

(2013) 01 P&H CK 0237
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 23219 of 2012

M/s. Buildwell Construction Company	APPELLANT
Vs	
State of Punjab and Others	RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:

Citation : AIR 2013 P&H 69 : (2013) 1 BC 605

Hon'ble Judges : A.K. Sikri, C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : R.K. Girdhar, for the Appellant; J.S. Puri, Addl. A.G. Punjab and Avtar Singh Bhatti, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—The petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 15.11.2011 passed by respondent No. 4 rejecting the representation of the petitioner for disqualifying respondent No. 5 and for issuance of a direction to the official respondents to reject the bid submitted by respondent No. 5, in terms of Clause 4.5 of the Conditions/qualifying criteria. In brief, notice inviting tender for execution of periodical repair of road from Khemkaran to Gajjal under Head 3054 (2012-13) was invited through e-tender. The petitioner submitted his bid on 3.11.2012 and respondent No. 5 on 5.11.2012 for the same work. The technical bid of both the tenderers was opened on 5.11.2012 as per prescribed norms. The value of the bid was Rs. 1,46,00,042.19. The amount quoted by the petitioner was Rs. 1,45,27,042/- and the amount quoted by respondent No. 5 was Rs. 1,35,76,779/-. The petitioner claims itself to be A-Class Government Contractor engaged in construction works of PWD(B&R), Municipal Corporation and other projects of State of Punjab, made a representation to respondent No. 4 on 10.11.2012 to disqualify respondent No. 5 upon whom liquidated damages have been levied due to non-performance. The said representation was rejected by respondent No. 4 vide its letter dated 15.11.2012 on the ground that the

aforesaid action was not taken against respondent No. 5 by the department of PWD (B&R) and hence it cannot be considered disqualified for grant of tender. The case set up by the petitioner is that respondent No. 5 is guilty of suppression of facts and is liable to be disqualified in terms of Clause 4.5 of the conditions/qualifying criteria, which reads as under:--

4.5 Even though the bidders meet the above qualifying criteria, they are subject to be disqualified if they have made misleading or false representation in the forms, statements and attachments submitted in proof of the qualification requirements; and/or Record for poor performance such as abandoning the works, not properly completing the contract, inordinate delays in completion, litigation history, or financial failures etc. and/or Participated in the previous bidding for the same work and had quoted unreasonably high bid prices and could not furnish rational justification to the employer.

2. It is argued that a bidder is liable to be disqualified if it records poor performance such as abandoning the work, not properly completing the contract, inordinate delays in completion, litigation history or financial failures. It is submitted that earlier the work of construction of link roads under Assembly Constituency Jandiala Guru (2010-11) Gr.I, Gr.2 and Gr.3, MC Gehri, District Amritsar, was allotted to respondent No. 5 by different letter numbers all dated 5.7.2010 by Semi-Government Organization i.e. Executive Engineer, Punjab Mandi Board, Amritsar, which it failed to complete within time, leading litigation with the department. The matter was referred to Arbitrator but respondent No. 5 did not co-operate there and delayed the arbitration proceedings. Ultimately on 18.9.2012, the Arbitrator decided all the three references and held that respondent No. 5 had not intentionally executed the work and rather taken the arbitration proceedings for a ride. It is argued that respondent No. 5 has failed to disclose the true facts and had concealed material facts with regard to its poor performance which was a condition precedent as per Clause 4.5 of general condition.

3. In reply, filed on behalf of respondent Nos. 1 to 4, it is alleged that abandonment of work by respondent No. 5 is not of any concern with the department of PWD (B&R) and Clause 4.5 of the General Conditions of bid documents does apply to the Tender Inviting Department i.e. Punjab PWD (B&R). It is also alleged that there is a difference of Rs. 9,50,263/- between price quoted by the petitioner and respondent No. 5 and the action could have been taken only if the affidavit submitted by respondent No. 5 is found to be false. We have heard learned counsel for the parties and have perused the record. As a matter of fact, the affidavits attached with the tender is a printed pro forma affidavits on (Format 2-8), in which the tenderer has to mention that he is not black-listed by any Government/Semi Government Organization/Corporation at any state and/or debarred by department of Punjab PWD (B&R). There is no other format of affidavit prescribed in I terms of Clause 4.5 of General Conditions which has been relied upon by the petitioner.. Had the affidavit been so worded

and respondent No. 5 had either suppressed or avoided to divulge information required in the affidavit, it could have been certainly a case of suppressio veri and suggestio falsi but as there was no such requirement by the department, respondent No. 5 was not obliged to give those information which are mentioned by the petitioner in the writ petition. Thus, it cannot be said that respondent No. 5 had made a misleading or false representation in the forms submitted by it. Moreover, it is not clear in Clause 4.5 of General Conditions as to whether the non-performance relates to the department concerned or could be with regard to any other department/Semi Government Organization or the State. Thus, keeping in view the facts of this case, we do not find any merit in the present writ petition and as such the same is hereby dismissed though without any order as to costs.