

111 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.17872 of 2021
Date of decision:14.09.2021

M/s Kot Gobindpur Coop. Labour & Construction Society Ltd.
... Petitioner

versus

State of Punjab and others ... Respondent (s)

Coram: Hon'ble Ms. Justice Ritu Bahri
Hon'ble Mrs. Justice Alka Sarin

Present:- Mr. Raman Sharma, Advocate for the petitioner.
Ms. Anu Pal, Deputy Advocate General, Punjab
(Through Video Conference)

Ritu Bahri, J.(Oral)

The petitioner has approached this Court by filing a writ petition under Article 226/227 of the Constitution of India for issuing a writ in the nature of Certiorari, mandamus or any other appropriate writ, order or direction, declaring impugned conditions No.(IX) and (XI) contained in the terms and conditions attached with tender dated 26.08.2021 (Annexure P-6), requiring bid capacity as per formula given in letter dated 16.06.2021 (Annexure P-5) which formula is applicable for works of the value of Rs.1.00 crore while through the tender (Annexure P-6) all the works are of value much below Rs.1.00 crore and further in insisting for last five years turnover certificate without realizing that there has been no effective working during last two years due to Covid-19 pandemic and further in not considering the legal notice of demand served by the petitioner upon respondents.

Learned State counsel has produced the standard bidding document for procurement of works of the Government of Punjab, Public Works Department Buildings & Roads Branch. This document is of the year 30.07.2018.

A perusal of this document shows that the rule 4.2 (C)(f) (at page 14) has been reproduced as under:-

“Details of his available bid capacity with an undertaking that his available bid capacity, calculated as per Clause 4.4 below, is more than the estimated value of the project/work; (as specified in BDS).”

This condition does not reflect that the estimated value of the project/work should be below one crore. The document attached in this petition at Annexure P-7 at page No.24 of the paper-book shows that in Clause 4.2 (C) (f), it is written by hand that the financial bid for works above Rs.1,00,00,000/-. Clause 4.4 shall be applicable for the estimated financial bid of works more than one crore. However, the original document produced by the counsel for the State dated 30.07.2018 as referred to above, this condition does not find mention. Keeping in view this fact, the petitioner cannot claim any right for participation without following the calculation as per Clause 4.4 as reflected at page No.25-A of the paper-book which reads as under:-

“Bid capacity:

The bid capacity of the prospective bidders will be calculated as under:

$$\text{Assessed Available Bid Capacity} = (A * N * 2 - B)$$

where

A = Maximum value of Civil Engineering works executed in any one year (year means Financial year) during the last five years (updated to the price level of the Financial year in which bids are received at a rate per year as indicated in the BDS) taking into account the completed as well as works in progress.

N = Number of years prescribed for completion of the Project/Works for which these bids are being invited. (e.g. 7 months = 7/12 year)

B = Value (updated to the price level of the year indicated in

***BDS)** of existing commitments (only allotted works) on the last date of submission of bids as per bidding document and on-going works to be completed during the period of completion of the Project/works for which these bids are being invited.*

***Note:** The statement showing the value of existing commitments and on-going works as well as the stipulated period of completion remaining for each of the works listed should be attached along with certificates duly signed by the Engineer-in charge, not below the rank of an Executive Engineer or equivalent.”*

As per original Clause 4.3(C) at page No.16, the Standard Bid document dated 30.07.2018, the petitioner is bound by the condition of Clause 4.4 with capacity.

Learned counsel for the petitioner seeking issuance of direction to the respondents to consider and take decision on the legal notice dated 27.08.2021 (Annexure P-8) which is pending for consideration.

In the light of the facts noticed herein above, we deem it appropriate to dispose of the present petition with a direction to the respondents to consider the claim of the petitioner and take a final decision on the legal notice dated 27.08.2021 (Annexure P-8) submitted by the petitioner and by passing a speaking order within a period of four weeks from the date of receipt of a certified copy of this order.

Petition disposed of.

**(RITU BAHRI)
JUDGE**

**(ALKA SARIN)
JUDGE**

14.09.2021
hemlata

*Whether speaking/reasoned Yes/No
Whether Reportable Yes/No*