

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

CWP-8071-2019 (O&M)

Date of decision:- 24.10.2019

M/s Sushil & Company

...Petitioner

Versus

Food Corporation of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SHARMA

Present:- Mr. Aashish Chopra, Advocate,
Mr. Alok Mittal, Advocate,
Ms. Rupa Pathania, Advocate,
for the petitioner.

Mr. Gurminder Singh, Senior Advocate,
with Mr. K.K. Gupta, Advocate,
for respondents No. 1 and 2.

Mr. Chetan Mittal, Senior Advocate,
with Mr. Kunal Mulwani, Advocate,
and Mr. Anurag Chopra, Advocate,
for respondent No. 3.

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RAVI SHANKER JHA, C.J. (ORAL)

CM-16083-2019

Leave is granted to place on record the replication filed on behalf of the petitioner and the application is allowed.

CWP-8071-2019

With the consent of learned counsel for the parties, the petition is taken up on board today.

Heard on CM-15247-2019 for vacating the interim order passed by this Court on 27.03.2019.

This petition has been filed by the petitioner being aggrieved by the fact that the bid submitted by it pursuant to tender notice dated 14.01.2019 for the purposes of awarding a

transportation and handling contract for the FCI Centre at Jind has been treated as non-responsive.

The contention of the petitioner is that it fulfilled all the necessary requirements prescribed in the tender notice, but the respondent-authorities without looking into the same have treated its tender to be non-responsive for the reasons that have been mentioned by them in Annexure P-4 (page-124) of the petition.

Learned senior counsel appearing for the respondent-FCI submits that the petitioner's tender was treated as non-responsive for the reasons that the petitioner did not fulfill the necessary terms and conditions and that the profit and loss account statement that was required to be furnished alongwith the tender form was invalid as the same did not contain the seal of the Chartered Accountant.

Though various issues have been raised and argued before us, the moot question that is required to be answered by this Court is as to whether the petitioner's tender form fulfilled the necessary requirements and terms and conditions prescribed or whether the respondents have rightly treated its tender to be non-responsive. For the said purpose, we have carefully examined the terms and conditions of the tender which are mentioned in Annexure P-1 (page-28) of the petition. Apparently, the terms require every tenderer having experience in transportation and handling to submit necessary documents relating to compliance with the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (in short the EPFMP Act, 1952) and other related laws. Whether it be clause 3(i) relating to experience of contractors relating to handling and transportation or whether it be clause 3(ii) relating to contractors having experience in handling

contract, both the clauses contained in the terms and conditions require the tenderer to submit necessary documents relating to compliance with the provisions of the EPFMP Act, 1952 and the necessary contribution to be made thereunder. It is the stand of the respondents in the return that though the petitioner has undertaken handling as well as transportation work and has employed labour, it has not submitted the necessary documents relating to EPF. This fact is not disputed by the petitioner. In fact, we have also examined the record of the tender proceedings which is placed before us in which the petitioner in Appendix-II of the tender form submitted by it has fairly stated in respect of clause 6 of Appendix-II relating to compliance of EPF that it is not applicable and has stated "No". On going through the documents, it is clear that the petitioner has admittedly undertaken handling contract as well and was, therefore, required to comply with the statutory provisions relating to EPF/ESI/Contract Labour Act etc. and to furnish the documents alongwith its tender form which it admittedly had not done so. In such circumstances, without going into several and various issues raised by the petitioner and the respondents, as it is an admitted and undisputed fact that the petitioner has not complied with the necessary terms and conditions relating to producing the documents regarding compliance of the provisions of the EPFMP Act, 1952, as mentioned in the tender form, we do not find any illegality or infirmity in the decision of the respondent-authorities in treating the bid of the petitioner as non-responsive.

Learned senior counsel for the FCI submits that this issue was required to be taken up by the FCI in view of a complaint received by the authorities which was duly examined and thereafter it was found that the requirement regarding

compliance of the EPFMP Act, 1952 and other statutory provisions was mandatory and necessary. Learned senior counsel appearing for the FCI has taken this Court through the specific and clear stand taken up by the FCI in this regard in their return on verification which is evident from pages 158, 159 and 160 of the paper book. He submits that the FCI having realized its mistake has now taken a decision to ensure compliance of the clauses relating to EPF, ESI and other related Acts in all cases even where the petitioner is claiming experience only of transportation for the relevant period.

In view of the above facts and circumstances, we do not find any reason to either continue with the interim order or to keep the petition pending.

The petition is accordingly dismissed.

The interim order dated 27.03.2019 passed by this Court stands vacated.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(RAJIV SHARMA)
JUDGE

24.10.2019
Amodh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No