

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

CWP No. 25420 of 2017

DATE OF DECISION : 25.01.2018

Manohar Chand

.... PETITIONER

Versus

Food Corporation of India and another

.... RESPONDENTS

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

Present : Mr. Anurag Chopra, Advocate,
for the petitioner.

Mr. J.S. Puri, Advocate,
for respondent No.1.

Mr. Rajesh Garg, Senior Advocate, with
Ms. Nimrata Shergill, Advocate,
for respondent No.2.

* * *

AVNEESH JHINGAN, J.

This petition has been filed praying for issuance of a writ in the nature of Certiorari for quashing the communication dated 20.07.2017 (Annexure P-6) whereby the technical bid of the petitioner had been rejected, and further quashing of order dated 16.08.2017 passed in pursuance of the direction issued by this court, vide which the technical bid of the petitioner was rejected again.

2. Respondent No.1 is the Food Corporation of India, who invited the tender, and respondent No.2 is the private party to whom the work has

been allotted.

3. Respondent No.1 invited tenders on 01.06.2017 under a two bid system for Handling and Transport Contractor (for short, 'HTC') at Kila Raipur. The Notice Inviting Tender (NIT) inter-alia required bidders to furnish an undertaking as per the prescribed format, paragraph 1 whereof reads as under :-

“I/We have applied the tender of _____ in
the Tender Enquiry **Date as per NIT** floated by
FCI, Regional Office Punjab.”

4. The petitioner submitted his bid. His technical bid was rejected on 20.07.2017 on the ground that in paragraph 1 of the said undertaking he had not named the center but referred to it by stating “as mentioned in the NIT”. Mr. Chopra, the learned counsel appearing on behalf of the petitioner submitted that the manner in which the petitioner referred to the center in the undertaking was in conformity with the requirement. The format does not necessarily require the center to be named. It is sufficient to identify it in any clear manner. In this case the tender was only in respect of one center viz. Kila Raipur and therefore the words “as mentioned in NIT” were sufficient. The petitioner had submitted the tender only for this center.

We will presume his submission to be well founded. The matter however does not rest there.

5. The petitioner's tender having been rejected the HTC work was allotted to respondent No.2 on 24.07.2017. The petitioner filed CWP

No.16152 of 2017 against the rejection of his technical bid which was disposed of vide order dated 25.07.2017. Liberty was granted to the petitioner to file a detailed representation and respondent No.1 was directed to decide the representation by passing a speaking order and after affording an opportunity of hearing to the petitioner and to respondent No.2. The decision was to be taken within seven days from the date of receipt of the representation.

6. The petitioner made a representation on 28.07.2017. Notice was issued to both the parties for 09.08.2017, providing an opportunity of personal hearing. In pursuance of the notice, both the parties appeared. It is important to note that before the representation could be decided, the petitioner filed a document/statement dated 11.08.2017 with respondent No.1 which reads as under :-

“I state that I have submitted an RTI application bearing No. 16152 to the Punjab and Haryana High Court against the FCI in regard to Kila Raipur Depot. The order of which was passed on 25.07.2017, and had submitted application to FCI for its hearing. For which FCI called up for hearing on 09.08.2017, and he told us about our mistakes and we realized about our mistakes. So he satisfied us and we are agreed with him.”

With respect to this document, the petitioner made the following averment in paragraph 9 of the petition :-

“It is worth mentioning the fact that the petitioner was induced in a settlement by the FCI to give a consent letter stating that the petitioner realizes the mistake committed by him which is not the case and the petitioner wants to challenge the said impugned letter dated 16.8.2017 whereby the bid has been rejected and the work has been allotted to the respondent No.2 whose price bid is on the higher side than that of the petitioner.”

Mr. Chopra stated only across the bar that respondent No.1 promised the petitioner another contract but reneged on the agreement compelling the petitioner to file this petition. We will assume even that to be so. It does not entitle the petitioner to the reliefs claimed as we will demonstrate after narrating the facts.

7. The representation was decided vide order dated 16.08.2017 and the technical bid of the petitioner was rejected. In fact in view of the above statement it was not even necessary for respondent No.1 to decide the representation on merits. The present writ petition was filed in the first week of November, 2017, i.e. after more than two and half months.

8. The petitioner's technical bid was rejected on 20.07.2017 and on 24.07.2017, respondent No.2 was allotted the work. It is only some where in the first week of August, 2017, when notice was received by respondent No.2 for personal hearing, that it came to his knowledge that the petitioner had challenged the rejection of his technical bid. In the earlier writ petition filed by the petitioner, respondent No.2 was impleaded as a

party but since the petition was disposed off without notice to the respondents, respondent No.2 was not aware of the said proceedings. After the personal hearing on 09.08.2017, before the decision on the representation, the petitioner on 11.08.2017 filed the said statement dated 11.08.2017 with respondent No.1. The said document was not annexed to the writ petition but was filed by respondent No.1 with its written statement. The petitioner thus induced respondent No.2 to continue to carry on the work thereby altering his position to his detriment. Respondent No.2 was entitled to rely upon the petitioner's statement which he did. The petitioner is therefore estopped from contending to the contrary at least qua respondent No.2. The petitioner has not alleged mala-fides against respondent no.2.

It would be worth while to mention here that challenge to the rejection of the technical bid was made by the petitioner after more than two and half months. During this period, respondent No.2 carried out the work, including paying advances to the labourers, appointing staff and making investments thereby further altering his position to his detriment.

9. It is important to note that the case of the petitioner himself is not that he was coerced into the settlement, but that he was induced into the settlement by respondent No.1 and the respondent No.1 did not fulfill its promise of giving him other works. Assuming this to be true, the petitioner's remedy is against respondent No.1 for breach of the agreement and not against respondent No.2 who is an innocent third party. In such

circumstances, a third party who had got the work and made investment should not be made to suffer.

10. The petition is disposed of with liberty to the petitioner to avail his remedy as per law for implementation of the settlement entered by him with respondent No.1.

(S.J. VAZIFDAR)
CHIEF JUSTICE

January 25, 2018
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes