

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

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**Civil Writ Petition No.2440 of 2016(O & M)
Date of Decision:18.02.2016**

Shree Balaji Transport Corporation (Regd.)

....petitioner

Versus

Food Corporation of India, Panchkula and others

.....respondents

**CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI**

- 1.Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not? [YES]**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.Lovkesh Sawhney, Advocate and
Mr.Pankaj Gupta, Advocate
for the petitioner

Mr.J.S.Puri, Advocate
for respondent No.1

Mr.K.K.Gupta, Advocate
for respondent No.2

S.J.VAZIFDAR, ACTING CHIEF JUSTICE (ORAL):

CM No.2128 of 2016

Application is allowed as prayed for. Written statement
on behalf of respondent No.1 is taken on record.

Civil Writ Petition No.2440 of 2016

(1) The petitioner has challenged respondent No.1 having
rejected its tender on the ground that it is non-responsive. The
petitioner has also challenged the award of the work to respondent

No.2-private respondent.

(2) Respondent No.1 by a notice dated 11.12.2015, invited tenders. The petitioner and respondents No.2 and 3 submitted their tenders. It is not disputed that the petitioner fulfilled the eligibility criteria stipulated in the tender documents. The only ground on which the petitioner's tender has been rejected is that it had failed to duly sign each page of the annexures and appendices of the Model Tender Form (MTF) and to scan and upload the same in the e-procurement portal. The petitioner contends that it had duly signed the said annexures and appendices. The petitioner had signed the same by way of Digital Signature Card (DSC). Learned counsel for the respondents did not deny the same. They, however contend that the expression 'duly signed' in clause 8(c) (i) in the tender documents referred only to physical signatures and not to digital signatures with the use of DSC. Clause 8(c) (i) reads as follows:

8. Submission of Tender

xx xx xx xx xx

(c)The envelope/packet in online containing the technical bid shall include the following:-

(i)All the Annexures & Appendices of MTF duly signed on each page by the Tenderer should be scanned and uploaded in e-procurement portal.

(3) To determine the ambit of the words "duly signed" in Clause 8 (c) (i), it is necessary to also note the following provisions of the tender document:

3.Qualification conditions for Tender:

xx xx xx xx

(ii) Experience certificate in the proforma prescribed at Appendix VI shall be produced from customers stating proof of satisfactory execution and completion of the contract(s) besides duly certifying nature, period of contract and value of work handled.

5.Instructions for submitting Tender

xx xx xx xx

(b) Signing of Tender

(i) The authorized signatory shall possess Digital Signature Card(DSC) for submission of tender documents and MTF. The DSC holder/authorized signatory signing the tender shall state in what capacity he is, signing the tender, for example as sole proprietor of the firm or as a Secretary/ Manager/Director etc., of a Limited Company. In case of Partnership firm, the names of all the partners should be disclosed and the tender shall be signed by all the partners or by their duly constituted attorney, having authority to bind all the partners in all the matters pertaining to the contract. The original or an attested copy, of the registered partnership deed should be scanned and uploaded along with the tender. In case of limited company the names of all the Directors shall be

mentioned, and a copy of the resolution passed by the Company authorizing the person signing the tender to do so on behalf of the company shall be scanned and uploaded along with a copy of the Memorandum and Articles of Association of the Company.

(ii) The Digital Signature Card (DSC) holder signing the tender, or any document forming part of the tender, on behalf of another or on behalf of a firm shall be responsible to produce a proper Power of Attorney duly executed in his favour stating that he has authority to bind such other person, or the firm, as the case may be, in all matters, pertaining to the contract. If the Digital Signature Card (DSC) holder so signing the tender fails to produce the said Power of Attorney his tender shall be summarily rejected without prejudice to any other right of the Corporation under the law and EMD paid by him/her will be forfeited. The hard copy of Power of Attorney will be submitted by the successful tenderer at the time of awarding of the contract.

(iii) The power of Attorney should be signed by all the partners, in the case of the partnership concern, by the proprietor in the case of

proprietary concern, and by the person who by his signature can bind the company in case of the Limited Company. The Power of Attorney duly signed should be scanned and uploaded.

(4) As we mentioned earlier, the question is whether the annexures and appendices of the MTF could be said to be duly signed within the meaning of those words in clause 8(c)(i) by the application of digital signatures. In our view, the question must be answered in favour of the petitioner.

(5) The words 'duly signed' and the word 'signed', have not been defined in the MTF. We must, therefore, derive the meaning by reading the NIT as a whole. The provisions quoted above, itself indicate that the parties have been furnished the Digital Signature Cards. The clauses, further indicate that the bidders have been permitted the use of the Digital Signature Cards for the submission of tender documents. This is clear, for instance, from Clause 5(b)(i) and (ii) reproduced above. In fact, clause 5(b)(ii) supports the petitioner's case. The opening words "*the digital signature card holder signing the tender or any document forming part of the tender.....*" indicate that the digital signature card holder can sign any document forming part of the tender by the use of the Digital Signature Card.

(6) The instructions for Online Bid Submission read thus:

The bidders are required to submit soft copies of their bids electronically on the CPP Portal, using valid Digital Signature Certificates.

Instructions given below are meant to assist the bidders in registering on the CPP Portal, prepare their bids in accordance with the requirement and submitting their bids online on the CPP Portal.

SUBMISSION OF BIDS

2) The bidder has to digitally sign and upload the required bid documents one by one as indicated in the tender document.

(7) The instructions for the online bid submission quoted above, state that the bidder has to digitally sign and upload the required bid documents one by one as indicated in the tender document. The bid documents would include all the documents. This is a clear indication that the bidders were entitled to digitally sign all the documents. Even assuming that the bidders were entitled to physically sign the documents, it would not make any difference, for, they were, in view of the above clauses, entitled to also sign the documents digitally.

(8) A reference to the Information Technology Act, 2000 (for short 'the IT Act'), is also useful. Sections 2 (p) and (q) of the IT Act, read thus:

(p) "digital signature" means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3;

(q) "Digital Signature Certificate" means a Digital Signature Certificate issued under sub-section (4) of section 35...

We are conscious of the fact that we must interpret the

contract on its own terms. We assume that the provisions of the IT Act are not applicable. However, it is reasonable to presume that parties understood the words 'digital signatures' to have the same meaning as in the IT Act. The parties have not stated what they took these words in the tender documents to mean. It is not denied that the DSC used by the petitioner falls within the definition of a digital signature in Section 2 (p) and (q) of the IT Act. It is reasonable to presume that what the parties meant by digital signatures was a digital signature as defined in the IT Act. Moreover, in any event, the parties were supplied the Digital Signature Card by respondent No.1 and it is that which has been utilized by the petitioner to place the digital signatures.

(9) It is also pertinent to note that the petitioner had filled-in a tender in a similar manner on an earlier occasion and the same was accepted. We do not suggest that an error ought to have continued. However, according to us, there was no error.

(10) In the circumstances, the rejection of the petitioner's bid cannot be supported.

(11) Learned counsel for respondent No.2 contended that our judgment ought not to operate in the present case and that it ought to operate only prospectively. We cannot accede to this request. The petitioner's bid was rejected on 01.01.2016. The petition was filed on 04.02.2016. The work order was issued on 04.02.2016, itself. The matter was circulated for 05.02.2016. By our order dated 05.02.2016, we recorded the statement on behalf of respondent No.1 that it would not be possible for respondent No.2 to start operating the work order,

as the formalities would require about a week. We, therefore, did not think it necessary to pass an interim order at that stage. Respondent No.2 claims to have incurred expenses aggregating to about ₹15 lakhs. The same were incurred obviously after the work order was issued. Respondent No.2 was served with a copy of this order on 08.02.2016. He therefore undertook the expenses at his risk. In any event, the petitioner agrees to take over the contracts that respondent No.2 alleges to have entered into for hiring trucks subject to the respondent No.2 establishing the genuineness of those contracts and furnishing a copy thereof, during the course of the day. This is, of course, subject to the contracts being transferred to the petitioner by the truck owner.

(12) In the circumstances the impugned order dated 01.01.2016, rejecting the petitioner's bid, is quashed and set aside. Respondent No.1 shall open the petitioner's financial bid and proceed accordingly. The interim order dated 10.02.2016 shall also continue to operate and be implemented. It is clarified that it will be open for respondent No.1 to insist on physical signatures in respect of the contracts that are ultimately to be signed by the successful bidder.

The petition stands disposed of, accordingly.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

February 18, 2016

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(ARUN PALLI)
JUDGE