

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

**CWP No.162 of 2021
Date of decision: 07.01.2021**

Rajbeer Singh

... Petitioner

Versus

Municipal Corporation, Chandigarh and others

... Respondents

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

Present: Ms. Deepa Negi, Advocate, for
Mr. Shekhar Choudhary, Advocate, for the petitioner.
(The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual Court)

ARUN PALLI, J.

A writ of certiorari is prayed for to quash the decision of the respondent-authorities rejecting the technical bid of the petitioner being non-responsive, with a direction to the respondents to open his financial bid and he be awarded the contract being the highest bidder.

In brief, the case set out in the petition is: Municipal Corporation, Chandigarh (respondent No.1) invited e-bids/offers, under two bid system, on percentage rate from the owner of fruit garden or lease holder throughout India to assign lease of Mango, Jamun, Litchi, Chickoo, Guava, Locat (Loquat), Annar, Kathal and Peach fruit crop on the trees on both sides of Purv Marg, abutting Sectors 28 and 29, Chandigarh on one side and Industrial Area Phase-I on the other. In terms of the tender conditions, the bidder was required to scan and upload all the requisite documents with the technical bid itself. For the petitioner submitted his bid (bearing No.195883) in terms of Clause 11 & 14 of the Tender Enquiry, he was fully eligible to participate and compete in the tendering process. However, the authorities

rejected his technical bid and the contract was awarded to M/s Mohd. Hashim and Munawar Hussain, even though the price bid of the petitioner was higher than the successful tenderer. Being aggrieved, the petitioner served the respondent-authorities with a notice dated 25.11.2020 (Annexure P10). Which was responded to by the authorities vide memo dated 04.12.2020 (Annexure P11), wherein it was clarified that as the petitioner failed to fulfill condition No.1 of the Tender Notice and had not uploaded the documents regarding proof of ownership of fruit garden or leasehold rights, those documents and details being an integral part of the technical bid the petitioner was found to be non-responsive by the competent authority. Further, even in the notice (Annexure P10), a vague description was given of an alleged lease agreement for a consideration of Rs.48,00,000/-. Thus, this petition.

Learned counsel for the petitioner submits that in compliance to conditions No.11 & 14 of the E-tender Notice, the petitioner had duly furnished all the necessary documents with his technical bid on 25.10.2020, including the lease agreement dated 25.02.2017, executed by Surendra Pal Singh, vide which a fruit garden was leased out to the petitioner for a period of five years commencing from 2016-17 to 2020-21. Therefore, decision of the respondent-authorities disqualifying the petitioner being technically non-compliant, is arbitrary and unsustainable. Further, the contract was awarded for Rs.41,00,000/- against a reserve price of Rs.38,50,000/-, even though the petitioner had submitted a financial bid of Rs.50,00,000/- and was thus the highest bidder. Thus, a financial loss of Rs.9,00,000/- is caused to the State exchequer.

We have heard learned counsel for the petitioner and perused the records.

In terms of clause 18 of the Tender Enquiry, it was mandatory for all the bidders to upload all the documents mentioned under “*NIT Documents’ template under the; Cover Details*” (**condition-1**), which, apart from other documents, required the bidders to furnish proof of ownership of fruit garden or leasehold rights throughout India:

“CONDITIONS

- 1 Cover-1** Shall contain scanned copy of Earnest money, Earnest money Undertaking, Proof of Owner of Fruit Garden or Lease Holder throughout India, Affidavit duly attested by Notary, financial turnover last three Years, certificate of registration of GST.
- Cover-2** Shall contain Financial Bid.”

Clause 34 of the Tender Enquiry cautioned the bidders that they must ensure that scanned copies of all necessary documents were uploaded with the bid. For, the technical evaluation was to be carried out only on the basis of the uploaded documents and no correspondence or physical submission of any additional documents was to be entertained thereafter. Thus, the limited issue that arises for determination is: **whether the petitioner had indeed submitted the necessary proof of being an owner of a fruit garden or a leaseholder?**

The specific case set out by the petitioner, in this regard, in paragraph 5 of the petition is “*...that along with other required documents the petitioner on the demand of respondent No.2 also supplied other document regarding his experience in this field i.e. agreement 25.2.2017 executed by one Surinder Pal Singh in favour of the petitioner whereby the petitioner had been leased out a garden by him on total amount of*

Rs.48,00,000/- for a period of five years". Ex facie, for the petitioner furnished a copy of the lease agreement dated 25.02.2017 (Annexure P9) in response to the demand/requisition by respondent No.2 (Superintending Engineer, Horticulture Division No.2, Municipal Corporation, Chandigarh), it's quite obvious that he did not submit the requisite documents along with his bid on 25.10.2020. Further, in the absence of any material on record to indicate that respondent No.2 had demanded or required the petitioner to submit any such document, the irrefutable presumption that permeates the record is that petitioner actually failed to submit the necessary proof of his either being an owner or a lessee in terms of condition No.1 of the Tender Enquiry. As indicated earlier, in terms of clause 18 of the E-tender Notice, it was mandatory for all the bidders to upload all the documents mentioned under "*NIT Documents' template under the; Cover Details*". Therefore, once the petitioner had failed to comply with one of the essential conditions of the tender documents, the only and the inevitable conclusion the authorities could reach was: the petitioner was technically non-responsive. Significantly, the petitioner has not alleged any malafides either to suggest that he was disqualified for any oblique purpose/motive to benefit another bidder. Further, the contract has been assigned to one M/s Mohd. Hashim and Munawar Hussain, who have not even been arrayed as party to the petition. The argument that petitioner had submitted a financial bid of Rs.50,00,000/-, whereas the contract has been awarded by the authorities for a sum of Rs.41,00,000/-, causing loss of Rs.9,00,000/- to the Corporation, would not advance the case of the petitioner a bit. Needless to assert that once the petitioner was found to be non-compliant/non-responsive during technical evaluation by the competent authority, he ceased to be a participant

in the tendering process. Therefore, to suggest that even though he was technically disqualified, but as the price bid submitted by him was higher than the successful tenderer, he was entitled to be awarded the contract, lacks conviction and cannot be countenanced. The Supreme Court in “**W.B. Electricity Board v. Patel Engineering Co. Ltd. and others**, 2001 AIR (SC) 682 observed:

“The principle of awarding contract to the lowest tenderer applies when all things are equal. It is equally in public interest to adhere to the rules and conditions subject to which bids are invited. Merely because a bid is the lowest the requirements of compliance of rules and conditions cannot be ignored. It is obvious that the bid of respondent Nos.1 to 4 is the lowest of bids offered. As the bid documents of respondent Nos.1 to 4 stands without correction there will be inherent inconsistency between the particulars given in the annexure and the total bid amount, it cannot be directed to be considered along with other bid on the sole ground of being the lowest.”

In the wake of the position as sketched out above, the matter warrants no interference. The petition being bereft of merit is, accordingly, dismissed.

(Ravi Shanker Jha)
Chief Justice

(Arun Palli)
Judge

07.01.2021
Rajan

Whether speaking / reasoned:
Whether Reportable:

YES/NO
YES/NO