

SUPREME COURT OF INDIA

State of Punjab

Vs.

Pritam Singh & Sons

(S V Manohar and D Wadhwa JJ.)

18.11.1997

ORDER

1. Leave granted in Special Leave Petition (C) No. 15795 of 1997.

2. These appeals are from a judgment of the High Court of Punjab & Haryana dated 3-1-1997 in Civil Writ Petition No. 5510 of 1996. The appellants in appeal arising out of Special Leave Petition (C) No. 15795 of 1997 are the Chief Engineer, PWD (B&R), Mall Road, Patiala, Punjab and the Superintending Engineer, PWD (B&R), Jalandhar, Punjab against whom the High Court has passed some adverse remarks. Their appeal is filed against those remarks. CA No. 5813 of 1997 is by the State of Punjab against the impugned order of the High Court. The entire dispute arises as a result of a tender which was invited for award of a contract for construction of Tanda side approach road to the high-level bridge over River Beas near Sri Hargobindpur in the State of Punjab. The last date for submission of tenders was 24-11-1995. The respondent, M/s. Pritam Singh & Sons was one of the tenderers for this contract.

3. Under para 7.32 of the PWD (B&R) Manual which deals with grant of contracts and agreements, it is provided in sub-para (ii) that usually the lowest tender should be accepted unless there be some objection to the capability of the contractor. The reasons for rejecting the lowest tender are also to be recorded on the register of tenders. Under sub-para (iii), a tender other than the lowest may be accepted only after obtaining the approval of the officer immediately superior to the one who under

the Rules is competent to accept the tender. In respect of acceptance of tenders for the execution of work by contract, the Chief Engineer is the highest authority who has full powers in that connection.

4. Under para 7.23 of the Manual, the instructions as per Appendix 7-C are given regarding the enlistment of contractOrs. Para 7.24 sets out the object of keeping such register of contractOrs. The object of this register is to enable an officer to communicate to his successor his assessment of the local contractor's worth based on his personal experience, in a concise and systematic way. It also provides that while submitting the comparative statement of tenders, the Divisional Officer should give against the tenderer's name, his serial number as contained in the register. Appendix 7-C to the Manual contains instructions regarding enlistment of contractors and the keeping up of a register of contractors in the Buildings and Roads Branch, Public Works Department. It sets out inter alia that there will be three classes of contractOrs. Class I is entitled to tender of any individual works of any amount. Class II is entitled to tender up to Rs. 1,00,000 and Class III up to Rs. 25,000. Among the factors which require to be considered for enlistment, clause 4 of the said Appendix requires the financial position of the contractor to be ascertained by bank reference only from a scheduled bank. The scheduled banks in Punjab are also listed. Clause 5 provides that the application for enlistment for all classes of contractors must be on a proper printed form which should consist of parts A, B & C as per the enclosed sample form. Clause 8 provides that Class I contractors will be enlisted by the Superintending Engineer who should send their lists to other Superintending Engineers. Clause 9 requires that the contractors' lists should be revised every year in April. Executive Engineer should give brief remarks about the work carried out by each contractor and his behavior during the year. Contractors whose financial circumstances have suffered deterioration may be made to produce fresh evidence of suitability. The enlistment is thus annual. Clause 13 which is relevant, provides that the tenders of listed contractors alone should be considered. Clause 14 further provides that the tenders may be received from unlisted contractors and entered in the tenders' register but should be rejected without consideration.

5. In the present case, the respondent M/s. Pritam Singh & Sons was enlisted as a Class I contractor by the Superintending Engineer, Patiala circle for the period 2-2-1988 up to 31-3-1989. The certificate of enlistment clearly states that the certificate is valid only up to 31-3-1989 and registration will have to be got renewed after 1-4-1989 on payment of Rs. 400. There is no material on record which would show that M/s. Pritam Singh & Sons were enlisted as a contractor in any subsequent period after 31-3-1989 and up to 24-11-1995 the latter being the last date for submission of tender with which this case is concerned. There is one receipt dated 23-1-1992 for Rs. 400 for renewal of enlistment as Class I contractor. This amount was deposited with the Sub-Divisional Engineer, PWD (B&R), Jalandhar. There is no enlistment certificate indicating that in 1992, the respondent was enlisted as Class I contractor, assuming that he had so applied. On 20-11-1995, four days before submitting the present tender, the respondent M/s. Pritam Singh & Sons applied to the Superintending Engineer, Central Works Circle, PWD (B&R), Jalandhar for enlistment as Class I contractor. In his letter, the respondent has stated that he was enlisted as Class 1 contractor on 3-2-1988. He has stated that he has done many works, a list of which is enclosed. As regards the income tax clearance certificate, he does not have such certificate but he has applied for the same and it will be submitted as and when he receives it. The letter requests for an enlistment certificate. While the application was made to the Superintending Engineer, Jalandhar, the fee for enlistment was deposited with the Sub-Divisional Engineer, PWD (B&R), Hoshiarpur on 24-11-1995. No

enlistment certificate, however, has been granted to the respondent on or before 24-11-1995 which was the last day for submitting the tender in question or even soon thereafter. Pursuant to the application of 20-11-1995, an enlistment certificate has been granted to the respondent only two years later on 22-5-1997 after the impugned judgment of the High Court.

6. Clearly, therefore, in terms of the PWD (B&R) Manual, the tender of the respondent was not even required to be considered. In fact, it would have been in violation of the instructions contained in para 7.23 read with Appendix 7-C of the said Manual to have considered it. Despite this being expressly pointed out in the counter-affidavit filed before the High Court by the State of Punjab, this aspect has been ignored by the High Court. The counter-affidavit before the High Court also sets out the circumstances in which the blank tender form was issued to the respondent. The respondent had reported that his enlistment papers were under final stage of disposal with the Superintending Engineer, Central Works Circle, Jalandhar. It was on this representation that the blank tender form was issued to him.

7. From Rule 7.23 read with Appendix 7-C, it is clear that the purpose of enlisting of contractors is to keep a proper record of contractors suitable for carrying out the kind of work in question, and to keep a record of their past performance. That is why enlistment is to be done only after assessment of their performance and work and their financial resources. The counter-affidavit states that accordingly, to assess the capability of the respondent, the appellants had sought a certificate from the Railway Department regarding the work which the respondent had done for the Railways on the railway line from Beas to Goindwal and had also required a copy of the agreement submitted by them to M/s. Apex International Constructions of U.A.E. The appellants had also sought from the respondent the outcome of his enlistment application and a certificate of enlistment. But these papers were never produced by the respondent. In these circumstances, the respondent was not eligible, and his tender could not have been considered.

8. The tender was awarded to the lowest tenderer among the eligible tenderers. Subsequently, the rates quoted by the lowest tenderer were, by agreement between the parties, further reduced. We fail to see how the respondent can have any grievance in that regard. The High Court, therefore, was not right in holding that the lowest tender was wrongly rejected by the appellants. The argument advanced on behalf of the respondent, that if the lowest tender (being his own) is rejected, approval should be sought from a higher officer by the Chief Engineer, has no merit when there was no question of considering the tender of the respondent. Among the eligible tenderers, the lowest tender has been accepted. Therefore, the question of getting any approval from any higher officer does not arise, even assuming that the Chief Engineer required such approval.

9. It is contended by the respondent that after the impugned judgment of the High Court, the respondent was awarded the tender by the appellants and a certificate of enlistment was also granted on 22-5-1997. The subsequent actions of the appellants are pursuant to the directions given by the High Court, especially in view of the High Court's findings that the tender of the respondent was

wrongly rejected and the directions given by the High Court to consider that tender holding it to be the lowest. Obviously, it was as a result of these directions given by the High Court, that the contract was subsequently given to the respondent. This subsequent action of the appellants is, therefore, not of any relevance as far as these two appeals are concerned. In fact, according to the appellants, the work of the respondent is far from satisfactory and is nowhere near completion. The further observation made by the High Court in the impugned judgment that the officers who dealt with the case while granting the contract to the original Respondent 5 should not be associated with this case and that the officials of the appellants had dealt with the case in a casual manner in violation of their own instructions and the principles of natural justice is also not warranted in the circumstances of the case.

10. We fail to see any violation of the principles of natural justice in a case like the present, where the tender of the respondent was not entitled to consideration as the respondent was not enlisted as Class I contractor at the material time. The impugned judgment is, therefore, set aside and the present appeals are allowed. The adverse remarks against the appellant officers [in CA @ SLP (C) No. 15795 of 1997] are also deleted. Looking to the conduct of the respondent, this is a fit case where the respondent should pay to the appellants costs of these two appeals fixed at Rs. 5000 in each appeal.