

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

Civil Writ Petition No. 10656/2020

Date of Decision: 27/07/2020

Baljit Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Mr. Vishal Sharma, Advocate for the petitioner.

Mr.Sahil Sharma, Dy. Advocate General,Punjab

JASWANT SINGH, J.

[The aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in virtual court.]

1. Petitioner claims to be prospective tenderer for the work of Cartage of foodgrains from respective mandis to storage points of Cluster Talwandi Bhai, Distt.Ferozepur, pursuant to the notice inviting E-Tender for labour and cartage works during 2020-21, published in various newspapers on 24.1.2020, supplemented by the Corrigendum Tender Notice dated 6.7.2020 (P-2) whereby the last date for submission of tender forms is 28.7.2020 and opening of technical bids is 29.7.2020.

2. Grievance of the petitioner is directed towards Clause 5(G) of the Punjab Food Grains Labour and Cartage Policy,2020-21 (P-1) (for short Policy 2020-21)issued by the Department of Food and Civil Supplies and Consumer Affairs, whereby for the first time a condition has been provided requiring tenderer to have minimum turnover from the cartage work of foodgrains of any Governmental agency of one year out of three years from

2017-18 to 2019-20, thereby rendering the petitioner ineligible to apply on account of not having worked with the Government agency in the recent past inspite of having sufficient experience in the previous years. Thus, the challenge in the present petition is to Clause 5(G) of Policy 2020-21.

3. It is contended that petitioner has experience in the work of cartage of foodgrains with the Government agency/ Markfed, Ferozepur for the year 2016-17 and for the work of labour and cartage of foodgrains for the year 2011-12, 2013-14 and 2014-15 as per experience certificate (P-3 colly.), however, has been illegally barred from participating in the tender process for the work of cartage of Cluster Talwandi Bhai on account of an arbitrary clause requiring a prospective tenderer to have a minimum turnover from the cartage work of foodgrains of any Government agency of one year within three years from 2017-18 to 2019-20, inspite of having sufficient experience and means to execute the contract. It is urged that in view of said requirement not only the experienced contractors but fresh entrants would be excluded from participating in the tender process thereby the said condition is violative of right to equality guaranteed under Article 19(1)(g) and the Clause being unreasonable and arbitrary, liable to be struck down.

4. After hearing counsel for the petitioner at length, we are not persuaded to invoke our writ jurisdiction as we find no fault with the action of the respondents.

In order to examine the issue involved in this petition, it would be beneficial to reproduce the said Clause 5(G) of Policy 2020-21, which reads as under:-

Clause 5(G): In case of tenderer applying for cartage,

either alone or along with labour, Tenderer must have minimum turn over from the cartage work of foodgrains of Government agencies in any one financial year out of previous 3 financial years i.e. from 2017-18 to 2019-20 depending upon the capacity of cluster applied for:-

<i>S.No.</i>	<i>Total arrival of wheat/ paddy (whichever is higher) in Mandis in previous year falling under one Cluter. (Only Mandi(s) from which cartage has to be done to be included to calculate capacity)</i>	<i>Minimum Turn Over required (In Rupees)</i>
1	Upto 5000 M.T.	10,00,000
2	5001 M.T. To 10,000 M.T.	20,00,000
3	10,001 M.T. To 20,000 M.T.	40,00,000
4	20,001 M.T. To 30,000 M.T.	60,00,000
5	30,001 M.T. To 40,000 M.T.	80,00,000
6	40,001 M.T. To 50,000 M.T.	1,00,00,000
7	50,001 M.T. To 75,000 M.T.	2,00,00,000
8	75,001 M.T. To 1,00,000 M.T.	3,00,00,000
9	Above 1,00,000 M.T.	4,00,00,000

It is apparent that for a tenderer to apply for allotment of contract for cartage alone or alongwith labour, he must have a minimum turnover from the cartage work of foodgrains from any of the Government agency in the 3 financial years as per specified capacity of the cluster. It is also matter of record that the policy containing clause was notified on 30.3.2020. It is further apparent that Government to protect its interest in such like commercial transactions affecting public interest has tried to provide some leverage to the prospective contractors who have executed certain works of required magnitude in the recent past.

5. Before we advert to the merits of the contentions raised, it is desirable to notice the enunciation of law laid down by the Courts.

The Hon'ble Supreme Court in **M/s Michigan Rubber**

(India) Limited v State of Karnataka, 2012 (8) SC 216, has held that, a Court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the Court can say; “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”; and (ii) Whether the public interest is affected. If the answer to the above questions are in negative, then there should be no interference under Article 226.

The Hon'ble Supreme Court of India in **M/s Siemens Aktiengesellschaft & S.Ltd., v DMRC Ltd., 2014 (11) SCC 288**, has laid down following principles for judicial review while dealing with the matters related to Tender by Government or instrumentality of the State:-

(i) The modern trend points to judicial restraint in administrative action.

(ii) The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(iii) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decisions, without the necessary expertise which itself may be fallible.

(iv)The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(v)The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(vi)Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

The Hon'ble Division Bench of this Court in **Arvind Kumar v State of Haryana, 2017(5) RCR (Civil) 113**, held that, it would not be open for this Court to strike down the terms of the tender prescribed by the Government or its instrumentality merely because it feels that some other terms would have been fair or logical. Authority calling for the tender is the best judge to prescribe the terms and conditions of the tender.

6. In the backdrop of aforesaid law on the subject, it cannot be denied that each contract and, in any event, each type of contract would

require an elaborate exercise while fixing the terms and conditions of the notice inviting tenders. The party inviting tenders is free to adopt any reasonable method for the purpose of fixing the terms and conditions of the tenders. They may rely upon experts or consultants. They may rely upon in-house expertise or may seek the assistance of other consultants. The terms of the invitation to tender is in the realm of contract. The Government must have freedom of contract.

In the present case if the Government has introduced this additional requirement of a tenderer having executed work of Government agency of minimum turnover in any one year in the previous three years towards the soundness, capacity and ability of a contractor to ensure the timely and successful execution of the work (especially in these challenging times of pandemic Covid-19), the action cannot be termed to be unreasonable, irrational or arbitrary, so as to persuade us to interfere in our writ jurisdiction, keeping in view the law settled by Hon'ble the Supreme Court.

Dismissed.

(JASWANT SINGH)
JUDGE

July 27,2020.
Joshi

(SANT PARKASH)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No