

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 7380 of 2015 (O&M)

Date of decision : 26.05.2015

M/s Sukhmani Auto Fuels

.....Petitioner

Versus

Union of India and others

....Respondents

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

Present: Mr. T.P.S. Tung, Advocate
for the petitioner.

Mr. Ashish Kapoor, Advocate
for respondents No. 2 to 5.

HEMANT GUPTA, J.

Challenge in the present writ petition is to the recommendation of the committee dated 25.02.2015 (Annexure P-15) whereby tender of the petitioner was rejected during technical evaluation and communication dated 26.02.2015 (Annexure P-17) communicating the aforesaid decision.

The respondent – Indian Oil Corporation invited tenders for transportation of bulk petroleum products from Bathinda. The petitioner submitted its tender for the transportation of such petroleum products. The last date of submitting tender was 26.12.2014. Prior to the submission of the tender, the petitioner was served with a show cause notice on 28.06.2014 that one of the tank truck of the petitioner had taken excess load on 28.02.2014 and 10.03.2014 and that why excess load charges be not

recovered and also as why action in terms of Industry Transport Discipline

Guidelines be not taken against it. A complaint was also sent to the Senior Superintendent of Police, Bathinda.

The respondent -Corporation debited a sum of ₹21,535/- from the payments due to the petitioner on account of excess load carried but it was on 31.12.2014, the respondent communicated that the tank truck in question has been blacklisted for a period of two years. It may be noticed that in the tender forms, the petitioner has not disclosed that a show cause notice was served upon the petitioner for carrying excess load on 28.06.2014.

Learned counsel for the petitioner relies upon Division Bench judgment of this Court in CWP No. 4262 of 2015 titled **M/s Maur Service Station versus Union of India and others** decided on 08.04.2015. In the aforesaid case, the blacklisted tank truck was not offered by the tenderer while submitting its bids. The tender was rejected on the ground that the tenderer has not disclosed blacklisting of tank trunk in the bid documents. This court allowed the writ petition for the reason the black listed tank trunk was never offered by the tenderes, and then in communication of the Corporation allows substitution of a black listed Tank Trunk.

In the written statement, it is pointed out that the petitioner has not disclosed in the tender documents that he was served with any show cause notice or that any inquiry in respect of any corrupt or fraudulent practice is pending against the petitioner. Reference is made to Clause 1 (9) of the tender terms and conditions giving right to the Corporation to reject the tender of the bidders, who does not disclose the complete facts. Mr. Kapoor relies upon order passed by this Court CWP No. 4657 of 2015 titled as **M/s Paramveer Auto Fuels versus Indian Oil Corporation Ltd. and**

basis of show cause notice was found to be sufficient reason for rejection of the bid of the tenderers.

We have heard learned counsel for the parties and find that reliance of the petitioner on the judgment of this Court in Maur Service Station's case (supra) is not tenable. In fact, the issue raised in the present petition is covered by the judgment of M/s Paranveer Autos Fuels (supra).

In Maur Service Station's case (supra), the tenderer has not given the blacklisted tank truck as one of the tank truck available for transportation of the petroleum products. It was held that since the tank truck has not been offered for transportation, the non disclosure of pending inquiry against such tank truck cannot be made basis of rejection of the bid of the tenderer. In Paramveer Auto Fuels's case (supra) it was found that non disclosure of issuance of show cause notice is a good ground for rejection of the technical bid.

Argument by learned counsel for the petitioner that no decision was communicated for almost six months i.e. before the last date of submission of the tender, led the petitioner to believe that no further action is being contemplated by the corporation. Therefore, the non disclosure of such fact cannot lead to penal consequences against the petitioner.

We do not find any merit in the said argument. Once the show cause notice was served upon the petitioner and the recovery on account of the excess load was imposed upon the petitioner, it was incumbent upon the petitioner to disclose such fact in the tender documents. The black listing is separate action contemplated in terms of the Industry Transport Discipline Guidelines. Therefore, mere fact that no decision was communicated after submission of reply by the petitioner is not a ground to infer that no action

to the show cause notice was contemplated.

In view of the above and following decision of this Court in Paramveer's Auto Fuels case (supra), we find no merit in the writ petition.

The same is dismissed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

May 26, 2015
rts