

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

CWP-22035-2017 (O&M)

Date of decision:- 29.01.2018

Zora Singh & Company

...Petitioner

Versus

Food Corporation of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present:- Mr. Aashish Chopra, Advocate,
Ms. Sumiti Arora, Advocate,
for the petitioner.

Mr. K.K. Gupta, Advocate,
for respondents No. 1 to 5.

Mr. Vaibhav Gupta, Advocate,
for respondent No. 6.

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

CM-16426-2017

The application for impleadment of the sole proprietor of the petitioner, namely, Zora Singh s/o Dhoop Singh, r/o Village Dumerka Kalan, Tehsil Narwana, District Jind as petitioner No. 2 is allowed.

CWP-22035-2017

The petitioners have challenged the rejection of their technical bid. The impugned order rejects the technical bid on the ground that the petitioners have not uploaded the required no dues certificate from the Employees Provident Fund Department for the relevant experience period of handling work. The petitioner had merely submitted challans evidencing payment of certain amounts. The mere payment of amounts does not indicate that all amounts due under the Employees Provident

Fund Act, 1991 (in short the Act) have been paid. There is no certificate from the authorities under the Act.

2. Mr. Chopra, the learned counsel appearing on behalf of the petitioners, states that no objection certificates in the form required by the Notice Inviting Tender (NIT) are not issued by the EPF authorities. There is nothing on record at least to indicate the same. The petitioners have not impleaded the EPF authorities or even issued notice to them or otherwise elicited any response from them in this regard. It is possible that a certificate is not issued in respect of the relevant period for the reason that no work was actually carried out at that time.

3. In any event, the petitioners do not appear to have the requisite experience as stipulated in clause 3 of Part-A of the NIT which refers to the Technical Bid. The relevant part of clause 3 reads as under:-

"3. Qualification conditions for Tender:

(I) Tenderer should have experience of Rake Handling and/or Transportation duly obtained from Manufacturer/PSU/Govt. Dept./Public Ltd. Company/Private Limited Company 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 the work of value:

(a) At least 25% 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."

(emphasis supplied)

4. Admittedly, the contracts relied upon by the petitioner to substantiate the experience had not been completed at the relevant time. A Division Bench of this Court by an order and judgement dated 06.12.2016 in a group of writ petitions one of which is CWP-12433-2016 titled as *M/s Sushil & Company Vs Food Corporation of India and others* held that the contracts on which the experience is sought to be based must be those which are already executed.

Mr. Chopra sought to question the correctness of this judgement. In this regard, he also relied upon the fact that the official respondents have also issued an experience certificate on the basis of contracts in progress on the basis of the value of the work done till then under the contract. It is not open to us to question the correctness of this decision. The decision is binding on us.

5. The petition is dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

29.01.2018
Amodh

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