

2025:PHHC:013392-DB



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

**116**

CWP-12257-2023 (O&M)  
Date of decision: 29.01.2025

Ganesh Kartikey Construction Pvt. Ltd.

...Petitioner

Versus

Union of India and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR  
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr. Sunil Chadha, Sr. Advocate with  
Mr. Dheeraj Mahajan, Advocate for the petitioner.  
  
Ms. Sonia Madan, Advocate for  
Mr. Mahender Joshi, Advocate for respondent Nos.2 and 3.

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**SURESHWAR THAKUR, J. (Oral)**

1. The order made by a coordinate Bench of this Court on 31.05.2023, encapsulates therein the fine rubric of the *lis* which has generated amongst the contesting litigants. The said order becomes extracted hereinafter:-

“Contentends that even earlier the petitioner had approached this Court, vide CWP No.7057 of 2023 and had assailed the decision of the authorities whereby one of the participant bidders namely M/s Satish Aggarwal and Company was declared to be technically compliant even though it lacked the basic eligibility condition to participate in the tendering process. In fact, initially M/s Satish



Aggarwal and Company was technically disqualified on 20.03.2023. But the authorities reviewed its decision on 27.03.2023 and the said concern was declared technically compliant. The petition (ibid) was disposed off by this Court, for learned counsel for the respondents submitted that pursuant to the complaint made by the petitioner, the matter was being re-examined by the authorities and appropriate orders in this regard shall be passed. And subsequently, it is urged that vide order dated 19.05.2023 (P-11), M/s Satish Aggarwal and Company was declared non-responsive/ineligible. Thus, he asserts that in the given situation, in terms of clause 2.1.14 of the tender documents, the petitioner, being L-2, was the inevitable choice and ought to have been awarded the contract. On the contrary, he asserts that authorities, as per clause 3.3.3 annulled the bidding process. It is urged that once M/s Satish Aggarwal and Company (L-1) was held to be ineligible, in essence, its participation in the tendering process was inconsequential. Hence, claim of the petitioner was squarely covered by clause 2.1.14 (ibid) and clause 3.3.3 was not attracted. He submits that apparently, the decision of the authority is arbitrary and has been resorted to for an oblique purpose.

Notice of motion.

Mr. Satyapal Jain, Additional Solicitor General of India with Mr. Arun Gosain, Central Government Counsel, accepts notice on behalf of Union of India. Mr. Mahender Joshi, Advocate for Mr. R.S.Madan, Advocate, present in Court, accepts notice on behalf of NHAI and he has been supplied the copy of the petition. He prays for a short accommodation to file response.

Adjourned to 27.07.2023.

Reply, if any, on behalf of Union of India shall also be filed on or before the adjourned date.”



2. However, prior thereto, the present petitioner had filed civil writ petition bearing No.7057 of 2023 and the said writ petition became decided on 10.04.2023. The challenge made in the said writ petition was based on grounds which are similar to the challenge which is now made in the instant writ petition. The relevant portion of the said order becomes extracted hereinafter:-

“Learned counsel for respondents No.2 & 3 submits that though subsequent to letter (Annexure P-2), the respondent No.4 had been declared L1 and the petitioner L2, however, on receipt of a complaint, the matter has been re-opened by the authorities and that they will consider the representation (P-5) of the petitioner, take a decision thereon, and only thereafter move forward in the tender proceedings. She further submits that they would also provide a personal hearing to the petitioner and others before taking a final decision, if so required.

In view of the statements made by learned counsel for the parties, the petition stands disposed of in terms thereof.”

3. It is in pursuance to the said passed observations that the impugned letter (Annexure P-11) has been issued. The learned counsel for the petitioner argues that since the firm/entity which was earlier declared to be the successful bidder, inasmuch as M/s Satish Aggarwal and Company in joint venture with M/s Ganesh Kartikey Construction Private Ltd., but when in pursuance to the supra passed directions, thus been declared to be ineligible. Resultantly, the counsel for the petitioner argues that therebys when the present petitioner is to be allotted the tender work(s), as such, the contents of 3.3.3 paragraph as embodied in the said



annexure, contents whereof become extracted hereinafter, thus were not required to become galvanised.

In the event that the lowest bidder is not selected for any reason except the reason mentioned in Clause 2.1.12 (b)(4), the authority shall annul the bidding process and invite fresh bids. In the event that the authority rejects or annuls all the bids, it may, in its discretion, invite all eligible bidders to submit fresh Bids hereunder.

4. In pursuance thereto, it is stated at the bar by learned counsel appearing for the respondent Nos.2 and 3 that the subject tender has been scrapped and, fresh invitation(s) to offer has been published in the newspaper. Moreover, the supra scrapping of the subject tender, thereby has caused grievance to the present petitioner.

5. Now the date of making of the impugned letter i.e. 19.05.2023 is of utmost importance. The reason being that since there is immense efflux of time since the making of the impugned letter and the apposite scrapping taking place, through the impugned letter, whereby fresh invitations to offer became floated, thereby but naturally there is but would be an increased escalation of cost in the completion and execution of the subject project. Though, the learned counsel for the petitioner vigorously argues, that he is ready and willing to execute the subject project, at the very same rate which he offered to do so under the earlier tender which has now been scrapped. However, the said offer may prima facie ultimately result in but on account of loss accruing to the present petitioner from escalations in costs of execution of the subject project, rather taking place since the year 2023 and upto now, qua



therebys, there being every likelihood of the present petitioner abandoning the works, wherebys, public works would be stalled.

6. Additionally also, the field of participation in the subject project tender would also be enlarged wherebys, there would also be better competition besides there would be better offers and responses received by the respondents concerned. Therefore, this Court at this belated stage, more so, when at the initial stage, there was no stay against the operation of the impugned letter, rather cannot make any interference with the scrapping of the earlier tender. What further endows momentum to the said inference ensues from the fact qua the drawing of the earlier subject tender, becoming stated at the bar by the learned counsel appearing for the respondent Nos.2 and 3, to become, so floated under the Bharatmala Pariyogana Phase-1, but since the now floated subject tender, is under a contra distinct scheme, inasmuch as, it has been floated after the said earlier policy/scheme becoming withdrawn. Resultantly, therebys too, in case this Court accepts the submissions of the learned counsel, thereupons this Court would be enforcing a scheme which is now not in vogue or in force.

7. Furthermore, since the present has also participated in the fresh tender thereupon, the respondents concerned are directed to, in accordance with law, if the petitioner is found to be both financially and technically eligible, thus to take a fair decision in relation to allotment of the fresh tender work to the present petitioner. Moreover, as prayed for by learned counsel for the petitioner, if some loss or damage become encumbered upon the petitioner, on account of there being any gross non



application of mind at the instance of respondents, to mis-allot works to the supra and rather to take a decision to not allot the works to the present petitioner, despite the present petitioner being eligible for allotment of the offered works, thereupon, it is open to the present petitioner to avail the relevant permissible civil remedies.

8. Disposed of.

(SURESHWAR THAKUR)  
JUDGE

(VIKAS SURI)  
JUDGE

29.01.2025  
sumit.k

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|-----------------------------|-----|----|
| Whether speaking/reasoned : | Yes | No |
| Whether Reportable :        | Yes | No |