

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

111

CWP-21753-2023(O&M)

Date of order: 14.12.2023

Jai Pal & Another

.....Petitioner(s)

Vs.

State of Haryana & Others

.....Respondent(s)

CORAM:

HON'BLE MS. JUSTICE RITU BAHRI, ACTING CHIEF
JUSTICE

HON'BLE MS. JUSTICE NIDHI GUPTA

Present:-

Mr. Paramjit Singh Jammu, Advocate
for the petitioners.

Mr. Deepak Balyan, Addl. AG Haryana.

Nidhi Gupta, J.

Prayer in the present petition is for issuance of a writ in the nature of certiorari for setting aside the impugned auction/bid of lifting of agricultural produce residue/garbage/waste segregated in the grain market of Market Committee Shahbad Markanda, District Kurukshetra accepted by respondent No.2 vide impugned letter dated 21.09.2023 (Annexure P4), as the said auction/bid is on lowest side Rs.67,30,000/- in favour of respondent No.5 whereas the petitioner has taken the last year bid @ Rs.1,01,50,000/- and has offered minimum Rs.85,00,000/- starting bid for this year.

2. Learned counsel for the petitioners submits that petitioner No.1 is the sole proprietor of petitioner No.2 firm. Petitioner No.1 is a contractor who lifts agricultural produce residue/garbage/waste segregated in the grain market. It is contended that for the last year i.e.

2022-2023 the petitioner had given the highest bid of Rs.1,01,50,000/- (Annexure P1), to the respondent-Market Committee, Shahbad Markanda for the lifting of agricultural produce waste from the Grain Market. It is submitted that for the present year 2023-2024, the petitioner had offered minimum bid starting from Rs.85,00,000/-, however, the contract has been awarded to respondent No.5 for a meagre amount of Rs.67,30,000/- only. Learned counsel argues that in view of the fact that the petitioner was already working in the previous year for highest bid of Rs.1,01,50,000/-; and had offered minimum bid of Rs.85,00,000/- for the present year, therefore, the award of contract to respondent No.5 for a meagre amount of Rs.67,30,000/- by respondent No.3 is an arbitrary and illegal action that deserves to be set aside. It is further contended that while awarding the contract to respondent no.5, the respondents No.3 and 4 have not adopted proper procedure and have given the contract of lifting agricultural garbage at lower price and therefore, the same needs to be set aside.

3. No other argument is raised on behalf of the petitioners.
4. We have heard learned counsel for the petitioners.
5. Perusal of the record of the case reveals that the contract for lifting garbage from the Grain Market for the present year 2023-2024, was awarded by holding open auction on 24.07.2023 in Kisan Rest House, New Grain Market Shahbad Markanda, District Kurukshetra. On a direct Court query, learned counsel for the petitioners has admitted that petitioner No.1 did not participate in the said auction on 24.07.2023; and had offered his 'highest bid' only vide letter dated 02.09.2023, after the

contract had already been sanctioned in the name of respondent No.5 vide letter No.633 dated 03.08.2023. It is further admitted that Tender bids were invited vide tender notice dated nil (Annexure P2) in pursuance to which respondent No.5 had admittedly participated in the auction process and being the highest bidder, was sanctioned the tender vide letter No.633 dated 03.08.2023; and subsequently, awarded the tender vide impugned letter dated 21.09.2023 (Annexure P4).

6. It is settled position in law that once the petitioners have chosen not to participate in the tender process/auction, they cannot be awarded the same on the basis of an alleged highest bid offered subsequently by way of written application dated 02.09.2023. In this regard, reliance may be placed upon a three-Judge Bench decision of the Hon'ble Supreme Court rendered in **"National Highways Authority of India Vs. Gwalior Jhansi Expressway Limited"** Law Finder Doc ID # 1098920, wherein it has been held as under:-

"Arbitration and Conciliation Act, 1996, Sections 17 and 37(2)(b) - Tender notice - Respondent's contract terminated for abandoning project - Appellant issued tender for balance work - Respondent claimed right to match bid of L-1 and ROFR - Right of respondent to match bid of L-1 or to exercise ROFR to come into play only if respondent was to participate in tender process pursuant to notice inviting tenders - Wording of eligibility clause in tender made it explicit that respondent was required to participate in tender process by submitting its sealed bid - Having failed to participate in tender process and, more so, despite express terms in tender documents, validity whereof has not been challenged, respondent cannot be heard

to contend that it had acquired any right whatsoever - Only entities who participate in tender process pursuant to tender notice can be allowed to make grievances about non-fulfilment or breach of any of terms and conditions - At culmination of tender process, if respondent had not participated, offer submitted by eligible bidders is required to be considered on basis of stated terms and conditions - If claim of respondent was to be strictly adjudged on basis of terms and conditions respondent has no case whatsoever.”

7. Learned counsel for the petitioners is unable to dispute the above noted factual and legal position. Present petition accordingly stands **dismissed**.
8. Pending application(s) if any also stand(s) disposed of.

(Ritu Bahri)
Acting Chief Justice

(Nidhi Gupta)
Judge

14.12.2023
Sunena

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No