

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

Civil Writ Petition No. 12302 of 2019 (O&M)

Date of Decision: 6th August, 2019

Jaswant Singh

.....Petitioner

versus

Government of Punjab, through its Secretary, Department of Food, Civil
Supplies and Consumer Affairs, Punjab and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present : Mr. K.K.Goel, Advocate, for the petitioner.
Ms. Lavanya Paul, Assistant Advocate General, Punjab.
Mr. Tejinder Kataria, Advocate,
for respondents No. 7 and 8.

KRISHNA MURARI, CHIEF JUSTICE

Aggrieved by the order dated 03.05.2019 passed by respondent No.1 rejecting/cancelling the tender granted for transportation of food grains for certain clusters in District Ferozepur, the petitioner has filed the present writ petition.

2. Facts relevant for the purposes of adjudication of the controversy at hands in brief can be summarized as under:-

In response to an advertisement inviting on-line tenders for transportation of food grains for Rabi-Kharif seasons for the period 01.04.2019 to 31.03.2020 by the Department of Food Civil Supplies and Consumer Affairs, Punjab, the petitioner was also one of the applicants. He submitted bids for clusters No. 5, 23, 24, 25, 26 and 27 of District Ferozepur. His bid submitted was found to be technically responsive and on opening of the financial bid he was found to be L-1 for clusters No. 5, 23 and 24.

3. Private respondents No. 7 and 8 challenged the decision of the District Tender Committee to award tender to the petitioner by filing an appeal before the First Appellate Authority, namely, the Director, Department of Food Civil Supplies and Consumer Affairs. Challenge to the tender awarded in favour of the petitioner was basically on the ground that he and another tenderer, namely, Ramandeep Singh submitted same list of trucks along with their bids which was against the policy and the terms and conditions of the NIT, hence the tender was liable to be revoked and they were subjected to further legal action including black listing. The First Appellate Authority vide order dated 16.04.2019 rejected the appeal which was challenged by the contesting respondents by filing second appeal before respondent No.1 in accordance with clause-14 of the policy.

4. The Second Appellate Authority after hearing the parties and analyzing the facts and circumstances allowed the appeal, cancelled/rejected the tender awarded in favour of the petitioner on the basis of the following findings arrived at by him:-

“After hearing the arguments of learned counsel for the appellant and perusal of the contents of the appeal, it becomes crystal clear that the allotment of tenders has been done by the DTC District Ferozepur despite violation of pre-requisite terms of the policy by the respondents by uploading fake list of trucks which is not limited to the extent of its one or two trucks which could be termed as an inadvertent error. As such, the same seems to be done with a motive to mislead officials declaring him eligible for getting the tender by covering up their carrying tonnage capacity and to list out other tenderers from the comparative chart. As per the instant policy of the Government, the onus of justification of arrangement of trucks according to requisite capacity always rests with the tenderer with effect from the date of applying the tender and before the final evaluation after opening of their

technical bids. In the instant case, there are registration nos. Like HR 38P2636, HR874247, PB05S8526 and PB05X3481 which have been verified on the Vahan Software at the time of hearing of this second appeal and the same have been found to be registration numbers of three wheelers, motor car and motorcycles/Scooter respectively. The exhaustive list of such numbers is too long. It is clear from the policy perse that the requirement of sufficient number of registration numbers of trucks to be uploaded at the time of submission of tender is to ensure that only those tenderers should be allowed to compete in the tendering process which have capacity to perform the job of transportation. Non-serious bidders must be eliminated at the time of technical evaluation itself. The learned counsel for the respondents have categorically made a statement that the respondents are ready to work at L-1 rates to avoid any financial burden on the state exchequer.

Fake registration number, on going unnoticed has got potential of getting reflected in the bills when the payments are made. Many a time, the Government has to face lot of embarrassment when the audit points out such glaring cases, State Government has to suffer huge financial losses by denial of reimbursement by the Government of India because of such malpractices by the transporters. As such, under no circumstances, it deserves to be condoned. Precisely, because of this, Note V of clause 5(A) of the policy makes it absolutely clear that in case the numbers of the trucks are found to be fake the tender is to be rejected/cancelled and in addition suitable legal action may be initiated against the tenderer.

On the basis of above facts and circumstances, especially in view of the violation of clause 5-A (Note V) of the policy by the tenderers at the time of submission of tenders, I, K A P Sinha, Principal Secretary, Food Civil Supplies and Consumer Affairs, Government of Punjab, being the competent Second Appellate Authority, as per Clause -14 of the ibid policy, deem it appropriate to reject/cancel the allotted tenders to the respondent Shri Jaswant Singh and Shri Ramandeep Singh for the relevant clusters in districts of Fazilka and Ferozepur respectively.

It is, therefore, ordered accordingly. Further, the concerned DTC is directed to take appropriate legal action including fixation of criminal liability on the part of the respondent as per the Note V of the Clause 5-A of the policy ibid for such deliberate, illegal practice of submitting fake numbers.”

5. We have heard Shri K.K.Goel, learned counsel for the petitioner, Ms. Lavanya Paul, Assistant Advocate General for the State of Punjab and Shri Tejinder Kataria, learned counsel for respondents No. 7 and 8

6. Learned counsel for the petitioner contends that the petitioner had submitted a list of trucks more than the capacity of trucks required as per clause V of the policy for transportation of food grains for the years 2019-20 and even if for the sake of arguments it is presumed that he had submitted wrong registration numbers of 20 trucks along with list of trucks even than all the terms and conditions being fulfilled he was eligible for awarding of the contract. It is also submitted that the appeal filed against the petitioner was by a black-listed contractor and thus the action is rendered illegal and without jurisdiction.

7. Be that as it may the finding recorded by the Second Appellate Authority while directing cancellation/rejection of the tender of the petitioner is that he uploaded fake list of trucks which is in clear violation of the pre-requisite terms and conditions of the policy as well as the NIT and black listing of respondent No.7 will not entitle the petitioner to cover his wrong and will not absolve him from the liability of facing consequences of uploading a list of fake registration numbers of the vehicles to mislead the authorities.

8. The illegal action of the petitioner was clearly in violation of Clause 5-A of the policy for the transportation years 2019-20 and thus he was ineligible for award of the contract and the same has rightly been cancelled/rejected by the Second Appellate Authority.

9. During the course of arguments, learned counsel for the petitioner has failed to demonstrate that the findings recorded by the Second Appellate Authority are either against the evidence or based on misreading of evidence and thus the same cannot be held to be vitiated for any reason. The petition is thus concluded by findings of fact recorded by the authority leaving no scope for interference in the impugned order.

10. The petition accordingly fails and stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

6th August, 2019
ravinder

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