



In the High Court of Punjab and Haryana at Chandigarh

CWP No. 132 of 2025

Reserved on: 14.1.2025

Date of Decision: 24.1.2025

Kamal Phool

.....Petitioner

Versus

Food Corporation of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Argued by: Mr. Dheeraj Mahajan, Advocate
for the petitioner.

Mr. Sunish Bindlish, Standing Counsel and
Mr. Viney Kumar, Advocate
for the respondent-FCI.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner seeks the quashing of the order dated 13.9.2024 (Annexure P-11), whereby the petitioner has been debarred for a period of two years from participating in any other tender process initiated by the Food Corporation of India (for short 'the FCI').

Brief facts of the case

2. The respondent department invited an e-tender for the appointment of Handling and Transport Contractor (HTC) at FCI, Butari Center under the two bid system(s). The petitioner participated in the said tender, and, submitted his bid on 11.5.2024. The technical bids were evaluated on 28.5.2024, and, the bid of the petitioner was declared to be technically fit along with the bids of the other two bidders. It was before the opening of the financial bid, that the petitioner realized, that he has wrongly quoted the rates as "at less of Rs. 118/-", whereas, as per the terms and

Conditions, the rate should have been quoted as Rs. "218/-". Resultantly, he



visited the Head Office of the respondent and apprised them about the said mistake, and, also furnished an affidavit dated 9.7.2024, stating therein to either cancel the said tender or in the alternative to award him work at a rate above Rs. 118/-. However, the authorities concerned, without considering the above request of the petitioner, opened the financial bid, and, declared him as L-1 and accepted the said rate, and, as such he was called upon to submit original documents. The petitioner also served a legal notice dated 24.7.2004 upon the respondent department, seeking cancellation of the bid, and, for not taking any penal action against him or debarring him. The respondent department without taking into consideration the above legal notice, issued a notice dated 28.5.2024, upon the petitioner, whereby an explanation was sought from the present petitioner in his failing to submit the requisite documents, and also an explanation was asked, as to why action in terms of the provisions of MTF be not initiated against him.

“1. Debarment from participating in any other tender enquiry with FCI for a period of two years.”

3. The petitioner filed reply to the said notice. However, vide the impugned order (supra), the respondent department imposed a penalty upon the petitioner whereby he became debarred for a period of two years from participating in any other tender enquiry of the FCI.

Submissions of the learned counsel for the petitioner

4. The learned counsel for the petitioner has argued, that the petitioner has wrongly submitted the tender by quoting less rates, and, that when before the opening of the financial bid, the petitioner has rectified the typographical omission and has also requested the respondent department to either cancel his bid or to treat his rate above Rs. 118/-, therefore, the



impugned order (supra) debarring the petitioner for a period of two years, is harsh and oppressive, and, is required to be quashed and set aside.

Submissions of the learned counsel for the respondents

5. The learned counsel for the respondents has argued, that the scope of interference by the High Court in exercise of its writ powers under Article 226 of the Constitution of India rather in tender matters, is limited, and, is restricted to proven arbitrariness, unreasonableness and procedural impropriety(ies), thus surging forth. He further submits that since the authorities concerned while passing the impugned order, have taken into consideration, the apposite admitted deficiencies, besides have taken into consideration, the makings of violation(s) vis-a-vis the requirements of the Model Tender Form. Therefore the impugned order (supra) cannot be said to be ridden with the vices qua the same becoming ingrained with any procedural impropriety, illegality or arbitrariness. Resultantly, it is argued, that the instant petition is not maintainable, and, is required to be dismissed as such.

6. The learned counsel further submits, that clause 8(I) of the MTF, clause whereof becomes extracted hereinafter, provides that no opportunity shall be provided to the tenderer to alter, modify or withdraw any offer, at any stage, after submission of the tender.

“It should be clearly understood by the Tenderer that no opportunity shall be given to them to alter, modify or withdraw any offer at any stage after submission of the tender.”

7. The supra clause is argued to be breached. The learned counsel for the respondent also submits that thereby the tenderer is barred from resiling from his earlier offer or from modifying the same. He has referred to clause 6(i) of the MTF, clause whereof becomes extracted hereinafter.



The tenderer shall be permitted to bid on the express condition that in case he resiles, or modifies his offer, or terms and conditions thereof, after, submitting his tender, for any reason whatsoever during the tender process, or any of the information furnished by him/her is found to be incorrect or false, the Earnest Money Deposited by him shall stand forfeited, without prejudice to any other rights and remedies of the Corporation under the Contract and Law, and, the Tenderer will be liable for any loss suffered by the Corporation on account of its withdrawal/modification etc. besides forfeiture of EMD. He will also be debarred from participating in any other Tender Enquiry with FCI for a period of two years.”

Inferences of this Court

8. Though, the learned counsel for the respondent has vehemently argued before this Court, that the scope of judicial review vis-a-vis the impugned order is extremely limited, unless the impugned order evidently smacks of gross arbitrariness, thus arising from the principles of natural justice remaining unadhered to, prior to the drawing of the order, which is challenged before this Court. The learned counsel for the respondent also submits, that since apparently the principles of natural justice became adhered to, prior to the making of the impugned order, besides when the supra extracted explicit contractual conditions, thus barring the tenderer to after his submitting his bid, modify the same, whereby an authorization becomes bestowed upon the respondent to debar the tenderer for a period of two years from participating in any other tender enquiry with the FCI, but evidently become(s) breached at the instance of the present petitioner. Consequently, he argues, that the impugned order is not amenable for any interference in the exercise of writ jurisdiction.

Reasons for rejecting the above submissions

9. However, to the considered mind of this Court, the supra made submission before this Court by the learned counsel for the respondent, is



not acceptable.

10. The reason for stating so, stems from the factum, as evincible from an e-mail dated 22.7.2024 (Annexure P-7), qua the present respondent accepting the bid amount, as became offered by the petitioner, in response to the apposite invitation of offer, as became advertised in the newspaper at the instance of the present respondent. The said published invitation offer mentioned that the quoted rate of ASOR was to be 18%. Since therebys the supra invitation to offer, resulted in the same becoming responded to by the present petitioner through his making his bid, whereafter the same through the supra e-mail also became accepted by the present respondent. Resultantly therebys, a complete/concluded contract came into existence inter se the petitioner and the respondent in the instant writ petition.

11. Primarily therebys the responsibility for accepting the said purported misquoted rate also lay with the present respondent. Moreover therebys, the present petitioner, thus on his accepted bid, as becomes comprised in a sum of Rs. 118/- whereas, he was to offer the bid amount in a sum of Rs. 218/-, but would lead to the ill consequence of the present petitioner, upon his executing the awarded works, rather suffering financial impoverishment. Resultantly, it appears that the present petitioner yet proceeded to, post the conclusion of the contract, as became so concluded, upon, with his offer becoming favourably responded through an e-mail of 22.7.2024, rather rid the ill-effects of the supra financial impoverishment, thus becoming encumbered upon him, on his yet being insisted to execute the awarded works in the quoted sum of Rs. 118/-, through making an offer wherebys he modified his previous offer into a sum of Rs. 218/-, besides also made an offer that the bid, as became accepted by the respondent



through an e-mail of 22.7.2024 being quashed. Resultantly therebys, the present respondent would become facilitated to publish a fresh invitation to offer, which would result in fresh responses becoming invited from the bidders concerned. The supra recursings thus cannot be concluded to be ingrained with any iota of malafides.

12. Moreover, it appears that attraction(s) of the supra contractual covenant, thus was prima facie available to be recoured, but prior to the concluded contract becoming executed between the present petitioner and the respondent. In other words, when the process of settling the contract was ongoing, therebys the said covenant was required to be employed, but was not required to be employed, thus post the conclusion of an effective contract, as became drawn amongst the present petitioner and the respondent in the instant writ petition, moreso when, the present respondent was also responsible for therebys accepting the bid amount, rather in a sum lesser than the amount, which was to be otherwise so offered by the bidder(s) concerned.

13. The corollary of the supra inference, is that, since the present petitioner, to bonafidely rid himself of the ill encumbrances upon him, of financial impoverishments, as would ensue, on his yet being asked to execute the awarded contracts comprised in a bid amount of Rs. 118/-, whereas, he was required to offer the bid amount comprised in a sum of Rs. 218/-, thus quoted a fresh rate post the conclusion of the contract inter se him and the present respondent. Moreover when, the petitioner also in the alternative, asked for the contract, which became favourably concluded qua him being rescinded, so that fresh invitation(s) to offer becomes published in the relevant newspaper, wheretos, fresh responses would become invited.



Consequently, all the supra constrain this Court to conclude that despite the supra bonafides becoming exhibited by the present petitioner, yet the respondent in the instant petition, even after executing a contract with the present petitioner for which the responsibility also was to be burdened upon the respondent, rather chose to untenably recourse the supra extracted covenant, which as stated supra, was to be galvanized only during the ongoing bidding process, and, was not to be galvanized into action rather post the respondent accepting the offer, as made by the present petitioner, especially when the said offer also became accepted by the respondent.

Final order

14. For all the above stated reasons, this Court finds merit in the instant petition, and, is constrained to allow it. Consequently, the instant petition is allowed. The impugned order dated 13.9.2024 (Annexure P-11) is quashed and set aside. However, liberty is reserved to the respondents to rescind the contract executed by them vis-a-vis the present petitioner, and, to subsequently forthwith float a fresh invitation to offer in the newspaper concerned.

15. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

January 24th, 2025
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No