

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 20089 of 2015 (O&M)

Date of Decision: 01.10.2015

Gangsar Transport Company

--Petitioner

Versus

Food Corporation of India & another

--Respondents

**CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR.
HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.**

Present:- Mr. D.S. Patwalia, Sr. Advocate with
Mr. Salil Sablok, Advocate for the petitioner.

Mr. J.S. Puri, Advocate for the respondents.

S.J. VAZIFDAR, A.C.J. (Oral)

The petitioner has challenged a notice dated 21.9.2015 calling upon them to show cause why the contract entered into between the parties should not be terminated under the Model Tender Form clause XI (b) with blacklisting of the firm. The challenge is on the basis that the General Manager who issued the show cause notice has already made up his mind against the petitioner. The respondents' allegation is that the petitioner is guilty of a fraud on account of having manipulated a price bid which was submitted online by increasing it from 114% to 128%.

2. As held by Hon'ble Supreme Court in ***Orxy Fisheries Pvt. Ltd Vs. Union of India, 2010 (13) SCC 427*** a show cause notice cannot be read hyper technically and must be read reasonably. Reading the show cause notice accordingly, it does appear that the General Manager has already formed more than just a strong opinion regarding the petitioner's conduct. For instance in paragraph 3 of the notice he states that the matter was investigated through a Four Member Committee and that the findings of the

Committee had declared with certainty that **“The rates of 128% ASOR of Gangsar Tpt. Co., was got manipulated and the tender was got awarded at the manipulated rates of 128% ASOR instead of actual rate of 114% ASOR uploaded online by the firm M/s Gangsar Tpt. Co. in connivance with Sh. Nitin Garg, AGM (Genl.).”** In paragraph 5 of the notice it is stated that the petitioner with the intention of corrupting the respondent staff indulged in malpractice detrimental to the interest of the Corporation and that the same had been “established beyond doubt”. It is further stated that the petitioner's integrity cannot be trusted at all and that its dishonorable acts were unprecedented in nature and severity. Finally in paragraph 6 of the notice, it is stated that the petitioner had miserably failed to comply with the contractual obligations and “has been found indulged in corrupt practices, manipulations, irregularities, submission of false information, malpractices detrimental to the interest of the Corporation”. Even reading the show cause notice liberally, it does appear that the General Manager has already formed an opinion regarding the petitioner's guilty. He may have done so bonafide. However, the fact is that he has virtually determined the issue in his mind.

3. In these circumstances, it would be unfair to have the petitioner's case of blacklisting decided by the General Manager. We reiterate that we do not for a moment suggest that he has formed his opinion for any malafide purpose. He may have done so genuinely. However, he has done so and therefore the petitioner is entitled to have its case decided by another person.

We are informed that the Executive Director would be senior to the General Manager.

4. We would request the respondents to appoint any Executive Director to decide the show cause notice. Needless to add that the Executive Director would have to give reasons and deal with each of the contentions raised by the petitioner regarding the alleged fraud. The respondents shall afford the petitioner an opportunity of inspecting the record unless any part thereof is privileged communication. In the event of the order of blacklisting being passed, the same shall not be enforced for a period of two weeks of the communication of the same to the petitioner.

The petitioner agrees to file its reply by 10.10.2015. The Executive Director is requested to pass the final order on the show cause notice by 31.10.2015.

Petition is, accordingly, disposed of.

A copy of this order be furnished to learned counsel for the parties under the signatures of Bench Secretary.

(S.J. Vazifdar)
Acting Chief Justice

(Tejinder Singh Dhindsa)
Judge

01.10.2015
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