

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

CWP No. 23771 of 2016
DATE OF DECISION : 18.11.2016

M/s Shri Sai Group

.... PETITIONER

Versus

Food Corporation of India

..... RESPONDENT

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

Present: Mr. Anurag Chopra, Advocate, for the petitioner.

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RAMENDRA JAIN, J.

1. Food Corporation of India, Panchkula – respondent, vide notice dated 13.11.2015 (Annexure P-1), invited financially sound parties for awarding contract of handling and transport of food grains and allied material etc. in and around Centre Ratia for 2016-2018, under two bid system at Central Public Procurement Portal. The last date for submission of the bid was 11.12.2015. Pursuant to the aforesaid tender notice, on 07.12.2015, the petitioner firm submitted its bid along with forwarding letter and all requisite letters. After examining the bid of the petitioner firm along with other bidders, bid submitted by the petitioner firm was considered to be technically qualified, whereas those of other bidders were found to be technically disqualified, vide letter dated 27.01.2016. Pursuant thereto, the petitioner firm duly submitted earnest money and bank guarantee in accordance with the tender notice. However, to the utter shock and dismay of the petitioner firm, the work was not allotted to it, as one of the bidders, namely M/s Shri Balaji Transport Corporation, had challenged the said letter dated 27.01.2016 by way of CWP No. 2440 of 2016, which

was decided on 18.02.2016, and bid of M/s Shri Balaji Transport Corporation was also declared to be qualified. Thereafter, the respondent Corporation did not allot the work to the petitioner firm on scrutiny of the bids of the petitioner firm as well as of M/s Shri Balaji Transport Corporation. Consequently, by way of CWP No. 6564 of 2016, the petitioner firm challenged the qualification of its competitive bidder, namely M/s Shri Balaji Transport Corporation. Vide order dated 01.09.2016 (Annexure P-2), the said writ petition was allowed and the respondent Corporation was directed to consider allotment of work to the petitioner firm in pursuance to the online tender. Resultantly, the petitioner submitted representations dated 30.09.2016 and 15.10.2016 (Annexures P-3 and P-4) to the respondent Corporation, along with a copy of the aforesaid order dated 01.09.2016, seeking allotment of the work under the orders of this court passed in CWP No. 6564 of 2016 for a period of two years, as specified in the tender notice. It was stated that the tender was initially floated for two years, starting from the date of allotment of work to the selected party, but the work could not be executed from 09.02.2016 till 01.09.2016, the date on which the CWP No. 6564 of 2016 filed by the petitioner was allowed. Therefore, implementation of the allotment for operation of the work should be treated as operative from 01.09.2016. The said representations are still pending.

2. Hence, by way of present writ petition under Articles 226/227 of the Constitution of India, the petitioner has sought issuance of a writ in the nature of mandamus directing the respondent Corporation to comply with the terms and conditions of the e-tender notice dated 13.11.2015 (Annexure P-1) for appointment of Handling and Transport Contractors and

Road Transport Contractors for Centres of Haryana region for a period of two years. Further, a direction has been sought to be issued to the respondent Corporation to decide the representations dated 30.09.2016 and 15.10.2016 (Annexures P-3 and P-4) in accordance with law and to permit the petitioner firm to execute the work for two years with effect from 01.09.2016.

3. Learned counsel for the petitioner argued that the representations dated 30.09.2016 and 15.10.2016 (Annexures P-3 and P-4) submitted by the petitioner firm to allot work for two years with effect from 01.09.2016, the date on which its CWP No. 6564 of 2016 was allowed, are still pending before the respondent Corporation, without any action. Hence, direction has been sought to the respondent Corporation to take decision on the aforesaid respondents.

4. After giving our thoughtful consideration to the arguments raised by learned counsel for the petitioner, we find that the instant petition is devoid of any merit, because at this stage, no cause of action has accrued to the petitioner. The prayer regarding issuance of direction to the respondent Corporation to decide the representations of the petitioner is completely ill founded. The respondent Corporation is a Government organisation. The dispute between the petitioner and the respondent is contractual in nature. While examining the scope of judicial review in the matters of award of contracts, it was held by the Apex Court in **B.S.N. Joshi and Sons Ltd. vs. Nair Coal Services Ltd. and others**, (2006) 11 SCC 548, that the employer is the best judge to award contract and the court's interference in such matters should be minimal. The Court should normally exercise judicial restraint unless illegality or arbitrariness on the part of the

employer is apparent. It was held as under :-

“It may be true that a contract need not be given to the lowest tenderer but it is equally true that the employer is the best judge therefor, the same ordinarily being within its domain, court's interference in such matter should be minimal. The High Court's jurisdiction in such matters being limited in a case of this nature, the Court should normally exercise judicial restraint unless illegality or arbitrariness on the part of the employer is apparent on the face of the record.”

Further, the Apex Court in **Maa Binda Express Carrier and another Vs. Northeast Frontier Railway and others**, (2014) 3 SCC 760 with regard to the scope of judicial review in contractual matters, inter alia, noticed that the State authorities are required to be conceded greater latitude and their action is not open to judicial review unless it can be demonstrated to be malicious, arbitrary, unreasonable or misuse of its statutory powers.

5. In view of the aforesaid settled proposition of law, interference by this court at each and every point of time in the Government functions is totally unwarranted and undesirable. The instant petition is completely devoid of any merit. Dismissed.

6. Registry is directed to send a copy of this order to the respondent Corporation, to avoid its concealment by the petitioner.

**(RAMENDRA JAIN)
JUDGE**

November 18, 2016
ndj

**(AJAY KUMAR MITTAL)
JUDGE**