

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

CWP-25974-2021 (O&M)
Date of decision:- 20.12.2021

M/s Shiv Shakti Enterprises

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

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

Present: Mr. Nitin Gupta, Advocate,
for the petitioner.

Mr. Deepak Balyan, Additional Advocate General, Haryana.

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RAVI SHANKER JHA, C.J. (ORAL)

This petition has been filed by the petitioner being aggrieved by an order dated 25.11.2021 (Annexure P-12) passed by respondent No. 2 on its complaint/representation dated 08.02.2021 assigning reasons for awarding the contract for construction of covered godowns under seven years guarantee scheme to respondent No. 3.

The brief facts leading to filing of the present writ petition are that the petitioner as well as the respondent No. 3 pursuant to an e-tender notice dated 19.11.2020 (Annexure P-1) had applied for allotment of work for construction of covered godowns under seven years guarantee scheme issued by respondent No. 2 – HAFED. Both the petitioner and the respondent No. 3 were found to be technically compliant and were shortlisted. Thereafter, the financial bids were opened and the respondent No. 3 being the lowest bidder was awarded the contract. The petitioner filed the complaint/representation dated 08.02.2021 before the respondent-authorities alleging that the respondent No. 3 was technically non-compliant. As no decision was taken thereon, the petitioner filed a writ petition i.e. CWP-5396-2021 which was disposed of by this Court, on the first date of hearing itself vide order

Haryana to the effect that the same had already been considered and decided by the respondent-authorities and that the decision thereon would be communicated to the petitioner. Thereafter, the petitioner filed CWP-23518-2021 alleging that the respondent-authorities had simply dismissed its complaint/representation dated 08.02.2021 without giving any reasons for the same. When the matter came up before this Court on 22.11.2021, the learned Additional Advocate General, Haryana stated that a detailed order giving reasons would be passed and communicated to the petitioner. Pursuant thereto, the impugned order dated 25.11.2021 (Annexure P-12) was communicated to the petitioner giving reasons for awarding the contract to respondent No. 3.

Learned counsel for the petitioner submits that it had placed before this Court several documents to indicate that the respondent No. 3 did not fulfill several mandatory conditions of the tender and eligibility requirements of the tender notice inspite of which the respondent No. 3 was held to be technically compliant and the tender was awarded in its favour. It is stated that the land which was offered by the respondent No. 3 for construction of the godown did not fulfill the requirements of the model tender form and in such circumstances its tender could not have been accepted.

We have heard learned counsel for the petitioner at length and perused the impugned order dated 25.11.2021 (Annexure P-12).

From a perusal of the same, it is evident that the respondent-authorities had constituted a District Level Committee consisting of officers from various departments i.e. Junior Engineer -HAFED, District Manager – HSWC or his representative, District Food and Supply Controller (DFSC) or his representative, official nominated by the Deputy Commissioner and District Manager, HAFED, Ambala for the purposes of examining the site offered by the respondent No. 3 and its suitability in terms of the factors mentioned in the

was stated that even though the level of the site was lower than that of the connecting District highway, however, it was suitable. For there was no water logging and the land behind the proposed site was lower in level. Further, there actually existed a bitumen road connecting to the site/land offered by the respondent No. 3, which was motorable for the movement of vehicle/trucks. And as per report of the Executive Engineer, Irrigation Department, it was not a flood prone area. The land/site was at a distance of 9 kms from the Anaj Mandi, Naraingarh and the distance between brick-kiln and the land/site was more than 500 meters. Accordingly, the respondent-authorities on the basis of the aforesaid report of the District Level Committee found that the said site was suitable and, thus, the respondent No. 3 was declared to be technically compliant. Further, in terms of the relevant factors of the model tender form, the requirements regarding level of the site, distance etc. were prefaced with a word “preferably” and not mandatory. The respondent-authorities in the impugned order have clearly stated that various level of inspection by HAFED officers shall be conducted during construction of the godown to ensure that the same is as per the specifications and is not low lying and to ensure connectivity by the godown owner. Failing which, if the godown cannot be used, it would be de-hired. The respondent-authorities were of the opinion that the respondent No. 3 complied with the necessary factors and conditions mentioned in the model tender form and as it was the lowest bidder, the tender was awarded in its favour.

It is settled law that the scope of interference with a tender matter is extremely limited, as has been held by the Supreme Court in a series of judgements rendered in *Central Coalfields Limited and another Vs SLL-SML (Joint Venture Consortium) and others* (2016) 8 SCC 622; *Afcons Infrastructure Limited Vs Nagpur Metro Rail Corporation Limited and another* (2016) 16 SCC 818; *Municipal Corporation, Ujjain and another Vs BVG India Limited and others* (2018) 5 SCC 462; *Caretel Infotech Limited Vs Hindustan*

Petroleum Corporation Limited and others (2019) 14 SCC 81 and *Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers Vs New J.K. Roadways, Fleet owners and Transport Contractors and others* 2020 SCC Online SC 1035 and that it is limited only to cases of established malafides, manifest arbitrariness or wednesbury unreasonableness all of which are absent in the present case. It is also held by the Supreme Court that an employer is the best interpreter of clause(s) of a tender as well as the best judge of the suitable person(s) to be awarded the same and that this Court cannot sit over the decision of the authorities as an appellate forum.

In the circumstances, we do not find any merit in the writ petition, which is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

20.12.2021
Amodh

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