

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.5749 of 2020
Date of Decision :03.03.2020

Amarjeet Aggarwal and others

.....Petitioners

Versus

Punjab State Power Corporation and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE

Present : Mr. Atul Lakhanpal, Sr. Advocate with
Mr. Arvindpal Singh, Advocate for the petitioners.

Arun Palli, J.:

A writ of *certiorari* is prayed for to quash the eligibility criteria set out in the tender notice dated 04.02.2020, for assignments of works: general housekeeping/cleaning and reclamation of spilled coal etc. from all locations of coal handling plant.

In brief, the case set out by the petitioners, who are contractors, is that they have been participating in the tenders floated by the respondent-Corporation since 1994. The criteria for being eligible to execute those works had been: proof of having successfully completed/executing the work of housekeeping/cleaning and reclamation of spilled coal in coal handling plant **or** assistance in operation of coal handling plant **or** maintenance of various equipments of coal handling plant during the last 7 years ending on 30.09.2018. However, in the tender notice for the year 2018-19, the eligibility conditions were altered but only to the extent of minimal value of

works:

“Proof of having successfully completed/ executing the work order of Housekeeping/cleaning and reclamation of spilled coal in coal handling plant or assistance in operation of coal handling plant or maintenance of various equipments of coal handling plant during last seven years ending on 30.9.2018 (last day of month previous to the one in which applications are invited) on 210 MW or higher capacity thermal units of minimum value either of following

a) One same completed/being executed work costing not less than amounting to Rs.178 Lac.

OR

b) Two same completed/being executed work each costing not less than amounting to Rs.107 Lac.

OR

c) Three same completed/being executed work each costing not less than amount to Rs.89 Lac.”

But in the impugned tender notice dated 04.02.2020 not only the eligibility conditions qua the minimal value criteria were changed but also the clause as regards maintenance of equipments of coal handling plant was substituted by **“mechanical maintenance of various equipments power plant”**. Meaning thereby word **“mechanical”** was added. Thus, the impugned eligibility clause reads as: **mechanical maintenance of equipments power plant.**

It is in reference to the position sketched out above, the learned Senior counsel for the petitioners submits that even earlier the eligibility conditions set out in tender notice 2018-19 were changed to suit respondent No.4. But, as despite such alteration, respondent No.4 remained ineligible, a

further modification, as indicated above, was caused to the eligibility clause set out in the tender inquiry dated 04.02.2020. He submits that the tender is for housekeeping/cleaning and reclamation of spilled coal, and thus, the addition of expression, 'mechanical', i.e. **“mechanical maintenance of equipments”** has no nexus with the housekeeping and cleaning work. In fact, the impugned eligibility clause was tailor made to favour respondent No.4. Even otherwise, he contends that respondent No.4 is a defaulter under the Employees' Provident Funds and Miscellaneous Provisions Act and, therefore, is ineligible to compete.

We have heard learned Senior counsel for the petitioners and perused the records.

Ex facie, the notice inviting tender was issued on 04.02.2020 and the tender process is still at an initial stage. For the techno commercial bids are yet to be evaluated and the price bids shall be opened thereafter. Thus, in the given situation, the grievance of the petitioners that impugned eligibility clause was formulated only to suit respondent No.4, is merely speculative. In fact, a reference to the eligibility criteria in question, at this juncture, shall be expedient:-

Following firms shall be eligible for registration:-

The firms desirous of getting themselves registered may send their applications for registration along with requisite fee and following documents:-

i) Proof of having successfully completed/executing the work order of Housekeeping/cleaning & reclamation of spilled coal in coal handling plant

OR

assistance in operation of coal handling plant

OR

Mechanical maintenance of various equipments power plant during last seven years ending on 31/01/2020 (last day of month previous to the one in which applications are invited) on 210 MW or higher capacity thermal units of minimum value either of following:-

a) One same completed/being executed work costing not less than amounting to Rs.198 Lac.

OR

b) Two same completed/being executed work each costing not less than amounting to Rs.118.8 Lac.

OR

c) Three same completed/being executed work each costing not less than amount to Rs.99 Lac.”

A bare analysis of the eligibility criteria irresistibly shows that not just the petitioners or respondent No.4, but many other aspirants, who are eligible in terms of the respective clauses of the eligibility criteria, are free to compete. This is not the case of the petitioners either that vide impugned eligibility clause respondent No.4 alone has been made eligible to the exclusion of all other stake holders. Thus, in the absence of any conclusive material, the apprehension of the petitioners that word mechanical has been prefixed before the expression maintenance of various equipments only with an intent to award the contract to respondent No.4 is misconceived. Even otherwise, the respondent-authorities are best equipped and positioned to device the eligibility criteria and balance the technical experience and qualifications etc. in context of the nature and scope of work. The Supreme Court in **Afcons Infrastructure Ltd. V. Nagpur Metro Rail Corporation Ltd. and Ors. (2016) 16 SCC 818** had held that owner or the employer of a project, having authored the tender documents, is the best

person to understand and appreciate its requirements to achieve the work which is sought to be executed. And the constitutional Courts must defer to this understanding and appreciation of the tender documents, unless there is *mala fide* or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. However, such is not the position in the matter at hands. For, apparently, the impugned eligibility clause is neither irrational nor arbitrary. Further, in **Municipal Corporation, Ujjain & Anr. V. BVG India Limited and Ors. (2018) 5 SCC 462**, the Supreme Court concluded: “*under the scope of judicial review, the High Court could not ordinarily interfere with the judgment of the expert consultant on the issues of technical qualifications of a bidder when the consultant takes into consideration various factors including the basis of non-performance of the bidder.*” Now advertent to the decision of the Supreme Court in **Manohar Lal Sharma Vs. Narendra Damodardas Modi & Ors. (2019) 3 SCC 25**, upon which reliance is placed by the learned senior counsel, the same would also not advance the case of the petitioners a bit. For, all that was observed and concluded therein: the terms subject to which tenders are invited are not open to judicial scrutiny unless it is found that same have been tailor made to benefit any particular tenderer. But, as demonstrated above, nothing conclusive is brought on record to suggest that impugned eligibility clause was customized or tailor made to suit and benefit respondent No.4 alone. Particularly, when the techno commercial bids and/or the price bids are yet to be opened and evaluated. In so far as the argument that respondent No.4 is a defaulter and has even been penalized under Employees’ Provident Funds and Miscellaneous Provisions Act, suffice it to say, if that be so, the said aspect would be factored in by the

authorities while evaluating if respondent No.4 was technically compliant.

Thus, in the wake of the position sketched out above, the only and the inevitable conclusion that could be reached: the petition being bereft of merits, deserves dismissal. And it is so ordered.

(RAVI SHANKER JHA) CHIEF JUSTICE	(ARUN PALLI) JUDGE
03.03.2020 <i>Manoj Bhutani</i>	Whether speaking/reasoned Whether reportable
	Yes/No Yes/No