

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

CWP No. 12371 of 2016

DATE OF DECISION : 17.10.2016

Doaba Transport Company

.... PETITIONER

Versus

Food Corporation of India and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Dr. Rau P.S. Girwar, Advocate,
for the petitioner.

Mr. Sameer Rathore, Advocate, for
Mr. Sumeet Goel, Advocate,
for respondent Nos. 1 to 4.

Mr. K.K.Goel, Advocate,
for respondent No.5.

* * *

RAMENDRA JAIN , J.

1. Various persons/companies, including the petitioner and respondent No.5 had participated in the tender enquiry dated 25.02.2016 (Annexure P-11) floated by respondent Nos. 1 to 4 for appointment of Transport Contractor at Talwandi Bhai, District Ferozpur. However, respondent Nos. 1 to 4 did not open tender of the petitioner. Apprehending that it would be disqualified in the aforesaid tender enquiry dated 25.02.2016, the petitioner filed CWP No. 7839 of 2016, which was disposed of by this court vide order dated 27.04.2016 (Annexure P-11). The operative part of the order reads as under :-

“2. There is nothing to indicate that the respondents do not intend considering the petitioner's bid. In the event of the official respondents rejecting the bid, the petitioner is always at liberty to challenge the same.

3. The petition is, therefore, disposed of with the aforesaid liberty and with an order that in the event of respondent No.1 rejecting the petitioner's bid on the ground that it is non-responsive, it shall not issue the work order till the expiry of a period of seven days from the date of the communication of the decision to the petitioner in writing.”

Despite the aforesaid order, respondent No.4 rejected the opening of financial bid of the petitioner due to striking out clause No.5 of the tender document and allotted the work to respondent no.5 in an arbitrary and illegal manner.

3. Aggrieved by the said act of the official respondents, the petitioner has filed this petition under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of mandamus directing respondent Nos.1 to 4 to consider the bid of the petitioner as valid in the tender enquiry dated 25.02.2016, and not to award work to respondent No.5.

4. Learned counsel for the petitioner contended that there was no mention in the notice inviting tender regarding the striking out of any clause, if additional documents regarding bank guarantee is annexed with other documents. Hence, striking out of clause No.5 of the tender document by the petitioner had not invalidated its bid. But despite that, respondent

Nos. 1 to 4 illegally and arbitrarily did not open the bid of the petitioner and

allotted the work to respondent No.5, without communicating the petitioner regarding disqualification of its bid.

5. On the other hand, learned counsel for respondent Nos. 1 to 4 submitted that since by striking down clause 5 of the tender document, the petitioner did not comply with the terms and conditions/requirements of the bid documents, therefore, its bid was rejected on 31.05.2016. In compliance with the order of this court dated 27.04.2016 (Annexure P-11) passed by this court in CWP No. 7839 of 2016, communication regarding rejection of the bid of the petitioner was sent to it on 22.06.2016.

6. The main controversy in this case is regarding striking out clause No.5 of the tender document by the petitioner. The said clause No.5 is re-produced below :-

“5. I hereby undertake to furnish an additional performance guarantee in the form of bank guarantee of 10% of the contract value from State Bank of India or any of its associate banks or by any other public sector bank which shall be valid and enforceable till six months after the expiry of the contract period (For tenderers without having the requisite experience) in addition to Security Deposit in the form of Bank Draft or Pay order or through ECS and Bank Guarantee.”

7. After giving our thoughtful consideration to the contentions raised by learned counsel for the parties, we do not find any merit in this petition, because bid of the petitioner was disqualified technically on the ground that clause No.5 of the tender document was struck off by the petitioner. That apart, bid of Baljeet Singh and Company, another

participant, was also rejected due to EPF default. Hence, the petitioner cannot be permitted to allege that he was disqualified arbitrarily. There is no merit in the contention of the petitioner that its bid was not opened and it was never communicated regarding disqualification of its bid. Learned counsel for respondent Nos. 1 to 4 has produced the original record, containing the order dated 22.06.2016 and the notice dated 10.06.2016 intimating the petitioner that its bid was rejected by the Competent Authority owing to the reason that Clause at Serial No.5 of Appendix-I was struck off by it. Photostat copies of the order dated 22.06.2016 and the notice dated 10.06.2016 are taken on record of this case. Even otherwise, the matter in dispute is contractual in nature. The Apex Court in **Jagdish Mandal v. State of Haryana and others, (2007) 14 SCC 517** has held that while invoking power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluation of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters. Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. Tenderer or contractor with a grievance can always seek damages in a civil court. The court should exercise judicial restraint unless illegality or arbitrariness on the part of the Government in these matters is apparent.

8. In view of the aforesaid settled proposition of law, and for the reasons recorded above, no ground for interference by this Court under Articles 226/227 of the Constitution of India is made out. Consequently, finding no merit in this writ petition, the same is hereby dismissed. The

original record produced in Court be returned to the learned counsel for respondent Nos. 1 to 4 against proper receipt.

**(RAMENDRA JAIN)
JUDGE**

October 17, 2016
ndj

**(AJAY KUMAR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No