IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7648 of 2020
Date of decision:09.06.2020

M/s Shree Radhey Shyam Transport and Contractor

…Petitioner

Versus

Food Corporation of India and others

…Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain
Hon'ble Mr. Justice Ashok Kumar Verma

Present: Mr. Ashish Chopra, Advocate,
for the petitioner.

Mr. K.K.Gupta, Advocate,
for respondent nos.1 and 2-FCI.

Mr. Puneet Bali, Senior Advocate, with
Mr. Vibhav Jain, Advocate, for respondent no.3.

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Rakesh Kumar Jain, J.

Case was taken up through video conferencing on 02.06.2020.

The petitioner has challenged the technical bid evaluation report uploaded on 12.05.2020 (Annexure P-3) and the order dated 22.05.2020 (Annexure P-6) by which representation of the petitioner has been rejected.

In brief, the Regional Office, Panchkula of the Food Corporation of India (hereinafter referred to as the "FCI") issued e-tender notice, inviting online e-tenders under Two Bid System at Central Public Procurement Portal for appointment of Handling and Transport Contractors (hereinafter referred to as the "HTC") for the movement of food grains and allied material by road to the depots of adjoining regions from the centres of Haryana Region for a period of two years. The e-tender was published on 13.03.2020 in which last date for online submission of the tender was mentioned as 02.04.2020 and the technical bids were to be opened on April 03, 2020. The detailed terms and conditions for the bidders were provided in the Model Tender Form (hereinafter referred to as the "MTF").

The petitioner submitted its online bid(s) for appointment of HTC for Rohtak Rail Head, Rohtak. As per the information of the petitioner, there were three bidders for the said tender. The technical bid of the petitioner was opened on 12.05.2020 and it was found from the portal that the technical evaluation report prepared by the official respondents reflected petitioner's technical bid as "rejected". The ground of rejection is reproduced as under:-

> "The bidder has not uploaded profit & Loss A/cs for March 2019. Hence, the financial statements for the financial year 2018-19 are incomplete. And at point no.2 of Appendix-II details of partner are not filled and at point no.4 PAN number mentioned is different from the PAN card and from ITR. Therefore, the Appendix-II is incomplete/wrongly filled.

The petitioner had allegedly made a representation on 14.05.2020 which was rejected by the impugned order Annexure P-6 on 22.05.2020. However, the petitioner has averred that it had sent another letter/representation on 22.05.2020, in continuation with the representation dated 14.05.2020, which has not been considered.

Learned counsel for the petitioner has submitted that the respondents have committed a patent error of misreading of documents and has unnecessarily highlighted minor mistakes for the purpose of rejecting technical bid of the petitioner. He has divided the reasons for rejection of its technical bid into three parts, which may be read as under:-

i) The bidder has not uploaded profit and loss accounts for March 2019;

ii) The details of the partners of the petitioner-firm/bidder have not been filled in Column No.2 of Appendix-II; and

iii) In Column No.4 of Appendix-II, PAN number mentioned is different from the PAN card and ITR.

It is submitted that the profit and loss accounts for the month of March 2019 were submitted but the Chartered Accountant has committed an error in mentioning it as "WORK & PROFIT & LOSS ACCOUNT FOR THE YEAR ENDED ON 31.03.2018". Counsel for the petitioner has tried to explain the aforesaid error from the profit and loss accounts appended with this petition, available at page 134 of the writ petition.

In respect of the second objection, it is submitted that though in Column No.2 of Appendix-II, the petitioner has mentioned as “Partnership Firm” and has not given names and details of all its partners but at the same time, counsel for the petitioner has referred to the partnership deed which was submitted along with the tender document. It is submitted that the names and details of all the partners of the petitioner-firm are there in the partnership deed and nothing has been concealed.

In respect of the third objection, it is submitted that there was no error in mentioning the PAN number in Column No.4 in Appendix-II, which deals with the PAN card which has also been separately submitted. It is also submitted that the last alphabet of the PAN card is `E’, which has in fact been mentioned rightly but it appears that last part of alphabet `E’ has merged in the dotted lines which are there in Column No.4 of Appendix-II.

Counsel for the petitioner has further submitted that the rates quoted by the petitioner are far less than the private respondent no.3 and if rejection of technical bid of the petitioner is not set aside, then respondent nos.1 and 2 shall suffer huge financial loss.

In the end, it is submitted that the petitioner had also sent a representation on 22.05.2020, in which it was highlighted that respondent no.1 had been scrapping the technical bids and re-inviting the same in case there was a single technically qualified bidder or even more than two bidders, in order to create more competition but in case of the petitioner where there was sole tenderer, the same yardstick has not been applied. In support of his submissions, counsel for the petitioner has referred to the decision of the Hon'ble Supreme Court rendered in the case of **Om Prakash Sharma vs. Ramesh Chand Prashar and others,** (2016) 12 Supreme Court Cases 632.

On the other hand, counsel for the respondents have submitted that in the instructions for submitting tender, it was categorically provided that *"5(a) The tenderer must fill up and sign the forwarding letter in the format given in Appendix-I and also furnish full, precise and accurate details in respect of information asked for in Appendix-II attached to the form of tender. The filled and signed Appendices I and II are to be scanned and uploaded at the space/packet provided in the e-procurement system. Detailed instructions to bidders are available at Annex-A of MTF. Bidders are requested to read the instructions contained therein carefully & meticulously for submission of bids through e-procure Portal".* It is further submitted that Clause XVII(c) of the MTF clearly provides that *"the results of technical evaluation will be uploaded on the CPP portal. In case there are technically disqualified bidders, the reasons for disqualification will be uploaded and price bid shall be opened only after three working days. If any of the bidders is disqualified, he may submit grievance (if any) to General Manager (Region) within three working days from the date of disqualification. However, no new documents will be accepted. In case of receipt of grievance, General Manager (Region) will redress the grievance by passing Speaking Order within seven (7) working days. In case of receipt of grievance from any disqualified bidder, the validity* *period of the tender shall get automatically extended by 15 working days, which shall be binding on all the bidders".*

Learned counsel for the respondents then referred to Appendix-II, which is reproduced here-as-under:-

APPENDIX-II

(Reference para 5(a) of General Information to Tenderers)

(TO BE FILLED IN BY THE TENDERER)

Master data shall be provided by the tenderer along with the copy of GST Registration Certificate (if available) as per following details:

1.	*Name and date of birth of the tenderer.*	
2.	*Constitution of tenderer (proprietor, partnership firm, Private/Public Company). The name of the proprietor, or all Partners, or, the Directors of the Company, as applicable, should be given.*	
3.	*Business in which the tenderer is employed together with particulars of the Head Office and branches, if any, are located.*	
4.	*PAN of business (along with copy of PAN Card)*	
5.	*Details of Goods (along with HSN Code/Excise classification) being/to be supplied to our organization.*	
6.	*Details of Services (along with HSN Code) being/to be supplied to our organization.*	
7.	*Following Details for Each Supplying State (From Which Material/Services is Being Or Proposed To Be Supplied To Us) [Refer Comments].* *a. Nature Of Tenderer (SEZ Unit/SEZ Developer/STPI Unit/Normal Entity/Foreign Entity)* *b. Category of Tenderer (Normal Registered/Registered Under Composition/Unregistered/Located Outside India.)* *c. Address* *d. State Code (Code As Prescribed Under GST)* *e. Latest Contact No.* *f. Latest Fax No. (If Any).* *g. Latest E-Mail ID*	

	h. GSTIN Allotted by The Government (alongwith with registration certificate) (if available). *i. Effective date of registration.*	

Learned counsel for the respondents have further submitted that the order of rejection of petitioner's technical bid dated 12.05.2020 (Annexure P-3) is not arbitrary because the petitioner has not filled up Appendix-II as per the instructions and has made itself liable for disqualification/rejection. In this regard, it is submitted that the petitioner has been thoroughly careless and casual in its approach in filling up the form Appendix-II. It is submitted that the petitioner itself has appended "WORK & PROFIT & LOSS ACCOUNT FOR THE YEAR ENDED ON 31.03.2018". It is further submitted that the said document was not only signed by the Chartered Accountant but also by one of the partners of the petitioner-firm twice. It is submitted that in Column No.2 of Appendix-II, the petitioner has mentioned only "Partnership Firm" but it did not care to mention the names and details of all the partners though there is a specific direction for that in the said column. It is also submitted that it is provided in Clause 5(a) of the MTF that both Appendix-I and Appendix-II have to be filled up by the tenderer himself. The purpose behind is that it may not lateron make a hue and cry that the said documents were filled up by someone else by giving wrong information on its behalf. It is argued that even the PAN number has not been correctly filled in by the petitioner in Appendix-II because the digits "8372" appears as "8370" and last alphabet `E' appears as `F' in Appendix-II. In regard to representation dated 22.05.2020, it is stated that only opportunity made available to the petitioner to raise its grievance is by making a representation within three days from the date of disqualification with a rider that no new document shall be accepted. In the present case, the disqualification order was uploaded on 12.05.2020 and the petitioner made its representation within three days, i.e. on 14.05.2020. However, the said representation was rejected on 22.05.2020 but the petitioner submitted a fresh representation on 22.05.2020 which was beyond the scope of Clause XVIII(c) of the MTF. It is further submitted that the loss to the exchequer, as has been stated by the petitioner, is no ground for denying the tender to private respondent no.3. In support of their submissions, counsel for the respondents have referred to the following decisions of this Court:-

a) **Varun vs. Food Corporation of India and others,** CWP No.18142 of 2019, decided on 08.07.2019;

b) **M/s Sushil & Company vs. Food Corporation of India and others,** CWP No.8070 of 2019, decided on 24.10.2019; and

c) **Ceigall Gawar (JV) A-898, Tagore Nagar, Ludhiana vs. State of Punjab and others,** CWP No.6473 of 2019, decided on 22.05.2019.

In reply, counsel for the petitioner has reiterated his submissions made earlier and further submitted that the decision in **Varun's case (supra)** is not applicable to this case because in that case, PAN number was mentioned but the PAN card was not uploaded, whereas the petitioner herein has not only mentioned the PAN number but also uploaded the PAN card.

We have heard learned counsel for the parties and perused the available record with their able assistance.

It is no doubt true that the petitioner has committed all the mistakes referred to in the order of rejection by the official respondents. It is also relevant to mention that the petitioner was made aware of the fact that it has to fill up Appendix-I and Appendix-II itself/himself, giving precise and accurate details of the information asked for. The purpose behind is that the information is to be given by the tenderer himself in order to avoid any future controversies about the mistakes, if any, deliberate or intentional, in the said appendices. However, despite a clear direction, much-less sort of a warning, the petitioner did not follow the instructions in its letter and spirit and had rather filled up Appendix-II in a most casual manner inasmuch as it did not mention names of all the partners in Column No.2 and is now trying to cover up the issue by alleging that the partnership deed was attached. Similarly, the PAN number is not properly filled in as there are mistakes therein and so as the profit & loss accounts for the year ended on 31.03.2019 because the observation of the official respondents is that the profit & loss accounts for March 2019 are conspicuous by their absence.

In **Varun's case (supra),** this Court had observed that if the bidder/petitioner was careless enough, then there was no illegality on the part of the respondents in holding his bid to be technically non-responsive. This case demonstrates the same mindset of the petitioner who was totally careless in filling up Appendix-II though it has been averred in the petition that the petitioner-firm had been in this kind of business for a long time insofar as the State of Punjab is concerned. Insofar as the allegation of the petitioner that the allotment of tender in favour of private respondent no.3 is going to cause financial loss to the FCI is concerned, we are not impressed with the same and similarly, the argument of the petitioner that the representation dated 22.05.2020 should have also been considered by the official respondents is also contrary to the provisions of Clause XVIII(c) of the MTF.

No other point has been raised.

In view of the aforesaid discussions, we do not find any merit in the present writ petition and hence, the same is hereby dismissed, though without any order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

June 09, 2020 **(ASHOK KUMAR VERMA)**
vinod* **JUDGE**

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No