

(2018) 05 P&H CK 0147

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6654 Of 2018 (O&M)

Rahul Co. Op. L/C Society Ltd.

APPELLANT

Vs

State Of Haryana & Others

RESPONDENT

Date of Decision : 31-05-2018

Acts Referred:

Citation : (2018) 05 P&H CK 0147

Hon'ble Judges : Ajay Kumar Mittal, J; Tejinder Singh Dhindsa, J

Bench : Division Bench

Advocate : Raghav Sharma, Ayuwan Singh, Deepak Balyan

Final Decision : Allowed

Judgement

1. Challenge in the instant writ petition is to the action of the Estate Officer, HUDA, Karnal in having initiated a tender process vide impugned tender notice dated 10.3.2018 (Annexure P-2).
2. Brief facts of the case are that respondent no.3 issued tender notice dated 10.3.2018 (Annexure P-2) for the work-Complete sanitation of the area including door to door collection and segregation at dumping waste upto disposal landfill at site Sector 12 PI Urban Estate, Karnal. Tender value of the work was fixed at Rs.50 lacs.
3. Challenge to the tender notice has been laid essentially on the ground that the same is in utter violation of notification dated 8.12.2016 (Annexure P-7) issued by the Haryana Govt., Cooperation Department and in terms of which all works (skilled/unskilled) upto Rs.50 lacs were reserved only for Cooperative Labour & Construction Societies. Precise argument raised by learned counsel is that the petitioner is a Cooperative Labour & Construction Society and vide impugned tender notice bids have been invited from firms/individuals as well, whereas consideration had to be confined only from amongst Cooperative Labour & Construction Societies. That apart, challenge has also been laid to certain eligibility conditions stipulated in the notice inviting tender.

4. Upon notice having been issued in the petition, a written statement of the Estate Officer, HUDA, Karnal has been filed. Stand taken is that the petitioner had not even applied in response to the tender notice. Learned counsel appearing for respondent no.3 would submit that there was no bar for the petitioner society to have submitted its bid and in such eventuality a preference would have been given to the Cooperative Labour & Construction Society.

5. We have heard learned counsel for the parties at length and have perused the pleadings on record.

6. It has not been disputed before us that the value of the contract in question was Rs.50 lacs. The applicability of the notification dated 8.12.2016 (Annexure P-7) for works/contracts floated by Semi Govt., Local Govt., Public Sector, Corporations as also HUDA is also not in dispute.

7. Relevant extract of the notification dated 8.12.2016 issued by the Cooperation Department, State of Haryana and which would be relevant to the issue at hand, is reproduced hereunder:-

"HARYANA GOVERNMENT COOPERATION DEPARTMENT NOTIFICATION No.8366-C-7-2016/13818 Chandigarh dated the 08.12.2016

1. (a) All works (Skilled/Unskilled) coming upto rupees Fifty Lacs each will be reserved only for Cooperative Labour and Construction Societies upto the rates allotted in the immediate past to similar works after inviting tenders for the concerned circle of the P.W.D.

(b) These concession shall also be applicable to the contract relating to supply of manpower, loading and unloading of goods, transportation of goods and supply of construction material.

(c) In case Cooperative Labour and Construction Societies fail to tender or do not accept the works then open tenders may be invited from both the Contractors and Cooperative Labour and Construction Societies.

2. xxx xxx xxx

3. xxx xxx xxx

4. The works of sanitation in Govt. Hospital and in Urban Local Bodies shall be reserved for Coop. Labour and Construction Societies consisting of all Scheduled Caste members. In case, Cooperative Labour and Construction Societies fail to tender then open tenders may be invited from both the service providers and Cooperative Labour and Construction Societies.

5. xxx xxx xxx

6. The concessions granted to Cooperative Labour and Construction Societies will also apply to works relating to semi-Government, Local Government, Public Sector, Corporations (not readable), Marketing Board, Housing Board, Haryana Police Housing Corporation, Haryana Tourism Corporation, Haryana Vidyut

Prasaran Nigam, Haryana Power Generator Corporation, Uttar Haryana Bijli Vitran Nigam, HSIIDC, Haryana State Roads and Bridges Development Corporation, Haryana Rural Roads and Infrastructural Development Agency, HUDA, ICDP, Panchayati Raj Department, CADA, HAFED, Warehousing Corporation and works relating to World Bank Aided Projects, all other work allotment agencies and other Statutory Bodies etc."

8. A bare perusal of the relevant clauses of the notification dated 8.12.2016 issued by the State Govt. and as reproduced herein above would make it clear that all works (skilled/unskilled) carrying contract value upto Rs.50 lacs are reserved only for Cooperative Labour & Construction Societies. Clause 6 of the notification clarifies that it would cover other Semi Govt., Local Govt., Public Sector, Corporations as also HUDA.

9. The language employed in clause 1 (a) of the notification dated 8.12.2016 (Annexure P-7) issued by the State Govt. is clear and categorical. There is no ambiguity therein. The words 'will' and 'only' have been employed in clause 1(a) while reserving all works in contracts carrying value of Rs.50 lacs for Cooperative Labour & Construction Societies. The position gets further crystalized in terms of clause 4 of the notification which postulates that it is only in a situation where Cooperative Labour & Construction Societies fail to tender, then, open tenders may be invited from both service providers and Cooperative Labour & Construction Societies.

10. We are unable to accept the stand taken on behalf of respondents no.2 and 3 to the effect that preference would have been accorded to Cooperative Labour & Construction Societies in case they had submitted their bids. Such a stand would be in clear derogation to the scheme of the notification dated 8.12.2016 (Annexure P-7) whereunder in the first instance the works (skilled/unskilled) upto Rs.50 lacs were exclusively reserved for Cooperative Labour & Construction Societies and accordingly tenders had to be called. In clause 4 of the notification it is only where Cooperative Labour & Construction Societies failed to submit their tenders, then resort may be taken to initiate a tender process inviting bids from other service providers as well.

11. In our considered view the notification dated 8.12.2016 issued by the Haryana Govt. Cooperation Department was in the nature of offering concessions in favour of Cooperative Labour & Construction Societies and as per clause 6 thereof applied equally to HUDA as well. It is not the case made out by learned counsel representing HUDA that the said Govt. notification dated 8.12.2016 is not applicable or the same has since been revised or rescinded. We would have no hesitation in holding that the notification dated 8.12.2016 (Annexure P-7) holds the field in so far as any tender process that may be initiated by HUDA pertaining to works (skilled/unskilled) carrying value upto Rs.50 lacs by virtue of the notification dated 8.12.2016. Works were in the first instance to be exclusively reserved for Cooperative Labour & Construction Societies and such mandate has been deviated from while issuing the impugned tender notice.

12. We, accordingly, hold that the impugned tender notice dated 10. 3.2018 (Annexure P-2) is bad in law as the same is in violation of the State Govt. notification dated 8.12.2016 (Annexure P-7).

13. Learned State counsel has apprised this Court that in pursuance to the impugned tender notice dated 10.3.2018 the tender work has not been allocated.

14. In view of the above, the present writ petition is allowed. Tender notice dated 10.3.2018 (Annexure P-2) is set aside. Directions are issued to respondents no.2 and 3 to resort to re-tendering the work in question and by following due process and in compliance of the notification dated 8.12.2016 (Annexure P-7) issued by the Corporation Department, State of Haryana.

15. It is, however, clarified that the tender notice dated 10.3.2018 (Annexure P-2) has been set aside on the ground of being violative of clause 1(a) of the notification dated 8.12.2016 (Annexure P-7) and we have not expressed any opinion with regard to the other conditions contained in the tender notice and which had also been impugned in the present petition.

Writ petition is allowed in the aforesaid terms.