

CWP-3076-2017 (O&M)

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

**CWP-3076-2017 (O&M)
DATE OF DECISION:07.03.2017**

RAMESH KUMAR AND ORS. ... Petitioners

V.

FOOD CORPORATION OF INDIA ... Respondent

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present: Mr. D.S. Patwalia, Senior Advocate with
Mr. Sehaj Bir Singh, Advocate
for the petitioners.

Mr. J.S. Puri, Advocate
for the respondent.

S.J. VAZIFDAR, C.J. (ORAL)

The petitioners have challenged their exclusion from the tender process in respect of handling and transport contracts.

2. The first respondent had, on 24.11.2016, invited bids for the said work in 73 centres. The petitioners submitted a bid for 14 centres. On 11.01.2017, the first respondent scrapped the tenders process in respect of the 27 centres as many of the bidders were not technically qualified. On 12.01.2017, fresh tenders were invited with clear 21 days' notice. The petitioners did not participate in the fresh tenders process. The petitioners contend that they were unable to do so as the earnest money deposited by them in respect of the first tender process, had not been refunded. The competent authority approved the return of the EMD on 31.01.2017. The last date for submission of fresh tenders was 02.02.2017. The EMD was returned only thereafter on 08.02.2017.

3. The, petitioners, however, did not inform the first respondent of this. They did not contend that they were unable to furnish the EMD in respect of the fresh tender process on account of their not having the necessary funds as their EMD in respect to the earlier tender process had not been refunded.

CWP-3076-2017 (O&M)

4. It is difficult to accept the contention that the petitioners did not have sufficient funds to furnish the EMD in respect of the fresh tender process. It is also difficult to accept the petitioners' case that they did not submit bids in respect of the fresh tenders due to paucity of funds. They had deposited an aggregate amount of Rs.40 lacs in respect of the 14 centres for which they had submitted their bids. Even if they had any difficulty on this account they ought to have taken steps to overcome the same including by filing proceedings in this Court seeking either timely refund or an adjustment of the same against the fresh bids. They did not do so till after the tenders were opened.

5. On 03.02.2017, the technical bids of the bidders in the fresh tender process were opened. 39 of the earlier bidders whose EMD was also not refunded submitted their bids without demur or protest on the ground raised by the petitioners. This petition was filed only thereafter obviously as an afterthought. In the circumstances, we are not inclined to grant the reliefs sought by annulling the fresh tender process in respect of the 27 centres.

6. Mr. D.S. Patwalia, learned Senior counsel appearing on behalf of the petitioners makes an offer to bear the entire costs in relation to the fresh tender process and to bid an amount not less than the most competitive bid received in the fresh tender process which is challenged in this writ petition. That is an issue for the first respondent to consider.

7. The petition is accordingly dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

07.03.2017

SwarnjitS

Whether speaking/reasoned
Whether reportable

Yes /No
Yes /No