IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 2444 of 2016

Date of Decision: 6.9.2016

M/s Jat Transport Company, Dumarkha Kalan, Jind

....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. Bhoop Singh, Advocate for the petitioner(s).

Mr. K.K. Gupta, Advocate for respondents No.1 and 2.

Mr. Arun Chandra, Advocate for respondent No.3.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of two petitions bearing CWP Nos. 2444 and 2446 of 2016 as according to learned counsel for the parties, the identical issues are involved therein. For brevity, the facts are being extracted from CWP No. 2444 of 2016.

2. In CWP No. 2444 of 2016 filed under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 6.1.2016 (Annexure P-4) passed by respondent No.2 and uploaded on the website on 21.1.2016 rejecting its technical bid and accepting that of respondent No.4.

3. Put shortly, the facts necessary for adjudication of the instant petition as narrated therein may be noticed. Respondent No.1 invited tender on 13.11.2015 for HTC for its Dhamtan Centre for handling and transportation of foodgrain bags. The last date for submission of online tender was 10.12.2015 upto 6.00 pm and the technical bid was to be opened on 11.12.2015 at 10.00 am. Three parties, i.e., the petitioner, respondent No.4 and M/s Sushil and Company submitted their respective tenders. The contract value and general instructions (Annexure P-1) were uploaded on the website of respondent No.1. The qualification and other conditions were mentioned in the Technical Bid (Annexure P-2). As per para 3(iii) thereof, the tenderer was also qualified without the requisite experience if the estimated contract value of the contract was less than ₹ 5 crores by providing an undertaking that an additional performance guarantee in the form of bank guarantee of 10% of the contract value would be given, if selected. The estimated contract value of the present contract is ₹ 2.33 crores. Accordingly, the petitioner in the forwarding letter Appendix-1 (Annexure P-3) gave an undertaking in para 5 regarding the furnishing of additional bank guarantee as required in addition to the security deposit in the form of bank draft or pay order or through ECS and bank guarantee. Though the petitioner had submitted the requisite experience certificates for the financial year 2014-15 amounting to ₹ 1,42,79,785/-, but it did not upload the P&L account and balance sheet of the said firms in respect of which the experience certificates were submitted. Therefore, its experience qua those firms was not taken into consideration and the technical bid of the petitioner was rejected by respondent No.2 vide order dated 6.1.2016 (Annexure P-4) and was uploaded on the website on 21.1.2016. However,

the technical bid of respondent No.4 was accepted. Thereafter, the price bids of respondent No.4 and M/s Sushil and Company were opened and the contract was awarded to respondent No.4. Respondent No.4 annexed with the tender its one of the experience certificates (Annexure P-5) for the period 1.4.2014 to 31.3.2015 issued by respondent No.3 dated 8.5.2015 (Annexure P-6) for an amount of ₹ 4323021.62 out of the total experience of ₹ 14131646.62. According to the petitioner, respondent No.4 had not submitted 'No Dues Certificate' from the concerned RPFC and also did not submit the copies of monthly challan for the experience period with its tender as is discernible from Appendix-II (Annexure P-7). Hence, the present writ petition.

3. Upon notice of motion having been issued, the respondents have filed their respective written statements. Respondents No.1 and 2 in their written statement have pleaded that under Clause III of the Model Tender Form (MTF) containing the qualification conditions for the tender, a tenderer had two options, i.e. either to claim requisite experience and furnish the required documents in support thereof or to furnish undertaking that in the event of being successful, he would furnish an additional performance guarantee in the form of bank guarantee of 10% of the contract value. The petitioner preferred to claim the benefit of experience and also filled up the Appendix VI of the MTF claiming the work experience of seven separate firms and also attached the experience certificates therewith. As the petitioner had not attached the audited P&F Account and Balance Sheet of the relevant completed years for which the experience certificates had been submitted, therefore, the technical bid of the petitioner was rightly rejected. The other averments made in the writ petition were controverted

and a prayer for dismissal of the writ petition was made. Respondent No.3 in its written statement pleaded that since the answering respondent is a multi State Cooperative Society registered under the Multi State Cooperative Societies Act, 2002, therefore, the writ petition against it was not maintainable. It was further pleaded that the answering respondent has nothing to do with the rejection of the technical bid of the petitioner and acceptance of technical bid of respondent No.4 as it had issued only the experience certificate to respondent No.4. Respondent No.4 gave its written statement on the similar lines of the written statement filed by respondents No.1 and 2. Respondent No.4 denied the averments of the petitioner made in the writ petition and prayed for dismissal of the writ petition.

4. After hearing learned counsel for the parties, we do not find any merit in the writ petitions.

5. A perusal of narration of facts shows that respondent No.1 invited tenders on 13.11.2015 for HTC for its Dhamtan Centre for handling and transportation of foodgrain bags. In response thereto, three parties, i.e., the petitioner, respondent No.4 and M/s Sushil and Company submitted their respective tenders. The contract value and general instructions were uploaded on the website of respondent No.1 and the qualification and other conditions were mentioned in the Technical Bid. As per para 3(iii) thereof, the tenderer was also qualified without the requisite experience if the estimated contract value of the contract was less than ₹ 5 crores by providing an undertaking that an additional performance guarantee in the form of bank guarantee of 10% of the contract value would be given, if selected. The estimated contract value of the present contract was ₹ 2.33 crores. The petitioner had failed to upload the P&L account and balance

sheet of the said firms whose experience certificates were submitted. Therefore, the technical bid of the petitioner was rejected by respondent No.2 vide order dated 6.1.2016 (Annexure P-4) and was uploaded on the website on 21.1.2016. The technical bid of respondent No.4 was accepted. Once the form of the petitioner was not complete in all respects in terms of the tender notice containing all the details required to be furnished in view of MTF, the official respondents had rightly rejected the technical bid of the petitioner. Learned counsel for the petitioner could not point out any illegality or perversity in the order dated 6.1.2016 (Annexure P-4) passed by respondent No.2 rejecting the technical bid of the petitioner.

6. It was not disputed by the learned counsel for the petitioner(s) that the financial bids submitted by respondent No.4 in the present case and respondent No.3 in CWP No. 2446 of 2016 were more favourable to the respondents than the bids submitted by the petitioner in both the cases.

7. Further, 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. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer is made out. 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.

8. In view of the above, we do not find any justification to interfere with the tenders allotted to the respondent No.3 in CWP No. 2446

of 2016 and respondent No.4 in CWP No. 2444 of 2016. Thus, there is no merit in the writ petitions and the same are hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

September 6, 2016 **(RAMENDRA JAIN)**
gbs **JUDGE**

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes**