

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

CWP-27887-2019 (O&M)

Date of decision:- 09.12.2019

M/s Aggarwal Construction Co.

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SHARMA

Present:- Mr. Aalok Jagga, Advocate,
for the petitioner.

Mr. Suveer Sheokand, Additional Advocate General, Punjab.

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RAVI SHANKER JHA, C.J. (ORAL)

CM-18473-2019

With the consent of learned counsel for the parties,
the main case is pre-poned for today and heard finally.

The application stands disposed of.

CWP-27887-2019

This petition has been filed by the petitioner praying for quashing the Notice Inviting Tender dated 13.09.2019 by which fresh bids have been called for execution of work relating to restoration of the road cut due to providing and laying of underground sewerage line on Jalandhar-Nakodar-Shahkot-Moga road kms 22.095 to kms 25.340.

Learned counsel for the petitioner submits that in the instant case the authorities had initially issued a Notice Inviting Tender for the same work on 20.06.2019. It is stated that four tenderers were shortlisted and the bids of the tenderers were evaluated on 29.07.2019 in which all the tenderers were found to be technically responsive and

thereafter the financial bids were opened on 01.08.2019. Learned counsel for the petitioner submits that the petitioner was the lowest bidder and was categorized as L-1. It is submitted that the authorities instead of awarding the contract to the petitioner sent a letter to it for justifying the rates mentioned by it, whereupon the petitioner submitted its justification for the rates on 07.08.2019. It is stated that the Executive Engineer, Central Works Division, PWD (B&R) Branch, Jalandhar agreed with the justification given by the petitioner on account of the fact that the petitioner was required to take up the work of earth excavation upto 4 meter depth and recommended that the rates tendered by the petitioner be approved and the contract be awarded to the petitioner. It is submitted that the authorities instead of doing so again asked the petitioner to justify the rates, whereupon the petitioner again submitted its justification on 30.08.2019. It is submitted that thereafter the authorities by treating the rates tendered by the petitioner to be on the higher side have gone in for fresh tender proceedings by issuing the impugned Notice Inviting Tender dated 13.09.2019 being aggrieved by which the petitioner has filed the present petition.

Learned counsel for the petitioner submits that the petitioner was the most competent bidder and had infact been declared as L-1 in the tender proceedings. It is further submitted that even after calling for a justification from the petitioner regarding its rates, the Executive Engineer had clearly recommended that the rates given by the petitioner were justified and deserved to be accepted. It is submitted that the petitioner during this period had filed a petition which was registered as CWP-22068-2019 challenging its technical bid to

be held as non-responsive in another tender proceeding in which this Court granted stay on 21.08.2019.

It is submitted that immediately thereafter the authorities changed their stand and with a view to punish the petitioner and victimize it for filing the petition and obtaining the stay have held its rates to be on the higher side and have not awarded the contract to the petitioner. Learned counsel for the petitioner submits that once the authorities have evaluated its technical bid as well as the financial bid and found the same to be the lowest, the authorities thereafter cannot drop the tender proceedings and go in for fresh tender merely on the ground that the rates submitted by the petitioner are on the higher side.

Learned counsel for the petitioner submits that the action of the respondents is malafide in the sense that the stand of the respondents and their attitude towards the petitioner suddenly changed when the petitioner obtained the order of stay on 21.08.2019 in CWP-22068-2019. Learned counsel for the petitioner submits that in such circumstances, a direction be issued to the respondent-authorities to award the contract to the petitioner and to treat the rates given by the petitioner to be competitive and on the lower side.

The respondents per contra have filed a return and admitted the fact that the petitioner in the initial tender proceedings was declared as L-1. It is, however, stated that while the case of the petitioner was recommended for approval by the Executive Engineer, the Chief Engineer sought justification for the rates on the ground that they appeared to be on the higher side, whereupon the justification was sought from the petitioner. It is submitted by the respondents that though the justification given by the petitioner was again

forwarded for approval by the Executive Engineer on 16.08.2019, however, the Chief Engineer and the Superintending Engineer again sought justification for the rates as they appeared to be on the higher side. It is submitted that thereafter the Executive Engineer again re-examined the matter and found the rates quoted by the petitioner to be on the higher side as compared to the rates quoted by the petitioner in other tenders and, therefore, the authorities decided to go in for fresh tender proceedings.

The learned Additional Advocate General, Punjab, appearing for the respondents, submits that the authorities under clause 32 of the tender document have the right to accept or reject any bid or bids. It is submitted that in the instant case the authorities have gone in for fresh tender proceedings as, after due inquiry, the rates tendered by the petitioner were found to be on the higher side than the market rates prevailing and the rates quoted by the petitioner itself for other similar works. The respondents submit that in such circumstances, as there is a valid and justifiable reason for going in for re-tendering and as the respondents have the right to not accept the bid even if it is the lowest in terms of clause 32 of the tender notice, therefore, the action taken by the authorities is in accordance with law.

We have heard learned counsel for the parties at length.

In the instant case, the fact that the petitioner was declared L-1 pursuant to the tender notice dated 20.06.2019 is undisputed and accepted. It is also an admitted fact that in spite of the fact that the petitioner was declared L-1, the contract has not been awarded to the petitioner by the authorities in exercise of powers contained in clause 32 of the

Notice Inviting Tender. In such circumstances and even in view of the aforesaid admitted facts, the petitioner has assailed the act of the respondents in not awarding the contract to the petitioner and approached this Court invoking its extraordinary jurisdiction under Article 226 of the Constitution of India.

In the instant case, the other undisputed facts are that the higher authorities, namely, the Chief Engineer and the Superintending Engineer before processing the offer of the petitioner, called for justification of the rates quoted by the petitioner on 05.08.2019 after opening of the financial bids and declaring the petitioner as L-1 on 01.08.2019. It is also an undisputed fact that the Executive Engineer accepted the justification for the rates quoted by the petitioner and favourably recommended its case for award of the contract on 16.08.2019. However, the higher authorities did not accept the recommendation of the Executive Engineer and asked the Executive Engineer to again obtain justification for the higher rates which was submitted by the petitioner on 30.08.2019, whereupon the Executive Engineer after obtaining the justification from the petitioner stated that the rates were on the higher side as compared to the market rates, which proposal was accepted by the Superintending Engineer and also by the Chief Engineer on 13.09.2019 and thereby ordering recall of the tender and for issuing a fresh Notice Inviting Tender which has admittedly been issued on 13.09.2019.

From the aforesaid narration of facts, which are not disputed, it is apparent that the justification for the rates quoted by the petitioner was called by the higher authorities i.e. the Superintending Engineer and the Chief Engineer on 05.08.2019, whereas the stay order in CWP-22068-2019 was

granted thereafter by this Court on 21.08.2019 and, therefore, in view of the aforesaid undisputed facts, the contention of the petitioner that there was a sudden change in the attitude and stand of the respondents in view of the order granted by this Court in another petition filed by the petitioner is factually incorrect.

It is also evident from the documents on affidavit placed before this Court and have been specifically mentioned and enumerated by the respondents in their reply that the rates quoted by the petitioner in some other contract awarded to the petitioner are on the lower side. We are of the considered opinion that the issue of higher or lower rates is a matter which is required to be examined by an expert body and not by this Court as this Court does not have the wherewithal to decide as to whether the rates quoted by the petitioner are on the higher or lower side. The best judge in this regard is the authorities who have examined the matter not once, but twice and that too the higher authorities than the Executive Engineer i.e. the Chief Engineer and the Superintending Engineer who have concluded that the rates quoted by the petitioner are on the higher side.

Apparently and undisputedly, no allegations of malafide have been made against the Chief Engineer or the Superintending Engineer by the petitioner in the petition, nor have they been impleaded in person. The record of the petition indicates that after the return being filed by the respondents, the petitioner has filed CM-17983-2019 alleging malafide against the Executive Engineer and seeking to implead him as a respondent by name. However, as we have enumerated and held in the preceding paragraph that the process for calling the justification for rates was neither initiated nor decided by

the Executive Engineer, but was infact initiated and decided by the Chief Engineer and the Superintending Engineer, that too well before filing CWP-22068-2019 by the petitioner and the issuance of the interim order therein on 21.08.2019, therefore, in the absence of any allegations of malafide against the Chief Engineer and the Superintending Engineer and in the absence of they being impleaded as parties in the petition, the contentions in this regard of the petitioner against the Executive Engineer are misconceived.

On examining the tender document, it is apparent that the authorities have the right to either accept or reject any bid or to cancel the bidding process and reject all bids at any time prior to the award of the contract without incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders of the grounds. However, it is also a settled law that while the employer/state has the right to do so, on such an action being assailed, the State is required to show reasons for going in for fresh tendering or for not accepting the bid of the eligible selected bidder. In the instant case, the authorities have submitted a justification on the affidavit to the effect that the authorities before awarding the contract found the rates quoted by not just the petitioner, but by the other bidders as well were on the higher side and have, therefore, gone in for fresh tendering. The reason given by the respondents for going in for fresh tendering in public interest, is reasonable and is supported by the documents that they placed before this Court as well as the averments made on the affidavit.

In the circumstances, as the steps being taken by the authorities for re-tendering the contract are based on cogent reasons and consideration of public interest which is

paramount, we do not find any arbitrariness, Wednesbury unreasonableness or malafide in the act of the respondents warranting interference by this Court. We find support for the view taken by us from the decisions of the Supreme Court rendered in the cases of *Haryana State Agricultural Marketing Board and others Vs Sadhu Ram* (2008) 16 SCC 405; *State of Jharkhand & Ors. Vs M/s CWE – Soma Consortium* (2016) 14 SCC 172 and *Laxmikant and others Vs Satyawar and others* (1996) 4 SCC 208.

The petition filed by the petitioner being meritless is accordingly dismissed.

It is, however, made clear that the authorities on issuing and proceeding further with the fresh tender notice would be required to consider the tenders of all the persons including that of the petitioner in case they choose to apply in pursuant to the fresh tender process.

It is stated by the learned Additional Advocate General, Punjab, on the instructions from Mr. Gurmukh Singh, Executive Engineer, PWD (B&R), Jalandhar, that the last date for accepting the bids would be extended to a further period of one week from today.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(RAJIV SHARMA)
JUDGE

09.12.2019
Amogh

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