
(1992) 03 P&H CK 0061

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1171 of 1992

M/s. Flow Treatment Incorporate

APPELLANT

Vs

Punjab Water Supply and Sewerage Board and another

RESPONDENT

Date of Decision : 24-03-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Citation : AIR 1993 P&H 66

Hon'ble Judges : Sandhu, J; Harmohinder Kaur, J; G.R. Majithia, J

Bench : Full Bench

Advocate : Mr. R.S. Cheema and Mr. S.S. Narula, for the Appellant; Mr. Jagan Nath Kaushal and Mr. Sumeet Mahajan, for the Respondent

Judgement

1. The petitioner has assailed the decision of respondent No, 1 -- Punjab Water Supply and Sewerage Board, Chandigarh accepting the tender of respondent No. 2 for Urban Renewal Project, Abohar, which includes the construction of a Water Treatment Plant of 5 mgd. capacity in this petition under Art. 226/227 of the Constitution of India.

2. The solitary ground of attack is that respondent No. 2 did not fulfil the condition laid down in clause 8 of the Schedule of requirements annexed with Short Terms Tender Notice inviting tenders (hereinafter the "DNIT"), which reads thus :--

"The tenderer should have designed, installed and constructed at least three sets of equipment/machinery of treatment plants of type/types specified in appendix "A" which are in successful commercial operation for at least two years. The tenderer must indicate in the tender details including capacities, date of start of operation etc, of the Plants."

3. Respondent No. 1 in its written statement controverted the plea of the petitioner and, inter alia pleaded that respondent No. 2 is a reputed and approved firm duly enlisted as "A" Class contractors with the Punjab Water

Supply and Sewerage Board and P.W.D. (Punjab Health Department), Punjab; that the entire work comprised of four components, i.e. (i) Water Treatment Plant, (ii) O.H.S.R., (iii) Clear Water Tank, and (iv) Storage and Sedimentation Tanks; that with regard to the first three items, respondent No. 2 is eligible and fully equipped to execute the work itself and for Water Treatment Plant, it has entered into collaboration with M/s. Clear Water Limited, New Delhi for technical know-how; that M/s Clear Water Ltd. New Delhi is a highly reputed company and has executed a large number of works of similar nature all over India for the last about 20 years; that even the petitioner firm had entered into technical collaboration with the Clear Water Limited, Delhi for obtaining a contract relating to the 4 M.G.D. Water Treatment Plant at Kot Kapura; that there is a prevailing practice in the Department to allot work of similar nature to bidders who had collaborated with others for technical know-how; that this practice has been followed by respondent No. 1 because rapid Sand Filtration Plants are new generation plants which were never constructed in this region of the country by the Construction Companies belonging to this part of the region; that only construction companies/firms based outside Punjab used to construct the plants in this region; that in the eighties the local and reputed construction companies/firms started venturing for the construction of rapid Sand Filtration Plants by entering into collaboration with Construction Companies having technical know-how based outside Punjab; that the Construction Companies based outside Punjab used to quote much higher rates than the actual costs whereas the local Construction Companies/Firms used to quote much less rates than the firms/companies outside Punjab; that in order to cut down the costs in public interest and to promote local construction industry, the practice of giving tenders to the reputed firms having collaborations for technical know-how was adopted and is being followed, for example, on January 8, 1992, a tender had also been issued by the Board to local firms having collaboration; that similarly the petitioner-firm was also awarded the work in 1988 for the construction of Water Treatment Plant at Kot Kapura, because it was having collaboration with Clear Water Limited, Delhi for technical know-how (i.e. with the same concern with which respondent No. 2 has now entered into collaboration in the present case); that although the petitioner-firm did not fulfil the eligibility clause at that time, yet it was given the work of construction because of its collaboration with M/s Clear Water Limited, Delhi for technical know-how and that in the present case also, the tender has been issued to respondent No. 2 having collaboration as per practice adopted by the Department; that the DNIT does not bar assigning of work to a construction company having collaboration for the construction of Water Treatment Plants and thus having a collaboration cannot be any stretch of imagination be termed as novel method to tide over the obstacle of ineligibility specially when the petitioner-firm has itself taken advantage of such a practice earlier in 1988.

4. Affidavit of Shri P. D. Vashist, IAS, Secretary, Local Government Punjab, Chandigarh has also been placed on record by respondent No. 1. It is stated therein that on October 10, 1991, he convened a meeting, in which the Deputy

Commissioner, Ferozepur, the Managing Director, the Chief Engineer and the Executive Engineer (Works) of respondent-Board and the concerned bidders of the tender had participated. After a thorough discussion in the meeting, it was resolved to accept the tender of respondent No. 2 as the bid was reasonable and lowest as worked out by respondent No. 1. It flows from the affidavit that the petitioner-firm's representative was also present in the meeting and the decision to allot the work was taken in his presence.

5. The petitioner is not correct in its submission that respondent No. 2 did not fulfil the eligibility condition laid down in clause 3 of the DNIT. Respondent No. 1 has stated that it is practice prevalent in the Department to allot works to those bidders who had collaborated with others for technical know-how. Respondent No. 2 firm is based at Bathinda and it had collaborated with M/s Clear Water Limited, Delhi for technical know-how. The petitioner had also collaborated with M/s Clear Water Limited, Delhi for technical know-how when it was allotted the work of Urban Renewal Project, which included Water Treatment Plant at Kot Kapura. The petitioner cannot be allowed to urge that respondent No. 2 did not fulfil the eligibility condition since on identical ground it also availed the benefits when the work of Urban Renewal Project, Kot Kapura was allotted to it. Respondent No. 1 has stated that if the work is allotted to the local company, the cost is less and the execution of the work is expeditious. If in public interest, the construction company has been allowed collaboration for technical know-how with an outside firm, no fault can be found with it.

6. The learned counsel for the petitioner submitted that it was not mentioned in the tender notice that the tenderers could collaborate with others for fulfilling the eligibility condition and in support of his submission relied upon M/s. Driplex Water Engineering Limited Vs. The Punjab State Electricity Board and another, . In that case, the decision of the Punjab State Electricity Board for awarding the contract for the design/erection etc. of water treatment plant having two streams, each of net rated capacity of 90 tons per hour at Phase 3 of Thermal Plant, Ropar, was assailed on the ground of ineligibility of respondent No. 2 to obtain tender documents to file tender due to lack of requisite experience in the commissioning of water treatment plants of similar capacity. Condition No. 10 of the tender notice reads thus :--

"Tender documents will be issued only to those firms who have already supplied, erected and commissioned water treatment plants of similar capacity and produce certificates of satisfactory service and performance for a period of two years from at least two clients/utilities. These certificates must be enclosed with the request for purchase of tender documents."

A bare perusal of condition No. 10 of the tender notices shows that only those firms were eligible to submit tenders who had already supplied, erected/designed water treatment plants of similar capacity. The firm whose tender was accepted did not append the certificate mentioned in condition No. 10 of the tender notice and was thus ineligible to submit the tender, It was in this context that the Bench

observed that the Board while accepting the tender had not observed the condition of eligibility experience of two years in installation of water treatment plants of similar capacity by tenderer and took into consideration the experience of its collaborator without making any mention in the tender notice that experience of the collaborator shall be given weight while determining the experience of the tenderer. The ratio of this judgment has no bearing on the facts of the instant case. In the present case, respondent No. 2 fulfilled the requisite conditions mentioned in the tender notice, but for technical know-how it was allowed to collaborate with a firm of repute. There was no condition identical to the one in M/s. Driplex Water Engineering Ltd. case (supra). Moreover, respondent No. 1 has taken a categorical stand that it has been the practice in the Board to accept the tenders of the firm which had collaborated with a firm of repute for technical know-how. This practice has been prevalent with respondent No. 1 for more than two decades and the petitioner in the instant case has taken advantage of that practice when it applied for a contract relating to 4 Mgd Water treatment plant at Kot Kapura in collaboration with M/s Clear Water Ltd., Delhi for technical know-how. There was no such practice pleaded or proved in M/s Driplex Water Engineering Ltd. (supra) and if such a practice had been pleaded and proved, the Bench would not have been impressed by the fact that there was no indication in the tender notice that the tenders could collaborate, it obviously implies that there was no such practice with the Punjab State Electricity Board permitting collaboration by the tenderers with outside firms for technical know-how.

For the reasons stated above, the writ petition is devoid of any merit and is dismissed.

7. Petition dismissed.