

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

**Civil Writ Petition No. 7646 of 2018
Date of Decision: 28th March, 2018**

The Dhariwal Coop. Labour and Construction Society Ltd. and another

.....Petitioner

versus

State of Punjab and another

....Respondents

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

**Present: Mr. Anand Chhibbar, Senior Advocate with
Mr. Vaibhav Sahni, Advocate, for the petitioners.**

S.J.VAZIFDAR, CHIEF JUSTICE

The petitioner has challenged certain eligibility conditions in the Notice Inviting Tender issued by the respondents.

2. By a notice dated 03.03.2018 the respondents invited tenders for the following work:-

“Resuscitation of Dhussi Bund/Flood Protection Embankment inside fencing opposite B.O.P. Chhanna Mulla and providing wire Crated Boulder Stone Toe Wall in Ajnala Sector in Distt. Amritsar during the year 2017-18 (Job No.4307).

It is important to note that the value of the work was Rs.1.61 crores and that it was to be completed within two months by 31.05.2018. The petitioner has been issued a certificate of enlistment dated 23.04.2018 from the office of the Superintending Engineer, Construction Circle, Public Works Department, Punjab designating them as a Class A-1 Society with a tendering limit of Rs.2 Crores.

3. The petitioner has challenged the following clause in the Notice

Inviting Tender:-

“3. ELIGIBLE BIDERS

4.2 All bidders shall include the following information and documents with their Technical Bid along with the information required as per Section 2:

A. For works upto Rs.5.00 crore.

(a) Copy of the enlistment relevant to the Class and category of work:

(B) In addition, each bidder shall submit the following information for his qualification:

(f) Details of his available bid capacity with an undertaking that his available bid capacity, calculated as per clause 4.4 below, is more than the total value of his financial bid;

4.3 To qualify for award of the contract, each bidder in its name should have:

A. For works upto Rs.5.00 Crores:-

(a) valid enlistment with Water Resources Department, Punjab under the appropriate class and category; or

B. In addition to above each bidder to be eligible or qualify should have submitted with his technical bid:-

(a) an undertaking that his available bid capacity, calculated as per clause 4.4 below, is more than the total value of his financial bid.

(b) the proof of PAN issued by Income Tax Department:

© the affidavit of not having been debarred/black-listed by any Government/Semi Government Organization/Corporation at any stage;

(d) the affidavit that information being submitted is correct and true and that any false information shall lead to disqualification at any stage;

(e) the proof of his valid VAT Registration Number (TIN) issued by concerned Department:

(f) the proof of his valid EPF registration with the Provident Commissioner;

(g) an undertaking that he agrees to the terms and conditions of bidding document including the technical requirements and in case there is anything contradictory in his technical proposal with respect to the conditions of bidding document, the latter shall prevail.

(h) The undertakings/affidavits/documentary proofs required as per the qualifying conditions laid down in the Conditions of Particular Application.

4.4 Bid Capacity:

The bid capacity of the prospective bidders will be calculated as under:-

$$\text{Assessed Available Bid Capacity} = (A * N * 2-B)$$

Where

A= Maximum value of Civil Engineering works executed in any one year during the last five years (updated to the price level of year indicated in Appendix to ITB) taking into account the completed as well as works in progress.

N= Number of years prescribed for completion of the projects for which these bids are being invited.

B= Value (updated to the price level of the year indicated in Appendix) of existing commitments and on going works to be completed during the period of completion of the projects for which these bids are being invited.

Note: i) The statement showing the value of existing commitments and on going works as well as the stipulated period of completion remaining for each of the works listed should be signed by the Engineer in Charge, not below the rank of an Executive Engineer or equivalent.”

4. The petitioner received a letter from the respondents stating that their technical bid was rejected as the petitioner did not fulfill the bid capacity as per clause 4.4. Correspondence ensued between the parties in the course of which the petitioner raised the issues that are raised before us.

5. The petitioner contends that the value of the work being only Rs.1.61 crores the eligibility condition was irrational. According to the petitioners, the eligibility conditions stipulate a turnover of three times the value of the work. The petitioner contends that there is no nexus between the eligibility condition and the value of the work to be carried out.

6. The submission is not well founded. Firstly, a party inviting tenders would obviously want to ascertain the ability of the bidder to carry out the work. It is for the party inviting the tender to decide the manner in which the bidders ability to carry out the work is to be determined or tested. The eligibility conditions do not have to be restricted to a turn over only to the extent of the value of the work to be executed. A party very often insists upon the bidders having a capacity to execute works of a larger value than the work for which it issues the tender. This is neither reasonable nor irrational. A larger margin is a perfectly valid stipulation as it ensures a greater ability to execute the works.

7. In any event, in the present case, it would make no difference. As we noted earlier, the value of the work is Rs.1.61 crores but the work had to be completed in two months. It is, therefore, reasonable for the

respondents to insist on an annual turnover far in excess of the value of the work. Indeed the contrary would be irrational. It is not necessary that a party with a specified annual turnover would be able to complete a work of that value namely the value of the annual turnover within a shorter period which in this case is two months. The challenge to the conditions, therefore, fail.

8. The petition is accordingly dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

28th March, 2018
ravinder

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned
Whether Reportable:

√ Yes/No
√ Yes/No