

CWP No.9242 of 2019 (O&M)

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

CWP No.9242 of 2019 (O&M)

Date of decision: 08.04.2019

M/s Sukhmander Singh & Jaspal Kumar

... Petitioners

Versus

State of Punjab and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

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

Mr. Shireesh Gupta, Sr. DAG, Punjab.

Mr. H.S. Jugait, Advocate,
for respondent No.4.

KRISHNA MURARI, CHIEF JUSTICE (Oral)

The petitioner has invoked the extra-ordinary jurisdiction conferred upon this Court by Article 226 of the Constitution of India, with a prayer to command respondents No. 1 to 3, to consider the financial bid submitted by it, in the event the technical bid submitted, in pursuance to the tender notice for cluster-1 and 2 at Centre Goniana, District Bathinda, for transport work, is accepted by the tender allotment committee. Another relief in the nature of mandamus claimed is to restrain respondents No. 2 and 3 from getting work done from respondent No.4 in respect of Centre Goniana cluster-1, Bathinda.

It appears that in response to the tender notice, petitioner, along with respondent No.4 and other applicants, submitted their technical and

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financial bids. It is the case set up by the petitioner that it had submitted bids for Goniana cluster-1 and 2. Though, the petitioner received a communication through E-mail in respect of acceptance of technical bid with regard to cluster-2, but no information was received with regard to cluster-1 and when its financial bid was not opened in respect of the said cluster, it approached this Court.

In response to the notice, Sh. Shireesh Gupta, learned Sr. Deputy Advocate General, appearing for the State of Punjab, on the basis of instructions, states that rejection of the technical bid was uploaded on the website and the same was that since submitted copies of registration certificates were not correct/complete, according to the list uploaded, hence the technical bid was being rejected.

Learned counsel for the petitioner vehemently contends that clause 15 of the policy clearly contains a stipulation that the tenderers whose technical bids have been rejected, will be informed about the reasons of rejection by the committee. However, in this case, petitioner has not been informed about the reasons for which its tender has been rejected. The fact has not been denied by the learned State counsel. The only explanation, which is coming forward, is that the technical bid was rejected on 2.4.2019, and it was uploaded on the website on the same day.

Time and again, the tenderers are not informed about rejection of their technical bids, which leads to unnecessary litigation and this fact led us to pass a general mandamus to the State of Haryana and to its instrumentality to communicate the reasons for rejection of the technical bid in all the tenders in future, vide order dated 13.3.2019 rendered in CWP No. 6224 of 2019 and other connected matters. Though there is a dispute

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between the parties with respect to the difference in the financial bids submitted by the petitioner and respondent No.4, which have been accepted, but admittedly there is a difference in the two financial bids.

Learned Sr. Deputy Advocate General, Punjab, also fairly stated before us that though the tender has been finalised in favour of respondent No.4, but the work has not been started as yet.

The case set up by the petitioner is that the reason for rejecting its technical bid is hyper-technical inasmuch as it was on account of a clerical mistake in filing the information and registration number of the vehicle, instead of PB-05-T-9744 was entered as PB-05-T-9740, though copy of the registration certificate depicting the correct registration number was supplied later on and the respondents could have easily verified the same and required the petitioner to carry out the necessary corrections. It is further submitted that rejection of a tender for non-compliance of the condition, which can easily be cured, ought not to have made the basis for rejecting the technical bid inasmuch as the said defect could have been easily cured, as copy of the registration certificate, depicting the correct registration number, was supplied and the mistake was only a clerical/typographical.

Be that as it may, all this requires investigation into questions of fact, which can only be carried out by the fact finding authority. From the policy for transportation of food grains for year 2019-20, we find that clause 14 of the policy contains a provision of appeal against any order of District Tender Committee before the competent authority or any other official delegated under of the policy, as prescribed under Clause 2 (b).

Learned counsel for the petitioner states that the petitioner could not avail the alternative remedy by filing an appeal, inasmuch as a

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copy containing the reasons for rejection was not available. It is not disputed that during pendency of this writ petition reasons for rejection have been supplied to petitioner.

In the circumstances, we feel it appropriate that the petitioner may avail the alternative remedy of appeal before the competent authority, as prescribed under the policy. Accordingly, the writ petition is disposed of by giving liberty to the petitioner to file an appeal within two days from today before the competent authority, with a direction to the respondent authorities that if any such appeal is filed, the same shall be considered and decided, in accordance with law, by passing a speaking and reasoned order, within a period of one week thereafter, after notice and opportunity of hearing to all the stakeholders, including respondent No.4.

Till then, status quo, as it exists today, in respect of execution of the contract, shall be maintained by all the parties.

A copy of this order, under the Signatures of Bench Secretary, be supplied dasti to the learned counsel for the State.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

April 08, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

NO