

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

CWP No.8398 of 2015(O&M)

Date of decision:15.5.2015

M/s Zimidara Transport Company

....Petitioner

VERSUS

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Gaurav Chopra, Advocate for the petitioner.

Mr. Manoj Bajaj, Additional Advocate General, Punjab
for respondent No.1.

Mr. C.S. Bakshi, Advocate for respondent No.2 and 3.

Mr. Gurminder Singh, Senior Advocate with
Mr. R.P.S. Bara, Advocate for respondent No.4.

HEMANT GUPTA, J.(Oral)

The challenge in the present writ petition is to the awarding of transportation contract for the *rabi* crop for the year 2015-16 for Khanna Mandi.

The brief facts leading to the present petition are that this Court in CWP No.6309 of 2013 titled Khem Singh and another v. State of Punjab and others, decided on 22.03.2013 and in CWP No.5540 of 2014 titled Baljinder Singh and another v. State of Punjab and others, decided on 25.03.2014, directed that the process of tender of labour, cartridge and/or transportation will be completed through e-tendering. Such e-tendering was proposed to be of two bids i.e. technical bids and financial bids. In pursuance of the directions of this

Court, the State Government finalized the policy of e-tender on 18.03.2015 (Annexure P-1). It was in pursuance of such policy, on 20.03.2015 the bids were invited for and on behalf of the State buying agencies for transportation of food grains and stock articles for the *rabi* season. The last date for submission of bid was 28.03.2015. The tender was to be opened on 30.03.2015. One of the condition of the tender as per the policy was two years experience for transportation of food grains. The relevant condition reads as under:-

“(i) Two years experience for transportation of foodgrains will be compulsory and this experience certificate must be duly attested as per Annexure A. Balance sheet of the last year will be produced and proof regarding experience work during one year/ turn over based on arrival in the cluster of Mandis as shown below will have to be furnished. Experience certificate pertaining to work done during last Rabi 2014 season, may be added for the purpose of above experience.”

The petitioner submitted its bid along with supporting documents including experience certificate but alleges that the respondent No.4 has not submitted its experience certificate before the time of closing of the bids i.e. on 28.03.2015. In fact, admittedly, the respondent No.4 has submitted additional documents on 30.03.2015 before the bids were opened. On the basis of the additional documents filed, respondent No.4 was considered to be eligible and the financial bids were opened. Since the bid of the respondent No.4 was the lowest, the contract for transportation was awarded to it.

Learned counsel for the petitioner has vehemently argued that no document could have been taken into consideration after the time for submission of the bid expired. The documents taken in consideration furnished on 30.03.2015 violates the tender condition

and on the basis of such documents, respondent No.4 could not have been declared eligible having satisfied the technical bid condition for opening of his financial bids.

Mr. Gurminder Singh, representing respondent No.4 points out that since the e-tender process was initiated for the first time and that respondent No.4 was not conversant with the same, it could not upload experience certificate except one i.e. from PUNSUP. Therefore, respondent No.4 has been rightly permitted to furnish its experience certificate manually after the cut-off period.

We have seen the uploaded documents with the assistance of the technical team of PUNGRAIN (Respondent No. 2 & 3) and it contains the following details of uploaded files:-

List of Files Uploaded

File Name	Description	Download
listoftrucks.jpg	listoftrucks.jpg	Download
experiencecert 1.jpg	experiencecert 1.jpg	Download
pancard.jpg	pancard.jpg	Download
List2.jpg	list2.jpg	Download
list3.jpg	list3.jpg	Download

We have seen the original files uploaded. The file names with the name of “listoftrucks.jpg, list2.jpg and list3.jpg” are the list of number of trucks on which the said respondent relies upon in support of its contention that it has the capacity to execute contract, whereas the file name “experiencecert 1.jpg” is the experience certificate from PUNSUP for the year 2012-13 having carried out the labour and carriage contract of value of Rs.1,36,45,189/-.

The argument of Mr. Gurminder Singh that he could not upload the other experience certificates, though respondent No.4 was

in possession thereof, cannot be accepted as if three files of truck numbers could be uploaded, there is no reason as to why different experience certificates could not be uploaded. It is not his case that there is any upper limit of the documents to be uploaded.

Since the said respondent has not uploaded experience certificates except that of PUNSUP, which was also not relevant for award of transportation contract, we find that act of the respondent-Corporation in taking into consideration the documents filed after the cut-off period is illegal and arbitrary being against the tender conditions.

Consequently, the present writ petition is allowed with costs of Rs.10,000/- holding the action of the respondents to be wholly arbitrary, irrational and unjustified. However, since the contract was only for the *rabi* period, the same has come to an end with the lifting of the food grains as stated by Mr. Bakshi. Therefore, the allowing of the writ petition will not disturb the contract already awarded to respondent No.4 but, the respondent-Corporation shall invite fresh bids for the subsequent transportation contract.

Further, we leave it open to the petitioner to claim damages for wrongful deprivation of the contract from the Civil Court in accordance with law.

(HEMANT GUPTA)
JUDGE

MAY 15, 2015
'D. Gulati'

(LISA GILL)
JUDGE