IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.717 of 2015 (O&M)

Date of decision:10.3.2015

R.S. Labour and Transport Contractor ….Petitioner

VERSUS

Food Corporation of India and others .....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Robin Dutt, Advocate for the petitioner.

Mr. Sumeet Goel, Advocate and
Mr. Sangram Singh, Advocate for respondents No.1 to 5.

Mr. S.K. Verma, Advocate for respondent No.6.

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HEMANT GUPTA, J.(Oral)

The petitioner has sought quashing of the order dated 31.12.2014 whereby an e-tender submitted by the petitioner was rejected for the reason that it is not technically qualified.

The respondent-Food Corporation of India (for short 'FCI') invited Handling and Transport contracts for two centres i.e. Madina and Khatkar. The e-tender was published on 13.10.2014 whereas, the last date for submission of bids was 03.11.2014. The petitioner and respondent No.6 submitted their online bids but the bid of the petitioner has been rejected on the ground that the experience certificate is not in prescribed proforma and is incomplete. Such certificate has not been issued by the customer for whom the work is said to be satisfactorily executed. The said certificate was to be one of the essential qualification conditions for a tenderer. The conditions for e-tender in respect of experience reads as under:-

> "13. Experience Certificate must be strictly in accordance with the proforma given in Appendix-VI of MTF for HTC."

In the accompanying Part-A of Technical Bid, the relevant condition reads as under:-

> "**3. Qualification conditions for Tender**:
>
> (I) xx xx xx xx
>
> (II) Experience certificate **in the proforma prescribed at Appendix VI** shall be produced from customers stating proof of satisfactory execution and completion of the contract(s) besides duly certifying nature, period of contract, and value of work handled.
>
> xx xx xx xx xx"

The petitioner has submitted his tender bid filling up Appendix-VI in his own hand giving the details of two contracts of the contract period for the year 2012-13 of FCI. One of the total volume of the contract executed is Rs.1,65,44,993/- and another of Rs.119.04 lakhs. In addition to filling up of the said proforma, the petitioner has attached two certificates, one issued by District Office, FCI, Rohtak pointing out that the petitioner has handled 107066 metric tones of food grains of a contract value of Rs.2,39,34,928/-. The said amount includes a sum of Rs.1,65,44,993/- mentioned by the petitioner in Appendix-VI. The other certificate attached by the petitioner is again pertaining to the District Office of FCI, Rohtak.

As per Mr. Goel, the first page of second certificate is not available on the records of the Corporation whereas the second page deals with the contract of Road and Mandi Transport Contracts of five stations giving contract value.

Learned counsel for the petitioner vehemently argued that the experience of the petitioner was that of the respondent-Corporation itself and that the petitioner has given sufficient experience details in the Appendix accompanied by the experience certificates issued by the customer that is FCI. Since the petitioner has worked for the respondent-Corporation itself, the Corporation could not be misled in respect of work experience of the petitioner. Had it be an experience of third party, the work experience certificate giving quantity of the food grains handled and the contract value would have relevance but in the case of petitioner who is a contractor of the respondent-Corporation itself, the sufficient details were mentioned in the Appendix-VI supported by the certificates, therefore, the rejection of the bid for the stated reason is untenable in law.

Learned counsel for the petitioner relies upon judgment of Hon'ble Supreme Court reported as (2013) 10 SCC 95 titled Rashmi Metaliks Limited and another v. Kolkata Metropolitan Development Authority and others, to contend that the purpose of experience certificate was to find out as to whether a tenderer is experienced to carry out the contract, in the event the same is awarded. The tender submitted by the petitioner could not be rejected for the reason that the experience certificate by the customer was not filled up in Appendix-VI but was attached as a separate certificate.

On the other hand, Mr. Goel, learned counsel for the Corporation, argued that all the tenderers were required to give their experience certificates in Appendix-VI only. It is pointed out that the remarks column of Appendix-VI has been left blank nor the certificate of experience satisfies the requirements of the tender. Therefore, the petitioner has been rightly declared to be ineligible. It is contended that the tender conditions are mandatory and any violation of the tender condition has been rightly taken as a ground for rejection of the tender.

On the other hand, learned counsel for the successful tenderer (respondent No.6) pointed out that the parties had sufficient time to give correct and complete information after the tender was opened on 13.10.2014. Therefore, having failed to comply with the tender conditions, the petitioner cannot be considered eligible said to satisfy the technical bid.

We have heard learned counsel for the parties and find that the action of the respondent-Corporation in rejecting the bid of the petitioner on the ground that experience certificate was not in Appendix-VI but was on separate sheets is unjust, arbitrary, irrational and cannot be sustainable in law. In Rashmi Metaliks Limited's case (supra), Hon'ble Supreme Court has said that the filing of income tax return would have assumed the character of an essential term if one of the qualifications was either the gross income or the net income. The Court said to the following effect:-

> "17. So far as Clause (*j*) of the detailed notice inviting E-tender No. 01/KMDA/MAT/CE/2013-2014 dated 10-5-2013 emanating from the office of the Chief Engineer is concerned, it seems to us that contrary to the conclusion in the impugned judgment[1], the clause is not an essential element or ingredient or concomitant of the subject NIT. In the course of hearing, the income tax return has been filed by the appellant Company and scrutinised by us. For Assessment Year 2011-2012, the gross income of the appellant Company was Rs 15,34,05,627, although, for the succeeding Assessment Year 2012-2013, the income tax was nil, but substantial tax had been deposited.

> 18. We think that the income tax return would have assumed the character of an essential term if one of the qualifications was either the gross income or the net income on which tax was attracted. In many cases this is a salutary stipulation, since it is indicative of the commercial standing and reliability of the tendering entity. This feature being absent, we think that the filing of the latest income tax return was a collateral term, and accordingly the Tendering Authority ought to have brought this discrepancy to the notice of the appellant Company and if even thereafter no rectification had been carried out, the position may have been appreciably different. It has been asserted on behalf of the appellant Company, and not denied by the learned counsel for the respondent Authority, that the financial bid of the appellant Company is substantially lower than that of the others, and, therefore, pecuniarily preferable.
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> 19. In this analysis, we find that the appeal is well founded and is allowed. The impugned judgment[1] is accordingly set aside. The disqualification of the appellant Company on the ground of it having failed to submit its latest income tax return along with its bid is not sufficient reason .for disregarding its offer/bid. The respondents are directed, therefore, to proceed further in the matter on this predication. The parties shall bear their respective costs".

In the present case, as per clause 13 of the advertisement, the experience certificate was required to be in accordance with proforma given in Appendix-VI. It thus means that the experience certificate should disclose the information which is mentioned in Appendix-VI but it was not required to be signed or submitted by the customer as it is argued by Mr. Goel.

Still further, clause 3(II) of Part A relating to technical bid further states that the experience certificate in the proforma prescribed at Appendix-VI shall be produced from the customers stating proof of satisfactory execution and completion of the contract(s) besides duly certifying nature, period of contract and value of work handled. Again such condition does not lead to inference that it is the proforma which is required to be filled in by the customer but the certificate by the customer should disclose the period of the contract, value of work handled and whether the tenderer has satisfactorily executed and completed the contract. All such parameters are met in the certificates produced by the petitioner, may not be strictly in tabular form but complying with the conditions of the tender.

Since the essential conditions of the tender have been satisfied by the petitioner, we find that the rejection of the tender of the petitioner on the ground that the petitioner has not submitted experience certificate in prescribed proforma cannot be said to be justified in law.

Consequently, we set aside the rejection of the technical bid of the petitioner vide order dated 31.10.2014 and direct the technical bid of the petitioner be evaluated again in the light of the findings recorded above.

It may be noticed that in pursuance of the tender, the handling contract has to commence from 12.03.2015. It is needless to say that the respondent-Corporation shall complete the process of evaluation of technical bid of the petitioner and to award contract in terms of the financial bids, soon thereafter, in accordance with law expeditiously.

(HEMANT GUPTA)
JUDGE

MARCH 10, 2015 **(LISA GILL)**
'D. Gulati' **JUDGE**