

In the High Court of Punjab and Haryana at Chandigarh.

**CWP-COM-29 of 2016
Decided on 19.01.2017**

M/s Daniel Masih Satprit Singh Bedi

--Petitioner

Vs.

Food Corporation of India and others

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Gaurav Chopra Advocate, for the petitioner

Mr.Sumeet Goel and Ms.Manju Goyal, Advocate, for the respondents

Rakesh Kumar Jain,J: (Oral)

This petition is filed for seeking a Mandamus for declaring the modified clause 3 (i) of the Handling and Transportation contract (HTC) Model Tender Form and the modified Clause No.3 (i) of the Road Transport contract Model Tender Form introduced vide letter No. F-1(11)/Raj/2014/Anu/Complaint dated 11.04.2016 issued by respondent No.1 stipulating that in case of Partnership, only the experience of the Firm would be reckoned and the experience of the individual partners would not be counted as the experience of the Partnership Firm, as illegal and contrary to the law laid down by the Supreme Court in M/s New Horizons Ltd and

another Vs. Union of India and others (1995) 1SCC 478.

In short, the Petitioner-Firm was constituted on 04.01.2016 as a Partnership Firm and was registered under the Indian Partnership Act, 1932 on 29.1.2016, which is engaged in the business of handling and transportation of foodgrains. One of the partners of the Petitioner Firm, namely, Daniel Masih is stated to have vast experience in the field of handling and transportation of foodgrains by virtue of having remained a partner in other Partnership Firm which had successfully completed and carried out the contract of work of labour/ cartage and transportation of foodgrains for various procurement agencies in the State of Punjab including PUNSUP, MARKFED, PUNGRAIN and Punjab Agro etc. In addition thereto, the aforesaid partner also stated to have vast experience in the work of handling and transportation of goodgrains in his individual capacity.

Respondent No.1 has prepared and formulated a Model Tender Form, (MTF) for Handling and Transportation Contract (HTC) and Road Transport Contract (RTC) which govern the field not only for determining the eligibility of an entity to bid for allocation of Handling and Transport Contract of respondent No.1 but also postulates various terms and conditions governing the allotment of work/contract executed between the respondents and the successful bidder in the tender process.

Respondent No.1, vide letter No. FI (11)/Raj/2014/Anu/Complaint dated 11.04.2016 had effected/ introduced a modification in Clause 3 (i) of the HTC and TRC MTF under the head of Qualification Condition for Tender/Bidding of the HTC and RTC MTF which read as under:-

Modified Clause No.3 (i) of the HTC MTF	Modified Clause 3 (i) of the RTC MTF
Tenderer should have experience of Rake handling and or Transportation Duly obtained from Manufacturer/ PSU/ Public Ltd. Company/ Private Limited Company dealing in the fiend of Fertilizer, Foodgrains cement, sugar Coarse grains or any other commodity. Tenderer should have executed in any of the immediate preceding five years the work of the value. a) Atleast25% of the estimated value of the contract to be awarded in one single contract; OR b) 50% of the estimated value of the contract to be awarded in different contracts.	Tenderer should have experience transportation duly obtained from Manufacturer/ PSU/Govt. Dept/ Public Ltd.Company Private Limited dealing in the field of Fertilizer, food grains, cement,sugar. Coarse grains or any other commodity. Tenderer should have executed in any of the immediate preceding five years work of value. a) At least 25% of the estimated contract value in one single contract; OR b) 50% of the estimates contract value in different contracts
In case of Partnership, only the experience of the Firm will be reckoned and for the purpose the experience of the individual partners will not be counted.	In case of Partnership, only the experience of the Firm will be reckoned and for the purpose the experience of the individual partners will not e counted.

Further, Appendix- II & III of the MTF & HTC and RTC respectively were also modified which read as under:-

“Duly audited P&L account and balance sheet of relevant completed years for which experience certificate has been submitted by the tenderer. In case of Partnership, only the experience of the Firm will be reckoned and for the purpose the experience of the individual partners will not be counted”

The aforesaid modifications in the HTC and RTC MTF were made applicable with prospective effect.

Learned counsel for the petitioner has submitted that in case of partnership, experience of the individual partners will not be counted, is contrary to the law declared by the Supreme Court in the case of **M/S.New Horizons Limited** (Supra) followed by a Division Bench of this Court in

CWP No. 7073 of 2016 (O&M) **M/S Daniel Masih Satprit Singh Bedi Vs.State of Punjab and others** decided on 17.5.2016.

It is submitted that the impugned clause was not there in the aforesaid two judgments but the Supreme Court and the Division Bench of this Court have held that partnership firm has no legal entity and is only a compendious method of describing the partner. It was also held that experience of one partner of the firm has to be reckoned as the experience of the firm and allowed the writ petition. It is further submitted that in the case of **M/s. New Horizons Limited (Supra)**, experience of one was considered to be the experience of joint venture for the purpose of seeking contract.

Learned counsel for the respondents has submitted that the orders passed in the cases of **M/s New Horizons and M/s. Daniel Masih (Supra)** are of no help to the petitioner because the impugned clause was conspicuous by its absence in the tender notice for which this Court had observed in the case of **M/s Daniel Masih (Supra)** that “**unless the notice inviting tenders specifies otherwise, the exclusion of the firm from the tender process on the ground that the firm does not have the requisite experience although one or more partners of the firm has the requisite experience, would not be justified**”. It is also submitted that the impugned clause has been introduced only in order to avoid cartilisation as the respondents are afraid that one person having experience may not become partner in various firms for the purpose of eligibility of the firm.

After hearing learned counsel for the parties and examining the record, I am of the considered opinion that the impugned clause deserves to be declared illegal because of the law laid down by the Supreme Court

in **M/s. New Horizons Ltd (Supra)** as mentioned in para Nos.23 and 25 of the said judgment and reproduced in **M/s. Daniel Masih Satprit Singh Bedi (Supra)** which says that “it is possible to visualise a situation where a person having experience has entered into a partnership and the tender has been submitted in the name of the partnership firm which may not have any past experience in its own name which does not mean that the earlier experience of one of the partners of the firm cannot be taken into consideration”.

Similar view has been expressed by this Court while following dicta in the case of **M/s. New Horizons Limited (Supra)** and **M/s. Daniel Masih Satprit Singh Bedi (Supra)**.

The argument of learned counsel for the respondents that since the impugned clause was not there, therefore, the judgment delivered by the Supreme Court has no support to the case of the petitioner is wrong because it is the law which has been declared by the Supreme Court.

The petitioner has approached this Court before submitting its bid so that it may not be rejected only on the ground of past experience of partner and by its own act and conduct having participated in the bid.

Thus, keeping in view the aforesaid facts and circumstances, the present writ petition is allowed declaring the modified clause 3 (i) of the Handling and Transportation contract (HTC) Model Tender Form and the modified Clause No.3 (i) of the Road Transport contract Model Tender Form introduced vide letter No.F-1(11)/Raj/2014/Anu/Complaint dated 11.04.2016 issued by respondent No.1 stipulating that in case of Partnership, only the experience of the Firm would be reckoned and the experience of the individual partners would not be counted as the

experience of the Partnership Firm, as illegal and contrary to the law laid down by the Supreme Court in **M/s New Horizons Ltd and another Vs. Union of India and others.**

19.01.2017
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(Rakesh Kumar Jain)
Judge

Whether Speaking/Reasoned: Yes/No.

Whether Reportable: Yes/No