IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CIVIL WRIT PETITION NO.13965 of 2015

RESERVED ON: DECEMBER 14, 2015

DATE OF DECISION: FEBRUARY 09, 2016

R.S.Labour & Transport Contractor ....Petitioner

Versus

Food Corporation of India and others ....Respondents

CORAM:- HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Robin Dutt, Advocate for the petitioner(s).

Mr.JS Puri, Advocate for respondents No. 1 to 5.

Ms.Meenakshi Goyal, Assistant Advocate General, Punjab.

Mr.Deepanshu Jain, Advocate for respondent No.7.

Mr.Bhoop Singh, Advocate for respondent No.8.

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TEJINDER SINGH DHINDSA, J.

This order shall dispose of Civil Writ Petition Nos.13965 of 2015 (R.S.Labour & Transport Contractor v. Food Corporation of India and others), 13968 of 2015 (R.S.Labour & Transport Contractor v. Food Corporation of India and others), 13969 of 2015 (R.S.Labour & Transport Contractor v. Food Corporation of India and others) and 13970 of 2015 (R.S.Labour & Transport Contractor v. Food Corporation of India and others).

2. Food Corporation of India had issued tender notice dated 22.4.2015 inviting tenders online for appointment of Handling and Transport Contractors and Road Transport Contractors for a period of two years in respect of a number of Centres under Haryana Region. Petitioner-firm submitted bids for four Centres, namely, Uchana, Samalkha, Mahara and Sonepat.

3. Challenge in these four connected petitions is to the action of the respondent-Corporation rejecting the bids and forfeiting the earnest money deposit. Mandamus is also sought to direct the respondent-Corporation to consider the bids submitted by the petitioner-firm.

4. In the counter filed to these writ petitions, a stand has been taken that the bids were rejected in view of an order dated 10.6.2015 passed by the Corporation in terms of which the petitioner-firm had been debarred from participating in any future tender process for a period of five years. Since the order of blacklisting dated 10.6.2015 had been impugned by the petitioner-firm in a separate proceeding i.e. Civil Writ Petition No.12463 of 2015, accordingly, while issuing notice of motion in the present bunch of petitions, the same were directed to be listed along with Civil Writ Petition No.12463 of 2015.

5. Civil Writ Petition No.12463 of 2015 came to be disposed of vide judgment and order dated 16.10.2015 by setting aside the order dated 10.6.2015 and granting liberty to the Corporation to pass a fresh order within a period of two weeks after affording the petitioner-firm an opportunity of being heard. Hearing in these four writ petitions was, accordingly, deferred.

6. Mr.JS Puri, learned counsel appearing for the Corporation has, during the course of hearing, produced before us an order dated 10.12.2015 whereby the issue with regard to blacklisting has been re-considered and the General Manager (Haryana Region), FCI has taken a view that the petitioner-firm is not to be debarred from participating in any tender process. A decision has also been taken to refund the earnest money deposits in respect of the four Centres for which bids had been submitted.

7. This Court is presented with a peculiar situation. The basis of rejection of the bids submitted by the petitioner-firm i.e. the order of debarment for a period of five years dated 10.6.2015 no longer survives. Respondent-Corporation in terms of directions issued by this Court in Civil Writ Petition No.12463 of 2015 has, itself, re-considered the matter and has taken a decision that the petitioner-firm is not to be blacklisted. The EMDs (earnest money deposits) have been directed to be refunded. Still, the petitioner-firm has been materially prejudiced as their bids submitted for the four Centres in response to the tender notice dated 22.4.2015 have not been considered.

8. We are constrained to observe that the respondent-Corporation is the author of such situation. Suffice it to notice that the order dated 10.6.2015 blacklisting the petitioner-firm had been passed ostensibly for the reason that earnest money deposit of one of its partners Shri Raj Singh had been forfeited in the year 2010 by the Punjab State Ware Housing Corporation and such information had been concealed while participating in a tender

process. Petitioner-firm while assailing such order in Civil Writ Petition No.12463 of 2015 had taken a specific ground that Shri Raj Singh had never applied for any contract floated by the Punjab State Ware Housing Corporation and as such, question of forfeiture of earnest money deposit by such Corporation does not arise. It had been further contended that the order of blacklisting had been passed without affording any opportunity to the petitioner-firm to furnish its view point. Accordingly, the blacklisting order dated 10.6.2015 had been set aside while disposing of Civil Writ Petition No.12463 of 2015 and liberty had been granted for passing of an order afresh after hearing the petitioner. Perusal of the order dated 10.12.2015 now passed by the respondent-Corporation would reveal that Shri Raj Singh, partner, had been called upon to explain the facts and submit a written brief and thereafter even a Committee was constituted to get the documents verified from Punjab State Ware Housing Corporation, Jalandhar. The General Manager (Haryana Region), Food Corporation of India, while taking a view that the petitioner-firm is not to be debarred, has observed in the following terms:

> *"After going through the reply submitted by Shri Raj Singh s/o Shri Chattar Singh, the entire record and the observations of the committee, it can be seen that Shri Raj Singh s/o Shri Chatter Singh wrote some letters to the PSWC after the award of alleged tender by the PSWC disputing his participation. However there is no evidence to show as to whether the tender was actually submitted by Shri Raj Singh or not. There*

is neither any adjudication by any authority nor there is any investigation done by any authority so as to conclude whether he actually participated or not....”

9. Clearly, there was no material with the respondent-Corporation to justify the action of debarring the petitioner-firm. In our considered view, the respondent-Corporation ought not to have passed the order dated 10.6.2015 blacklisting the petitioner-firm in the first instance. Petitioner-firm has been acted against arbitrarily by denying to it participation in the tender process for the four Centres in question.

10. In view of the above and to consider the prayer of the petitioner to issue mandamus as regards consideration of the bids submitted, we had called upon the first respondent to open the petitioner's financial and technical bid in respect of the Centres in question and to inform the Court about the result thereof. In compliance of our directions, Mr.Puri has furnished a statement reflecting the petitioner's bid for Uchana Centre (Civil Writ Petition No.13969 of 2015) to be the most competitive being L-1. As regards Mahara Centre (Civil Writ Petition No.13965 of 2015) and Samalkha Centre (Civil Writ Petition No.13968 of 2015), the bid submitted by the petitioner-firm was not L-1, accordingly, the contract has been awarded to the lowest tenderer. Insofar as Sonepat Centre (Civil Writ Petition No.13970 of 2015) is concerned, we have been apprised that during the pendency of the writ petition itself, fresh tenders had been called and in which the petitioner did not participate and the work order has since been awarded to a third party.

11. In the light of the information supplied on behalf of the first respondent and coupled with the view that we have voiced hereinabove, these four writ petitions are dealt with as under:

Civil Writ Petition No.13969 of 2015

This petition relates to Uchana Centre. Respondent No.8 has been awarded the Handling and Transport Contract (HTC) for a period of two years. In terms of the notice inviting tenders, the estimated contract value for Uchana Centre was ₹2,80,45,000/-. Respondent No.8 has deposited earnest money of ₹5.5 lacs approximately i.e. 2% of the contract value, ₹14 lacs approximately i.e. 5% of the contract value has been furnished as security deposit and irrevocable and unconditional bank guarantee of ₹28 lacs i.e. 10% of the contract value has also been furnished. Petitioner-firm's bid, however, was the most competitive. It ought to have been awarded the contract. However, in the given fact situation, respondent No.8 would have to be viewed as an innocent party. It cannot be apportioned any blame for such piquant situation. Mr.Robin Dutt has suffered a statement that petitioner-firm would be ready and willing to compensate respondent No.8 if the contract for the balance period is awarded in its favour. To balance out the equities, we had called upon learned counsel to disclose the expected profit over the contract period. The figures quoted in response are at great variance i.e. ranging from ₹10 lacs to ₹2 crores.

In our view, the ends of justice would be met by awarding the Handling and Transport Contract (HTC) over the remaining period for Uchana Centre in favour of the petitioner-firm. This would be subject to the petitioner fulfilling all the other terms and conditions of the contract and paying respondent No.8 a sum of ₹3 lacs as stated hereafter. Petitioner would also make over to respondent No.8 a sum of ₹3 lacs towards loss of interest on the earnest money deposit/security deposit and to make good the bank charges for having furnished a bank guarantee of ₹28 lacs. Such an arrangement to our mind would not prejudice respondent No.8. Even if the expected profit over the entire contract period of two years was at the lower end of ₹10 lacs, still, it would stand adequately compensated in terms of ₹3 lacs made payable by the petitioner-firm. On the other hand, if the expected profit was on the higher side i.e. ₹2 crores or more as had been suggested, respondent No.8, in such eventuality, has already earned profits over the last six months having secured the work order inspite of it not being the lowest tenderer. Needless to mention that Food Corporation of India would, in any case, stand to gain as the remaining part of the contract would be undertaken by the petitioner-firm at a rate lower than the one at which the contract had been awarded to respondent No.8.

Civil Writ Petition No.13969 of 2015 is allowed in the aforesaid terms.

Civil Writ Petition No.13970 of 2015

This petition relates to Sonepat Centre. Learned counsel for the first respondent has informed us that during the pendency of the petition, fresh tenders had been called for and in pursuance thereto, contract has been awarded to a third party. Petitioner-firm has not assailed such fresh tender process and neither has the party, to whom the contract has been awarded, been impleaded as a respondent to the present proceedings. The petition is, accordingly, disposed of by giving liberty to the petitioner-firm to challenge the fresh tender process, if so advised, on all such grounds that may be available strictly in accordance with law. In case petitioner-firm puts in a request for supply of information/relevant documents pertaining to the fresh tender process for Sonepat Centre, respondent No.1 would be obligated to supply the same. Petition disposed of accordingly.

Civil Writ Petition Nos.13965 and 13968 of 2015

These two writ petitions relate to Mahara Centre and Samalkha Centre respectively. Admittedly, the bid submitted by the petitioner-firm in respect of these two Centres was not the most competitive and the contract, accordingly, stands awarded to the lowest tenderer i.e. Shri Satish Kumar for Mahara Centre and M/s Shivam Roadlines Private Limited for Samalkha Centre.

In the light of such uncontroverted factual position, no relief can be granted to the petitioner in these two petitions. Writ petitions are, accordingly, dismissed.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

FEBRUARY 09, 2016
SRM

Note: Whether referred to Reporter? (Yes/No)