

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

CWP No. 7082 of 2016
DATE OF DECISION : 12.07.2016

M/s D.M. Trading Company

.... 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. S.K. Verma, Advocate, for the petitioner.

Mr. K.K. Gupta, Advocate, for respondents No.1 to 4.

Mr. Anurag Chopra, Advocate, for respondent No.5.

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RAMENDRA JAIN , J.

1. Respondent - Food Corporation of India invited E-tenders from financially sound parties having business competency, for handling and transportation of food grains for Julana Centre in District Rohtak, vide Tender Notice (Annexure P-1) published in the newspaper on 13.11.2015. Last date for online submission of tenders was fixed as 03.12.2015 and technical bids of tenders were to be opened on the next day, i.e. 04.12.2015. However, by way of a corrigendum (Annexure P-2), issued by the respondent Corporation, last date for online submission of tenders was extended upto 10.12.2015, and the date for opening of technical bids of tenders was revised to 11.12.2015. The prospective bidders were governed by certain terms and conditions as enshrined in the Instructions (Annexure

*“Tenders not accompanied by all the Schedules/
Annexures intact and duly filled in and signed
may be ignored.”*

Thus, it was incumbent upon the bidders to fill in all the tender documents. The petitioner firm – M/s D.M. Trading Company, Manesar, Gurgaon, submitted its tender (Annexure P-4) on 09.12.2015, leaving the space in para 3 of the forwarding letter filed along with the Tender submission undertaking, which was with regard to the period for which the offer of acceptance was kept open. In view of this factual position, vide order/tender summary report dated 31.03.2016 (Annexure P-11), the respondent Corporation rejected/technically disqualified the bid of the petitioner firm and allotted the work to respondent No.5 – Gaurav Kumar.

2. Being aggrieved, the petitioner firm by way of the present writ petition has sought issuance of a writ in the nature of certiorari for quashing the order/tender summary report dated 31.03.2016 (Annexure P-11), rejecting/technically disqualifying the bid of the petitioner firm and accepting the technical bid of respondent No.5 wrongly, illegally and arbitrarily. Further prayer has been made for issuance of a writ in the nature of mandamus and prohibition, directing respondents No.2 to 4 to accept the technical bid of the petitioner firm and to restrain them from allotting the work of handling and transportation of food grains for Julana Centre to respondent No.5.

3. Learned counsel for the petitioner firm contended that when respondents No.1 to 4 did not open the tender bids till 07.03.2016, which was the expiry date of the bids, proprietor of the petitioner firm submitted

extension of validity period of tender dated 07.12.2015 and to keep open the offer up to the extended date, i.e. 30.06.2016. Thus, if the space in the forwarding letter, regarding the period for which the offer of acceptance was to be kept open, was left blank by the petitioner firm, it could not have been a ground to disqualify its bid, as it has already submitted an affidavit of its proprietor for extension of validity period of tender up to 30.06.2016. He further contended that respondent No.5 did not submit any affidavit for keeping open the validity of offer beyond 45 days. Thus, the technical bid of respondent No.5 should have been disqualified on this ground alone, but he has been wrongly and illegally declared successful bidder by respondents No.2 to 4.

4. On the other hand, learned counsel for respondents No.1 to 4 contended that the technical bid of respondent No.5 has been rightly accepted, because in the forwarding letter, he had specifically mentioned to keep the offer open for acceptance up to and inclusive of 45 days and thereafter for extension of another 30 days. Even vide communication dated 17.02.2016 (Annexure R-1), respondent No.5 had extended the validity period of his tender up to 31.03.2016 and then vide another communication dated 31.03.2016 (Annexure R-2), he further extended the validity period of the tender up to 10.04.2016. Hence, considering the aforesaid communications, technical bid of respondent No.5 has rightly been accepted. He further contended that tender of the petitioner firm was non responsive, as the same did not contain the period of remaining open of its offer, despite it being a mandatory requirement. Thus, tender of the petitioner firm was not rightly considered.

5. After giving our thoughtful consideration to the submissions made by learned counsel for the parties, we find no merit in the instant writ petition.

6. The filling up of all the columns of the tender documents was a mandatory requirement for all the bidders. A perusal of the tender documents (Annexure P-4) of the petitioner firm shows that in para 3 of the forwarding letter, the space meant for the period for which the offer of acceptance was to be kept valid was left open, leaving the respondent Corporation and its officers in dark qua validity period of tender of the petitioner firm. The tender form, submitted by the petitioner at the initial stage itself being non-responsive for want of full particulars in the forwarding letter Appendix-I, the affidavit dated 29.03.2016 extending the period of the bid till 30.6.2016 would not render the petitioner eligible for competing in the bid process. Hence, the respondent Corporation had no other option but to reject/technically disqualify the tender of the petitioner firm. The matter is no longer res-integra. A Division Bench of this Court in ***Khem Singh Vs. Food Corporation of India and others*** (CWP No. 23472 of 2015, decided on 23.12.2015) has opined as under :-

“However, clause 8 of the ‘General Information to Tenderers’, quoted above, expressly required the bidders to scan and upload all the appendices which included the said forwarding letter-Appendix-I. That this was mandatory, is clear from clause 8 (d) of the ‘General Information to Tenderers’ which expressly provides that the tender which does not comply with these instructions shall be summarily

rejected. Clause 8(g) further provides that the tenders not accompanied by all the schedules/ annexures intact and duly filled in may be ignored. Having left blank, the period for which the offer was to be kept open, the 5th respondent's bid must be held to be non-responsive on a parity of reasoning qua the impugned order.”

As far as contention of learned counsel for the petitioner qua the tender documents (Annexure P-5) submitted by respondent No.5 is concerned, the same are found to be duly filled in.

7. Thus, we do not find any illegality or arbitrariness in the action of the respondent Corporation, while rejecting/technically disqualifying the tender of the petitioner firm and allotting the work in question to respondent No.5, vide the impugned order/tender summary report dated 31.03.2016 (Annexure P-11).

8. Petition is, accordingly, dismissed.

(RAMENDRA JAIN)
JUDGE

July 12, 2016
ndj

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No