

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.21056 of 2014 (O&M)

RESERVED ON: 07.01.2015

DATE OF DECISION: 14.01.2015

M/s Sushil & Company

....Petitioner

versus

Food Corporation of India and others

.....Respondents

**CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. Vikram Singh, Advocate for the petitioner

Mr. Sumeet Goel, Advocate for respondents
No.1 and 2

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE:

Rule. Rule returnable and heard forthwith.

2. The petitioners have challenged the rejection of their tender on the ground that there was a typographical error in an affidavit filed as required by a term of the notice inviting tenders.

3. The question that falls for our consideration is whether a bid can be rejected or disqualified on the ground of a typographical error which admittedly is totally insignificant and makes no difference whatsoever including as regards the price, terms and conditions and the evaluation of the bids.

We have answered the question in the negative. That the present case involves a mere typographical error and nothing more, is manifest, obvious and clear beyond doubt. It is not even possible to contend that the typographical error indicated anything other than the contract in question. Nor is it possible to contend that the typographical error could affect in any manner whatsoever the evaluation of the technical or financial bids.

4. The second respondent is the General Manager of the first respondent. Respondent No.1 issued a notice inviting tenders on 24.07.2014 for appointment of Road Transport Contractors by e-tender. The bids were invited in the two envelope system. Clause-3 of the General Information to Tenderers, insofar as it is relevant, reads as under:-

"3. Qualification conditions for Bidding:

- (I)
 (II)

(III) Where the estimated contract value of Road Transport Contract is less than Rupees Five Crores, Tenderer without the requisite experience as mentioned above may also participate subject to providing an undertaking that an additional Performance Guarantee in the form of Bank Guarantee of 10% of the contract value from SBI & its Associate Banks/the other Public Sector Banks will be given, if selected. The format of the Bank Guarantee to be provided in such cases is at Appendix-V." (emphasis supplied)

5. It is not disputed that the petitioners' tender was valid in every respect except to the extent of the typographical error which we will now refer. The undertaking referred to in Clause-3(III) was furnished by way of an affidavit which is said

by the first respondent to contain the typographical error. It is necessary to set out the entire affidavit to establish that the typographical error was totally inconsequential and that it could never have been understood as anything but a mere typographical error. The affidavit reads as under:

"1- That I am sole owner of M/s Sushil & Company, Chouri Gali, Rohtak Road, Jind and there is no other share-holder in the above said firm except me.

2- That the above said firm is working the Food Grain Handling and Sugar Handling work with different Food/Purchase agencies in the State of Haryana since last many years.

3- That I am submitting the Tender of RTC (Sonepat to Narela) in the name of above said firm. The Tender Reference No. is F.10 (17)/TPT/RTC/TE/AUGUST 14, Tender ID2014_MFPD_11465_53.

4- That I and my firm did not fulfil the condition of experience as per the conditions of MTF. So, if Food Corporation of India allots the HTC Tender in the name of my Firm then I am ready to deposit 10% performance guarantee except the prescribed Bank Guarantee in the Department as per the condition of MTF.

5- That I will ready to comply with all the conditions prescribed in MTF by the Department."

(emphasis supplied)

6. The letter 'H' instead of the letter 'R' in "HTC" in paragraph-4 of the affidavit is the typographical error on the basis whereof respondent No.1 considered the petitioners' bid to be invalid.

7. Firstly, it is clear that the same was a typographical error. In paragraph-3, the petitioners correctly referred to the tender of "RTC" and not of "HTC". The letter 'H' in "HTC" in paragraph-4 was an obvious typographical error for the letter 'R', as the tender for which the petitioners submitted the bid

was in respect of Road Transport Contract only (RTC). It was not in respect of a Handling & Transport Contract (HTC). The petitioners, by a further affidavit dated 26.9.2014, corrected the typographical error stating that "RTC" be considered in the place of "HTC". The tender did not invite bids for RTC and HTC contracts. The tender invited bids only in respect of RTC Contract and the petitioners, in fact, referred in paragraph-3 of the affidavit to "Tender of RTC". The respondents could, therefore, never have considered the reference to "HTC" in paragraph-4 as anything but a mere typographical error. The respondents could never have considered the bid to be in respect of a Handling and Transport Contract (HTC). The bid was clearly in respect of a Road Transport Contract (RTC) in respect whereof the bids were invited through the notice inviting tenders

8. We do not suggest that a typographical error can never be a ground for rejecting a bid. We limit our observations to cases such as this which involve not merely some but all the following features. The error not only is but can be considered only as a typographical error and nothing else by any party especially the party issuing the tender and inviting the bids and by the person or authority entrusted with the task of evaluating the bids. The error could not have left the party inviting the bids or the person or authority evaluating the same in a state of confusion. The error was also inconsequential in every respect. For instance, the error has absolutely no significance or effect

on the evaluation of the bids. The typographical error did not alter the terms and conditions of the proposed agreement between the parties. It has no consequence upon the terms and conditions of the proposed contract including as to the price.

9. The rejection of the petitioners' bid was, therefore, irrational and unreasonable and accordingly totally arbitrary. Irrational and unreasonable administrative actions are always subject to judicial review. In our view, the rejection of the tender in cases such as this is arbitrary and irrational. It is a view that no reasonable person could have adopted.

10. The judgments relied upon by Mr. Goel do not support the respondents' contention that the petitioners' bid was invalid. None of the judgments dealt with a case such as this, namely, where the typographical error is obvious and totally inconsequential in every respect.

11. The judgment of the Supreme Court in **W.B. State Electricity Board vs. Patel Engineering Co. Ltd. and others**, (2001) 2 Supreme Court Cases 451 in fact supports our view. The Supreme Court held that the respondents relied upon the judgment of the Superior Court of New Jersey in Spina Asphalt Paving Excavating Contractors Inc. v. Borough of Fairview, 304 NJ Super 425 which was of no assistance to the respondents in that case. In paragraph-30 of the judgment, the Supreme Court held that the judgment in Spina's case did not help the respondents as the error in Spina's case was apparent - \$ 400 for \$ 4 - non material and

waivable by the Corporation. The error on the part of the respondents was held to be not merely an arithmetical or clerical one but a deliberate mode of splitting the bid which amounted to rewriting the entries in the bid document and, therefore, could not be treated as non-material. The case before us, as we have already held, involves a mere obvious typographical error which is apparent and non-material in every respect.

12. Mr. Goel then relied upon paragraph-22 of the judgment of the Supreme Court in **Jagdish Mandal vs. State of Orissa and others, (2007) 14 SCC 517**. The observations are not relevant to the question that falls for our consideration.

13. Mr. Goel also submitted that there is no power to relax the terms and conditions of the tender. The error in this case did not relate to the terms and conditions of the contract. The error did not reflect upon the terms and conditions of the contract in any manner whatsoever.

14. There may well be cases where there is an error of the type before us where the evaluation evolves no human intervention whatsoever. We express no view on the validity of the rejection of tenders in such cases as that is not the case before us. In fact, the authorities had scrutinized the tenders. The Finance Department did not even agree with the rejection of the petitioners' bid noting that it was a mere clerical mistake and that the rejection on such a ground would lead to reduction in

competition and would leave only one bidder for the tender. The Finance Department, therefore, recommended that the technical bid of the petitioners be accepted and the price bid be opened. Despite the same, the respondent No.1 wrongly rejected the tender.

15. In the circumstances, the rule is made absolute. The impugned communication/order dated 30.9.2014 (Annexure P/3) is quashed and set aside. Respondents No.2 and 3 shall consider the petitioners' bid for the said contract.

There shall, however, be no orders as to costs.

**(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE**

14.01.2015
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**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether reportable: [√] YES/~~NO~~