IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: February 20, 2015

M/s Fair Deal, Village Adamwalgarhi, Hoshiarpur

...Petitioner

Versus

Punjab State Civil Supplies Corporation Limited, Chandigarh and others

...Respondents

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

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Vijay Pal, Advocate,
for the petitioner.

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AUGUSTINE GEORGE MASIH, JUDGE

1. Respondent-Punjab State Civil Supplies Corporation Limited (hereinafter referred to as "respondent-Corporation") floated a tender dated 10.01.2014 for sale of rice stock for the years 2010-11 and 2011-12. Petitioner-M/s Fair Deal submitted its bid for the rice stock of 36460 bags for the year 2011-12. The rate quoted per quintal was Rs.1550/-. Vide communication dated 30.01.2014 (Annexure P-1), the petitioner-firm was intimated that its tender has been accepted and was called upon to deposit an amount of Rs.28,25,650/- as EMD/security with the head office of respondent No.1. Petitioner accordingly deposited the EMD/security amount. As per the terms of the tender, the delivery of the stock sold was to

be given effect to on the buyer presenting an account payee demand draft in favour of the respondent-Corporation payable at Chandigarh on a scheduled/nationalized bank towards the cost of the stock together with VAT/sales tax and all other taxes, if any. The period fixed for lifting the rice by the buyer from the site of storage was 30 days from the date of issue of acceptance of offer. The said period could be extended to the extent of another one month on a request made by a buyer subject to the liability to pay final storage charges @ 20paise per bag per day with regard to the entire quantity of un-lifted stock, for which extension is given. In case of delay in deposit of cost of the material, interest charges @ 13% per annum was to be levied. Another extension of one month could be granted by the respondent-Corporation with penal storage charges @ 50 Paise per bag per day on the entire quantity of un-lifted stocks for which extension is given. It was specifically mentioned that the buyer will be required to deposit the total cost of grain alongwith other leviable taxes in advance before issue of release order, in a way that lifting is completed within 30 days from the date of acceptance of offer. In case of default with regard to the payment of cost of the stocks together with VAT/sales tax and other taxes within the specified period, the respondent-Corporation could forfeit the earnest money and the security and re-sale the stocks or part thereof to any other party at the risk and cost of the original buyer apart from right to recover any loss suffered by PUNSUP as a result of such failure. On successful completion of the contract, the security deposit was to be refunded to the party on submission of no due certificate in the prescribed proforma.

2. The petitioner being well aware of these terms and conditions of tender, accepted the offer by depositing earnest money/security money of

Rs.28,25,650/-.

3. The acceptance of tender was conveyed to the petitioner on 30.01.2014 (Annexure P-1) and, therefore, the petitioner was required to lift the rice stock within a period of 30 days, which it failed to do. The petitioner sought extension of time vide letter dated 04/05.03.2014 to lift the stock, which request was accepted by the respondent-Corporation and conveyed to the petitioner vide communication dated 12.03.2014 (Annexure P-3). The lifting period of stock was extended by one month from the date of issue of the letter i.e. 12.03.2014 @ 20 paise per bag per day as penal storage charges and 13% interest as per the terms of the tender. The petitioner sought extension and on 05.05.2014 (Annexure P-5), the respondent-Corporation intimated the petitioner that its request for further extension by 30 days has been accepted by the head office and the petitioner should contact the Circle Office for depositing the required amount and lifting the stock of rice immediately so that the rice could be lifted. It was clearly mentioned therein that no further extension will be granted.

4. Petitioner, despite the second extension granted, could not lift the rice and, therefore, again requested the respondent-Corporation to grant further extension and permit it to lift the rice upto 30.07.2014. Vide communication dated 10.07.2014 (Annexure P-7), the petitioner was intimated that since it had failed to lift the whole stock, which was required to be lifted within a period of thirty days and even after extension granted, the request for further extension cannot be accepted. It was further stated that even the price of the complete stock has also not been deposited by the petitioner within the stipulated period which also dis-entitled it for extension. Therefore, in view of Clause 9 of the terms and conditions, the

tender security amount of Rs.28,25,650/- deposited with the respondent-Corporation stands forfeited and the remaining stock was to be sold again at the risk and cost of the petitioner.

5. The petitioner did not take any further steps.

6. A notice, inviting tender, was issued by the respondent-Corporation, copy of which has been appended as Annexure P-9. As per the said tender notice, the tender form was to be sold upto 1.30 P.M. and received upto 2.00 P.M. on 23.02.2015 and technical bids opened at 2.30 P.M. on the same day. The financial bids were to be opened afterwards. It is at this stage that the petitioner has approached this court by way of the present writ petition, praying for quashing of the order dated 10.7.2014 (Annexure P-7), whereby the security deposited by the petitioner stands forfeited and the remaining un-lifted rice stock by the petitioner is being put to sale at the risk and cost of the petitioner. Prayer has also been made that the petitioner may be granted 30 days time to clear the entire stock, after quashing the tender notice, Annexure P-9 qua the rice stock, of which the petitioner was the successful tenderer on 10.01.2014. An alternative prayer has also been made for quashing Clause 9 of the terms and conditions of the tender, Annexure P-2.

7. It is the contention of counsel for the petitioner that the petitioner could not lift the rice stock because of the general Lok Sabha elections as the labour was not available for lifting the stock. He contends that Clause 9 of the terms and conditions of the tender is not sustainable as in the facts and circumstances of the case, the security deposit should not have been forfeited and the terms and conditions are arbitrary and illegal and violative of principles of natural justice as no opportunity of hearing

was granted to the petitioner. Learned counsel, however, has not been able to give any explanation for the delay in approaching the Court at this stage.

8. We have considered the submissions made by counsel for the petitioner and are of the considered view that none of the grounds, which have been pressed into service, are sustainable.

9. As per the facts narrated above, it is the admitted position that the petitioner was aware of the terms and conditions of the tender and entered into the contract with open eyes. After the acceptance of tender, which was communicated to it vide letter dated 30.01.2014, he had deposited the earnest money/security amount of Rs.28,25,650/-. The petitioner is, thus, bound by the terms and conditions of the tender and, therefore, cannot be now allowed to resile from the same or feign ignorance. Clauses 8, 9 and 21 of the terms and conditions of the tender reads as follow:-

> "*8. The buyer(s) will be required to deposit total cost of grains along with other leviable taxes in advance before issue of release order in a way that lifting is completed within thirty days from the date of acceptance of offer.*
>
> *9. The delivery of the stocks sold will be given after the buyer presents a payee's account* <u>*DEMAND DRAFT*</u> *in favour of the "Punjab State Civil Supplies Corporation Limited" payable at Chandigarh on any scheduled/nationalized bank towards the cost of the stocks together with the VAT/Sales tax and all other taxes, if any, with in the period as specified. In the event the cost of the stocks sold not being deposited with PUNSUP Chandigarh within the stipulated period, PUNSUP may, at their option, forfeit the earnest money & security and resell the*

stocks or part thereof to any other party at the risk and cost of the original buyer apart from the right to recover any loss suffered by PUNSUP as a result of such failure.

10 to 20 xx xx xx xx xx

21. The goods sold will be removed by the buyer from the site of storage within the period of 30 days from the date of issue of acceptance of the offer. In case extension is sought by the tenderer, he shall inform in writing on the last date of original period of lifting to concerned district office and PUNSUP H.O simultaneously. PUNSUP reserves the right to extend the period of delivery for another one month. In such event, tenderer shall be liable to pay penal storage charges @ 20 paisa per bag per day. These charges will be recovered in respect of the entire quantity of the un-lifted stocks for which extension is given. In case of delay in deposit of cost of the material, interest charges @ 13% per annum shall be charged. However, Punsup reserves the right to extend the period of delivery further by one month with penal storage charges @50 paise per bag per day on the entire quantity of un-lifted stocks for which extension is given and in case of delay in deposit of cost of the material interest @ 13% per annum shall be charged."

10. A perusal of the above would show that the petitioner, who is the buyer, was required to deposit the total cost of grain alongwith other leviable taxes in advance before issue of release order. The time specified for lifting the full stock was 30 days, which could be extended initially for a

period of one month subject to certain conditions specified above with a further extension of one month's time at the discretion of the respondent-Corporation.

11. As per the terms of the tender, the petitioner was required to lift the complete stock on or before 10.02.2014. On a representation dated 04/05.03.2014 as submitted by the petitioner, the period was extended by one month from the date of issue of letter i.e. 12.03.2014. Still, the petitioner could not lift the stock and thereafter sought further extension of time, which request was accepted on 05.05.2014 and one more month for lifting the stock i.e. upto 05.06.2014 was granted. In this communication dated 05.05.2014, it was clearly mentioned that no further extension will be granted. However, despite mentioning of fact that `no further time will be granted', petitioner failed to deposit the price of the whole stock within the stipulated period nor could it lift the whole stock. The petitioner again requested for further extension upto 31.07.2014 but the said request appears to have not been accepted as vide impugned communication dated 10.07.2014 (Annexure P-7), Clause 9 of the terms and conditions of the tender was invoked and the security amount of Rs.28,25,650/- deposited by the petitioner was forfeited and the remaining stock ordered to be sold at the risk and cost of the petitioner.

12. No steps whatsoever thereafter were taken by the petitioner, till the notice, inviting tender, Annexure P-9, was issued by the respondent-Corporation for sale of rice. The stock, which was being sought to be sold, included the un-lifted rice, which was a subject matter of tender granted to the petitioner on 10.01.2014. The petitioner has, thus, now approached the Court after a period of more than six months without any explanation for the

delay. It even did not take any steps after the forfeiture of the security amount. This itself is a good ground for not entertaining the present writ petition. However, as has been referred to above, the petitioner having violated the terms of the tender, had made itself liable for action in accordance with the same and the respondent-Corporation has accordingly exercised its option for forfeiture of the security deposit. The explanation given for non-lifting of the whole rice stock within the original time stipulated and then within the further extended time is unacceptable as the general elections would not in any manner hinder or hamper the lifting of the rice stock nor any reason has been assigned by the petitioner while seeking further extension. In any case, the respondent-Corporation has, according to Clause 21 of the terms and conditions of the tender, exercised its discretion in favour of the petitioner to the maximum as this clause provides for only two extensions i.e. for one month at a time. It cannot, thus, be said that the action of the respondent-Corporation is either arbitrary or illegal or unreasonable, which would pursuade this court to exercise its discretionary jurisdiction in favour of the petitioner to further extend the time to lift the entire stock by 30 days as has been prayed for.

13. As regards the challenge to Clause 9 of the terms and conditions of the tender, the same, at this belated stage, cannot be challenged as the petitioner has availed the benefit under the terms and conditions, which were in its knowledge from the very outset and rather prior to applying for the tender. In any case, we do not find any arbitrariness, unreasonableness or illegality in Clause 9 of the terms and conditions of the tender, which would call for any interference by this Court.

14. It would not be out of way to mention here that Clause 30 of the terms and conditions of the tender provides for arbitration in case of any dispute arising out of the contract, which remedy the petitioner failed to avail.

15. In view of the above discussion, we do not find any merit in the present writ petition and the same, therefore, stands dismissed in limine.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

(AUGUSTINE GEORGE MASIH)
JUDGE

February 20, 2015
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