IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision:22.04.2019

CWP No.6019 of 2000

Jaswinder Singh ....petitioner

Versus

Food Corporation of India .....respondent

CWP No.6020 of 2000

Harpal Singh ....petitioner

Versus

Food Corporation of India .....respondent

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.D.D.Bansal, Advocate
for the petitioner(s)

Mr.H.S.Dhandi, Advocate
for the respondent

RAJIV NARAIN RAINA, J. (ORAL):

1. This order shall dispose of two writ petitions bearing CWP Nos.6019 and 6020 of 2000, which can be conveniently decided by a common order. For the sake of convenience, the facts are taken from CWP No.6019 of 2000.

2. Heard learned counsel for the parties.

3. The claim in this petition is for refund of earnest money arising out of a tender for appointment of Handling and Transport Contract of foodgrains and other allied materials floated by the Food Corporation of India. The petitioner submitted his tender documents along with earnest money of Rs.82,909/- for allotment of tender in respect of Muktsar. The

tenders were opened and the rates given by the petitioner were found on higher side than the last two or three persons. However, the tender was kept open till 30.06.1999. Meanwhile the tender process was ongoing/underway. The petitioner made a representation on 28.05.1999 withdrawing his tender of earnest money. The other petitioner did likewise.

4. In the written statement put up by the respondent-Food Corporation of India (FCI), Punjab Region, Chandigarh to contest the case, it has been averred that Clause IV of the tender condition had been accepted by the petitioner and that clearly stipulated that if the tenderer after submitting his tender resiles from or modifies his offer/and/or, the terms and conditions thereof, in any manner the earnest money shall be liable to be forfeited. Clause IV of the tender condition is reproduced hereunder:

> "**Earnest Money:** Each tender must be accompanied by an earnest money of Rs..... (Rs.....) only in the form of Demand Draft issued by the State Bank of India or a Scheduled Bank in favour of the Senior Regional Manager, Food Corporation of India, Punjab Region, Chandigarh. Tenders not accompanied by earnest money shall be summarily rejected.
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> The earnest money shall be liable to forfeiture if the tenderer after submitting his tender resiles from or modifies his offer/and/or the terms and conditions thereof in any manner, it being understood that the tender documents have been made available to him and he is being permitted to tender in consideration of his agreement to this stipulation. The earnest money is also liable to be forfeited in the event of the tenderers failure after the acceptance of his tender, to furnish the

requisite security deposit by the due date without prejudice to any other right and remedies of the Corporation under the contract and law. The earnest money will be returned to all unsuccessful tenderers; as soon as practicable after decision on tenders and to a successful tenderers, after he has furnished a security deposit, if the successful tenderers does not desire the same to be adjusted towards the security deposit. No interest shall be payable on the amount of earnest money in any case. The Sr.Regional Manager, also reserves the right to forfeit the earnest money deposited by the tenderer if he fails to complete the formalities incidental to tender and submit the bank balance and business competency certificate by the stipulated date."

5. The petitioner admittedly resiled from the offer. Thus, the forfeiture of earnest money was legal and justified and no cause is made out to interfere with the decision of the respondent not to refund the earnest money to the petitioner for breach of tender terms and conditions binding on both parties. No ground is made out warranting an interdict by writ of certiorari or for issuance of a mandamus. The petitions fail and are dismissed.

22.04.2019 **(RAJIV NARAIN RAINA)**
neenu **JUDGE**

Whether speaking/reasoned Yes
Whether reportable Yes/No