

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

CWP No. 32751 of 2019 (O&M)

Date of decision: 13.11.2019

Vijay Kumar

.. Petitioner

vs

State of Punjab and others

.. Respondents

**Coram: Hon'ble Mr. Justice Ravi Shanker Jha, Chief Justice.
Hon'ble Mr. Justice Rajiv Sharma**

Present Mr. Onkar Singh, Advocate, for the petitioner.

Ravi Shanker Jha, Chief Justice

This petition has been filed by the petitioner being aggrieved by order dated 18.10.2019 passed by the 2nd Appellate Authority as well as order dated 17.5.2019 passed by the 1st Appellate Authority dismissing the appeal filed by the petitioner against the act of the respondents in not opening the technical bid of the petitioner by treating the petitioner as non-responsive.

Learned counsel for the petitioner submits that the petitioner had submitted his on-line tender for the labour and cartage contract of food grains from mandis to various storage points floated by the Department of Food & Civil Supplies and Consumer Affairs, Punjab, for the period from 1.4.2019 to 31.3.2020. It is submitted that the petitioner had given the requisite list of trucks along with registration numbers as well as undertaking of M/s B. S. D. Transport Company in terms of Clause 5(F)(III) of the tender conditions. It is stated that the authorities without assigning any reason informed the petitioner that his bid had been rejected at the threshold. The petitioner being aggrieved had filed the 1st appeal and thereafter 2nd appeal, which have not yielded any result, hence, the present

writ petition.

Learned counsel for the petitioner submits that during the course of hearing of the 1st appeal and 2nd appeal, the petitioner came to know that the petitioner's bid was rejected on account of letter dated 28.4.2019 received by the authorities written by one Gurshakti Singh, who is partner of M/s B. S. D. Transport Company, informing the authorities not to consider or take into account the undertaking given by the other partner, namely, Gurmeet Singh of M/s B. S. D. Transport Company. It is stated that the authorities received this letter on the basis of which the petitioner's bid was rejected.

Learned counsel for the petitioner submits that Gurmeet Singh is power of attorney holder and is the person authorised by M/s B. S. D. Transport Company, which is a partnership firm. It is stated that the authorised person has given an undertaking as per Clause 5(F) (III), whereas the other partner, namely, Gurshakti Singh had no authority to submit a letter dated 28.4.2019 on behalf of the firm as he had not been authorised to do so. It is submitted that the authorities have committed an illegality in considering the letter of Gurshakti Singh dated 28.4.2019 behind the back of the petitioner in rejecting his bid, hence, the present petition.

We have heard learned counsel for the petitioner and have carefully gone through the orders passed by the 1st Appellate Authority and the 2nd Appellate Authority. Both the authorities by referring to Clause 5 (F) (III) have stated that undertaking given by M/s B. S. D. Transport Company in favour of the petitioner for supplying the necessary transport service in case the contract was awarded to the petitioner could not be relied upon in view of the letter dated 28.4.2019 received by the authorities from the other partner Gurshakti Singh. The authorities in the orders have stated that in

view of the letter received from the equal partner in the firm, namely, Gurshakti Singh, the undertaking given by M/s B. S. D. Transport Company could not be acted or relied upon for the purpose of treating the petitioner as technically competent to execute the contract. The authorities have recorded a finding to the effect that in reducing the number of trucks, which were to be made available by M/s B. S. D. Transport Company, the remaining trucks given by the petitioner were not sufficient to fulfill the requisite capacity of 1350 Mts for the Machhiwara Cluster of District Ludhiana.

Before this Court, learned counsel for the petitioner has submitted that Gurshakti Singh had not been authorised by M/s B. S. D. Transport Company to withdraw the undertaking. The authorities were bound to accept the consent of the power of attorney holder as valid and to award work to the petitioner. He has, however, not disputed the fact of issuance of letter by the equal partner of M/s B. S. D. Transport Company, namely, Gurshakti Singh rescinding and recalling the undertaking. In such circumstances, we do not find that the 1st or the 2nd Appellate Authority has committed any illegality or perversity in rejecting the tender of the petitioner and not opening the same. More so, it is an admitted fact that the equal partner of the firm has turned hostile and had refused to honour the contract.

The petition has no merit and the same is dismissed.

(Ravi Shanker Jha)
Chief Justice

13.11.2019
vs
Whether speaking/ reasoned

(Rajiv Sharma)
Judge
Yes/No

Whether Reportable

Yes/No