

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 16190 of 2016

Date of Decision: 11.8.2016

M/s Rahad Transport Company, Sirsa

....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. HPS Bhinder, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition under Articles 226/227 of the Constitution of India, the petitioner has prayed, *inter alia*, for issuance of a writ in the nature of certiorari for quashing E-Tender Notice dated 3.8.2016 (Annexure P-7) floating the fresh tender enquiry by the respondents by recalling earlier tender enquiry dated 5.5.2016 with regard to E-Tender Notice dated 15.4.2016 for Ellenabad Centre. Further, a writ of mandamus has been sought directing respondents No.2 and 3 to award the contract to the petitioner being the lowest successful bidder (L-1) in tender enquiry dated 5.5.2016 in relation to E-Tender Notice dated 15.4.2016.

2. Put shortly, the facts necessary for adjudication of the instant petition as narrated therein may be noticed. The petitioner is a partnership firm as per partnership deed dated 1.4.2013 (Annexure P-2). The partnership firm is registered with the Registrar of Firms, Sirsa vide Forms-

A & C dated 10.10.2013 (Annexure P-1 Colly). Shri Mahavir Parshad, one of the partners of the firm was authorized to file the present writ petition through Special Power of Attorney dated 25.4.2016 (Annexure P-3). Food Corporation of India (FCI) floated tender enquiry dated 5.5.2016 vide E-Tender Notice dated 15.4.2016 (Annexure P-4). In response thereto, the petitioner applied for award of handling and transport contract for Ellenabad Centre. The petitioner also applied for handling and transport contract for Bhattu and Barwala Centres. The petitioner also submitted requisite documents along with requisite earnest money and security deposits. The technical bid of the petitioner was evaluated on 6.5.2016 and on being found in order, it was held to be qualified for opening of its financial bids for all the three centres, i.e. Ellenabad, Bhattu and Barwala. The financial bids of the petitioner and other successful bidders were opened on 22.6.2016 and the bid of the petitioner was found to be financially viable for Ellenabad and Bhattu Centres being the lowest bidder (L-1). As such, the petitioner was awarded contract for Bhattu Centre. However, the petitioner was not awarded contract for Ellenabad centre even though it was the lowest successful bidder (L-1). As per the Tender Summary Reports (Annexure P-5), the petitioner stood L-1, M/s Sai Transport Company stood L-2 being second lowest bidder and Shree Balajit Transport Corporation Registered stood L-3, being the third lowest bidder. Thus, the contract of Ellenabad Centres was liable to be awarded to the petitioner. Accordingly, the petitioner served a legal notice dated 1.8.2016 (Annexure P-6) upon respondents No.1 and 2 for allocation of work of Ellenabad Centre being the lowest successful bidder (L-1) in pursuance to the E-Tender Notice dated 15.4.2016 (Annexure P-4), tender enquiry dated 5.5.2016, but to no

effect. However, the respondents scrapped the tender enquiry dated 5.5.2016 in relation to E-Tender Notice dated 15.4.2016 (Annexure P-4) and called for fresh tender vide E-Tender Notice dated 3.8.2016 (Annexure P-7). Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that the petitioner was entitled to the award of the contract for Ellenabad centre in pursuance to E-Tender Notice dated 15.4.2016 (Annexure P-4), tender enquiry dated 5.5.2016. It was further submitted that the action of the respondents in not awarding the contract to the petitioner being the lowest successful bidder (L-1) was illegal and unsustainable in the eyes of law. Thus, challenge to E-Tender Notice dated 3.8.2016 (Annexure P-7) was made.

4. After hearing learned counsel for the petitioner, we do not find any merit in the writ petition.

5. The FCI vide E-Tender Notice dated 15.4.2016 (Annexure P-4), tender enquiry dated 5.5.2016 invited bids for award of handling and transport contracts for Ellenabad, Bhattu and Barwala Centres. The petitioner applied for Ellenabad, Barwala and Bhattu Centres and was awarded the contract for Bhattu Centre being the lowest bidder. Though according to the petitioner, it was the lowest bidder for Ellenabad as well but the respondents had scrapped tender enquiry dated 5.5.2016 vide E-Tender Notice dated 15.4.2016 (Annexure P-4) and called for fresh tender vide E-Tender Notice dated 3.8.2016 (Annexure P-7). It was within the domain of the respondents to have scrapped the E-Tender Notice and to call for the fresh E-Tender. Further, the respondents had taken the decision for fresh E-Tender Notice in the best interests of the FCI. The decision taken by the respondents has not been shown to be suffering from any arbitrariness or

malafides. In such a situation, the inviting of fresh tender by the respondent-FCI cannot be faulted. Further, no letter was issued to the petitioner awarding contract in its favour and, therefore, no legally enforceable right had accrued in favour of the petitioner.

6. The Supreme Court in **Jagdish Mandal v. State of Orissa and others 2007(14) SCC 517** had held that the contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.

7. Learned counsel for the petitioner could not point out any illegality or perversity in the E-Tender Notice dated 3.8.2016 (Annexure P-7) issued by the respondents 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

August 11, 2016
gbs

(RAMENDRA JAIN)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes