IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 10973-2021 (O&M)
Date of decision: 17.11.2021

Lata Mukherjee

…..Petitioner

Versus

Indian Institute of Science Education and Research and others

...Respondents

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

Present:- Mr. K.K. Gupta, Advocate,
for the petitioner.

Mr. Shireesh Gupta, Advocate,
for respondent No.1.

Mr. A.P. Setia, Advocate,
for respondent No.2.

Mr. Avinit Avasthi, AAG, Punjab.

(The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual Court).

RAVI SHANKER JHA, CHIEF JUSTICE (Oral)

This petition has been filed by the petitioner, challenging the decision of the respondent authorities, dated 30.5.2021 (Annexure P-9), whereby her technical bid was rejected and respondent No.2 was found to be technically compliant.

Brief facts, leading to filing of the present writ petition, are that vide E-Tender Notice dated 20.3.2021 (Annexure P-1), under two bid system, online bids were invited for allotment of shops at the campus of Indian Institute of Science Education and Research, Mohali, (IISER). The technical bid submitted by the petitioner was rejected, for she failed to furnish the GST number, along with her bid.

Learned counsel for the petitioner submits that rejection of her technical bid for want of GST number was illegal, for, in fact, the petitioner was/is exempted from obtaining the GST number. Therefore, in such a situation, the decision of the authorities to hold the petitioner ineligible was erroneous and lacked application of mind. On the contrary, he submits that respondent No.2, though submitted the GST number, but that was incorrect. Thus, his bid could not have been accepted. He also submits that petitioner had applied for GST number, but her prayer was rejected by the authorities on 3.4.2021 (Annexure P-6), on the ground that she cannot be granted GST number for the shop in which she was operating, as its lease was going to expire on 30.4.2021. He places reliance on Rule 11 of the Central Goods and Services Tax (CGST) Rules, 2017, relating to "Separate registration for multiple places of business within a State/ UT", to submit that respondent authorities could not have insisted upon furnishing the GST number, as the petitioner, in such a situation, cannot possibly obtain it under law. He also submits that, in fact, the condition requiring furnishing the GST number is required to be quashed.

The respondents have filed their replies, refuting the claim of the petitioner.

At the outset, it is submitted by learned counsel for respondent No.1 that petitioner has not assailed the condition that required furnishing of GST number. In such a situation, the issue raised by the petitioner cannot be looked into. It is pointed out that petitioner, in her own letter of undertaking and declaration, dated 9.4.2021, had undertaken that she would accept all the terms and conditions of the tender document and undertook to abide by them. Thus, she cannot now be permitted to object to the condition of furnishing the GST number. It is further submitted that petitioner, in fact, did not submit the GST number with her bid, as is evident from Annexure-II (at page 33 of the paper book), wherein column No. 9 of the tender for shops for rent at IISER Mohali, had been left blank. Whereas, respondent No.2 furnished his GST number (Annexure P-11), along with other necessary documents, including experience certificate. Therefore, the authorities rightly accepted the bid of respondent No.2. Thus, the petition being meritless deserves to be dismissed.

We have heard learned counsel for the parties and perused the record.

A bare perusal of the tender document (Annexure P-1) indicates that petitioner was required to upload the scanned copy of PAN Number and GST Number, duly signed and stamped. Concededly, the petitioner did not furnish the abovesaid documents. In such circumstances, the authorities cannot be faulted with in rejecting the technical bid submitted by the petitioner. On the other hand, admittedly, respondent No.2 had submitted the GST number, along with other necessary documents vide Annexure P-11. As regards contention raised by learned counsel for the petitioner with respect to Rule 11 of the CGST Rules, the said contention is noticed only to be rejected, in view of the fact that the petitioner has not challenged the condition requiring furnishing of GST number. Rather, categorically accepted the same vide her letter of undertaking and affidavit. In such circumstances, the petitioner cannot now be permitted to say that she was not required to furnish the GST number. That apart, even the claim of petitioner as regards exemption from obtaining GST number is also misconceived. For, a perusal of notification No.10/2019-Central Tax, dated

7.3.2019 (Annexure P-13), makes it clear that exemption is not applicable to the petitioner, as she is engaged in a business of supply of ice-cream, to which no such exemption is admissible, as has been enumerated at column No. 1 of the chart provided therein. Further, the fact that petitioner supplies ice-cream is evident from the information supplied by the petitioner herself in the tender form. Thus, we are of the considered opinion that once the petitioner had accepted all the terms and conditions of the tender and was well aware of the mandatory requirement of furnishing the GST number, now she cannot be permitted to say that she was not required to do so. In such a situation, it can be safely concluded that the authorities have rightly rejected her technical bid, being non-compliant. On the other hand, respondent No.2 had furnished the GST number and was the only tenderer remaining in the fray, and therefore, declared as technically compliant.

As regards the issue that petitioner had offered higher rent than respondent No.2, it would also not advance her case, as she was technically non-compliant or ineligible. The issue of comparative rates of rents can be taken up only by those tenderers who are eligible and have been declared compliant, as per the tender document. But the case of the petitioner is not such. Therefore, the fact that petitioner offered higher rent than respondent No.2 is inconsequential and has no effect on the decision of the respondent authorities.

At this stage, learned counsel for the petitioner submits that the statement of profit and loss submitted by respondent No.2 was the projected statement and not actual. He points out that even the experience certificate was not submitted by respondent No.2, therefore, allotting tender in his favour is in violation of conditions of the tender notice. He also submits that requirement of furnishing experience certificate was mandatory and in the absence of submission of experience certificate by respondent No.2, his bid could not have been accepted.

To this, it is observed that from a bare perusal of the tender document, it is crystal clear that requirement of experience is not mandatory. Further, condition No.2 of the tender document envisages that preference would be given to those tenderers, who had, at least, one year experience in running the shops of identical in nature. Once possession of experience is not mandatory, non-submission of experience certificate by respondent No.2 does not disentitle him. Moreover, as stated by respondent No.1 in its return, respondent No.2 has not been extended any benefit of experience under this clause. But, in fact, he has been allotted tender, for he fulfilled all the mandatory requirements of the tender document, and was the sole tenderer remaining in the fray.

At this stage, learned counsel for respondent No.1, on instructions, clarified that though learned counsel for petitioner has placed reliance on the document (at page 63 of the paper book), whereby certain bids were rejected on account of non submission of experience certificate, but the authorities had committed a mistake, which is being re-visited and corrective measures in this regard would be taken, after following principles of natural justice. He further clarifies that the instances relied upon by learned counsel for the petitioner do not relate to the grocery shops to which the petition at hands relates to. In fact, those instances relate to the stationery shops qua which the petitioner had not even submitted her bid. In the circumstances and the clarification given by the learned counsel for respondent No.1, we do not find any merit in the submission of the counsel for the petitioner in this regard.

Thus, in the given situation, the only and the inevitable conclusion that could be reached: the petition being bereft of merit is required to be dismissed. And, it is so ordered.

Since the main case has been decided, pending miscellaneous application, if any, shall also stand disposed of.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

17.11.2021
AK Sharma

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