201

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19701-2016 (O&M)
Date of decision : 17.08.2017

M/s Joshua Foods

... Petitioner(s)

Versus

Union of India and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Veneet Sharma, Advocate
for the petitioner.

Mr. Namit Kumar, Advocate
for respondent No.1.

Mr. I.P.S. Doabia, Addl. A.G., Punjab.

Ms. Deepali Puri, Advocate
or respondent Nos.3 & 4.

****

AMIT RAWAL, J.

CM-3043-2017

Annexures A-1 to A-4 filed with the application are taken on record, subject to all just exceptions. Office to tag the same at appropriate place.

CM stands disposed of.

CM-10283-2017

Prayer in the application under Order 1 Rule 10 read with Section 151 CPC is for deleting respondent No.1 from the array of parties.

Since the main petition has been decided, the present application has become infructuous.

Application stands dismissed as such.

<u>CM-11208-2017</u>

Prayer in the application under Section 151 CPC is for modification of the order dated 01.08.2017, wherein costs have been imposed for non-filing of written statement and the same was ordered to be recovered from the erring official.

For the reasons stated in the application, we are not inclined to modify our order dated 01.08.2017 and accordingly, the application is dismissed.

<u>CWP-19701-2016</u>

The petitioner has approached this Court by invoking the provisions of Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari quashing* the impugned order dated 18.07.2016 (Annexure P-10) passed by respondent No.2 asking it to deposit an amount of ₹68,23,252/- and to lift the stock. Further direction has been sought to the respondents to release the amount of security deposited by the petitioner along with interest @ 18%.

2. The facts as narrated in the petition are that the petitioner-Trader of Food Grains is duly registered with Punjab Government vide Registration No.(VRN/TRN) 03952035706 under the Punjab VAT Act, 2005 (in short 'the 2005 Act') vide registration certificate dated 28.08.2007 (Annexure P-2). The Punjab State Civil Supplies Corporation (in short 'the Corporation') issued an advertisement dated 10.01.2014 inviting the tenders for lifting of paddy/rice for the crop Kharif 2011-12 lying in the premises of M/s Dashmesh Agro Exports, Tarn Taran i.e. total 4032 bags being 14381.91 quintals. The petitioner submitted the tender by quoting the rate of 1232 per quintal. The respondent(s) accepted the tender of the petitioner.

On acceptance of the tender, vide letter dated 21.01.2014, the petitioner was required to deposit an amount of ₹4,03,250/- + ₹13,35,600/- (₹17,38,850/-) as security. On deposit of the aforementioned security amount, as per letter dated 30.01.2014, the petitioner was allowed to lift 40325 bags of paddy weighing 14381.91 quintals along with 5% VAT for a total price of ₹1,86,04,439/-. The terms and conditions provided a period of 30 days for the lifting of paddy. Vide letter dated 07/10.02.2014, the petitioner was called upon to deposit the aforementioned amount of ₹1,86,04,439/- within a period of 30 days for lifting of the stock and in case of any failure, the auction contemplated was to be taken. The petitioner lifted 219.69 bags and deposited an amount of ₹3,00,000/- with the respondent(s)/Corporation and in this regard, release order dated 20.02.2014 (Annexure P-3) was issued. The petitioner being unable to lift the paddy owing to the fact that his wife was having Brain Tumor, who eventually succumbed in April 2016, submitted a letter dated 04.03.2014 seeking extension of time for lifting the paddy, which was considered and accepted by the respondent(s) vide letter dated 18.03.2014 (Annexure P-4). Extension of 30 days was granted to the petitioner for lifting the stock from the date of issuance of the letter.

3. It was further submitted by the petitioner that during the extended period, it deposited an amount of ₹20,00,000/- and in lieu thereof, it was allowed to lift further 3926 bags weighing 1400.20 quintals paddy for a total price of ₹18,11,298/- including 5% VAT. The balance amount was adjusted towards the late delivery charges and interest. The petitioner made another request for extension on 14.04.2014 which was considered vide

letter dated 05.05.2014 (Annexure P-6) and another extension of 30 days was granted. The petitioner again deposited an amount of ₹47.50 Lacs and was allowed to lift 2066.79 quintals of paddy amounting to ₹26,73,599/- including 5% VAT. Again on 06.06.2014, a request for extension was made, but without acceding to it, vide order dated 10.07.2014, the security amount of ₹ 17,38,850/- deposited by the petitioner was, forfeited. The petitioner, in this regard, submitted a representation dated 21.07.2014. Since no action was taken, the petitioner was constrained to approach this Court vide CWP No.16220 of 2014 which was disposed of vide order dated 14.08.2014 with a direction to respondent No.3 to decide the representation. On 18.09.2014, the representation submitted by the petitioner was rejected by respondent No.3 by reiterating the previous order. The petitioner again approached this Court through CWP No.21409 of 2014 by challenging the orders dated 10.07.2014 and 18.09.2014. However, during the pendency of the writ petition, the respondent(s) issued a Tender Notice inviting fresh tenders for the sale of the remaining paddy lying in the premises of M/s Dashmesh Agro Exports, Tarn Taran and the last date for submission of tenders was 23.02.2015 at 2.30 p.m. The writ petition bearing CWP No.21409 of 2014 came up for hearing before this Court and vide order dated 21.02.2015 (Annexure P-8), permission was granted to the petitioner to submit bid in the proposed tender and with a further observation that the original bid would also be considered in the re-auction.

4. Learned counsel for the petitioner further argued that the respondent(s) was also granted liberty to sell the stock to the successful bidder in the event of the bid of the petitioner not being the highest and in case the bid of the petitioner being the highest, the petitioner would be

entitled to lift the stock, but subject to making the entire payment within one week. The petitioner received another letter dated 02.07.2015 (Annexure P-9) from the respondent(s), indicating that 1792 bags of paddy lying in the premises of M/s Dashmesh Agro, Tarn Taran were to be auctioned on 13.07.2015. The petitioner duly participated and in pursuance to the order dated 21.02.2015 (Annexure P-8), the bid of the petitioner was considered to be ₹1232/- per quintal. However, respondent(s) took no action for more than one year and vide impugned order dated 18.07.2016, the petitioner was called upon to deposit a sum of ₹68,23,252/- for lifting of the paddy. The aforementioned letter, according to him, is erroneous and lacks application of mind on the part of the respondent(s). The respondent(s) have not come out with any explanation for their inaction for a period of almost one year, whereas the petitioner's bid was accepted way back in July 2015. The letter dated 02.07.2015 (Annexure P-9) reveals that the petitioner had been asked to bid for 1792 bags of paddy and the total price of the same along with VAT came to ₹8.50 Lacs only at the rate of ₹1232 per quintal, as quoted by the petitioner and accepted by the respondent(s). In view of the order 21.02.2015 (Annexure P-8) passed by this Court, the security amount of ₹17,38,850/- deposited by the petitioner, was to be adjusted. However, the respondent(s) without adjusting the said amount, instead had raised the impugned demand of ₹68,23,250/-. It was, thus, urged that the impugned order, under challenge, is liable to be set aside.

5. *Per contra*, Ms. Deepali Puri, learned counsel appearing on behalf of the respondent(s) has drawn the attention of this Court to Clause 30 of the terms and conditions dealing with the reference of dispute through arbitration. It was further submitted by learned counsel for the

respondent(s) that the petitioner failed to follow the order dated 21.02.2015 passed by this Court as the paddy was not lifted and even the costs, charges and expenses on account of delay in lifting the same including interest and late delivery had not been paid. The pith and substance of the order dated 21.02.2015 had not been adhered to, thus, prayer for dismissal of the petition was made.

6. We have heard the learned counsel for the parties and are of the view that there is no force and merit in the submissions of Mr. Veneet Sharma, learned counsel for the petitioner.

7. Before we proceed to deal with the contentions, aforementioned, it would be apt to reproduce the order dated 21.02.2015 (Annexure P-8) passed by this Court in ***Civil Writ Petition No.21409 of 2014,*** which reads as under:-

> *"Learned counsel appearing on behalf of the petitioner-firm states that he only needs some time to comply with his obligation to lift the paddy as they were required to under the order placed on them in their favour by the respondents. On account of the petitioners' failure to lift the paddy, the stock has been re-auctioned. Last date for receiving the bids is 23.02.2015. The petitioners agree and undertake to lift the paddy and to pay all the costs, charges and expenses they were liable to pay not only for the paddy but also on account of the delay in lifting the same including the interest and late delivery charges. The petitioners' state that this amount be treated as their bid in the re-auction. It is accordingly so ordered. The petitioners shall also tender their bid with the authorities.*
>
> *2. In the event of the petitioners' bid not being highest, the respondents shall be at liberty to sell the stock to the successful bidder and all the rights and contentions of the parties on account of the petitioners' failure to lift the stock*

are kept open. In the event of the petitioners' bid as recorded in this order being the highest, the petitioners shall be entitled to lift the stock but subject to their making the entire payment within one week of the respondents informing them in writing of the amount payable by them. In that event, the petitioners security deposited would be adjusted against the bid amount. However, in the event of the petitioners thereafter failing to pay the amount within one week, the respondents would be at liberty to confirm the bid in favour of the next highest bidder and to enter into a contract with them and further in that event all the rights of the respondents against the petitioners shall be kept open.

Writ petition is accordingly disposed of.

A copy of the order be given dasti to learned counsel for the petitioner under the signatures of the Bench Secretary."

8. From the perusal of the order, extracted above, it is evident that the petitioner was to make the payment within one week to the respondent(s) after receiving information in writing from them, of the amount payable by it and in that eventuality, the security deposited was to be adjusted. The respondent(s) had issued the letter dated 18.07.2016 (Annexure P-10), calling upon the petitioner to pay a sum of ₹68,23,252/-. The contents of the same reads thus:-

"In compliance of the orders dated 21.02.2015 passed by the Hon'ble Punjab and Haryana High Court in Civil Writ Petition No.21409 of 2015, you are written that the value of the stock at M/s Dashmesh Agro Exports, Tarn Taran for the year 2011-2012 @ ₹1232/- per qtl., plus 1% VAT and Interest/Late Delivery Charges regarding the amount deposited late total amounting to ₹68,23,252/- be deposited within 7 days in the office of the District Manager, Tarn Taran and the lifting of the stock be done."

9. From the averments made in the petition and after hearing the learned counsel for the parties, we find that the disputed questions of fact arise in the matter relating to the quantity of bags actually lifted and the various payments made. Further, in view of the contents of paragraph 27 of the writ petition, no conclusive finding can be recorded by this Court in writ proceedings, accordingly, we refrain from interfering in writ jurisdiction. Para 27 of the petition reads as under:-

> *"That in fact on account of the delay on the part of the respondents, the paddy which is for the year 2010-11 has become unfit for human consumption and the petitioner who has offered a bid of ₹1232/- per quintal shall not be able to fetch that amount in the open market from the sale of the said paddy which has caused loss to the petitioner."*

10. In view of the above, particularly when disputed questions of fact are involved herein, in our opinion, it would be open to the petitioner to seek the remedy before the appropriate forum in accordance with law.

11. For the foregoing reasons, no interference is called for setting aside the demand raised vide impugned letter dated 18.07.2016 (Annexure P-10) in exercise of writ jurisdiction under Articles 226/227 of the Constitution of India. Resultantly, the present writ petition is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

17.08.2017
Yogesh Sharma

Whether speaking/reasoned **Yes**

Whether Reportable **Yes**