

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 18473 of 2016

Date of Decision: 6.9.2016

Pardeep Kumar

....Petitioner.

Versus

Union of India and others

...Respondents.

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

PRESENT: Mr. Mansur Ali, Advocate with
Mr. H.S. Deol, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 24.8.2016 (Annexure P-9) passed by respondent No.2 rejecting his claim. Further, a direction has been sought to respondents No.2 and 3 not to include the Contract Labour Handling Charges in the E-Tender Notice (Annexure P-1) and the bid so thereafter submitted by the petitioner qua Sirsa Centre and in case they wanted to include the said charges, the petitioner be allowed to withdraw from the bid and the Earnest Money Deposit (EMD) be refunded to him along with interest.

2. A few facts necessary for adjudication of the instant petition as narrated therein may be noticed. Respondents No.2 and 3 vide E-Tender Notice (Annexure P-1) invited tenders for the appointment of contractor for

loading/unloading/handling and transport of foodgrains. In response thereto, the petitioner applied for the tender vide application dated 5.5.2016 (Annexure P-2). The technical bid of the petitioner was opened on 6.5.2016 and after evaluating the same, his financial bid was opened on 12.7.2016. The petitioner's tender was found to be lowest and as such, the same was to be awarded to the petitioner. Vide letter dated 11.7.2016 (Annexure P-3) the petitioner informed respondent No.3 that the tender was with regard to TC Sirsa. For another two centres, namely, Dheen Taniya Mandi, Sirsa and Malekha, Sirsa, the petitioner had also submitted his bids for which there was no notification by the Ministry of Labour, Government of India that there cannot be contract labour by private contractor/transporter. The petitioner had got both the tenders and was required to deposit the security of ₹ 30,500/- and ₹ 2,20,000/-, respectively with respondents No.2 and 3. The Ministry of Labour, Government of India vide notification dated 6.7.2016 (Annexure P-4) de-notified the Sirsa Centre with regard to contract labour charges. According to the petitioner, the same was done after the issuance of tender notice on 15.4.2016 and after the technical bid dated 6.5.2016. The petitioner moved a representation dated 6.8.2016 (Annexure P-5) to respondent No.2 for award of contract to him for Sirsa Centre. For Sirsa Centre, the petitioner had deposited the earnest money vide receipt dated 5.5.2016 (Annexure P-6). If respondents No.2 and 3 wanted to incorporate the contract labour in the category of 'handling', they could have brought in a corrigendum which was not done. The FCI has been issuing corrigendum as and when so required. In the present case also, one corrigendum (Annexure P-7) was issued with regard to certain terms, but no corrigendum was issued by the FCI for contract labour charges. The

petitioner filed CWP No. 16364 of 2016 which was disposed of by this Court vide order dated 12.8.2016 (Annexure P-8) with a direction to respondent No.2 to take a decision on the representation dated 6.8.2016 (Annexure P-5) moved by the petitioner. In pursuance thereto, respondent No.2 vide order dated 24.8.2016 (Annexure P-9) rejected the representation of the petitioner. Hence, the present writ petition.

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

4. The petitioner applied for the tender vide application dated 5.5.2016 (Annexure P-2) for the appointment of contractor for Sirsa Centre for loading/unloading/handling and transport of foodgrains in pursuance to the tender notice, Annexure P-1, issued by respondents No.2 and 3. On acceptance of the technical bid of the petitioner opened on 6.5.2016, the financial bid was opened on 12.7.2016. The contract was awarded to the petitioner being the lowest bidder (L-1). The petitioner was directed to complete all the required formalities so as to enable him to join as TC, Sirsa vide letter dated 4.8.2016. As per Section 7(i)(a) and (b) of the Model Tender Form, the petitioner was required to deposit the security amount within fifteen working days of the acceptance of the tender. Instead of complying with the aforesaid provisions of tender, the petitioner had filed the representation. Respondent No.2 while rejecting the claim of the petitioner had noticed that the petitioner cannot be allowed to take a deviation as the tenders were invited for Handling and Transport Contract and the petitioner submitted the tender by accepting the terms and conditions contained thereunder. Further, the petitioner was called upon to comply with the Clauses 7 and 8 of the tender. On failure to do so, the

claim of the petitioner was rejected by respondent No.2 vide order dated 24.8.2016 (Annexure P-9). The relevant observations recorded by the competent authority while rejecting the representation of the petitioner read thus:-

“The representation dated 06.08.2016 has been considered. In the said representation, the petitioner has taken the plea that the earlier handling work at Sirsa was carried out by FCI's departmental labours and under the belief of same he has applied for HTC Sirsa. He has further stated that the notification issued by the Government, has been stayed by the Hon'ble High Court of Madras in cases WNP No. 22824, 22826, 22828 and 22830 of 2016 vide order dated 29.07.2016. He has requested to allow him to join the contract for carrying out the transportation work only and not labour work, in view of aforesaid stay order.

After due consideration of the matter including the submissions made by the petitioner during the personal hearing on 24.08.2016 at 02:30 PM vis-a-vis the record pertaining to the case, it is stated that the Tender Notice was issued by the FCI, Regional Office, Panchkula, for appointment of contractor for loading/unloading/handling and transport of foodgrains and allied material etc. for a period of two years from various godowns including that of Sirsa Centre (FCI District Hisar). It is not denying the fact that in response thereof, the

petitioner also submitted his tender for Sirsa Centre and in response thereof, also submitted his Technical Bid and Price Bid duly signed and submitted by way of e-tendering. On the acceptance of the Technical Bids, the Price Bids of the tenderers were opened wherein the petitioner was found to be L-1 and his tender was accepted. Therefore, said Sh. Pardeep Kumar was required to complete all the required formalities so as enable him to join as HTC Sirsa vide letter dated 04.08.2016. As per Section 7(i)(a) and (b) of MTF, said Shri Pardeep Kumar was required to deposit security amount within fifteen working days of acceptance of his tender. Instead of complying the aforesaid provisions of tender, said Shri Pardeep Kumar has made the instant representation. At this stage the petitioner cannot be allowed to take a deviation, as the tenders were invited for Handling & Transport Contract and the petitioner submitted the tender while accepting the terms and conditions contained therein under his signatures and now at this stage, the petitioner cannot be allowed to say that the contract was only for transport and he would not carry out the handling operation. As regards to interim order dated 29.07.2016 passed by the Hon'ble Madras High Court in WP No. 22826, 22828 and 22830 of 2016, the same was not having any bearing in the present case as the tender was invited for Handling and Transport

Contractor. Moreover, the interim order dated 29.07.2016 has been vacated by the Hon'ble High Court of Madras vide order dated 17.08.2016. Regarding consent given for extension of bid validity by mentioning 'TC', same has no relevance in the case as he has applied for Handling and Transport Contract and tender terms will remain same till the expiry of contract and he cannot make request to amend them.

It is also denying the fact that in the terms and conditions governing the contract for transport, unloading, loading and handling of foodgrains etc., as contained in Annexure I of MTF (Technical Bid), under Clause 7(c)(iv), it was provided as under:-

“7. Security deposit:-

(a) to (c) (iii) XX XX XX

(iv) In the event of the Tenderer's failure, after the communication of acceptance of the tender by the Corporation, to furnish the requisite Security Deposit by due date including extension period, his Contract shall be summarily terminated besides forfeiture of the Earnest Money and the Corporation shall proceed for appointment of another contract. Any losses or damages arising out of and incurred by the Corporation by such conduct of the contractor will be recovered from the contractor, without prejudice to any other

rights and remedies of the Corporation under the Contract and Law. The contractor will also be debarred from participating in any future tenders of the Corporation for a period of five years. After the completion of the prescribed period of five years, the party may be allowed to participate in the future tenders of FCI provided all the recoveries/dues have been effected by the Corporation and there is no dispute pending with the contractor/party.”

In view of the above, the representation dated 06.08.2016 submitted by the petitioner is hereby rejected and the petitioner is again called upon through this order to comply with the provisions of Clause 7 and 8 of the tender duly accepted by him, failing which, the contract would be terminated at his risk and costs. As the movements of the foodgrains would be suffering in the event of non-compliance of the aforesaid provision by the petitioner, therefore, the petitioner is required to do the needful within a period of one week to avoid the consequences provided in the aforesaid sub clause (iv) of the tender.”

5. Learned counsel for the petitioner could not show any illegality or perversity in the order dated 24.8.2016 (Annexure P-9) rejecting the claim 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 and the Court's indulgence in such matter should be minimal. Principles of equity and natural justice stay at a distance. 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. The Court should exercise judicial restraint unless illegality or arbitrariness on the part of the Government in these matters is apparent. No ground for interference by this Court under Articles 226/227 of the Constitution of India is made out. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

September 6, 2016
gbs

(RAMENDRA JAIN)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes