

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

Date of Decision: 20.03.2018

(i) **CWP No. 4909 of 2018 (O&M)**

Gaurav Kumar

.....Petitioner

Versus

Director, Food Civil Supplies and Consumer Affairs Department,
Haryana and others

.....Respondents

(ii) **CWP No. 5684 of 2018 (O&M)**

M/s Kulbir Singh and Company

.....Petitioner

Versus

Director, Food Civil Supplies and Consumer Affairs Department,
Haryana and another

.....Respondents

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

Present: Mr. Anurag Chopra. Advocate
for the petitioner in CWP No. 4909 of 2018.

Mr. Bhupinder Ghai, Advocate
for the petitioner in CWP No. 5684 of 2018.

Mr. Deepak Balyan, Addl. Advocate General, Haryana.

AVNEESH JHINGAN, J.

Two writ petitions have been filed seeking directions to the respondents to grant adequate time to the petitioners for submission of their bids pursuant to the order passed by this Court in CWP No. 3496 of 2018 and even otherwise. The grievance is that the four days granted by the respondents were not enough to enable the petitioners to submit their bids.

2. In each of the petitions, respondent No.1 is the Director, Food

Civil Supplies and Consumer Affairs Department and respondent No.2 is the Deputy Commissioner of the District.

3. The background of this litigation is that on 17.01.2018 respondent No.1 invited tenders for transportation of food grains, labour and cartage. There was a requirement of experience provided under Clause 4 (ii) and the same is quoted below:

"(ii) Certificate of work experience of previous/last three years from the concerned DFCS&CA/DM of the procurement agency of the district with detail of volume of work i.e. stock handled in MT from the mandi and payment receipt. Out of this atleast one year experience of work done in the mandi i.e. loading, unloading, cartage and stacking etc. of food grains equal to the volume of work for the mandi/centre for which the tenderer is submitting the tender."

The said condition was relaxed by a corrigendum dated 12.02.2018. The amended condition in Clause 4 (ii) is quoted below:

"(ii) Certificate of work experience of previous/last three years from the concerned DFCS&CA/DM of the procurement agency of the district with detail of volume of work i.e. stock handled in MT from the mandi and payment receipt. Out of this atleast one year experience of work done in handling & transportation of foodgrains in the mandi/any other experience of work to be done in the mandi/centre for which the tenderer is submitting the tender."

5. There was a grievance that the term was altered on 12.02.2018 by which date or nearing that date, the bids were to be submitted. The matter came up before this Court by way of CWP No. 3496 of 2018. On 15.2.2018 notice of motion was issued. Learned counsel for the State sought time to seek instructions. The petition was disposed of on 15.02.2018 by the

following order:-

"Notice of motion.

Mr. Deepak Balyan, Additional Advocate General, Haryana, who was present in Court, accepts notice and sought time to take instructions. The matter was, therefore, mentioned again towards the end of the Court working day. Mr. Balyan stated that the respondents have decided to extend the period for submitting the bids by at least five days for all the districts. In other words, the last date would not be before 20.02.2018. This would redress the petitioner's grievance which is limited to the effect that the altered term was introduced on 12.02.2018 but the last date for submitting the bids was also retained as 12.02.2018. The petitioner's grievance, therefore, stands redressed and no further orders are, therefore, required in this writ petition. We must observe here, however, that the respondents must consider this case further as to the effect of this decision on the parties that have already submitted their bids and those who may not have submitted their bids. The parties who have already submitted their bids may have submitted different bids had the corrigendum been issued before the original stipulated last date for submitting the bids. There may also be parties who had not submitted the bids in view of the original terms and conditions but may have participated in the tender process had the terms and conditions been altered as per the corrigendum. There is a possibility, therefore, of the parties who have submitted the bids and the parties who have not participated in the tender process being prejudiced. That does not affect the petitioner but it certainly is an aspect which the respondents may take into consideration regarding the future course of action in the tender process. The petition is accordingly disposed of."

.....(emphasis supplied)

6. This Court while disposing of the petition observed that the respondent should consider the effect of the decision taken on the other parties who had submitted bids and on those who had not been able to

submit their bids. Probably for that reason, fresh tenders were invited on 22.02.2018. The time for submission of bids was given from 22.02.2018 at 9:00 a.m. to 26.02.2018 till 9:00 a.m. for labour and cartage work and 23.02.2018 at 9:00 a.m. to 27.02.2018 till 9:00 a.m. for transport work.

7. The grievance of the petitioners is that the respondents have not given clear five days for submission of the bids as required by the said order dated 15.02.2018. Their further grievance is that out of these four days, two days were Saturday and Sunday, which were bank holidays.

8. While disposing of CWP No. 3496 of 2018, there was no direction given by this Court to the respondents that five clear days should be given for submitting the bids. The order recorded the respondents statement they had decided to extend the period for submitting the bids by at least five days for all the Districts. It was clarified that the last date would not be before 20.02.2018. The statement was not that five days would be provided between the NIT and the closing of the tender. In the fresh NIT the last date for submission of bids is 26.02.2018. The petitioners' reliance upon the order of this Court is, therefore, misplaced.

9. The second limb of the argument that the time period given for submission of the bids was not sufficient, cannot be accepted. The contention initially was that it was impossible to submit bids within the period prescribed as it had only two working days. In such time, the funds could not be transferred and bids could not be uploaded. This contention was belied by the fact that the petitioners in both the petitions had themselves submitted several bids.

10. The respondents by additional affidavits placed on record the fact that the petitioners had themselves submitted bids within the stipulated

time. The relevant extract of the additional affidavits are quoted below:

CWP No. 4909 of 2018

"That it is further submitted that in the extended period for submission of bids the petitioner had submitted his bids in District Jind at four center which are Julana, Nagura, Pilloo Khara and Dhathrath."

CWP No. 5684 of 2018

That it is further submitted that in the extended period for submission of bids the petitioner had submitted his bids in four districts the details of which is as under:-

<i>Sr. No.</i>	<i>District</i>	<i>Transport</i>	<i>Labour</i>
1	Kaithal	(i) Bhusla (ii) Agondh	(i) Cheeka (for Food and Supply Department and HAFED)
2	Karnal	(i) Gharaunda (ii) Nighdu (iii) Tarori (iv) Nilokheri	(i) Tarori (ii) Nilokheri
3	Ambala	(i) Ambala City (ii) Brara (iii) Saha (iv) Sadhaura (v) Ugala	(i) Brara (ii) Mulana
4	Kurukshetra	(i) Amin (ii) Kurukshetra (iii) Neemwala (iv) Pehwa (v) Thana (vi) Karasahab	(i) Kurukshetra (ii) Ladwa (iii) Pehwa

11. The petitioners were specifically asked whether they wanted to file replications to the said additional affidavits. It was stated that they do not want to file replications. The averments in the additional affidavits have not been rebutted. The petitioners contention that it was impossible during the short period to submit the bids stands falsified by their own conduct.

12. Faced with this, it was argued that it was not possible to submit all the bids that the petitioners intended submitting during the time given. Whether the time given for submission of bids was adequate or not is a different matter than to state that it was impossible to submit the bids. This Court cannot decide in this writ petition the question whether submission of more bids was physically possible or not. The fact remains that the petitioners have submitted a number of bids in the said period. There is nothing to establish the petitioners' contention. The contention appears to be an after thought only after the initial contention that it was impossible to submit bids within the period stipulated was belied.

13. The petitioners have not even indicated if they had adequate money in the designated accounts to enable payment. Extra time cannot be demanded for collecting finances. There is another aspect of the matter. In the earlier round of litigation, the bidders were aware that the time was being extended at least upto 20.02.2018. Funds could and ought to have been arranged in advance.

14. In the additional affidavits, the respondents stated that the corrigendum dated 15.02.2018 in which the dates for submissions of bids were mentioned was uploaded on the official website on 15.02.2018. As discussed earlier the content of the additional affidavits were not rebutted by filing replications. An attempt was made to support the allegation that the corrigendum dated 15.02.2018 was not uploaded on the website on 15.02.2018 by relying upon an e-mail dated 23.02.2018 sent by an official of the Food and Supply to the petitioner Kulbir Singh wherein it has been stated that the corrigendum was uploaded on 23.02.2018. This mail cannot be relied upon to reject the contention of the respondents made on oath by

way of an affidavit and especially when the same has not been denied.

15. The matter relates to storage and transport of food grains. It is for the respondents and not for this Court under Article 226 of the Constitution of India to determine how much time is to be fixed for submission of bids

16. In CWP No. 5684 of 2018 reliance was placed on an e-mail dated 23.02.2018 which stated: “ Note: *The bidder would remit the funds at least T+1 working day (Transaction + one day) in advance to the last day and make the payment vis RTGS/NEFT to the beneficiary account number as mentioned in the challan*”.

17. This is of no assistance to the petitioners for the time frame stipulated in the note (Transaction+one day) is met by the present NIT as 22.02.2018 (Thursday) was the Transaction day and 23.02.2018 (Friday) was the additional day.

18. Both the writ petitions are therefore dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

20 .03.2018

reema

Whether speaking/reasoned

√ Yes/No

Whether Reportable:

√ Yes/No