

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

CWP Nos. 12433, 12506 and 12508 of 2016
DATE OF DECISION : 06.12.2016

M/s Sushil & 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: Mr. Anand Chhibar, Senior Advocate, with
Mr. Robin Dutt, Advocate, for the petitioner.

Mr. K.K. Gupta, Advocate, for respondent Nos. 1 to 4.

Mr. Anurag Chopra, Advocate, for respondent No.5.

* * *

RAMENDRA JAIN, J.

1. This order shall dispose of three writ petitions bearing CWP Nos. 12433, 12506 and 12508 of 2016, filed by one and the same firm, namely M/s Sushil and Company, claiming the similar relief. The controversy in these petitions is regarding the tenders for HTC Jind, Pillukhera and Alewa Nagura Centres in FCI District Rohtak, respectively, for the Link Rail Head Jind,

2. Briefly stated, vide tender notice dated 15.04.2016 (Annexure P-1), respondent No.3-Food Corporation of India invited tenders for different Centres. The estimated contract value of the contract for HTC Jind, Pillukhera and Alewa Nagura Centres was ₹ 3,19,46,000/-, ₹ 4,20,43,000/- and ₹ 61,42,000/-, respectively. In the general instructions, it was specifically mentioned by respondent No.3 that for detailed terms and

conditions, Model Tender Form (for short 'MTF') (Annexure P-2) is applicable. The tender was called in two parts, i.e. (i) technical bid and (ii) price bid. The petitioner firm applied the tender online for aforesaid three Centres and submitted the technical bid and price bid, as mentioned in MTF, along with all the documents. The experience certificate of the petitioner firm (Annexure P-3) issued by District Office of respondent No.1 was also uploaded. Some experience certificates from the State Agencies, issued by HAFED Jind, CONFED District Office, Hisar, CONFED District Office, Fatehabad, Food & Supply Controller, Fatehabad and District Food & Supply Controller, Jind (Annexure P-4 collectively) were also annexed by the petitioner firm. The experience certificate in the proforma prescribed at Appendix-VI (Annexure P-5), as prescribed in column 3, Sub clause-2 of MTF, was also uploaded by the petitioner firm. In addition to these, the petitioner firm uploaded the online deposit EPF challans with the EPF code number (Annexure P-6 collectively) to show that nothing was due against it. The case of the petitioner firm is that ignoring all these documents arbitrarily, vide order dated 02.06.2016 (Annexure P-7) its technical bids in respect of all the aforesaid three Centres were rejected on the ground that (i) its experience of ₹ 98,08,338/- could not be counted as per MTF Clause 3 (II), and (ii) no due certificate for EPF in respect of relevant experience period was also not uploaded.

3. Learned counsel for the petitioner argued that at the end of Clause 3 of the MTF, a note was given to the effect that "The year for the purpose of experience will be taken as financial year (1st April to 31st March) excluding the financial year in which the tender enquiry is floated."

Therefore, in view of this note, the amount and period of experience

certificate of the petitioner firm has been interpreted arbitrarily, as experience of the petitioner for the financial year 2014-15, i.e. from 01.04.2014 to 31.03.2015, is of ₹ 2,54,44,092/-. With regard to the second objection regarding non-uploading of no due certificate for EPF in respect of relevant experience period, learned counsel submitted that since the petitioner firm worked for FCI for Road Transport Contract (RTC), wherein there is no involvement of labour, and the monthly challan for which the labour was involved by specifically uploaded by the petitioner, therefore, as per General Instruction No.3 of the tender notice (Annexure P-1), no due certificate was not required to be submitted. Moreover, EPF code number and proof of deposit of EPF for the relevant experience period was deposited by the petitioner firm. Further, in the case of respondent No.5, respondent Nos. 3 and 4 have mentioned that the EPF code is not necessary, whereas in the case of the petitioner, they are asking for no due certificate from RPFC.

4. On the other hand, learned counsel for the respondents, while justifying the impugned order dated 02.06.2016 rejecting the technical bids of the petitioner firm with regard to HTC Jind, Pillukhera and Alewa Nagura Centres in FCI District Rohtak, argued that as per the requirement of the MTF as contained in Clause 3, a tenderer should have the requisite experience of the contracts executed in any of the immediately preceding 5 years, either in a single contract or in different contracts. In the instant case, the petitioner had claimed experience of different contracts out of which majority of the experience claimed pertains to the contracts which are yet to be executed, as is apparent on perusal of Annexures P-3 and P-4. If such experience of the contracts which are yet to be executed, is excluded, the

estimated value of such contracts comes to ₹ 1,56,35,754/- only, which does not fulfil the requirement. While supporting the second objection raised in the impugned order, learned counsels argued that the petitioner firm claimed the experience, but as per the requirement of Clause 3 of the MTF, it did not submit any undertaking that it would furnish 10% additional Bank Guarantee. The petitioner also failed to upload the no dues certificate from the concerned RPFC to the effect that it has deposited the PF dues in respect of number of workers engaged by it for the experience period/contract period correctly and timely. With regard to case of respondent No.5 is concerned, it was submitted that since respondent No.5 submitted the undertaking of furnishing 10% additional Bank Guarantee for want of requisite experience, therefore, the requirement of EPF documents was not applicable in his case, whereas the petitioner did not furnish any such undertaking so as to be considered in the said category. Hence, technical bids of the petitioner have been rightly rejected.

5. We have thoughtfully considered the submissions of learned counsel for the parties.

6. The technical bids of the petitioner firm for HTC Jind, Pillukhera and Alewa Nagura Centres in FCI District Rohtak, have been rejected on two grounds, firstly that its experience of ₹ 98,08,338/- could not be counted as per MTF Clause 3 (II); and secondly that no due certificate for EPF in respect of relevant experience period was not uploaded.

7. Before proceeding further, relevant parts of Clause 3 of the MTF, which is regarding qualification conditions for tender, are being re-produced below :-

“3. Qualification conditions for Tender :

(I) Tenderer should have experience of Rake Handling and/or Transportation duly obtained from Manufacturer/PSU/Govt. Dept./Public Ltd. Company/Private Limited Company dealing in the field of Fertilizer, Food grains, Cement, Sugar, Coarse grains or any other commodity. Tenderer should have executed in any of the immediate preceding five years the work of value :

(a) At least 25% of the estimated value of the contract to be awarded in one single contract :

OR

*(b) 50% of the estimated value of the contract to be awarded, in different contracts.
In case of Partnership, only the experience of the Firm will be reckoned and for the purpose the experience of the individual partners will not be counted.*

(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.

(III) x x x x x

(IV) x x x x x

Note: The year for the purpose of experience will be taken as Financial Year (1st April to 31st March) excluding the financial year in which tender enquiry is floated.”

8. In the present case pertaining to the awarding of Handling and Transport Contract at Jind Centre of the FCI, the value of the contract was ₹ 3,19,46,000/-. Since the petitioner claimed experience of different contracts, therefore, as per aforesaid Clause 3 (I) (b), experience equivalent to 50% of the above value of the contract was required and that too of the contracts already executed. The petitioner furnished a compiled chart of the alleged experience as Annexure P-5, stating that the experience is for the contract period 01.04.2014 to 31.03.2016, whereas on comparison of the said chart vis-a-vis with the individual experience certificates collectively attached as Annexures P-3 and P-4, it is clear that majority of the experience certificates pertain to the contracts which are yet to be executed and the remaining experience of the contracts which have already been executed by the petitioner comes to the value of ₹ 1,56,35,754/-, which does not fulfil the requirement, as 50% of ₹ 3,19,46,000/- (the estimated value of the contract) is ₹ 1,59,73,000/-. Similar is the case regarding the awarding of Handling and Transport Contracts at two other Centres.

9. Further, General Instruction No.3 of the tender notice (Annexure P-1) reads as under :-

“3. In case of Handling & Transport Contract :- (i) Experienced contractors of FCI participating in the new tenders as a bidder having insufficient experience by giving undertaking that 10% of additional Bank Guarantee would be submitted for relaxation of experience AND (ii) the contractors submitting tenders having experience in handling contract has to deposit the following documents in proof of deposit of EPF timely and correct,

*(a) No Dues Certificate from the concerned RPFC to the effect that the contractor has deposited the PF dues in respect of number of workers engaged by him for the experience period/contract period correct and timely,
(b) The copies of monthly challan for the experienced period.”*

It is the admitted case of the petitioner that it did not furnish the no due certificate from the concerned RPFC, as required in sub clause (a) of the aforesaid General Instruction No.3 of the tender notice. The contention of learned counsel for the petitioner that since the petitioner claimed experience of the road transport contracts only, therefore, the requirement of EPF documents was not applicable in its case, cannot be accepted. The requirements of submission of no dues certificate from the RPFC and copies of the monthly challan for the experience period were required to be complied with for those also who claim experience.

10. In view of the above, we are of the considered opinion that technical bids of the petitioner in all the three cases have been rightly rejected by respondent Nos. 3 and 4.

11. Dismissed.

12. The original record which was produced before this Court and was retained be returned to the learned counsel for FCI against proper receipt.

**(RAMENDRA JAIN)
JUDGE**

December 06, 2016
ndj/rishu

**(AJAY KUMAR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No