

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGRH

Civil Writ Petition No. 29001 of 2018 (O&M)

Date of Decision: 14.01.2019

M/s Sukhbir Singh and company

..Petitioner

Versus

Food Corporation of India and others

..Respondents

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

Present : Mr. G.C.Dhuriwala, Advocate, for the petitioner.
Mr. J.S.Puri, Advocate, for the caveator/respondent No.1.

KRISHNA MUMARI, CHIEF JUSTICE (oral)

Petitioner a registered partnership firm has approached this Court by filing the instant petition seeking the following main reliefs:-

- i) A writ, order or direction of an appropriate nature quashing the part of the order dated 23/24.10.2018 (Annexure P-7) passed by respondent No.1 allowing allotment of tender in favour of respondent No.4, although he was proved to be guilty of evasion of EPF and ESI.
 - ii) A writ, order or direction in the nature of mandamus directing respondent No.1 to allot the tender to the petitioner who has been found to be eligible by him in the order dated 23/24.10.2018 passed by him.
2. The aforesaid reliefs are being claimed in the background of the following facts:-

Respondent-Food Corporation of India invited tenders for appointment of Handling and Transport Contractors (HTC) vide NIT dated 25.05.2018 in pursuance whereof the petitioner as well as respondent No.4 who were declared as successful bidders along with others submitted their

bids. The technical bid submitted by the petitioner was found to be non-responsive on the ground that the partnership deed and general power of attorney submitted along with the bid documents were restrictive in nature for transport operations only whereas the contract to be awarded was for handling and transport both. The reasons of rejection of the tender as conveyed to the petitioner through e-mail dated 07.09.2018 reads as under:-

“M/s Sukhbir Singh & Co. 132 Shivala Bhaiyan, Amritsar has participated in the tender of Handling and Transportation (H&TC) at Chabhal Centre, Amritsar in Tender Enquiry dated 25.05.2018. The tender was opened at Food Corporation of India, Regional Office, (Punjab), Chandigarh on 25.05.2018 by the AGMs Committee.

On scrutiny of documents handed over by AGMs Committee, it was found that Partnership Deed and General Power of Attorney uploaded by M/s Sukhbir Singh & Company is restrictive for transport operations (TC), however, the instant tender is for both Handling and Transport operations (HTC). **As such, the technical bid of M/s Sukhbir Singh & Co. was summarily rejected as the Partnership Deed & GPOA is restrictive in nature for Transport operations only.**

Asstt. Genl. Manager (Cont.)

**Food Corporation of India, Regional Office (Punjab),
Chandigarh.”**

3. Aggrieved by the same, the petitioner approached this Court by filing Writ Petition No. 23143 of 2018 which was disposed of by a Division Bench of this Court vide order dated 13.09.2018 on the basis of consensus arrived by learned counsel for the parties that the petitioner may make a comprehensive representation as regards the rejection of its technical bid and the matter may be re-examined/re-considered by the authorities and be disposed of by passing suitable orders assigning reasons in support thereof.

In pursuance of the aforesaid order, the petitioner made a representation dated 18.09.2018. Apart from challenging the order declaring its bid as non-responsive on various grounds, the validity of the technical bid submitted by respondent No.4 was also raised on the ground that the undertaking submitted by him that he is not defaulter in deposit of the EPF and ESI was false and his technical bid was liable to be rejected on the said ground.

4. Respondent No.1, General Manager of Food Corporation of India vide impugned order dated 23.10.2018 insofar as the challenge to the order holding the bid of the petitioner as non-responsive is concerned accepted the case of the petitioner and accordingly it was directed that the technical bid of the petitioner may be considered qualified for opening of the price bid for the tender in question. This part of the order is not in challenge before us and thus we need not go into the said question.

5. Challenge in this petition is confined to the other part of the order whereby the challenge made by the petitioner to the validity of the technical bid of respondent No.4 was rejected.

6. It was alleged by the petitioner in its representation that respondent No.4 has given a false undertaking in the tender document that he is not defaulter for the deposit of EPF and ESI though as a matter of fact he was a defaulter. It is pertinent to point out that only bald allegations in this regard were made in the representation, still, however, respondent No.1 considered the same in depth and on analysis of the documents submitted by respondent No.4 in his defence found the allegations to be without any basis.

7. Respondent No.4 in his defence filed a copy of the letter dated 22.08.2017 issued by the Assistant Provident Fund Commissioner certifying that the establishment has deposited the PF contribution amounting to Rs.96,887/- for the period March-2016 to March-2017 as per the record

available in the office and the dues of damages and interests under sections 14-B and 7Q of the Act were also paid and there is no pending amount of damages and interest upto March-2017. A certificate issued by the District Magistrate, PUNGRAIN, Ludhiana, was also produced which certified that EPF dues for the contract period 2016-17 have been deposited correctly and timely. Respondent No.1 went further into the matter and sought clarification from EPFO, Ludhiana, regarding deposit/compliance of EPF provisions by respondent No.4 through Area Manager, Food Corporation of India, District Office, Ludhiana. The Area Manager informed that he personally visited the office of APFC, Ludhiana, to do the needful and a clarification has been received on 23.10.2018 from the office of APFC, Ludhiana that establishment of respondent No.4 has deposited the dues for the period in question and no amount payable under sections 14-B and 7Q of the Act was outstanding. On the basis of the aforesaid documentary evidence respondent No.1 held that the allegations leveled by the petitioner regarding false undertaking given by respondent No.4 about EPF and ESI does not hold good.

8. Learned counsel for the petitioner contended that the decision rendered by respondent No.1 on the complaint of the petitioner is without application of mind and without considering the fact that though respondent No.4 had paid Rs.62,51,645/- as salary to the labour and deposited only Rs.96,887/- which cannot be the requisite deposit and thus a false undertaking was given by him.

9. Respondent No.1 while holding that the objection being raised by the petitioner is without any basis has relied upon a certificate issued by the Assistant Provident Fund Commissioner certifying that the entire dues of PF contribution were deposited by respondent No.4 and there was no

outstanding dues against him. The certificate was got verified from the office of the APFC, Ludhiana through Area Manager of the Food Corporation of Ludhiana and there was no outstanding against respondent No.4 was again certified.

10. The findings recorded by respondent No.1 are based on appraisal of evidence brought on record. It may be pertinent to mention at this stage that the legal principle reiterated consistently by various pronouncements of the Hon'ble Apex Court is that it is not the function of this Court to reassess the evidence particularly when there is a failure on the part of the petitioner to demonstrate that the findings returned are either based on misreading of evidence or have been recorded ignoring any material piece of evidence.

11. In the wake of the above facts and circumstances neither do we find any illegality in the conclusion drawn by respondent No.1 nor any such material could be pointed out by learned counsel for the petitioner to indicate that the same is vitiated and the conclusion arrived at is based on non-consideration or misreading of any factual aspect of the matter.

12. In view of the above facts and discussion we find no good ground to interfere in the impugned order. The writ petition accordingly fails and stands dismissed in limine.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

14.01.2019
ravinder

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