IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 14945 of 2016

Date of Decision: 28.7.2016

Dashmesh Goods Career (Regd.), Barnala

....Petitioner.

Versus

Food Corporation of India, Chandigarh and others

...Respondents.

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

PRESENT: Mr. ABS Sidhu, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. This petition seeks quashing of the order dated 27.6.2016 (Annexure P-8) passed by respondent No.1 whereby the representation/legal notice dated 11.4.2016 (Annexure P-6) of the petitioner had been rejected.

2. The facts, in brief, necessary for adjudication of the instant petition as narrated therein may be noticed. The petitioner had been undertaking transport contracts with various State agencies including Food Corporation of India (FCI) in the State of Punjab. It was allotted transport contract for the years 2014-16 from 7.3.2014 to 6.3.2016 for Barnala Centre by respondent No.1 and is still working on day to day basis. The performance of the petitioner for the said work was satisfactory as per experience certificate dated 14.3.2016 (Annexure P-1). Respondent No.1 floated a scheme of e-tender for appointment of transport contract at Barnala on 4.4.2016 (Annexure P-2). As per the said scheme, the bids were

to be submitted by 1.4.2016 and were to be opened on 4.4.2016. On opening of the bid, the transport contract was allotted to respondent No.3. Though respondent No.3 applied for the tender in his own name, but he submitted the documents, i.e. partnership deed dated 22.8.2007 (Annexure P-3), profit and loss account statement dated 31.3.2004 (Annexure P-4) and experience certificate dated 14.3.2016 (Annexure P-5) of M/s Balram and Bansi Lal in which he was a partner. The said documents were submitted in complete violation of terms and conditions of the tender notice, Annexure P-2. As per the partnership deed, Annexure P-3, there were two partners, i.e. Balram and Bansi Lal, having 50% share each in M/s Balram and Bansi Lal whereas as per the profit and loss account statement, Annexure P-4, there were ten partners, namely, Banesh Kumar, Bansi Lal, Gopal Krishan, Gurdeep Kataria, Mool Raj, Pardeep Kataria, Sanjeev Kumar, Satpal, Tejpal Yadav and Balram and the profit sharing ratio of Balram and Bansi Lal was 20% each. According to the petitioner, respondent No.3 concealed the material facts and had submitted false and fabricated documents. Despite that, respondent No.1 had allotted the contract in favour of respondent No.3. The petitioner served a legal notice dated 11.4.2016 (Annexure P-6) upon respondent No.1 for rejecting the bid of respondent No.3 on the basis of submission of false and fabricated documents. However, no action was taken thereon. Thereafter, the petitioner filed CWP No. 10647 of 2016 which was disposed of by this Court vide order dated 26.5.2016 (Annexure P-7) directing the official respondents to decide the representation dated 11.4.2016 within two weeks from the date of receipt of the certified copy of the order. In pursuance thereto, respondent No.1 vide order dated 27.6.2016 (Annexure P-8) rejected the representation/legal notice of the petitioner.

Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that respondent No.1 had rejected the representation of the petitioner on assumptions as he had failed to consider the documents submitted by respondent No.3 in its right perspective which were not as per the terms and conditions of the tender-notice.

4. We have heard learned counsel for the petitioner and do not find any merit in the submissions made by him.

5. Respondent No.1 sought clarification from Shri Bansi Lal that as per partnership deed dated 22.8.2007 (Annexure P-3), it consisted of two partners, i.e. Shri Balram and Shri Bansi Lal whereas as per the profit and loss account statement, there were 10 partners. Said Shri Bansi Lal submitted that after execution of the partnership deed on 22.8.2007, he had not entered into partnership deed but only used to assist/hire some persons to execute the work and no partnership deed was executed by him. The partners of the partnership deed remained same till date. Regarding profit and loss account statement, Shri Bansi Lal stated that the major share was held by him and Shri Balram and there was no inconsistency in the deed as the work had to be carried in a time bound manner. Keeping in view the urgency of the work involved as well as in order to provide proper transparency/uniformity and also to avoid any loss to food grains, he used to associate various persons and instead of giving salary to them, used to give them a share either in profit or salary-cum-profit out of the total earning of the firm. Respondent No.1 held that the members mentioned in the audited profit and loss account and balance sheet may be members/relatives within the meaning of Section 40A(2)(a) and (b) of the Income Tax Act, 1961 (in

short "the Act") but not the members of the firm as mentioned in the partnership deed. It was further noticed that as per Section 184 of the Act, the partnership firm is assessed as a firm, inter alia, if partnership is evidenced by an instrument, certified copy of instrument is submitted, individual share of partners are specified in the instrument. The income tax authorities have considered the partnership deed and the audited profit and loss account and balance sheet while assessing the return filed to have been without any defect. Further, profit and loss account and balance sheet had been audited by a registered Chartered Accountant for the purpose of filing return and since there was nothing on record that the said partnership deed had been objected to by the Chartered Accountant or the income tax authorities, so there was no ground to discard the partnership deed. Even it cannot be assumed that the Chartered Accountant and the income tax authorities had ignored this fact while auditing and considering the income tax return.

6. Further, in case of award of contract by the public authorities, it is essentially a commercial function. In case of award of contract is bonafide and is in public interest, exercise of jurisdiction under Articles 226/227 of the Constitution of India of judicial review was ordinarily not to be exercised even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review under Articles 226/227 of the Constitution of India will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. Reference may also be made in this regard to the decision of the Apex Court in **Jagdish Mandal v. State of Orissa and others 2007 (14) SCC 517.**

7. In view of the above, there is no illegality or perversity in the order dated 27.6.2016 (Annexure P-8) passed by respondent No.1 warranting interference by this Court under Articles 226/227 of the Constitution of India. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

July 28, 2016 **(RAMENDRA JAIN)**
gbs **JUDGE**

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes**