

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

C.W.P. No.1560 of 2007
Date of decision : 31.5.2007

GCS Computer Tech.Pvt.Ltd.

....Petitioner through
Mr.Anil Kshetarpal,
Advocate

Versus

The State of Haryana and another

...Respondents through
Mr. Randhir Singh,
Addl.Advocate General,
Haryana & Mr. Aman
Chaudhary,
Advocate

CORAM : HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE
HON'BLE MR.JUSTICE MAHESH GROVER

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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Mahesh Grover,J.

The petitioner has invoked the jurisdiction of this Court under Articles 226/227 of the Constitution of India praying for the issuance of a writ in the nature of certiorari quashing the order dated 24.1.2007 by which the pre-qualification-cum-technical bid submitted by the petitioner has been rejected and a further prayer for issuance of a writ in the nature of mandamus has been made directing the respondents to consider and open the commercial bid of the petitioner.

The State of Haryana took a decision to provide computer and technology education services in approximately 1232 Govt. Senior Secondary Schools in the State and authorised the respondent no.2 to undertake the process of selecting firms/companies who would be able to provide the services in order to achieve the above said objective.

An advertisement was published in the Tribune on 6.11.2006 inviting tenders for providing computer education services.

The minimum eligibility criteria was as follows :

- “1. the Bidder must be a reputed I.T.Education firm/company engaged in providing I.T.Education Services for at least 7 (seven years).
2. In the preceding 3 (three) financial years, the annual turnover of the Bidder on account of IT Education shall not be less than Rs.1,00 (One) Crore on an average.
3. The Bidder should have successfully executed computer education project in India, for at least 50 (Fifty) different schools/institutions in any state during the last three years.
4. The firm/organisation of the company should be ISO 9001 certified either in IT Education Processes/Support Services/Curriculum Design/Channel Management at the time of notice inviting tender.”

The petitioner who fulfilled the eligibility conditions responded to the aforesaid tender notice. The tender documents prescribed some conditions which were incorporated in various

articles and the relevant ones are reproduced below :

“3.2.1. The Pre-qualification-cum-Technical Bid will be opened and checked for Pre-qualification Criteria under “Bidder's qualifications” Section-IV, Article 4.1. Bids of only those Bidders who qualify the Pre-qualification Criteria will be Technically evaluated and processed further.

4.1. The Bidder should be incorporated as a Private/Public Limited company or a Registered Firm engaged in IT Education in India and fulfilling the following preconditions and must also submit documentary evidence in support of fulfilling these conditions while submitting the pre-qualification cum technical bid.

4.1.1. The Bidder must be a reputed I.T.Education firm/company engaged in providing I.T.Education Services for at least 7 (seven) years.

4.1.2. In the preceding 3 (three) financial years, the annual turnover of the Bidder on account of IT Education shall not be less than Rs.1,00 (One) Crore on an average.

4.1.3. The Bidder should have successfully executed computer education project in India, for at least 50 (Fifty) different schools/institutions in any state during the last three years.

4.1.4. The Bidder will submit a letter from a financial

institution that it willing to fund this project or should have sufficient reserves to implement the project.

4.1.5. The firm/organization or the company should be ISO 9001 certified either in IT Education Processes/Support Services/Curriculum Design/Channel Management at the time of notice inviting tender.”

The petitioner submitted his tender documents in two parts i.e. technical bid and the commercial bid. The technical bid was opened on 4.12.2006.

Finding the bid to be in order the petitioner was summoned by the respondents for some clarifications and for giving a presentation before the committee of the officials constituted for the said purpose.

Eight persons including the petitioner had submitted the tender forms. However, the respondents chose to reject the pre-qualification-cum-technical bid vide order dated 24.1.2007. The petitioner has impugned the aforesaid decision of the respondents to contend that his bid has been rejected arbitrarily, without assigning any reason and without considering the merit of the petitioner. It was contended that the petitioner had submitted a list of 92 schools/institutes who were associated with the petitioner company during the last three years and that the petitioner company had ISO 9001: 2000 certification in the field of imparting and processing IT and management courses.

Upon notice of motion having been issued the respondent no.2 entered in appearance and filed their counter affidavit. It was

stated therein that the respondents were desirous in providing free computer education from the session 2007-2008 to about 5,50,000 students from class 6 to 12 who were studying in Senior Secondary Schools of Haryana and that upon the receipt of tenders from the aspirants the evaluation of the eligibility criteria and other conditions of the tenders were considered by the committee and they found that the petitioner company was lacking in experience of providing direct I.T./Computer Education. The company did not even have EPF number which would reflect on the size and strength of the company and that apart, the petitioner could not demonstrate its financial health required to meet the initial investment in the event of tender having been granted in its favour. That apart, it was contended that the petitioner company was a service provider to the Punjab Technical University whereby it has authorised the institutes run and owned by the other companies to conduct I.T. and management courses. In so far as the question of providing computer education is concerned, it had done so only in six schools in 12 years of its existence.

In order to ascertain the controversy and keeping in view the principles as propounded by the apex court that the action of the government in awarding of contracts have to be purely guided by the principles of public interest and that such contracts are not beyond the purview of scanner of judicial review, we, as a measure of prudence, summoned the records, examined and determined whether the decision-making process was tainted, arbitrary or violative of Article 14 of the Constitution of India. After examining the record, we find that the petitioner and other aspirants had been evaluated subjectively

and cogent reasons have been given in the evaluation sheets pertaining to each and every company and on the strength of which the relative merits and demerits of the aspirants had been considered.

While exercising the powers of judicial review pertaining to government contract, the Courts can interfere only when it is shown that the decision is arbitrary, result discriminatory and the process leading to the decision tainted with mala fides or extraneous reasons or that the conditions attached to the eligibility criteria are oppressive or unreasonable.

Simply because there could have been more preferred eligibility conditions or the contract had been awarded to an aspirant in preference to the another would not prompt the court to upset the decision-making process by acting as an appellate authority. In **Tata Cellular v. Union of India** (1994) 6 SCC 651 it was observed as follows :

“94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”

Similarly in **Air India Ltd. v. Cochin International Airport Ltd.** (2000) 2 SCC 617 it was observed as under:

“The award of a contract, whether it is by a private party or by a public body or the State is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can

choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedure laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness.”

After having examined the entire matter in the aforesaid perspective, we do not find that the impugned decision of the respondents suffers from any vice of arbitrariness or discrimination which could prompt this Court to exercise its jurisdiction under Articles 226/227 of the Constitution of India.

The writ petition being without any merit is dismissed.

(MAHESH GROVER)
JUDGE

31.5.2007

(VIJENDER JAIN)
CHIEF JUSTICE

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