

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Civil Writ Petition No. 8925 of 2018 (O&M)  
Date of Decision: 21st April, 2018

R.S.Labour and Transport Contractor through Chatar Singh

.....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, JUDGE

Present: Mr. Robin Dutt, Advocate, for the petitioner.  
Mr. Sumeet Goel, Advocate and  
Mr. Manav Bajaj, Advocate, for respondent Nos.1 to 4.  
Mr. Anurag Chopra, Advocate, for respondent No.5.

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**S.J.VAZIFDAR, CHIEF JUSTICE( oral)**

The petitioners seek a writ of certiorari to quash an order dated 05.04.2018 passed by respondent No.4 and a writ of mandamus directing respondent Nos.1 to 4 to consider their financial bid.

2. The Food Corporation of India has been impleaded as respondent Nos.1 to 3 through its Chairman, Executive Director and General Manager, respectively. Respondent No.4 is the Tender Committee of the Food Corporation of India. Respondent No.5 is the private respondent in whose favour the contract has been awarded.

3. The Food Corporation of India issued a Notice Inviting Tender for appointment of contractors for loading/unloading/handling and transport of food grains and allied material etc.

4. Respondent Nos.1 to 4 rejected the petitioner's tender on the ground that they had failed to comply with the terms and conditions of the NIT. The relevant terms and conditions read as under:-

(A) "8. Submission of Tender

(a) The tender shall be submitted online in two parts, viz. technical bid and price bid.

(b) All supporting documents except tender document have to be scanned and uploaded in the technical bid. Price Bid as per Appendix-VII provided in Part-B has to be scanned, encrypted and uploaded at the requisite places in the e-Procurement system.

(c) xx xx xx xx

(d) Tender which do not comply with these instructions shall be summarily rejected." (emphasis supplied).

(B) The bidders were required to fill a "TENDER SUBMISSION UNDERTAKING", clause-5 whereof reads as under:-

"5. In case any provisions of this tender are found violated, then your department/organization 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".

(C) Appendix-II contains one of the documents that was to be filled in by the tenderer. The relevant provisions of Appendix-II read as under:-

"List of the Documents Attached

1. xx xx xx

2. All supporting documents except tender document have to be signed, scanned and uploaded in Technical Bid. Price Bid has to be scanned and uploaded at the requisite places in the e-Procurement system.

3. List of documents enclosed.

**Document No.**

1. to 3 xx xx xx

4. Duly audited P&L account and Balance Sheet of relevant completed years for which experience certificate has been submitted by the tenderer. **In case of Partnership, only the experience of the Firm will be reckoned and for the purpose the experience of the individual partners will not be counted.**
5. Copy of Income Tax Return/PAN Card.

...emphasis supplied.”

5. The petitioners failed to fill in and upload the income tax return. The petitioners uploaded the balance sheet as on 31.03.2013 stating that the partners capital accounts was as per Annexure-A. However, Annexure-A had not been uploaded in the bid document. The names of the partners/members and their profit sharing ratio's have also not been uploaded. The technical bid was, therefore, incomplete. The petitioners are not entitled to the relief sought.

6. Though we have come to the conclusion that the petitioners are not entitled to any relief, we must note what transpired in Court. It reveals an alarming situation, if true.

7. The petitioners had bid a rate of 136 ASOR for transport and handling contracts. Respondent No.5 submitted a bid of 142 ASOR for transport and 256 ASOR for handling. The financial implication of this according to the petitioner is a loss of Rs. 2 crores to the official respondents.

With these rates, the FCI understandably could well have decided to abandon the tender process and invite fresh bids for the loss as stated by the petitioner is about Rs.2 crores. There was some dispute regarding the computation of loss. The petitioners, however, agreed to do the

work at the rate quoted by respondent No.5 with liberty to the FCI to reduce the amount by Rs.2 crores.

8. It is important to note at this stage that the learned counsel appearing on behalf of respondent No.5 stated that respondent No.5 would also do the work at the rates quoted by the petitioner namely 136 ASOR for both transport and handling contracts.

9. This discloses an alarming state of affairs. It indicates a major flaw in Food Corporation of India's tender process resulting in a financial loss of hundreds and possibly thousands of crores of rupees. There are about 200 Mandis in Haryana and about 800 Mandis in Punjab alone. If the loss for each Mandi is the same, there would be an aggregate loss of about Rs. 2000 crores. The revenue may not, however, be the same for each Mandi. The unnecessary and avoidable loss in any event staggering. Needless to add that these are the only prima-facie observations based on what transpired in Court.

10. In the circumstances, the petition is dismissed. Respondent Nos.1 to 4 must consider the above aspects at the highest level. We would request that a copy of this judgment be brought to the notice of the Chairman-cum-Managing Director of the Food Corporation of India.

(S.J. VAZIFDAR)  
CHIEF JUSTICE

(AVNEESH JHINGAN)  
JUDGE

21st April, 2018  
ravinder

Whether speaking/reasoned  
Whether Reportable:

√ Yes/No  
√ Yes/No