

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

CWP-34195-2019 (O&M)

Date of decision:- 12.12.2019

M/s Pioneer Publicity Corporation Pvt. Ltd.

...Petitioner

Versus

Chandigarh Administration, U.T. Chandigarh through its
Chief Engineer, Engineering Department, Additional
Deluxe Building, Sector 9-D, U.T., Chandigarh and
another

...Respondents

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

Present:- Mr. Aditya Grover, Advocate,
for the petitioner.

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RAVI SHANKER JHA, C.J. (ORAL)

The petitioner has filed this petition praying for quashing the Request for Proposal (RFP) dated 31.05.2019, whereby the respondents have set up ambiguous terms and conditions for inviting bids from reputed firms for construction and maintenance of bus queue shelters in Chandigarh on build, own, operate and transfer basis for display of advertisement on bus queue shelters.

The petitioner has also challenged an order dated 15.11.2019 passed by the respondents, whereby they have rejected the representation filed by the petitioner.

The petitioner has in addition prayed for a direction to the respondents to float a Fresh Request for Proposal(s) or amend the existing Request for Proposal dated 31.05.2019 by splitting the work of construction from the work of operation and maintenance alongwith rights of advertisement and laying down proper unambiguous terms and conditions.

Learned counsel for the petitioner submits that the authorities have issued the aforesaid e-tender notice for construction and maintenance of bus queue shelters on build, own, operate and transfer basis for display of advertisement on bus queue shelters and have asked for applications from advertisers. It is submitted that the agencies like the petitioner, who are involved in advertisement, are not involved in the work of construction and maintenance or any other civil work. It is submitted that in such circumstances, the tender notice violates the CVC guidelines, inasmuch as it results in clubbing two works which are totally different and cannot be performed by a single agency. The petitioner submits that these anomalies were pointed out by the petitioner to the authorities, but as no action thereon was taken, the petitioner had filed a petition being CWP-29058-2019 before this Court which was disposed of on 04.10.2019 with a direction to the authorities to consider and decide the petitioner's representation. The petitioner submits that the authorities without addressing the issues raised by the petitioner have dismissed the representation by the impugned order dated 15.11.2019. Learned counsel for the petitioner submits that the order dismissing the representation suffers from perversity and lack of application of mind as the issues raised by the petitioner were neither considered, nor addressed by the authorities.

In such circumstances, learned counsel for the petitioner submits that the impugned e-tender notice be quashed and the authorities be directed to bifurcate two works - advertisement and construction as well as maintenance - and thereafter issue a fresh tender notice.

We have heard learned counsel for the petitioner at length.

From a perusal of the impugned e-tender notice (Annexure P-1), it is apparent that the authorities have not restricted or called for bids from advertisement agencies or advertisers alone. A bare reading of the e-tender notice makes it clear that the authorities have called for applications from eligible, reputed and established advertisement agencies/individuals/firm/company or companies for construction and maintenance of bus queue shelters in Chandigarh for the purpose of displaying advertisement thereon. The use of the solidus, virgule, slash or oblique between the words advertisement agencies, individuals, firm, company or companies in the tender notice makes it clear that the authorities have called for applications from the eligible, reputed and established advertisement agencies or individuals or firm or company or companies. It is further clear that the tender notice is for construction and maintenance of bus queue shelters which would be used for display of advertisement.

The petitioner's objections in this regard were taken up and considered by the authorities in the pre-bid meeting held on 07.06.2019 as well as on 25.06.2019. The authorities in the impugned order dated 15.11.2019 have clarified that in the first attempt on the part of the authorities, they called for tender work on 26.03.2019, but no agency had participated and it is only thereafter that the authorities, while keeping in view the CVC clarification dated 07.05.2004, modified the eligibility criteria for calling bids from the agency having experience in construction, operation and maintenance and not in advertising alone as alleged by the petitioner.

The authorities have taken all aspects into consideration and have given cogent reasons for prescribing the terms and conditions in the e-tender notice.

Apparently, apart from the petitioner, there are others, who are qualified and have applied for grant of the contract and would be considered by the authorities in accordance with law and, therefore, the conditions mentioned in the e-tender notice are not impossible to be complied with as alleged. It is settled law that this Court can enter into the conditions or terms of a tender notice only in cases where they are tailor-made to accommodate someone or malafide or impossible to perform. None of the aforesaid aspects exist in the present case.

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

(RAVI SHANKER JHA)
CHIEF JUSTICE

(RAJIV SHARMA)
JUDGE

12.12.2019
Amodh

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