

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.13591 of 2015 (O&M)
DATE OF DECISION: 10.09.2015

M/s Bal Ram and CompanyPetitioners
versus

The Food Corporation of India and othersRespondents

CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Ms. Sushma Chopra, Advocate for the petitioners
Mr. K.K. Gupta, Advocate for respondents No.1 and 2
Mr. ABS Sandhu, Advocate for respondent No.3
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S.J. VAZIFDAR, ACTING CHIEF JUSTICE :

1. The petitioners have challenged the respondents' decision rejecting their technical bid on the ground that they had failed to furnish the registered deed of partnership as required by the terms and conditions of the notice inviting tenders.

2. The respondents issued a notice inviting tender (NIT) dated 11.04.2015 for handling and transport contractor for a period of two years. Prior to issuing the NIT, the respondents communicated a decision by an inter-office note dated 29.05.2014 that for the new tender enquiries, the bidders should be asked for a registered Power of Attorney and that a term to this effect be incorporated in the NIT for future tender enquiries.

3. Pursuant thereto, even in the present case, a term to this effect was incorporated as follows:-

"1. List of Documents to be uploaded in Technical bid folder/cover.

(i) to (v)

(vi) Scanned copy (in pdf format) of Registered Power of Attorney of person of DSC key holder."

4. The word "registered" was emphasised by underlining it in the NIT itself. The petitioners, admittedly, did not submit a registered Power of Attorney. The question that falls for consideration, therefore, is whether the term requiring a registered Power of Attorney was merely an ancillary or formal term or whether it was an essential term. If it was an essential term, the petitioners' bid was rightly rejected.

5. It would be useful also to note Clauses 1, 4 and 12 of the NIT which read as under:-

"Instructions to the Bidders to submit the bids online thro' the Central Public Procurement Portal for e Procurement at <https://eprocure.gov.in/eprocure/app>

1. Possession of valid Digital Signature Certificate (DSC) and enrolment/registration of the contractors/bidders on the eprocurement/etender portal is a prerequisite for e-tendering.

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4. Then the Digital Signature Certificate (Class II or Class III Certificates with signing key usage) issued by SIFY/TCS/nCode/eMudra or any Certifying Authority recognized by CCA India on eToken/Smart Card, should be registered.

....

12. It is construed that the bidder has read all the terms and conditions before submitting their offer. Bidder should go through the tender schedules carefully and upload the documents as asked; otherwise, the bid will be rejected."

6. The respondents' reliance upon Clause-12 of the NIT is not relevant. It was fairly conceded that the term "schedule" referred to in Clause-12 refers to the time schedule regarding the tender process. Item (vi) of the list of documents to be uploaded

in the technical bid folder/cover is not a term in the tender schedule.

7. In our view, the requirement of submitting a registered power of attorney was an essential and a mandatory term. That it was an essential term is established by the NIT having emphasised the same. That itself should have put the petitioners or any reasonable person on notice that it was an essential term. There is no other explanation for the term having been emphasised. It is not the petitioners' case that they did not notice this fact or that they construed the same as being insignificant. It is not even the petitioners' case that they sought a clarification and were advised otherwise. The party inviting tenders is entitled to fix the terms and conditions. Unless the terms are *ex facie* absurd or arbitrary, the Courts do not interfere with this exercise of power.

8. The requirement of a registered Power of Attorney can hardly be said to be arbitrary or unreasonable. Nor can it be said to be totally unnecessary. A registered power of attorney protects the party inviting the tenders against claims, fictitious or otherwise, by persons who raise contentions, tenable or otherwise, which would affect the tendering process as well as the implementation of the work, if awarded to a party. The process of registering a power of attorney involves *inter alia* the partners attending the Registrar/Sub-Registrar of assurances and the Registrar/Sub-Registrar of assurances registering the power of attorney after following the procedure prescribed for registration. One of the requirements is of affixing the photographs of the donors of the power of attorney. This would at least to a large extent protect the party inviting tenders from any claim by the

donors such as for instance that they had not executed the power of attorney or that they are for any other reason not bound by the terms and conditions thereof.

9. A registered Power of Attorney would also establish the identity and liability of the partners. This would be even more important in cases where the firm is unregistered. Similarly, the registered power of attorney would protect the party inviting tenders in other cases also where the registered power of attorney is required.

10. The petitioners, however, contend that they had been submitting such tenders for the past about 35 years without submitting a registered power of attorney. Firstly, the petitioners have not produced any terms and conditions of the earlier tenders to enable us to ascertain whether or not the earlier NITs had such a term. Secondly, if the tenders were accepted erroneously in the past, it cannot justify the continuation of an incorrect practice.

11. In the circumstances, the rejection of the petitioners' bid on the ground that they had failed to produce a registered power of attorney cannot be said to be erroneous.

12. The writ petition is accordingly dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

10.09.2015
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(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether reportable: YES
