

CWP No. 17805 of 2019

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

**CWP No. 17805 of 2019
Date of decision: 05.07.2019**

Sukhdev Singh Brar

... Petitioner

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. Ashish Aggarwal, Sr. Advocate, with
Mr. Satbir Singh Gill, Advocate,
for the petitioner.

KRISHNA MURARI, CHIEF JUSTICE (Oral)

By means of this writ petition filed under Article 226 of the Constitution of India, petitioner seeks a writ of Certiorari for quashing the order dated 5.6.2019, passed by respondent No.1 as also order dated 22.4.2019 passed by respondent No.2, being illegal and erroneous.

Facts in brief, giving rise to the dispute, can be summarised as under.

The department of Food, Civil Supplies and Consumer Affairs, Punjab, issued a tender notice inviting E-tenders for labour and cartage work for the period from 01.4.2019 to 31.3.2020, in accordance with the Punjab Labour and Cartage Policy, 2019-20, for various clusters situated in District Faridkot. Petitioner and respondent No.4, along with others, were the applicants for the said tenders. The bid of respondent No.4 was held to be technically non-responsive by the Tender Evaluation Committee. And, as the

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bid submitted by petitioner was found to be the lowest, hence the tender was allotted to him and he started carrying out the work allotted to him. However, in the meantime, respondent No.4 filed an appeal before respondent No.2-first appellate authority (Director, Department of Food & Supplies & Consumer Affairs, Punjab). Vide order dated 22.4.2019, the first appellate authority allowed the appeal, and held that bid submitted by respondent No.4 was technically responsive, and directed the Tender Evaluation Committee to open his financial bid. The financial bid of respondent No.4 was opened and it was found that he was actually L-1, and accordingly, the tender allotted to the petitioner was cancelled and work was assigned to respondent No.4. The order dated 22.4.2019, passed by the first appellate authority, was challenged by the petitioner in second appeal before the Principal Secretary, Food, Civil Supplies & Consumer Affairs, Punjab-respondent No.1. The second appeal was filed by the petitioner basically challenging the findings recorded by the first appellate authority that technical bid submitted by respondent No.4 was responsive. However, in the meantime, respondent No.4 abandoned the work.

It is submitted by learned senior counsel for the petitioner that the second appellate authority, without entering into the issue as to whether the bid submitted by respondent No.4 was technically responsive or not, simply disposed of the appeal by directing that proceedings be undertaken to blacklist respondent No.4, since he had abandoned the work midway and also to recall the tenders to discover the rate afresh. It is vehemently contended that scope of the appeal filed by the petitioner was confined to the issue, as to whether the technical bid offered by respondent No.4 was responsive or not, and without entering into the issue, for no rhymes and

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reasons, his tender has been cancelled and a direction has been issued to issue fresh tenders. It is also submitted that after the work was allotted to the petitioner, he had even carried out 50% of the work, before his tender was cancelled.

Notice of motion to respondents No.1 to 3 only, at this stage.

On our asking, Ms. Lavanya Paul, Assistant Advocate General, appearing for the State of Punjab, accepts notice on behalf of respondents No.1 to 3. Copies furnished.

Learned State counsel, when confronted with the arguments raised on behalf of the petitioner, has failed to demonstrate from the impugned order that the second appellate authority adverted to the questions raised in the appeal or has returned any finding in respect of the technical bid submitted by respondent No.4, being responsive or not.

Having heard the matter at length and with the consent of learned counsel for the petitioner and the State counsel, the writ petition is being finally disposed of.

Once it is the factual position that the order passed by respondent No.1, i.e. second appellate authority, suffers from a patent error of law apparent on the face of the record, the same is not liable to be sustained. Accordingly, we allow this writ petition and set aside the order dated 5.6.2019. The matter is remitted to the second appellate authority-respondent No.1, with a direction to decide the same afresh, in accordance with law and in the light of the observations made hereinabove, by passing a reasoned and speaking order, after notice to respondent No.4, within a period of three weeks from the date of receipt of a certified copy of this order.

In so far as respondent No.4 is concerned, the writ petition has

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been disposed of without issuing notice to him, but his rights are not being affected inasmuch as he would have ample opportunity to contest the proceedings before the second appellate authority, if he so chooses. This is being made clear that since scope of this writ petition is confined only to recall of the tender notice and to issue a fresh tender notice, to the extent the petitioner is aggrieved by, we have not entered into the question of directions contained in the impugned order passed by the second appellate authority to initiate the process for blacklisting of respondent No.4, and the same should be proceeded, in accordance with law and as per the directions.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

July 05, 2019

AK Sharma

Whether speaking / reasoned:
Whether Reportable:

YES
NO