

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-16847-2017

Date of Decision: 1.8.2017

The HP State Cooperative Milk Producers' Federation Ltd., Totu, Shimla

...Petitioner

Versus

Union of India and another

...Respondents

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

PRESENT: Mr. Gaurav Mohunta, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of writ in the nature of certiorari for quashing the letter dated 12.7.2017 (Annexure P-1) vide which respondent No. 1 has unilaterally superseded earlier notifications/orders and has directed to procure milk and milk products through 'negotiated contracts instead of e-procurement' from National Cooperative Dairy Federation of India Limited (NCDFI) only. Further, a writ of mandamus has been sought directing the respondents to allow the petitioner to participate in the e-tender as and when floated by them.

2. Briefly stated, the facts necessary for adjudication of the instant petition as narrated therein may be noticed. The grievance of the petitioner is that respondent No. 1 vide letter dated 12.7.2017 (Annexure P-1) has

procure milk and milk products through 'negotiated contracts instead of e-procurement' from NCDFI only. The petitioner is a registered milk federation with NCDFI, who is a marketing agency/liaisoner for procurement of milk and milk products from various Government agencies including defence and thereafter nominating the State Federation/Co-op Society for supply of the same through contract. For the said service, they charge 1% commission on milk products and 10 paise per litre on milk fresh as commission. The NCDFI has charged a sum of ₹ 3,89,477/- as part payment commission towards service fee w.e.f. October, 2015 till September, 2016 vide letter dated 25.11.2016 from the petitioner which was paid by the petitioner vide demand draft dated 1.12.2016 as is discernible from a perusal of the letter dated 2/3.12.2016 (Annexure P-2). The petitioner is supplying milk and milk products to the defence services at Chandimandir, Chandigarh, Mamun Cantt. and various places in Himachal Pradesh through regular annual contracts. Western Command has about 45 stations and at only 4 stations, i.e. Ambala, Chandimandir, Mamun Cantt. and Delhi Cantt. and the Army has been able to save about ₹ 6 crores per year which is clear from the illustration, Annexure P-3. The petitioner is currently supplying milk and milk products under the regular contract to various cantonments in Punjab, Chandimandir Cantt. and Himachal Pradesh as per acceptance of tender notes (Annexure P-4 Colly). Respondent No. 1 vide letter dated 10.8.2015 (Annexure P-5) sanctioned for conclusion of negotiated contracts from NCDFI and its State Cooperative Milk Federations for supply of milk and milk products at HQ Command only which was valid for a period of three years commencing from 1.10.2015 to 1.10.2018. Through the said letter, the Army was able to procure milk and

its products at most competitive rates through the process of negotiation with State Cooperatives. Further, vide letter dated 19.1.2017 (Annexure P-6), respondent No. 1 to the NCDFI decided to conclude annual negotiated contract for supply of milk and its products at various stations of Western Command w.e.f. 1.10.2017 onwards on Central Public Procurement Portal (CPP) through e-tendering. Hence, the present writ petition.

3. After hearing learned counsel for the petitioner, we do not find any merit in the writ petition.

4. A perusal of narration of facts shows that the petitioner was supplying quality milk and milk products to Chandimandir, Chandigarh, Mamun Cantt. and various places of Himachal Pradesh through regular annual contracts. Vide letter dated 10.8.2015 (Annexure P-5) respondent No.1 sanctioned for conclusion of negotiated contracts from NCDFI and its State Cooperative Milk Federations for supply of milk and milk products at HQ Command only which was valid for a period of three years commencing from 1.10.2015. The petitioner-Federation was supplying milk and milk products under the regular contracts to various cantonments in Punjab, Chandimandir, Cantt. and Himachal Pradesh, copies of acceptance of tender note for the said stations have been collectively appended as Annexure P-4. A perusal of acceptance of tender of the petitioner appended along with the petition as Annexure P-4, clearly shows that the period of supply specified therein is valid upto 30.9.2017 only. Through letter dated 19.1.2017 (Annexure P-6), respondent No.1 has decided to conclude annual negotiated contract for supply of milk and its products at various stations of Western Command w.e.f. 1.10.2017 onwards on Central Public Procurement Portal (CPP) through e-tendering. Further, respondent No.1 vide letter dated

12.7.2017 (Annexure P-1) issued to the Chief of the Army Staff had superseded all its previous instructions and has directed to procure milk and milk products through negotiated contracts from NCDFI only. It was within the domain of the respondents to procure milk and its products by negotiated contracts through e-tendering with NCDFI. The petitioner has not been able to demonstrate that respondent No. 1 had taken the decision for procuring the milk and its products through negotiated contracts with NCDFI only which was not in their best interests or was taken with malafide intention to favour any particular person. Even otherwise, the acceptance of the tender of the petitioner as per Annexure P-4 collectively is valid upto 30.09.2017 and the fresh procurement vide Annexure P-1 has been directed to be made effective from 01.10.2017 only, i.e. after the expiry of the said period. Thus, the decision taken by the respondents has not been shown to be suffering from any arbitrariness or malafides. In such a situation, the procurement of milk and its products through negotiated contracts with NCDFI only by the respondents cannot be faulted.

5. The Supreme Court in **Jagdish Mandal vs 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. .

6. Learned counsel for the petitioner could not point out any illegality or perversity in the letter dated 12.7.2017 (Annexure P-1) issued by respondent No. 1 directing to procure milk and its products through 'negotiated contracts' from NCDFI only, warranting interference by this Court under Articles 226/227 of the Constitution of India. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 1, 2017
gbs

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes