

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No. 5694 of 2015(O&M)

Date of Decision: April 23 , 2015.

M/s Sumit Road Lines through its Proprietor Mr. Prithvi Raj

..... PETITIONER (s)

Versus

Indian Oil Corporation Limited and others

..... RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE HEMANT GUPTA
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. Amit Jhanji, Advocate
for the petitioner.

Mr. Ashish Kapoor, Advocate
for the respondents.

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

HEMANT GUPTA, J.

Challenge in the present writ petition is to a communication dated 24.02.2015 (Annexure P6) whereby the tender bid of the petitioner was rejected.

The respondent – Indian Oil Corporation issued a notice inviting tenders for road transportation of bulk petroleum products/Motor spirit/High Speed Diesel/Branded fuels for the location of District Rewari through e-tenders.

The respondent – Corporation invited e-tenders under two bid system from Tank

Truck owners for awarding contracts for road transportation of bulk petroleum products w.e.f. 22.10.2014. The closing date and time was mentioned as 07.11.2014 at 11.00 hours. Petitioner submitted its tender along with the documents but the technical bid of the petitioner has been rejected on 24.02.2015 (Annexure P6). The reason for rejection of the bid was said to be technical. The assertion of the petitioner is that petitioner has uploaded all the relevant documents within time and also deposited the earnest money therefore, the technical bid of the petitioner has been rejected arbitrarily without disclosing any reason.

However, in reply the stand taken by the respondents is that the petitioner has not uploaded the documents at Sr. No.17, 18 and 19. However, during the course of arguments it is pointed out that in fact the documents at Sr.No.16, 17 and 18 have not been uploaded and not against Sr.No.17, 18 and 19, which is apparent from the perusal of Annexure P-1, page 34 of the writ petition. The documents which were not furnished are bank guarantee for security deposit, bulk petroleum products road transport agreement and industry transport discipline guidelines. Since the petitioner has not submitted the requisite documents as per the petitioner itself, the petitioner cannot be said to be technically qualified for participation in the tender process.

Learned counsel for the petitioner relies upon a Single Bench judgment of Rajasthan High Court in S.B. CWP No.12834 of 2014 (M/s Bachan Singh Transport Co. v. Indian Oil Corporation and others) wherein the court has directed the deficiencies to be made good by submitting physical copies of the documents which were not uploaded by the tenderers.

We have heard learned counsel for the parties and find no merit in the writ petition.

Learned Single Judge of Rajasthan High Court in the aforesaid case has observed as under:-

“XX XX XX XX

In the result, writ petitions are allowed in part with direction to the respondents to accept hard copies of relevant documents to be submitted now by the petitioners, which could not be opened/uploaded on their e-tender portal. The respondents shall take final view on the offers/bids submitted by the petitioners. However, it is made clear that this order has been passed by this Court in the peculiar facts of the present case and would not be taken as precedent in similar cases because e-tender process was initiated by the respondents for the first time and the petitioners were not able to take proper training before submitting online e-tenders.”

In view of the above said order, wherein the Rajasthan High Court has observed that this order be not taken as precedent in similar cases, the reliance of the petitioner on the aforesaid judgment is not tenable. Though the petitioner, as per his own showing, has not submitted three documents at Sr. No.16, 17, 18. It is not the case that the petitioner could not able to upload the relevant documents due to technical glitch at the time of submission of the tender. Therefore, petitioner cannot make grievance that he should be permitted to produce the physical copies of the documents at this stage.

The reliance of petitioner on the communication (Annexure P5) i.e., e-mail dated 11.02.2015 is again not tenable. The said e-mail is to the effect that the bid has been admitted by the Committee and that the petitioner was asked to

get in touch with the Tender Inviting Authority in future.

Mr. Jhanji has argued that since the bid of the petitioner has been admitted, it means the bid of the petitioner stands technically qualified therefore, the same could not be rejected subsequently.

On the other hand, Mr. Kapoor pointed out that the said e-mail was an auto generated mail from e-procurement system acknowledging the receipt of tender of the petitioner which is subject to technical evaluation by the Committee. It is pointed that word 'admitted' mentioned in the mail dated 11.02.2015 expressed only a formal acknowledgment of the receipt of bid of the petitioner and not an acknowledgment of the technical eligibility of the bidder, which was to be evaluated subsequently by the tender Committee. He refers to an order passed by the Division Bench of Allahabad High Court reported as **Kirti Scanning Centre (P) Ltd. v. Union of India, 2014(6) ADJ 376**. The Court has observed as under:-

“6. The communication which was issued to the petitioner on 8 May 2014 at 11.50 a.m. to the effect that its bid had been admitted, was only a formal acknowledgment of the bid and not an acknowledgment of the technical eligibility of the bidder which still had to be considered. It was only after the tender Committee had evaluated the bid that the petitioner was duly informed at 1.27 p.m. on 8 May 2014 that the bid had been rejected for non-compliance with the tender requirement. In the circumstances, the interference of this Court under Article 226 of the Constitution is not warranted as the Union Ministry of Health and Family Welfare has duly followed the tender requirements. For these reasons, we find no reason to entertain the petition. The petition is, accordingly, dismissed.”

In view of the fact that the communication (Annexure P5) is only an acknowledgment of the receipt of the tender of the petitioner, it cannot be read to mean that the technical bid of the petitioner has qualified the stage of evaluation.

In view of the above, we do not find any merit in the present writ petition.

Dismissed.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

April 23, 2015.
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