

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 5831 of 2018 (O&M)
Date of Decision: 3rd April, 2018

Gaurav Kumar

.....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, JUDGE

Present: Mr. Gaurav Chopra, Advocate,
Mr. Anurag Chopra, Advocate and
Mr. Nippun Sharma, Advocate, for the petitioner.

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

Mr. Robin Dutt, Advocate, for respondent No.2.

S.J.VAZIFDAR, CHIEF JUSTICE

One Sushil Bansal carries on business in the firm name and style of the second respondent-Sushil & Company, as a sole proprietor thereof.

2. The petitioner has challenged the award of a contract in favour of the 2nd respondent on the ground that the 2nd respondent had failed to fill in the tender document in accordance with the provisions of the Notice Inviting Tender.

3. The first respondent invited e-tenders for appointing handling and transport contractors and road transport contractors. The petitioner and the 2nd respondent had submitted their bids. The 2nd respondent's bid was admittedly more competitive. The petitioner, however, contends that the 2nd respondent's bid is liable to be rejected on the ground that he failed to fill in a forwarding letter as required by the Notice Inviting Tenders (NIT). Clause-

3 of the forwarding letter as filled in by the 2nd respondent reads as under:-

“I agree to keep the offer open for acceptance upto and inclusive of **As per MTF** and to the extension of the said date by 30 days in case it is so decided by the General Manager. I/We shall be bound by communication of acceptance of the offer dispatched within the time. I/we also agree that if the date upto which the offer would remain open is declared a holiday for the Corporation, the offer will remain open for acceptance till the next working day.”

The words underlined namely “As per MTF” were filled in by hand in the space left blank in the format.

4. Mr. Chopra, the learned counsel appearing on behalf of the petitioner submitted that the bidders were required to mention a period of 45 days in clause-3. He submitted that the words “As per MTF” did not meet the requirements of the NIT. The requirement was an essential condition and in view of non-compliance thereof, the 2nd respondent’s bid was liable to be rejected.

5. We will proceed on the basis that the requirement to fill in clause-3 correctly is an essential condition. It is, however, not necessary to indicate the period only by mentioning the number of days. Had that been so, the word “days” in clause 3 would have been added after the blank space. It is permissible for a bidder to stipulate the number of days in any manner so long as the same clearly stipulated the number of days and that the bidder was bound thereby. The question is whether the words “As per MTF” meet this requirement. We think it does.

6. Mr. Chopra, submitted that the MTF is totally silent as to the number of days and therefore the words “As per MTF” do not indicate the number of days.

7. The contention overlooks a crucial provision in the NIT. The bidders were required to submit a duly filled undertaking for Notice Inviting Tender in the prescribed format. The format stipulates certain terms and conditions including the following:-

“TERMS AND CONDITIONS:-

4. The tender which are not accompanied by all the schedules annexures intact shall be liable to be rejected.

15. All the tenders shall remain open for acceptance upto a period of 75 days including the extension period of 30 days at the discretion of GM (R).

17. All the tenderer must ensure that they should fill in all the relevant columns and indicate their choices by ticking/striking the relevant points as indicated in the NIT/Appendices/Annexures of MTF etc. failing which the tender will be liable for rejection. Further putting of “*” (Star) in blank space of any column in any form, without its explanation, will be treated as incomplete information/bid and same will be rejected.

Note: For detailed terms and conditions, MTF applicable may be referred.”

8. Thus clause 15 stipulates the number of days. The initial period is 45 days which was extendable by another 30 days. What is of vital importance is the note at the end of the undertaking. The applicable MTF “Model Tender Form” was expressly incorporated in the terms and conditions. It is necessary, therefore, to read the MTF and the NIT together. So read, it is clear that the MTF itself also incorporates specifically the period of 75 days.

9. There are two aspects that fortify this conclusion. Firstly, this is how the first respondent who invited the tenders construed the contract. Even assuming that there are two ways of construing the terms, we see no reason to reject the first respondent’s construction thereof. Secondly, the petitioner himself construed the contract in the same manner. The petitioner filled in the blank space in the same clause-3 with the words “As per MTF

45 days”. In other words, the petitioner himself construed the MTF as stipulating the period of 45 days.

10. The petition is, therefore, dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

3rd April, 2018
ravinder

(AVNEESH JHINGAN)
JUDGE

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