

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 19630 of 2016

Date of Decision: 21.9.2016

M/s Walia Logistics, Nadala, Kapurthala

....Petitioner.

Versus

Food Corporation of India, Chandigarh and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE KULDIP SINGH.**

PRESENT: Mr. Praveen Gupta, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. The petitioner seeks quashing of the order dated 8.7.2015 (Annexure P-8) vide which its work contract of transportation of foodgrains has been terminated with forfeiture of earnest money and had also been debarred from participating in any future tenders for the period of five years. Further a direction has been sought to respondent No.4 to decide the application/complaint dated 21.8.2015 (Annexure P-10) moved by the petitioner in a time bound manner.

2. The respondents invited tenders for the Road Transport Contracts for transporting foodgrains from Bholath to Meer Bazar which is at a distance of 435 kilometers. As per Clause 6 of the tender, the tenderer was to deposit the earnest money @ 2% value of the contract estimates and the successful tenderer was entitled to get the Earnest Money Deposit (EMD) adjusted towards the security deposit to be paid by him. In response thereto, the petitioner applied for the tender. The tender of the petitioner was accepted and vide order dated 9.6.2015 (Annexure P-1), the work contract was awarded to the petitioner for the work of transportation of

foodgrains from Bholath to Meer Bazar which is at a distance of 435 kilometers and a security amount of ₹ 22,41,650/- @ 5% of the contract value together with two bank guarantees for the amounts of ₹ 67,24,950/- and ₹ 44,83,300/- was to be furnished within 15 working days from the date of the order with respondent No.3. Respondent No.3 vide letter dated 15.6.2015 (Annexure P-2) asked the petitioner to deposit the security with two bank guarantees within the prescribed period. The petitioner got prepared the pay order amounting to ₹ 2,24,165/- (50% of 5% of the contract value and after deducting the amount of EMD for ₹ 8,96,660/-) on 27.6.2015 (Annexure P-3) and also prepared two bank guarantees dated 27.6.2015 (Annexures P-4 and P-5, respectively) from the Punjab National Bank amounting to ₹ 67,24,950/- and ₹ 44,83,300/- and furnished to respondent No.3 on 27.6.2015. However, the said securities were not accepted by respondent No.3 on the ground that the same were to be deposited upto 26.6.2015. As per the calendar for the month of June, 2015 (Annexure P-6), 2nd Saturdays and all Sundays were non-working days and therefore, 15 working days from the date of issuance of work order dated 9.6.2015 would be completing on 27.6.2015. The petitioner sent a letter dated 29.6.2015 (Annexure P-7) to respondent No.2 as 28.6.2015 happened to be a Sunday apprising that even by taking 26.6.2015 as the closing date for submission of the security, there was a delay of one day which was on account of failure of the system in the bank due to which the security deposit and the bank guarantees could not be prepared. Further, as per the terms and conditions of the tender, the time period of 15 working days was liable to be extended by another 15 working days by imposing penalty @ 1% of the total value of the security deposit. However, respondent No.2

vide order dated 8.7.2015 (Annexure P-8) terminated the contract with forfeiture of the EMD and debarred the petitioner from participating in future tenders for a period of five years. Due to failure of the system of the bank on 26.6.2015, the petitioner could only get an FDR amounting to ₹ 44,50,000/- prepared for three years for issuance of the bank guarantee in favour of the Food Corporation of India, Kapurthala which is discernible from the certificate dated 22.7.2015 (Annexure P-9) issued by the Punjab National Bank, Jalandhar. Thereafter, the petitioner moved an application/complaint dated 21.8.2015 (Annexure P-10) to respondent No.4 for restoration of the contract work to it, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has sent the application/complaint dated 21.8.2015 (Annexure P-10) to respondent No.4, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.4 to take a decision on the application/complaint dated 21.8.2015 (Annexure P-10), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of three months from the date of receipt of certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

September 21, 2016
gbs

Whether Speaking/Reasoned
Whether Reportable

(KULDIP SINGH)
JUDGE

Yes/No
Yes/No