



CWP-29766-2024

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

CWP-29766-2024**Date of decision: 04.11.2024**

M/s K.S. Constructions

....Petitioner

Versus

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. Anand Chhibber, Senior Advocate, with
Mr. Lakhwinder S. Sidhu, Advocate,
for the petitioner.

ARUN PALLI, J. (Oral)

The petitioner (M/s K.S. Constructions), has prayed for the following substantive relief:-

“Civil Writ Petition under Article 226 of the Constitution of India praying for issuance of appropriate writ, orders or directions, especially a writ in the nature of Certiorari quashing Order No.146/SE (TIC), dated 21.10.2024 (Technical Evaluation Report) (Annexure P-2) and all consequential action pursuant thereto, whereby the technical bids submitted by the petitioner for tenders published vide DNIT No.100/SE(TIC), dated 04.09.2024, have been rejected on the flimsy and arbitrary basis of the ‘Undertaking 3.2 is not uploaded’; the same being illegal, against law and facts of the case, arbitrary, violative of the principals of natural justice, thus, unsustainable and liable to be quashed.

And for issuance of a writ in the nature of Certiorari for quashing the consequential Financial Bid process, as the same has proceeded without considering the Financial Bid for the Petitioner;

And for issuance of a further writ in the nature of Mandamus directing the official respondents to declare the



Petitioner herein as qualified and its Technical Bid as Responsive, and further to open and consider the financial bids of the petition firm for the tenders in case the Petitioner is determined as L-1. And with a further prayer that during the pendency of instant writ petition, any further action, pursuant to DNIT No.100/SE(TIC), dated 04.09.2024 (Annexure P-1), may kindly be stayed in the interest of justice;”

Learned Senior counsel for the petitioner submits that vide Notice Inviting E-Tenders, dated 04.09.2024 (P-1), Municipal Corporation, Ludhiana, had invited bids from the eligible tenderers, for execution of three separate civil works. In response, the petitioner submitted its bids qua two works, i.e. (i) providing and fixing 80 mm thick interlocking tiles in Mohalla Deep Vihar in Ward No.2, and (ii) providing and fixing interlocking tiles in streets of Sandhu Colony Ward No.9. He submits that the limited grievance that the petitioner has is: vide impugned order/Technical Evaluation Report dated 21.10.2024 (P-2), it has since been declared technically non-responsive, owing to non-compliance of condition No.3.2. of the Standard Bidding Document for Procurement of Works (SBD), that required the tenderers to furnish an undertaking. He asserts that apparently, the decision of the competent authority to disqualify the petitioner is erroneous, as no format was given in the SBD for furnishing an undertaking that corresponds to clause 3.2. (*ibid*), though all other requirements to participate in the tendering process were duly complied with by the petitioner, in letter and spirit. He has also drawn our attention to clause 22.3 (ii) of the SBD, (page 60 of the paper book), which postulates, ***“The bidder will be asked in writing (usually within 10 days of opening of the Technical Bid) to clarify or modify his technical bid, if necessary with respect to any rectifiable defects.”*** Accordingly, it is submitted that as only the undertaking, per clause 3.2 (*ibid*), could not be furnished, for no prescribed format was provided in the SBD, the authorities were under obligation, in sync with clause 22.3(ii) (*ibid*), to afford a due opportunity to the petitioner to furnish any such undertaking. But apparently, the respondent authorities failed to comply with the said clause. Further, the other two participants,



namely M/s Ashok Kumar Sobti and LRY Labour Construction, had quoted -2.00 percentage, as regards the work of providing and fixing 80 mm thick interlocking tiles in Mohalla Deep Vihar in Ward No.2. Whereas, the percentage quoted by the petitioner was -30.00. Meaning thereby, he asserts that the lowest amount quoted by the two tenderers, who were declared compliant, was Rs.98,23,520/-, but the price that was offered by the petitioner was Rs.70,00,000/-. Similarly, as regards the second work (providing and fixing interlocking tiles in streets of Sandhu Colony, Ward No.9), the bidders, who were declared technically responsive, (M/s Glisten and M/s Hitesh Aggarwal Contractor), had quoted percentage as -1.13 and -1.98, respectively, whereas, the petitioner had quoted -30.00 percentage. Thus, he submits, the lowest amount quoted by M/s Hitesh Aggarwal worked out to Rs.1,42,98,177.40/-, whereas, the petitioner offered to execute the subject work at Rs.1,02,00,000/-. Accordingly, it is submitted that apparently, rejection of the technical bid submitted by the petitioner is for an oblique purpose and for extraneous considerations, which, indeed, would have serious financial ramifications. It is urged that prior to the institution of this petition, the petitioner had even served the respondent authorities with a representation dated 18.10.2024 (P-8), as regards its concerns/grievances, but to no avail. Thus, this petition.

Served with the advance copy of the petition, Mr. Vipin Pal Yadav, learned Additional Advocate General, Punjab, for respondent No. 1; Mr. Parambir Singh, Advocate, for respondents No.2 to 4; and Mr. R.K. Girdhar, Advocate, for respondent No.5 to 7, are present in Court.

At the outset, learned counsel for the respondent-Municipal Corporation, Ludhiana, submits that post technical evaluation, even the price bids have since been opened on 22.10.2024, and the tender process is in progress. Be that as it may, he submits, for the competent authority is already in seisin of the matter, it would rather be expedient if the petition is disposed of, at this stage, to enable the respondent authorities to deal with the concerns/grievances of the petitioner and pass necessary orders on its representation (*ibid*), in accordance with law. Further, he



submits that before any such orders are passed, the petitioner, as also the other stakeholders, shall be heard, for which a formal communication shall also be issued to them, well in advance. However, he, as always, fairly submits that till a formal decision, as indicated above, is reached, the works shall not be assigned to the successful bidders.

Learned Senior counsel for the petitioner is in agreement with the course suggested by learned counsel for the respondent-M.C. Ludhiana and submits that let this petition be disposed of, in terms of the statement made by him. However, it is urged that the matter being time sensitive, the authorities be directed to do the needful, within a specified time.

In response, learned counsel for the respondent-M.C., Ludhiana submits that appropriate orders shall be passed within two weeks from today.

In the wake of the position sketched out above and in terms of the statements made by learned counsel for the parties, the petition is accordingly disposed of.

This Court is sanguine that the authorities shall look into the matter in the right earnest. And the appropriate orders shall be passed within the time indicated by learned counsel for the respondent-M.C. Ludhiana.

Needless to assert that this order shall not constitute any expression of opinion on the merits of the case of either party, for, as indicated earlier, the competent authority shall examine the concerns/grievances of the petitioner, strictly in accordance with law.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

04.11.2024
Ak Sharma

Whether speaking/reasoned	Yes
Whether reportable	Yes/No