

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

CWP-6503-2022 (O&M)
Date of decision:- 30.03.2022

M/s Garg & Company

...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. Harpreet Singh Brar, Senior Advocate,
with Mr. Ranjit Singh Kalra, Advocate,
for the petitioner.

Mr. Deepak Balyan, Additional Advocate General, Haryana.

Mr. Sanjiv Kumar Aggarwal, Advocate,
for respondent No. 11.

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RAVI SHANKER JHA, C.J. (ORAL)

This petition has been filed by the petitioner praying for quashing the DNIT dated 14.02.2022 (Annexure P-11), whereby the respondent-authorities have re-tendered the balance work for beautification, widening, divider and lighting of road from Gitadawar to Jyotisar of Saharanpur-Yamunanagar-Radaur-Ladwa-Kurukshetra road section Km. 76.150 to 85.00 in District Kurukshetra.

Learned senior counsel appearing for the petitioner submits that the impugned DNIT has been issued by the respondent-authorities at exorbitant rates. He further submits that the petitioner was a previous contractor who was allotted this work for a sum of Rs. 44 crores. He further submits that as per the respondent-authorities themselves, the petitioner has completed more than 50% of the work. However, on account of disputes between the parties, the previous tender has been cancelled, and the respondent-authorities are proceeding ahead with re-tendering of the remaining work. He further submits that the respondent-authorities without undertaking the proper procedure for determining and quantifying the amount of the remaining work have gone in for re-tendering at an inflated rate, which ultimately they propose to recover from the petitioner. He further submits that subsequent to the impugned tender proceedings and receiving offers, another contractor, namely, RBM JV Construction, who was not a part of the previous tender process,

submitted its bid in terms of clause 13.18.1 of the Haryana PWD Code which

was less than 5% of the previous offer of the lowest tenderer and, therefore, the respondent-authorities have undertaken the proceedings prescribed therein and allotted the tender to the lowest bidder by entering into negotiations with it. He further submits that the subsequent proceedings of re-tendering undertaken by the respondent-authorities pursuant to the impugned DNIT are in violation of the procedure prescribed by law and, therefore, the same be quashed.

Mr. Deepak Balyan, learned Additional Advocate General, Haryana, on advance copy, submits that the work in question was previously allotted to the petitioner, and the contract has been cancelled, and the matter is now referred to the sole arbitrator pursuant to the consent order passed by this Court on 24.02.2022 in CWP-3197-2022. He further submits that apart from the other issues, which are already pending before the arbitrator, the issue regarding excess recovery towards the enhanced amount of the contract pursuant to re-tendering can also be taken up by the petitioner before him. He further submits that the next date fixed by the arbitrator in the arbitration proceedings is 19.04.2022. He further submits that the construction of the road in question has been delayed by two years, and it is in public interest, that the respondent-authorities have undertaken the entire process of re-tendering and allotted the contract to another tenderer, so that the same can be completed at the earliest. He further submits that the petitioner did not offer its bid pursuant to the impugned DNIT, and in such circumstances, it being not a party thereto has, therefore, no right to challenge the same.

Mr. Sanjiv Kumar Aggarwal, learned counsel, appearing for respondent No. 11, on advance copy, submits that the contract has been allotted to it, and it has already commenced the work by depositing performance security of Rs. 1,60,33,000/- (Rupees One Crore Sixty Lacs Thirty Three Thousand only), and also procured the necessary raw material, which is lying on the spot.

Having heard learned counsel for the parties, we are of the considered opinion that the petitioner having chosen not to participate in the subsequent tender proceedings, now cannot be permitted to assail the same. Further, the other issues arising out of the contract awarded to the petitioner can be taken up in the arbitration proceedings that are pending before the arbitrator. The petitioner cannot be permitted to rake up the issue regarding the manner in which the proceedings have been taken up by the respondent-authorities pursuant to the impugned DNIT either. For it has consciously chosen not to submit its offer to the impugned DNIT, although the same was within its

It is also pertinent to note that though certain monetary irregularities in the re-tendering process have been alleged by the petitioner, but the same have not been challenged by any of the tenderer who participated in the tender proceedings or is aggrieved by alleged irregularities.

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

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

30.03.2022
Amodh

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