

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 18732 of 2016

DATE OF DECISION : 20.12.2016

M/s Zimidara Transport Company

.... 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. Anurag Chopra, Advocate,
for the petitioner.

Mr. Samir Rathore, Advocate, for
Mr. Sumeet Goel, Advocate,
for respondent Nos. 1, 2 and 5.

Mr. Gurminder Singh, Senior Advocate, with
Mr. R.P.S. Bara, Advocate,
for respondent No.3.

* * *

RAMENDRA JAIN , J.

1. Briefly stated, the facts of the case are that respondent No.2 in pursuance to the Notice Inviting Tender (NIT) under the two bid system invited parties for appointment of Transport Contractor (TC) at Centre Sunam for a period of two years and issued the tender inquiry dated 26.07.2016 (Annexure P-1). The petitioner Company submitted its tender and undertaking along with the requisite forwarding letter as prescribed in the MTF/instructions issued by respondent No.1. Respondent Nos. 3 and 4 also submitted their respective tender bids (Annexures P-3 and P-4) through

their submission dated 25.7.2016. The petitioner raised objections in the tender submission documents submitted by respondent Nos. 3 and 4 and addressed a legal notice dated 4.8.2016 (Annexure P-5) to respondent No.2 duly highlighting the omissions.

2. While raising objections to the tender submission documents submitted by respondent No.4, it was stated that the tender submission form was not filled accurately and neatly. In the forwarding letter, Appendix-I on Page 43, tender number was not mentioned. The Format – B submitted by respondent No.4 was not in accordance with the specimen as provided in the tender inquiry/instructions issued by respondent No.1. With regard to the tender submission documents submitted by respondent No.3, it was stated that column No.4 in Appendix – I was not filled in. All the pages of the tender submission documents were not stamped. On Appendix – I, respondent No.3 used the short form of the word 'point' and stated 'PO' instead of writing the complete word. Certain other discrepancies were also pointed out by the petitioner in the tenders submitted by respondent Nos. 3 and 4. The petitioner sent another legal notice dated 15.8.2016 stating therein its apprehension that its technical bid may not be rejected due to any omission which was not material in nature as it had not written the name of Rail Head, Sunam in Column I of Appendix I.

3. Since respondent No.2 did not give any response to the said legal notices, therefore, the petitioner filed CWP No.16833 of 2016 in this Court seeking a direction to respondent No.2 to consider its technical bid for TC Sunam. Further prayer was made for a direction to respondent No.2 to reject the bids of respondent Nos. 3 and 4. The said writ petition was

disposed of vide order dated 22.8.2016 (Annexure P-7) directing respondent No.2 to take a decision on the legal notices dated 4.8.2016 and 15.8.2016 in accordance with law after affording an opportunity of hearing to the petitioner. According to the petitioner, before the said order could be communicated to respondent No.2, at about 4 PM on the same day, the office of respondent No.2 passed the order dated 22.8.2016 (Annexure P-8) along with an email communication of even date (Annexure P-9) certifying that the technical bid of the petitioner had been rejected. Thereafter, in compliance with the aforesaid order dated 22.08.2016 passed by this court in CWP No. 16833 of 2016, respondent No.2 afforded an opportunity of hearing to the petitioner and vide order dated 01.09.2016 (Annexure P-14) rejected its bid. According to the petitioner, the impugned orders were passed by respondent No.2 hurriedly and with malafide intention. The price bid of the petitioner was the most conducive in comparison to the price bid submitted by respondent Nos. 3 and 4.

4. Hence, through the instant writ petition under Articles 226/227 of the Constitution of India, the petitioner prays for issuance of a writ in the nature of mandamus declaring the tender process carried out by respondent No.2 in pursuance to tender inquiry dated 26.7.2016 (Annexure P-1) whereby the technical bid dated 25.7.2016 (Annexure P-2) submitted by it for appointment of TC at Sunam has been rejected vide impugned orders dated 22.8.2016 (Annexure P-8) and 01.09.2016 (Annexure P-14), as illegal and arbitrary. Further prayer has been made for restraining respondent No.2 from allotting the work of TC Sunam in pursuance to technical evaluation

and opening of financial bids of the successful bidders during the pendency of the writ petition.

5. During the pendency of the writ petition, the respondent Corporation issued a letter dated 03.10.2016 (Annexure P-15), regarding appointment of respondent No.3 as regular TC at Sunam, for a period of two years (15.09.2016 to 14.09.2018).

6. Learned counsel for the petitioner argued that material omissions in the tender documents submitted by respondent Nos. 3 and 4, as pointed out by the petitioner in its legal notice dated 04.08.2016, have been wrongly and illegally ignored by respondent No.2 and their technical bids have been found responsive, whereas due to non-mentioning of the name of Rail Head by the petitioner in Clause 1 of Appendix – I of its tender documents, its technical bid has been found non-responsive, in spite of the fact that in the same very Clause, it was stated that “all storage points of the Center Sunam as mentioned in the NIT and other storage points for which rates will be fixed by the Corporation under Part I (7) of the MTF”. Thus, mentioning of the words “Center Sunam” in Clause 1 of Appendix – I would mean that the tender was submitted for appointment of TC to Rail Head, Sunam. Even in the Tender Submission Undertaking submitted by the petitioner, it was mentioned that it was for “TC Sunam”. Thus, non-mentioning of the name of Rail Gate in Clause 1 of Appendix – I cannot be said to be detrimental to interest of the respondent Corporation, particularly when the same type of ambiguities, as pointed out in the tender submission documents of respondent Nos. 3 and 4, were held to be not detrimental to

interest of the respondent Corporation. Hence, rejection of the technical bid of the petitioner is illegal and arbitrary, and against the principles of natural justice. Therefore, the impugned orders dated 22.08.2016 and 01.09.2016, finding the technical bid of the petitioner as non-responsive, are liable to be quashed.

7. On the other hand, learned counsel for the respondents argued that technical bid of the petitioner was rightly rejected by respondent No.1, as in Clause 1 of Appendix I submitted by the petitioner, name of Rail Head was not disclosed, which is a material ambiguity, which might prove detrimental to interest of the respondent Corporation in future. The objections raised by the petitioner in its legal notice dated 04.08.2016 were duly considered before taking a decision on the acceptance of technical bids.

8. We have given our thoughtful consideration to the rival contentions of learned counsel for the parties.

9. Admittedly, in the Tender Submission Undertaking submitted by the petitioner, it was specifically mentioned that name of the Tender/Work was "TC Sunam". Further, Column 1 of Appendix -1 submitted by the petitioner reads as under :-

"I submit the Online Tender for appointment as Transport Contractor from all storage points of the Center Sunam as mentioned in the NIT and other storage points for which rates will be fixed by the Corporation under Part I (7) of the MTF to Rail Head."

Thus, even if the word 'Sunam' could not be written in correspondence to "Rail Head", the same could not be a valid ground to reject the technical bid of the petitioner as from perusal of the entire tender form, it is very much clear that it had submitted the bid for Rail Head, Sunam. In the facts and circumstances of the case, in our opinion, this could not be a factor to reject the technical bid of the petitioner as it cannot be said to be detrimental to the interest of the respondent Corporation in any manner.

10. Viewed from another angle, there were certain ambiguities in the tender documents submitted by respondent Nos. 3 and 4, as pointed by the petitioner in its legal notice dated 04.08.2016, which have been ignored by respondent No.2. In Clause 5 of Appendix – I of the tender document submitted by respondent No.4, tender number was not mentioned and the said column was left blank. Vide impugned order dated 01.09.2016, this ambiguity has been ignored by stating that Appendix – I consisted of two pages and the contractor had mentioned the tender number on its first page, but not on the second page. Similarly, in Clause 1 of Appendix – I of the tender document submitted by respondent No.3, instead of writing the complete word 'point' its short form was used as 'PO'. This short form 'PO' denotes many words, like "Probation Officer", "Presiding Officer" "Proclaimed Offender" and "Post Office" etc. Thus, without seeking any clarification from respondent No.3, how the respondent Corporation came to the conclusion that the short form 'PO' was used for "point". Hence, it cannot be said that there was no ambiguity in the tender documents submitted by respondent Nos. 3 and 4.

11. The aforesaid facts and circumstances lead to the conclusion that rejection of the technical bid of the petitioner is legally unsustainable and against the principles of natural justice.

12. Consequently, the impugned orders dated 22.08.2016 (Annexure P-8) and 01.09.2016 (Annexure P-14) passed by respondent No.2 are set aside. As a necessary corollary, the subsequent appointment of respondent No.3 as regular TC at Sunam, for a period of two years (15.09.2016 to 14.09.2018), vide letter dated 03.10.2016 (Annexure P-15), is also set aside. The respondent Corporation is directed to consider the technical bid of the petitioner, along with other bidders, in accordance with law.

13. Petition is, accordingly, allowed in the aforesaid terms.

(RAMENDRA JAIN)
JUDGE

December 20, 2016
ndj

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes