

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

CWP-8209-2018 (O&M)

Date of decision:- 05.04.2018

Ram Pal

...Petitioner

Versus

State of Punjab and others

...Respondents

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

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

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S.J. VAZIFDAR, C.J. (ORAL)

The petitioner has challenged the award of the work in favour of the private respondent Nos. 3 and 4, namely, one Mohd. Javed and Jagpreet Singh.

2. The Notice Inviting Tenders (NIT) has not been annexed to the petition. The official respondents, however, have produced the same. The tenders were invited by a notice dated 14.03.2018. The NIT stated that tenders were invited for transportation of food grains from mandis to storage points and for various labour operations at storage points for the year 2018-2019 on the basis of SOR (Schedule of Rates) and PR 66 issued under the Punjab Food Grains Transportation Policy, 2018-2019 and the Punjab Labour and Cartage Policy, 2018-2019, respectively, copies whereof were available on the department's website. The footnote states that all the terms and conditions and process of tendering is given in the said policies which may be seen on the department's website.

3. We will presume, therefore, that the terms and conditions of the policies stood incorporated in the NIT and formed a part thereof.

4. By a further notice dated 15.03.2018, the opening and closing date and time for submission of technical bids Part-I were postponed to 22.03.2018 to 27.03.2018 upto 6.50 PM.

5. Mr. Chopra relied upon the following provisions of the Policy for Labour and Cartage of Food Grains for the year 2018-2019:-

"4. General Qualifications:

10. No recovery, of any procurement agency, should be pending against him on the date of submitting tender. He shall submit a no due certificate for this purpose, from all the procuring agencies.

13. No tenderer will violate or act in contravention, to the provisions of the 'Punjab Goods Carriages (Regulation and Prevention of Cartelization) Rules, 2017, issued by Government vide notification No. G.S.R.62/C.A.59/1988/Ss. 79 and 96/2017, dated 13th December, 2017.

5. Technical Qualifications:

F. Tender form uploaded without attaching/uploading the document(s) required under this policy, shall not be considered, for allocation of work.

7. Procedure for inviting/submission and finalization of tender(s):

(7.) All the bids shall be submitted in two bid system i.e. technical bid and financial bid for all the districts. The technical bid is liable to be rejected for those tenderers who do not fulfill general and technical qualification.

(8.) The technical bid will be opened and evaluated, first. The financial bid shall be opened only for those tenderers, who fulfill all the general and technical qualifications, given in these policy guidelines."

(emphasis supplied)

Mr. Chopra submitted that the private respondent No. 3 had intentionally uploaded the certificates referred to in clause 4(10) quoted above of the 4th respondent and not of himself. Clause 4(10) undoubtedly requires a bidder to submit the requisite documents pertaining to himself and not to another. At present, we have nothing, but the word of the petitioner that respondent No. 3 submitted the certificates of respondent No. 4 and not of himself. However, our attention was invited by the respondents to a clarification issued on 24.03.2018 to the Labour and Cartage Policy 2018-2019. Clause 6 of the table therein reads as under:-

Problem		Clarification (Solution)	
6.	According to Clause 5(G), if a bidder fails to upload a particular document can it be taken during technical bid opening.	6.	It depends upon the nature of the documents. However, committee is allowed to accept those documents which have no effect on transparency and competitiveness of the tender process.

It is important to note that the clarification was issued before the closing date of the tender.

6. If the private respondent No. 3 had not produced the certificates required under clause 4(10) before the award of the work, the official respondents would not have been entitled to consider his technical bid to be valid. However, in view of the clarification, any errors in this regard could be rectified by the bidders furnishing the correct documents even subsequently. It is not possible especially in this writ petition to hold that the private respondent No. 3 submitted the documents pertaining to the 4th respondent deliberately. If indeed he had the required documents, there was no reason for him not to do so deliberately. On the other hand, if he did not have the required documents, he would not have been able to produce the same even subsequently.

7. The official respondents would undoubtedly have to consider whether respondent No. 3 submitted the documents

pertaining to respondent No. 4 as alleged by the petitioner and if so whether respondent No. 3 subsequently furnished the documents in conformity with clause 4(10) of the said policy read with the clarification dated 24.03.2018. Needless to add that the official respondents would decide the issue only after affording the private respondent Nos. 3 and 4 an opportunity of being heard.

8. The official respondents shall examine the 3rd respondent's documents in respect of the above issue as expeditiously as possible and in any event by 30.04.2018.

9. The petition is accordingly disposed of. It is clarified that as this petition has been disposed of without even issuing notice to the private respondent Nos. 3 and 4 and by requesting the learned State counsel appearing on behalf of respondent Nos. 1 and 2 to appear in the matter only yesterday, the respondents are at liberty to make any application for modification or clarification of this judgement after giving the petitioner's advocate 72 hours notice in writing.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

05.04.2018

Amodh

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