

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

CWP-11136-2022

Date of decision : 25.05.2022

Sharma Constructions Joint Venture

.....Petitioner

Versus

Punjab Agro Industries Corporation Ltd. and another

....Respondents

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

Present: Mr. Vivek Salathia, Advocate,
for the petitioner.

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

Mr. Sumit Jain, Advocate, and
Mr. Abhishek Arora, Advocate,
for respondent No.2.

RAVI SHANKER JHA, CHIEF JUSTICE (Oral)

The petitioner has filed this petition being aggrieved by an order dated 11.05.2022 (P-6) vide which it has been declared technically non-compliant qua e-tender (P-2) floated by respondent No.1, for supply of gypsum for agriculture use.

Learned counsel for the petitioner submits that the respondent – authorities had floated the e-tender by changing the relevant eligibility clause only to favour the private respondent, who has been allotted the tender. It is further submitted that though the petitioner constituted a Joint Venture and applied for allotment of tender, its claim as a Joint Venture has been rejected by the authorities, without taking into consideration the documents relating to creation of Joint Venture. He further submits that the petitioner had filed a representation (P-8) against

the rejection of its technical bid, which has also been rejected by the authorities vide letter dated 18.05.2022 (P-9). Further, the authorities changed the eligibility condition by prescribing a condition of having one year experience for supplying gypsum to Government/semi Government organizations. It is submitted that this condition was incorporated to favour the private respondent, who has been awarded the contract. Hence the e-tender floated by the respondent authorities and allotment of the tender to the private respondent deserve to be quashed.

We have heard learned counsel for the parties.

From a perusal of the eligibility condition, it is evident that it is general in nature, and is applicable to all concerned. The condition requiring one year experience for supplying gypsum to Government/semi Government organizations, *ex-facie*, can be fulfilled by any person or entity in the trade. There is no allegation or assertion in the petition to indicate that the condition is tailor-made, incorporated to favour the private respondent alone and that there is no other person to fulfill the conditions prescribed. No such averment or specific details have been mentioned in the petition either in this regard. The contention of learned counsel for the petitioner, therefore, stands rejected.

As far as the petitioner's claim for being eligible as a Joint Venture is concerned, it is evident from the impugned communication dated 18.05.2022 (P-9) that the authorities have examined the documents filed by the petitioner as well as the individual requirement of a Joint Venture as contained in the tender document. The authorities, on a representation being made by the petitioner, have examined each of the petitioner's contentions in detail. From a perusal thereof, it is evident that

though the petitioner filed the documents to indicate the person who would be authorised to deal with the authorities, however, the certified copy of the resolution of the Joint Venture to authorise a person was not filed. Similarly, copies of the Income Tax Permanent Account Number (PAN) as well as GST registration number of the Joint Venture were also not filed, but these were filed in the name of individuals constituting the Joint Venture. The documents required by the authorities to indicate that the petitioner would be functioning as a Joint Venture were missing. Further, a perusal of the Joint Venture Agreement dated 22.04.2022 (P-1) would indicate that there is no clause indicating as to who would be managing the Joint Venture. On the contrary, the document indicates that in spite of constituting the so called Joint Venture, the constituents/proprietors would continue to manage their own separate firms.

Learned counsel for the petitioner fairly submits that the said Joint Venture was constituted on 22.04.2022 after issuance of the NIT on 12.04.2022 only for the purposes of applying for the tender in response to the NIT, as admittedly the constituent members of the Joint Venture were not eligible to apply and obtain the contract.

It is pertinent to note that a perusal of the eligibility condition contained in the NIT makes it clear that the tenderer should be either a proprietorship concern, a partnership firm or an incorporated company and own its entity. In these circumstances, it is evident that the attempt of the petitioner to obtain the contract by entering into a Joint Venture agreement with other individual was only to overcome the disqualification suffered under the relevant clauses of the agreement. In these circumstances, it is evident that the expert committee of the

authorities has examined the representation of the petitioner in detail and found the petitioner to be ineligible.

As regards the contention of the petitioner that the tender was floated only to favour the private respondent does not appear to be correct, as ultimately two tenders were shortlisted and as the rates of the private respondent were found to be lowest, therefore, tender was allotted to it.

In view of the above, the petition being meritless is dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

May 25, 2022
ndj

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