(2011) 12 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 22547 of 2011

Capital Medicos and Others — APPELLANT

Vs

Chandigarh Administration and Others — RESPONDENT

Date of Decision : 20-12-2011

Acts Referred:

Citation : (2012) 54 VST 311

Hon'ble Judges : Hemant Gupta, J;G.S. Sandhawalia, J

Bench : Division Bench

Advocate : Lalit Pathak for Ashok Bector and Arun Bansal, for the Appellant; Sanjay Kaushal, Senior Standing Counsel, U.T. Administration, for the Respondent

Judgement

Hemant Gupta, J.—The petitioners are the chemists who submitted their bids in pursuance of advertisement, annexure R1, published on October 15, 2011 whereby the respondents have invited tenders for leasing either shop No. 1 and shop No. 4 or shops No. 1 and 4 jointly. The bids were to be submitted on or before November 4, 2011. One of the condition in the tender notice was that tenderer should be income tax assessee and service tax payee and such tenderer has to furnish proof of the same. The petitioners submitted their bids in pursuance of the advertisement dated October 15, 2011. On November 17, 2011 a communication was addressed by respondents to the petitioners asking them to submit copy of the service tax number as well as affidavit regarding non-black listing/non-prosecution of firm. The petitioners represented that service tax is applicable on health services provided by any hospital, nursing home or multi-speciality clinic and not by the chemists. It was on December 2, 2011, the petitioner were informed that their bids have been rejected during technical evaluation by the committee for the reasons that the bids are technically not qualified. The reasoning given by the respondents is that the petitioners do not have service tax number.

2. After the bids of the petitioners were rejected the petitioners approached this court by way of writ petition filed on December 5, 2011. During the pendency of

the writ petition, the financial bids of the other tenderers have been opened.

3. In response to the notice of the present petition, respondents Nos. 1 to 3 have filed their reply. In reply, annexure R5 has been appended pertaining to the proceedings of meeting held in the office of the Director Principal on November 29, 2011. The minutes of the said meeting are as under :

It has been observed that there were six tenderers against the shop No. 4 and seven tenderers against the shop No. 1, out of which three tenderers each (for shop No. 1 and 4) have submitted their service tax number as per the instructions/guidelines of the tender document. DC(F&A) is of the considered opinion that clause of service tax number should not have been included in this tender document and it is the GMCH which has to obtain the service tax number. He feels if it is included in the tender document then it is desired to have the service tax number. AC(F&AII) is of the opinion that this is of minor deviation and to have healthy competition, an undertaking has been given by the tenderers that in case of successful bidders, they will obtain the service tax number.

In such situation, two issues are highlighted, i.e., (a) Those who had obtained the service tax number on the closer of the tender, can go to court against GMCH if GMCH selects the higher bidder among the tenderers who has mere given an undertaking. (b) It is also possible that a person who has not competed in the tender can also say that if the undertaking is acceptable in the absence of service tax number, he/she can also have participated.

In the light of the observations made by the account functionaries that being a minor deviation, because of the two issues defined above and to have broader competition, it would be appropriate to seek permission from the competent authority to open the price bids of the qualified tenderers by relaxing the issue of service tax number. However, it may be added that the successful bidder has to have service tax number within one month from the date of approval of the tender.

It is of utmost importance that since only one chemist shop is functioning and patients are facing tremendously difficulty which demands early finalization of the tender. It is pertinent to mention here that the tender of shop Nos. 1 and 4 was invited 4th/5th time, respectively.

4. Consequent to the said proceedings, the Chandigarh Administration has informed the Director Principal that the proposal of the committee cannot be legally accepted as matter has to be decided as per terms and conditions of the tender document.

5. The learned counsel for the petitioners vehemently argued that precondition of service tax registration is wholly unjustified as service tax number can be obtained by a successful tenderer even before the possession of the shop is given to the successful bidder though it is contended that liability to pay service

tax is not of successful tenderer but of the administration being service provider.

6. Mr. Sanjay Kaushal, learned senior standing counsel, appearing on behalf of the respondents has not been able to dispute the said argument but it is contended that tenderers of shop Nos. 1 and 4 have been invited 4 to 5 times but due to some technical or the other issue, the tender process is not being finalised. The non-finalisation of the tender process pertaining to the lease of chemist shops in the premises of the medical college and hospital, is causing great hardship to the patients and their attendants. Such necessary public service cannot brook any further delay.

7. Mr. Arun Bansal, learned counsel appearing on behalf of one of the participant M/s. Goel Medicos, has vehemently argued that as per the financial bids opened, M/s. Goel Medicos is the highest bidder for shop No. 4 and if the financial bids of the petitioners are also ordered to be opened it will seriously affect the rights of the said tenderer. Therefore, the financial bids of the petitioners cannot be opened at this stage. Mr. Bansal has also pointed out that since the petitioners have not filed affidavit in respect of non-black listing and non-prosecution of the firm, therefore, the petitioners cannot be permitted to furnish such affidavit after the last date of opening of tenders.

8. A perusal of the written statement of the official-respondents shows that in fact the petitioners have filed such affidavit on November 4, 2011 attested by the Notary Public and not by the Executive Magistrate. The petitioners were called upon to file affidavit vide communication dated November 17, 2011 attested by the Executive Magistrate. Learned counsel for the respondents could not point out any guidelines, instructions or statutory provisions as to why the affidavit is required to be attested only by Executive Magistrate. The Notary Public is authorised with the power of attestation of affidavits under the Notaries Act, 1952. Therefore, we find that affidavit filed by the petitioners attested by the Notary Public within the time of submitting tenders, meets the requirement of the tender conditions.

9. Coming to the issue of lack of service tax number by the petitioners, suffice it to say that such requirement is not a requirement by statute. The chemists under the Finance Act, 1994 are not required to have registration with service tax authorities. The committee was right in proposing the minor deviation so as to have service tax registration after the finalisation of the bids from the successful bidder.

10. We may notice that the present is 4th/5th attempt to lease out the shops situated in the medical college/hospital premises. The non-leasing of such shops is causing great inconvenience to the public. Therefore, we deem it appropriate to direct the administration to open the financial bids of the petitioners and process the same in accordance with law.

11. Mr. Kaushal, learned senior standing counsel, states that within one week from today, the administration shall finalise the tender process.

12. With the aforesaid directions, the writ petition is disposed of. Copy of this order be given to the learned senior standing counsel, U. T. Administration, Chandigarh under the signature of the Special Secretary.

