

CWP No.14318 of 2020

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(PROCEEDINGS CONDUCTED THROUGH V.C.)

CWP No.14318 of 2020

Date of Decision: October 26th, 2020

The Nangal Co-op L&C Society Ltd.

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Prateek Gupta, Advocate &
Mr. Harsh Chopra, Advocate
for the petitioner.

Ms. Anu Pal, DAG, Punjab
for respondents No.1 to 3.

Mr. Manbir Singh Batth, Advocate
for respondents No.4 and 5.

AUGUSTINE GEORGE MASIH, J.

Petitioner, which is a Co-operative Labour and Construction Society, has approached this Court challenging the order dated 01.09.2020 (Annexure P-9), vide which the bid of the petitioner has been rejected as having not qualified on technical grounds from the tender process, asserting it to be illegal, arbitrary and contrary to the settled principles of law. Prayer has also been made for considering the bid of the petitioner in pursuance to e-tender notice dated 22.07.2020 (Annexure P-6) being fully qualified.

2. It is the contention of the learned counsel for the petitioner –

society that the petitioner – society has been enlisted in Class-III category for the contracts upto an amount of ₹ 2,00,00,000/- with the Department of PWD (B&R), State of Punjab, since 05.02.2019. The said enlistment is valid for two years i.e. upto 05.02.2021. Various works have been allotted to the petitioner – society, which have been successfully executed. Respondent No.4 – Municipal Council, Phillaur, issued e-tender notice dated 22.07.2020 (Annexure P-6), wherein bids were invited for completion of 14 different works relating to construction and building etc. Petitioner – society submitted its bid for seven works on 12.08.2020 (Annexure P-7) along with related documents.

3. Petitioner – society came to know about *mala fide* practice being adopted by the Municipal Council, Phillaur as it was indulging in bid pooling due to personal benefit of some of its officials. Petitioner – society sent a letter dated 27.08.2020 (Annexure P-8) to the Minister of Department of Local Government, State of Punjab, by registered post highlighting these irregularities and illegal activities, which would result in loss of exchequer. On 31.08.2020, officials of Municipal Council, Phillaur – respondent No.4 had a meeting with the President of the petitioner – society at Phillaur. President was made to understand that it was relating to the letter dated 27.08.2020 (Annexure P-8) sent by the petitioner – society to the Minister. In the said meeting, President of the petitioner – society was being pressurized and threatened to withdraw the aforesaid letter or to face consequences. He was also informed that the bid would be rejected for one reason or the other. The President was told that it was the case of bid pooling and each of the applicants will get few works as contained in e-

tender notice dated 22.07.2020 (Annexure P-6) to the exclusion of those, who has not pooled in the bid.

The apprehension of the petitioner – society turned out to be correct as its technical bid was rejected on 01.09.2020. No specific reason was given with regard to the rejection of the technical bid of the petitioner – society. Petitioner, therefore, having no other option had approached this Court challenging the order of rejection dated 01.09.2020 (Annexure P-9) on the grounds that the past experience of the petitioner – society in the field of building has not been taken into consideration especially when the works assigned had been successfully completed by it. Earlier also, bids submitted by the petitioner – society in pursuance to e-tender notice in the year 2019 had been accepted by the Municipal Council, Phillaur, where the works assigned have been successfully completed, whereas in the present process, the bid of the petitioner – society has been rejected on technical grounds. It is asserted that the petitioner – society has been ousted as it has not participated in the bid pooling for the award of contract of e-tender notice. It has been asserted and pointed out that prior to passing the order of rejection of the technical bid, the flaws/shortcomings, if any, should have been brought to the notice of the petitioner – society and after giving an opportunity to fulfill the said shortcomings/conditions, further action should have been taken.

Challenge has also been made posed and as pressed by the learned counsel for the petitioner that the reasons which have been assigned for rejecting the claim of the petitioner – society in the technical bid cannot be said to be essential conditions and on this ground, technical bid of the

petitioner – society could not be rejected. Support in this regard is being sought from the judgment of the Hon'ble Supreme Court in **Om Parkash Sharma Vs. Ramesh Chand Prashar & others** {(2016) 12 Supreme Court Cases 632}.

4. Reply to the writ petition has been filed by respondents No.4 and 5 i.e. Municipal Council, Phillaur and its Assistant Municipal Engineer. The stand of the Municipal Council, Phillaur, is that the bid of the petitioner has been rejected rightly as the conditions laid in the e-tender notice dated 22.07.2020 (Annexure P-6) have not been complied with. It has been asserted that in pursuance to the e-tender notice, 19 societies from different districts of State of Punjab had applied in the said e-tender process. Petitioner – society applied for seven works out of total 14 works. Not only the technical bid of the petitioner has been rejected but bids of six other societies have also been rejected on different grounds as they did not fulfill the criteria and requisite terms and conditions of e-tender process nor were they found to be eligible in terms of Standard Operation Procedure (hereinafter referred to as 'SOP') for execution of development works notified on 02.08.2018 by the Department of Local Government, Punjab. As regards the petitioner – society is concerned, it has been stated that according to Clause 15 of e-tender notice, apart from the copy of list of L&C society members inclusive of the President, their identity cards duly certified/attested by the Assistant Registrar/Registrar Cooperative Societies, were to be submitted. Petitioner – society has not submitted the identity cards of its members as well as of the President certified from the Assistant Registrar/Registrar Cooperative Societies as per the SOP notified by the

Department of Local Government, Punjab, on 02.08.2018, Clause 4.4. thereof, categorically mentions that list of members of the societies, their identity proofs and capacity certificate has to be issued by the Registrar Cooperative Societies. Although the petitioner – society has submitted the capacity certificate and list of members issued by the Assistant Registrar Cooperative Societies but no identity proofs of the members duly certified by the Competent Authority stand submitted, thus, rendering it ineligible. Reliance has also been placed upon Clause 42 of the e-tender notice dated 22.07.2020 (Annexure P-6), where it is stated that bidders will be responsible for any clerical mistake or wrong entry during filling-up the e-tender. Another reason which has been assigned for rejecting the technical bid of the petitioner – society is that the petitioner – society is registered for building works only, whereas the work for which the e-tender was issued, for which the petitioner has applied, is for construction of roads with interlocking tiles, for which the petitioner – society is not competent as per the certificate of enlistment. According to the certificate of enlistment issued to the petitioner – society, it is enlisted for building works only and not for construction of roads. This is so provided in Clause 4.1 (iii) in the SOP dated 02.08.2018, issued by the Department of Local Government, Punjab. As regards the allegation with regard to the answering respondents indulging in bid pooling, the said allegation is vehemently denied. It is asserted that the petitioner has levelled false allegations without any proof thereof. The letter which has been sent to the Minister, Local Government, Punjab, does not bear the signature of the President. Prayer has, thus, been made for rejection of the writ petition.

5. Rejoinder has been filed by the petitioner – society to the reply filed by respondents No.4 and 5, wherein it has been stated that as per Clause 3 of the e-tender notice dated 22.07.2020 (Annexure P-6), the requirement was that the tenderer must be enlisted with the Municipal Council/Nagar Panchayat, Punjab or any other Government department as Civil Contractor/Building Contractor/Road Works Contractor. On this basis, it is asserted that any enlisted contractor relatable to any of these categories could apply in response to the e-tender. Petitioner, according to the admitted case of the respondents, has enlistment certificate for building works, which is valid till 05.02.2021 and therefore, rejection of the petitioner's technical bid is unsustainable.

6. Learned counsel for the parties have put forth their respective submissions as per their pleadings and having considered their submissions, we are unable to accept the submissions of the learned counsel for the petitioner – society.

7. The contention of the learned counsel for the petitioner – society that the petitioner – society, in pursuance to the e-tender notice issued in the year 2019, had applied where the bid of the petitioner was duly accepted. The work allotted to the petitioner has also been successfully executed and therefore, the rejection of the technical bid in pursuance to the subsequent e-tender notice dated 22.07.2020 (Annexure P-6) is unsustainable, cannot be accepted as there is no pleading to the effect that earlier also, petitioner had submitted the bid without any attested/certified identity cards of the President and the members of the society and in any case, if such incomplete documents had been earlier submitted by the

petitioner – society, which were wrongly accepted, does not confer any right upon it to claim the benefit thereof in the present bid also especially when the requirement is clearly laid down in the e-tender notice dated 22.07.2020 (Annexure P-6). Any wrong which has taken place earlier would not entitle a party for the benefit of the same for all times to come.

8. According to the e-tender notice dated 22.07.2020 (Annexure P-6), terms and conditions have been clearly mentioned therein, which fact is not disputed. Clause 3 of the e-tender notice relating to the terms and conditions reads as follows:-

3. The tenderer must be Enlisted with the Municipal Council/Nagar Panchayat or with any other Government Department as Civil Contractor/Building Contractor/Road works Contractor.”

9. A perusal of the above would indicate that the tenderer enlisted in any of the three categories i.e. Civil Contractor/Building Contractor/Road works Contractor could apply in pursuance to the e-tender notice, therefore, the stand of the respondents that the petitioner – society was not eligible, as it had enlistment certificate for building works only, is unsustainable.

However, the other condition which was required to be fulfilled i.e. condition No.15 has not been satisfied by the petitioner. The same reads as follows:-

“Copy of list of L&C Society Members inclusive of President and their identity card which is certified/attested by the Assistant Registrar/ Registrar Cooperative Societies”.

10. This condition, admittedly, has not been complied with as only the copy of list of L&C society members has been supplied but their identity cards duly certified/attested by the Assistant Registrar/Registrar Cooperative Societies have not been submitted, which is a mandatory condition as far as the societies to which category the petitioner belongs. With the non-submission of these documents, the technical bid of the petitioner has rightly been rejected. The plea of the petitioner – society that it should have been given an opportunity to rectify the error, the said aspect cannot be accepted especially when there is no such clause in the e-tender notice, which permits such an opportunity to be given to the tenderer. Further, as per Clause 42, it has categorically been stated that the bidders will be responsible for any clerical mistake or wrong entry during filling-up the e-tender.

11. As regards the contention of the learned counsel for the petitioner – society that the submission of the duly attested/certified identity cards of the President and the members of the petitioner – society was not an essential condition and therefore, was not an impediment for execution of the work, where the technical bid could be rejected, the said plea cannot be accepted in the light of the fact that this is a mandatory condition especially with regard to the category under which the petitioner – society was applying. As has been mentioned above, not only the list of members inclusive of the President was required to be supplied by the L&C society, as the petitioner, but their identity cards duly attested/certified by the Assistant Registrar/Registrar Cooperative Societies, were also required to be submitted. Municipal Council, Phillaur, has rightly proceeded to reject

the technical bid of the petitioner – society because of non-compliance of Clause 15 of the e-tender notice dated 22.07.2020 (Annexure P-6) as well as Clause 4.4 of the SOP notified by the Department of Local Government, Punjab, on 02.08.2018, which also requires identity cards of the members to be duly certified by the Registrar Cooperative Societies. Therefore, the judgment in *Om Parkash Sharma's* case (supra) would not help the petitioner.

12. As regards the contention of the learned counsel for the petitioner that there has been bid pooling at the behest of the Municipal Council, Phillaur and its officials, suffice it to say that these are merely bald allegations without any evidence to substantiate the same. Petitioner – society has also failed to demonstrate on the basis of the documents on record with regard to the parties having come together for the bid pooling nor is there any pleading indicating such process having been adopted. Mere bald allegations, which have been specifically denied, cannot be made the basis for accepting such a plea.

13. In view of the above, finding no merit in the present writ petition, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

October 26th, 2020
Harish

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No