

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

Civil Writ Petition No. 15728 of 2018

Date of Decision: 06.08.2018

M/s Rohtash Kumar

.....Petitioner

versus

State of Haryana and another

.....Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present : Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Bhupinder Ghai, Advocate for the petitioner.
Mr. Sharad Aggarwal, Assistant Advocate General, Haryana.
Mr. K.K.Gupta, Advocate, for respondent No.2.

KRISHNA MURARI, CHIEF JUSTICE

Petitioner a partnership firm duly registered under the Indian Partnership Act with the Registrar of Firms and Societies, Kurukshetra and carrying on business in the name and style of M/s Rohtash Kumar and Company has invoked the extra ordinary jurisdiction conferred upon this Court by virtue of Article 226 of the Constitution of India challenging the order dated 20.06.2018 whereby the technical bid offered by the petitioner for handling transport contract was rejected. A further writ of mandamus has been claimed to command respondent No.2 for considering the technical bid offered by the petitioner and to permit to participate in the tender process by opening the financial bid offered by it.

2. Facts necessary for adjudication of the controversy raised can be summarized in brief as under:-

Respondent No.2-Food Corporation of India at Panchkula,

Haryana, in the month of May-2018 invited tenders for the appointment of

loading/unloading/handling and transport contractor at its depots godowns and rail heads. As per the Notice Inviting Tender (for short hereinafter referred to as 'NIT'), the bidder was required to download the tender documents and submit the tender online under two bid system.

Accordingly, the petitioner firm downloaded the tender form from the website and submitted its tender for various godowns and rail heads situated in the State of Haryana separately including Kaithal, in respect whereof the technical bid has been rejected which is under challenge in the present petition.

3. On 20.06.2018, the petitioner received an e-mail from respondent No.2 informing that he is disqualified for violating clause 21 of the NIT and clause 3(ii) of Model Tender Form (for short hereinafter referred to 'MTF'). For ready reference, the aforesaid e-mail received by the petitioner is extracted hereunder:-

“Bidder has not uploaded the duly filled Appendix-VI. Thus, violation of NIT Clause 21 and MTF Clause 3(ii). Further, the bidder has mentioned in Appendix-II that the firm submitted the tender for HTC from Kaithal to Kaithal rather stating HTC Kaithal to Railhead, Kaithal. Hence, Disqualified.”

4. Clause 21 of the NIT reads as under:-

“21. Experience details in the proforma prescribed at Appendix VI of MTF shall be furnished by tenderer. The information furnished in Appendix VI shall be supported by experience certificate issued by client(s) on their letter head. Failing which the bid will be summarily rejected.”

5. Clause 3(ii) of the MTF reads as under:-

3. Qualification Condition for Tender:-

(ii) Experience details in the proforma prescribed at Appendix VI shall be furnished by tenderer. The information furnished in Appendix VI shall be supported by experience certificate issued by client(s) on their letter head.”

6. At this stage, it may be relevant to quote the instructions for submitting the tender contained in paragraph-5 of the General Information to Tenderer. The same read as under:-

“Instructions for submitting Tender:-

The instructions to be followed for submitting the tender are set out below:-

(a) The tenderer must fill up and sign the forwarding letter in the format given in Appendix-1 and also furnish full, precise and accurate details in respect of information asked for in Appendix-II attached to the form of tender. The filled and signed Appendices I and II are to be scanned and uploaded at the space/packet provided in the e-procurement system. Detailed instructions to bidders are available at Annex-A of MTF. Bidders are requested to read the instructions contained therein carefully and meticulously for submission of bids through e-procure Portal.”

7. In pith and substance, the technical bid of the petitioner was rejected for two reasons: - (i) for not uploading the duly filled Appendix-VI thus violating clause 21 of the NIT and clause 3(ii) of the MTF and (ii) for having not mentioned in Appendix-II that the tender is being submitted for HTC Kaithal to Railhead, Kaithal, as it was only mentioned in Appendix-II HTC from Kaithal to Kaithal.

8. Learned counsel for the petitioner submits that the technical bid of the petitioner has been rejected and he has been disqualified for hyper technical reasons inasmuch as all the experience certificates were attached by the petitioner-firm along with the tender form issued by various branch officers of respondent No.2 itself. It is further pointed out that once the experience certificates were attached along with the tender form which were total 15 in number given on their own letter heads and thus merely because the details of the experience have not been mentioned in Appendix-VI, should not lead to the conclusion that there was a violation of any of the terms and conditions of the NIT or MTF. The required documents since were already attached with the tender form, failure to mention them in Appendix-VI was not such a serious lapse so as to reject the technical bid.

9. It is next contended that similar omission to mention the word 'Railhead' before Kaithal in Appendix-II would also not tantamount to violation of any mandatory condition of either the NIT or MTF so as to entail a serious consequence of rejection of the technical bid. It is also submitted that otherwise the technical bid submitted by the petitioner was found to be in order insofar as fulfilling the qualification, experience, financial capability and other prescribed conditions are concerned. It is also submitted that none of the alleged violations can be said to be of any mandatory condition of eligibility as the requirements which were wanted in the tender document submitted by the petitioner were merely ancillary or in other words subsidiary and thus the authorities cannot be said to be justified in insisting upon strict or literal compliance of the said conditions.

10. In the backdrop of the above facts and discussion, the issue which arises for our consideration is whether the alleged violation of the

eligibility so as to reject the technical bid of the petitioner or the nature of the conditions which are alleged to have been violated is such which were only ancillary or subsidiary and the authorities cannot be said to be justified in insisting upon a strict or literal compliance of such a condition.

11. Per-contra, learned counsel appearing for the Food Corporation of India vehemently contended that the conditions violated by the petitioner while submitting the tender documents were the essential requirements to be filled in in the tender documents and since the petitioner committed folly by not providing requisite information in the prescribed format, no fault can be found with the rejection of his technical bid.

12. We have considered the arguments advanced by learned counsel for the parties and have carefully gone through the entire pleadings.

13. General Information to Tenderers attached to the tender form provides for the procedure of submission of tender which is contained in clause-8 and the same reads as under:-

“8.Submission of Tender

- (a) The tender shall be submitted online in two parts, viz., technical bid and price bid.
- (b) All supporting documents except tender document have to be scanned and uploaded in Technical Bid. Price Bid as per Appendix VII provided in Part-B, has to be scanned, encrypted and uploaded at the requisite places in the e-Procurement system.
- (c) The envelope/packet in online containing the **Technical Bid shall include the following:**
 - (i) All the Annexures & Appendices of MTF duly signed on each page by the Tenderer should be scanned and uploaded in e-Procurement portal.
 - (ii) Earnest Money Deposit details alongwith receipt if any.
 - (iii) List of Scanned copy of documents attached as per the format in Appendix III, duly signed by the Tenderer.

***The Tenderer shall quote one uniform percentage below or above the schedule of rates as per appendix VII (Price Bid). In case separate rates are quotes for Handling and transport operation, total estimated cost of both the operations for the contractual period taking into account the volume of operation is to be worked**

out on the basis of the tendered rates to arrive at the lowest rate.

- (d) Tender which do not comply with these instructions shall be summarily rejected.
- (e) Tenders should be uploaded / submitted through e-procurement at <https://eprocure.gov.in/eprocure/app>. Hard copy of the tender documents will not be accepted. **However the successful tenderer will have to submit the original hard copy of MTF duly signed** on each page of MTF alongwith annexures/appendices duly attested on **or before the date & time stipulated by FCI, failing which the EMD furnished by the Bidder is liable to be forfeited and further that the award of contract through the letter of acceptance will be issued to the successful tenderer only after he fulfills this requirement.**
- (f) The supported documents shall be scanned and uploaded by Tenderer clearly, neatly and accurately in readable format. Any alteration, erasures or overwriting on the supporting documents should be duly initialed by the authorized signatory.
- (g) Tenders not accompanied by all the Schedules/Annexures intact and duly filled in and signed may be ignored.
- (h) It should be clearly understood by the Tenderer that no opportunity shall be given to them to alter, modify or with-draw any offer at any stage after submission of the tender.
- (i) Any attempt by tenderer to change the format of any of the supporting documents of the MTF while uploading or any attempt to tinker with the software of the portal will render his tender liable for cancellation and his subsequent blacklisting.”

14. A perusal of the aforesaid specified procedure for submitting the tender goes to show that it was to be submitted on-line in two parts i.e. technical bid and price bid. All the supporting documents except tender document were to be scanned and uploaded in technical bid. One of the essential conditions prescribed under Clause 8(g) was that the tenders which were not accompanied by all the schedules/annexures intact and duly filled in and signed may be ignored.

15. A copy of the tender form submitted by the petitioner along with the forwarding letter and appendix has been filed as Annexure P-3. A perusal of the same goes to show that it is not accompanied by Appendix-VI.

furnish information with regard to experience certificates is totally missing and was not at all submitted by the petitioner. Only experience certificates, the details of which were required to be filled in Appendix-VI, are attached. There is also no such averment in the pleadings that duly filled in Appendix-VI accompanied the tender documents submitted by the petitioner.

16. Thus in effect the tender document submitted by the petitioner was incomplete and totally in violation of clause 8(g) of the General Information to Tenderers which provides that the tenders are not accompanied by all the schedules/annexures intact and duly filled in and signed are liable to be ignored.

17. Learned counsel for the petitioner referring to the pronouncement of the Hon'ble Apex Court in **Poddar Steel Corporation v. Ganesh Engineering Works and others (1991) 3 Supreme Court Cases 273** submitted that since the conditions, if any, violated by the petitioner were not mandatory, as such, in view of the law laid down by the Apex Court, the same are liable to be ignored.

18. In our considered opinion, the case law being relied upon by the petitioner is of no avail to him inasmuch as the ratio of the said decision is not at all attracted to the facts of the present case. The case in hand is not one of violation of any terms and conditions of the tender as such we are not required to enter into the issue as to whether the conditions alleged to be violated are mandatory or only ancillary. This is a case where incomplete tender form has been submitted by the petitioner which was liable to be ignored as per the procedure prescribed for submission of the tender.

19. In view of the above facts and discussion, the tender submitted by the petitioner being incomplete, we do not find any illegality in the impugned action of the respondents in rejecting the technical bid of the petitioner and disqualifying him from participating in any further proceedings of the tender. The writ petition accordingly fails and stands dismissed-in-limine.

In the facts and circumstances of the case, we do not make any order as to costs.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

06.08.2018
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No