, if necessary and justified.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

3rd April, 2018
ravinder

Whether speaking/reasoned
Whether Reportable:

√ Yes/No
Yes/No√