

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: 28.02.2018

1. Civil Writ Petition No.3080 of 2018 (O&M)

DharampalPetitioner
Versus
Food Corporation of India and othersRespondents

2. Civil Writ Petition No. 3415 of 2018 (O&M)

R.S.Labour Transport ...Petitioner
Versus
Food Corporation of India and othersRespondents

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

Present: Mr. Aashish Chopra, Advocate with
Ms. Sumiti Arora, Advocate for the petitioner in
CWP No. 3080 of 2018.

Mr. Robin Dutt, Advocate for the petitioner in
CWP No. 3415 of 2018.

Mr. K.K.Gupta, Advocate for Food Corporation of
India.

Mr. Gaurav Chopra, Advocate, for respondent Dinesh
Kumar.

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S.J. VAZIFDAR, CHIEF JUSTICE:

Although the result in these two petitions is not the same, it is convenient to deal with them in a common judgment for the issues that arise in both the petitions are similar.

2. The petitioners in both the petitions have challenged the rejection of their bids in the same tender process on the ground that they are technically not qualified. The alleged technical defects in the bids are different.

3. We will first deal with Civil Writ Petition No. 3080 of 2018.

4. Respondent No.4 is the private respondent who on account of the disqualification of the petitioners in both the petitions is liable to be awarded the contract.

5. By a Notice Inviting Tenders (NIT), respondent No.1 invited e-tenders for the appointment of Handling and Transport Contracts (HTC). The petitioner submitted the bid for the said work from the centre at Narwana to the linked Rail Head at Narwana. The NIT stipulated:-

"BASIC RATES OF TRANSPORTATION FROM STORAGE POINTS TO RAIL HEAD VIA WEIGHBRIDGE (PER QTL.) T.E. DATED 19.12.2017.

Sr. No.	Centre	Storage Point	Rail head	Basic rates
FCI DISTRICT ROHTAK				
4.	NARWANA	BG NARWANA NON SIDING (BG RAILWAY SIDING)	NARWANA	1.77
		BG NARWANA		2.49
		FSD NARWANA		1.77
		DFSC GODOWN (NEW/OLD)		2.13
		AGRO MANGE RAM PLINTH II/COVERED GODOWN		2.49
		PEG, AJAY KUMAR ISMAILPUR		6.81
		PEG, SHEELA DEVI, ISMAILPUR		6.81
		PEG, RANDEEP KAUR, ISMAILPUR		6.45
		PEG, OM INDIA, HAFED.		6.09
		GUPTA GODOWN, CWC		2.85
		HAFED OLD GODOWN		3.57
		HAFED NEW GODOWN		3.93
		PEG, RANDHIR GODOWN, HAFED, DUMERKHAN		7.35

...emphasis supplied)".

The petitioner's bid was for Narwana which falls within the Food Corporation of India, District Rohtak. The basic rates vary between 1.77 and 7.35 for Narwana.

6. According to the respondents, two undertakings were to be uploaded, namely, "TENDER SUBMISSION UNDERTAKING FOR HTC/RTC (SPECIMEN)" and "UNDERTAKING FOR NOTICE INVITING TENDER (SPECIMEN)". The respondents contend that whereas the petitioner had uploaded the first undertaking, he had failed to upload the second undertaking.

(A) The undertaking that the petitioner uploaded reads as under:-

"TENDER SUBMISSION UNDERTAKING FOR HTC/RTC (SPECIMEN)

To

The General Manager (Region)
Food Corporation of India
Regional Office, Haryana,
Panchkula.

Subject:- Acceptance of Terms and Conditions of
Tender.

Tender Reference No. _____

Name of Tender/Work

Dear Sir,

1. I/We have downloaded/obtained the tender document(s) for the above mentioned "Tender/Work" from the web site(s) namely <https://eprocure.gov.in/eprocure/app> as per your advertisement given in the above mentioned website(s).
2. I/We hereby certify that I/WE have read the entire terms and conditions of the tender documents from Page no. ____ to ____ (including all documents like annexure(s), schedule(s), etc.) which form part of the contract agreement and I/We shall abide hereby by the terms/conditions/clauses contained therein.
3. The corrigendum(s) issued from time to time by your department/organization too have also been taken into consideration, while submitting this acceptance letter.
4. I/We hereby unconditionally accept the tender conditions of above mentioned tender document(s)/corrigendum(s) in its totality/entirety.
5. In case any provisions of this tender are found violated, then your department/organisation shall without prejudice to any other right or remedy be at liberty to reject this tender/bid including the forfeiture of the full said earnest money deposit absolutely along with taking action as per other remedies available under law.

Yours Faithfully,

(Sign of the Bidder, with official seal)"

(B) The undertaking which the petitioner, admittedly, did not upload, as a result of which his technical bid was rejected, reads as under:-

"UNDERTAKING FOR NOTICE INVITING TENDER (SPECIMEN)

To

The General Manager (Region)

Food Corporation of India
Regional Office, Haryana,
Panchkula.

Subject:- Acceptance of Terms and Conditions of NIT

Tender Reference No. _____

Name of Tender/Work

Dear Sir,

1. I/We have downloaded/obtained the tender document(s) for the above mentioned "Tender/Work" from the web site(s) namely <https://eprocure.gov.in/eprocure/app> as per your advertisement given in the above mentioned website (s).
2. I/We hereby certify that I/We have read the entire terms and conditions of the Notice Inviting Tender page no. ___ to ___ and Basic rates of transportation from storage points to Rail head via weighbridge Page no. ___ to ___ which form part of the contract agreement and I/We shall abide hereby by the terms/conditions/clauses contained therein.
4. I/We hereby unconditionally accept the terms and conditions of above mentioned in Notice inviting Tender in its totality/entirety.
5. In case any provisions of this Notice Inviting tender are found violated, then your department/organisation shall without prejudice to any other right or remedy be at liberty to reject this tender/bid including the forfeiture of the full said earnest money deposit absolutely along with taking action as per other remedies available under law.

Yours Faithfully,

(Sign of the Bidder, with official seal)"

7. The petitioner in Civil Writ Petition No. 3080 of 2018 admittedly did not submit the second undertaking for "NOTICE INVITING TENDER". The question is whether the petitioner's failure to do so justifies his technical bid being rejected. We have held it does.

8. The respondents relied upon clause 20 of the terms and conditions of the NIT which reads as under:-

"20. Bidder must upload duly filled undertaking for Notice Inviting Tender/Basic rates of transportation duly signed by bidder failing which the tender will be liable for rejection."

Absent anything else, there is no doubt that the failure to upload this undertaking would justify the rejection of the petitioner's technical bid.

9. It would be convenient at this stage to refer to our judgment dated 21.02.2018 in *Tajinder Pal v. Food Corporation of India and others* Civil Writ Petition No. 2911 of 2018. In that case, the petitioner had submitted a bid not for a Handling and Transport Contract (HTC) as in these cases but for a Road Transport Contract (RTC). We held that the second undertaking was not to be filled by parties submitting a tender for RTC contracts but only by parties submitting tenders for HTC contracts as in the present petition. In paragraph-11 we did observe that it is only if the required undertaking is not uploaded that the tender is liable to be rejected. This undertaking is undoubtedly required to be submitted by the parties tendering for HTC contracts. We did in that case further note that by virtue of a forwarding letter in the format provided in Appendix-II read with Clause 5 of the "General Information to Tenderers", the petitioner therein had infact undertaken to be bound by the NIT and the distance stipulated therein. The petitioner in this case has also submitted a forwarding letter as per the format prescribed in Appendix-II, clause 2 whereof reads as under:-

"2. I have thoroughly examined and understood all the terms & conditions as contained in the Tender document, invitation to tender, General Information to Tenderer and its annexures & appendices and agree to abide by them." (emphasis supplied)."

We must, therefore, presume that the petitioner in this case also agreed to abide by the terms and conditions in

the NIT. The question then is whether in view thereof the requirement of submitting the undertaking for Notice Inviting Tender set out earlier is superfluous and not an essential term of the contract. The question is answered in the negative.

10. A party inviting tenders is entitled to stipulate the terms and conditions on which the work is to be awarded as well as the terms and conditions on which the bids are to be evaluated and accepted. One of the concerns of a party inviting tenders is to bind the opposite party to the terms and conditions. The party inviting tenders is entitled to stipulate the manner in which the other party to the contract is to be bound. There may be several ways of doing so. The choice is that of the party inviting tenders. It may insist one or more of such modes. It is, absent anything else, the satisfaction of the party inviting tenders that is paramount.

We are unable to hold the separate undertaking being superfluous, arbitrary or irrational. There is nothing wrong in a party inviting tenders insisting upon diverse undertakings to leave no scope for argument or out of abundant caution. The failure to submit the undertaking by an HTC contractor renders the technical bid liable to rejection. The failure to submit the undertaking, therefore, renders the petitioner's bid ineligible.

11. Civil Writ Petition No. 3080 of 2018 is, therefore, dismissed.

CIVIL WRIT PETITION NO. 3415 of 2018

12. This case is entirely different on facts. The said undertaking was furnished. The respondents have not filed an affidavit in reply. The petitioner, however, did not oppose the

respondents raising a defence only orally and without putting the same on affidavit.

13. The respondents' case is that although the petitioners submitted the undertaking, they did not do so by uploading a separate document. The petitioners filled in the specimen form provided in the tender documents itself.

14. This objection is entirely unjustified and unfounded. The NIT does not stipulate the manner in which the undertaking is to be filled in. It does not stipulate that after the tender documents are submitted, a separate copy must be made of the format and filled in and submitted separately. It is not the respondents' case that any of the particulars furnished in the undertaking were defective.

15. In the circumstances, Writ Petition No. 3415 of 2018 is disposed of by holding that the undertaking had been furnished as required. The bid of the petitioner in Civil Writ Petition No. 3415 of 2018 shall, therefore, be not rejected on the ground that the undertaking was not furnished. The official respondents shall proceed to consider whether the technical bid of this petitioner was otherwise in order or not.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

28.02.2018

ravinder

Whether speaking/reasoned	√Yes/No
Whether Reportable:	√Yes/No