

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-18200-2016 (O&M)

Date of Decision: September 05, 2016

M/s Sandeep Transport Company

.....Petitioner

Versus

Food Corporation of India and another

.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present: Mr.Akshay Bhan, Sr.Advocate with
Mr.Gaurav Chopra, Advocate
for the petitioner.

.....

SURYA KANT, J.

[1] The legality of the FCI order dated 29.08.2016 rejecting the petitioner's Technical Bid is under challenge in this writ petition.

[2] Some of the conditions contained in the Tender Notice, which are undisputedly sacrosanct and enforceable through Court of law and as contained in Clause 3(I) read as follows:

“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.”

[3] Clause 3(a) of the **General Instructions** of the Tender Document speaks as follows:-

“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 B.G. 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 correctly.

(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 correctly and timely.”

[4] The petitioner has 'work experience' for transportation in FCI and it relied upon such 'Work Experience Certificate'. Yet, in the application form under the clause 'List of the Documents to be attached', the petitioner mentioned against Serial No.6 as follows:-

“6. Copy of EPF Code Number and Proof of Deposit of EPF for the relevant experience period, if applicable.

Yes/No **N.A.**”

[5] The petitioner admittedly did not attach the proof of deposit of EPF and also did not disclose the EPF Code Number. For this deficiency, its technical bid has been turned down vide the impugned order (Annexure P4)

stating that:-

“ M/s Sandeep Transport Co., Ambala Cantt. Has enclosed the work experience certificate of HTC Barara (Contract period 16.06.12 to 15.06.2014) for transportation work only. Whereas, at Shahbad Railhead handling work is also performed by the contractor and EPF liability, clearance is mandatory requirement. Since, M/s Sandeep Transport Co. has not submitted EPF Code No. payment of EPF dues and N.D.C. From concerned RPFC of experience period during which he executed composite Handling and Transport work.

Hence Technical bids of M/s Kulbir Singh & Company, Kurukshetra and M/s Sandeep Transport Co., Ambala Cantt. are rejected.”

[6] We have heard learned counsel for the petitioner and gone through the Tender Document(s) including terms and conditions reproduced above.

[7] In our considered view, Clause 3(a) of the E-Tender Notice (Annexure P1) has to be read with Clause 3(I) of the DNIT issued by FCI (Annexure P3) and once read together both the conditions are mutually supplementary, leaving no escape except to hold that without 'Work Experience' of 'Railhead Handling or Transportation', the tenderer would be ineligible and once such tenderer relies upon the 'Work Experience' of Railhead Handling or Transportation, he was obligated to disclose the EPF Code number as well as No Due Certificate of EPF deposits. Since the petitioner concededly failed to comply with the last condition, no fault can be found with the rejection of its technical bid.

- [8] Dismissed.
- [9] Needless to say that in the event of fresh tender the petitioner would be entitled to bid alongwith relevant documents.

(SURYA KANT)
JUDGE

September 05, 2016
meenuss
Whether speaking/reasoned
Whether Reportable

(SUDIP AHLUWALIA)
JUDGE
: Yes/No
: Yes/No