

Gurbax Singh
2016.09.21 11:46

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

**CWP No.6564 of 2016
Date of decision: 01.09.2016**

M/s Shri Sai Group

.....Petitioner

Vs.

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. J.S.Puri, Advocate for respondent-Food Corporation of India.

Ajay Kumar Mittal,J.

1. Through the instant writ petition under Articles 226/227 of the Constitution of India, the petitioner prays for a direction to respondent No.2 to consider allotment of work to it in pursuance to the Online Tender dated 24.11.2015, Annexure P.1 for handling and transportation of food grains for Centre Ratia RH Tohana vide Tender No.SANDC/13/HTC/T.E./Dec15 being the technically qualified bidder vide order dated 27.1.2016, Annexure P.5. Further prayer has been made for a direction to respondent No.2 to declare the tender submitted by respondent No.3 as unresponsive for the omission of having left blank the period for which the offer of acceptance was to be kept open in the tender submission documents and declaring the technical bid submitted by respondent No.3 as unqualified on this ground. Direction has also been sought for restraining respondent No.2 from opening the price bid of respondent No.3 and not allotting the said work to

respondent No.3.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The Food Corporation of India (FCI) having its regional office at Panchkula invited financially sound parties for appointment of handling and transport contract at Centre Ratia for the years 2016-18. Respondent No.2 vide Online Tender dated 24.11.2015 under two bid system at Central Public Procurement Portal floated Tender for the handling and transportation of food grains in and around Centre Ratia, R.H.Tohana. Subsequent to the Notice Inviting Tender, the prospective parties were to be governed by the instructions to tenderers for appointment of loading, unloading, handling and transport contractor at the Food Corporation Depots/godowns/rail heads. The said instructions laid down the conditions for qualification/disqualification. The petitioner submitted its forwarding letter as per NIT for appointment as Handling and Transport Contractor for HTC Ratia. The tender submission undertaking alongwith all the requisite documents as required were duly annexed with the forwarding letter submitted by the petitioner. Respondent No.3 also submitted its bid for appointment as handling and transport contractor for Ratia on 9.12.2015. According to the petitioner, the tender submission undertaking made by respondent No.3 through its forwarding letter in Clause 3 had an omission wherein it failed to fill the required form stating the period for which the offer of the tender was to be kept open for. Respondent No.2 did not take into account the said non responsive submission made by respondent No.3 but disqualified the tender submitted by it on the ground that respondent No.3 had not signed experience certificate which was an essential condition as per MTF/NIT and Appendix II and hence technically disqualified its bid. According to the petitioner, there were other omissions

in the tender submitted by respondent No.3 which were overlooked by respondent No.2. The order dated 27.1.2016, Annexure P.5 duly found the petitioner's bid to be technically qualified who should have been allotted the tender for HTC Ratia. Aggrieved by the order dated 27.1.2016, respondent No.3 challenged the disqualification of its technical bid in CWP No.2440 of 2016 in this Court. Vide order dated 18.2.2016, Annexure P.6, the said writ petition was allowed and the impugned order was set aside. Direction was also given that the financial bid of respondent No.3 may be opened and the interim order dated 10.2.2016 shall continue to be operative and implemented with a further direction that the FCI could insist for physical signatures in respect of contracts. According to the petitioner, respondent No.2 failed in its endeavour to technically disqualify respondent No.3 for the omission in the forwarding letter Appendix I. The petitioner after coming to know of the orders passed by this Court in CWP Nos.23472 of 2015, 2355 and 3454 of 2016 filed a review application before this Court for recalling the order dated 18.2.2016. Vide order dated 16.3.2016, Annexure P.7, this Court disposed of the application on the ground that the FCI had not raised the said condition for the disqualification of the tender and held that if the present petitioner was not satisfied with the decision of respondent No.2 for considering respondent No.3 tender to be responsive, it was open for it to challenge the same in separate proceedings. Hence the instant petition by the petitioner.

3. Reply by way of short affidavit of Mr. Santosh Kumar, Assistant General Manager (Contract), Food Corporation of India, Haryana has been filed on behalf of respondent Nos. 1 and 2 wherein it has been inter alia stated that the Tender Enquiry dated 11.12.2015 was published and invited for HTC Ratia. Three bidders i.e. petitioner, respondent No.3 and

one M/s Rampal and Co. participated in this tender. The technical bids were opened on 11.12.2015 and were thereafter examined. On 1.1.2016, the technical bids of respondent No.3 and M/s Rampal and Co. were rejected. Thereafter, the price bid of the petitioner was opened on 28.1.2016 and after thorough scrutiny and evaluation on 29.1.2016, the tender was awarded to the petitioner by the competent authority on 1.2.2016 and award letter was issued on 4.2.2016. Respondent No.3 filed CWP No.2440 of 2016 in this court on the ground that it had been wrongly declared as non responsive. The said writ petition was disposed of vide order dated 18.2.2016, Annexure P.6 and the impugned order was set aside. It was directed that the FCI shall open the financial bid of respondent No.3. The SLP filed by the FCI was withdrawn with liberty to file review petition which was not filed and hence the main judgment attained finality. The present writ petition was filed by the petitioner who was respondent No.2 in the earlier writ petition on the ground that respondent No.3 was liable to be declared non responsive in view of another judgment of this Court in CWP No.23472 of 2015 (***Khem Singh vs.FCI and others***). It has been admitted by the respondents in para 4 of the reply that judgment in ***Khem Singh's*** case (supra) is applicable in the case of respondent No.3 as it had kept column No.3 as blank and therefore, it ought to have been declared as non responsive.

4. We have heard learned counsel for the parties.

5. Admittedly, in pursuance to the Notice Inviting Tender, the petitioner submitted its forwarding letter for appointment as handling and transport contractor for HTC Ratia. The petitioner submitted the tender submission undertaking alongwith all the requisite documents as required. Respondent No.3 also submitted its bid on 9.12.2015. Respondent No.3 failed to fill the period for which the offer of the tender was to be kept open

for. Respondent No.2 did not take into account the non responsive submission made by respondent No.3 but disqualified its tender on the ground that it had not signed experience certificate which was an essential condition as per MTF/NIT and Appendix II. There were certain other omissions which were overlooked by respondent No.2. The petitioner's bid was found to be technically qualified vide order dated 27.1.2016. Aggrieved by the order, respondent No.3 filed CWP No.2440 of 2016 in this Court which was allowed vide order dated 18.2.2016 and the impugned order was set aside. It was directed that financial bid of respondent No.3 be opened and the interim order dated 10.2.2016 shall continue to be operated. The petitioner after coming to know of the orders passed by this Court in ***Khem Singh's*** (supra) case filed review application before this court for recalling the order dated 18.2.2016. Vide order dated 16.3.2016, this court observed that if the petitioner was not satisfied with the decision of respondent No.2, it could challenge the same in separate proceedings. Consequently, the petitioner filed the instant writ petition. In the reply, it has been categorically admitted by the respondents in the reply in para 4 that the judgment in ***Khem Singh's*** case (supra) is fully applicable to the case of respondent No.3 wherein the tender process was set aside and the work order issued in favour of respondent No.5 in that case was set aside. Para 4 of the reply reads thus:-

“4. That so far as applicability of ***Khem Singh's*** judgment on the bid of respondent No.3 i.e. M/s Balaji Transport is concerned, it is apparent from page 35 of the paper book that he had kept column No.3 as blank and therefore in view of ***Khem Singh's*** judgment, he ought to have been declared as non responsive.”

Moreover, vide order dated 27.01.2016, Annexure P-5, the petitioner's bid

was found to be technically qualified by the respondent authorities and thus it should have been allotted the work in question.

6. In view of the above, the writ petition is allowed. Respondent No.2 is directed to consider allotment of work to the petitioner in pursuance to the online tender dated 24.11.2015 for handling and transportation of food grains for Centre Ratia RH Tohana in accordance with law.

(Ajay Kumar Mittal)
Judge

September 01, 2016
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes