

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

CWP No. 22741 of 2018 (O&M)

Date of Decision: 11th September, 2020

R. S. Labour and Transport Contractor

.....Petitioner

Versus

Food Corporation of India and others

.....Respondents

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE AVNEESH JHINGAN**

Present: Mr. Alok Mittal, Advocate for the petitioner.

Mr. Gurminder Singh, Senior Advocate with
Mr. K. K. Gupta, Advocate for Food Corporation of India.

Mr. Chetan Mittal, Senior Advocate with
Mr. Anurag Chopra, Advocate for respondent No. 3.

Avneesh Jhingan, J.

1. The petitioner is a partnership firm and has filed the present petition through its partner seeking quashing of Annexure P-4 dated 27th August, 2018 rejecting the technical bid of the petitioner.

2. The respondents are Food Corporation of India (FCI), its General Manager of Regional Office, Panchkula and M/s Shiva Transport Company- the successful bidder.

3. The facts in brief are that the FCI issued notice inviting tenders (NIT) dated 10th July, 2018 for appointment of handling and transport contractor for its various centres. The tender was under two bid system. The bids were to be submitted by 30th July, 2018 and to be opened on 31st July, 2018. The petitioner applied for six centres. The technical bid of the petitioner was rejected on 31st July, 2018 on two grounds. Firstly, that the petitioner had attached experience certificate for 'handling

work' which was not as per clause 3(I) of Model Tender Form (MTF). Secondly, the

“No Dues Certificate” from Regional Provident Fund Commissioner was not attached. Aggrieved of the rejection, the present petition is filed.

4. Before proceeding further, term and condition No. 3 of NIT and clause 3 of MTF are quoted below:

“Term and condition of NIT

3. In case of Handling & Transport Contract:- (i) Experienced contracts of FCI participating in the new tenders as a bidder having insufficient experience by giving undertaking that 10% of additional B.G. would be submitted for relaxation of experience AND (ii) The contractors submitting tenders having experience in handlings contract has to deposit the following documents in proof of deposit of EPF timely and correctly.

(a) No Dues Certificate from the concerned RPFC to the effect that the contractor has deposited the PF dues in respect of number of workers engaged by him for the experience period/contract period correctly and timely.

(b) The copies of monthly challan for the experience period.

Clause of MTF

3. Qualification conditions for Tender:

(I) Tender should have experience of Rake Handling and/or Transportation duly obtained from Manufacturer/PSU/Govt. Dept./Public Ltd. Company/ Private Limited Company dealing in the field of Fertilizer, Food grains, Cement, Sugar, Coarse grains or any other commodity. Tenderer should have executed in any of the immediate preceding five years the work of value:”

[Emphasis supplied]

5. The first limb of learned counsel for the petitioner's argument is that the

experience certificate dated 29th January, 2018 was in compliance of clause 3(I) of MTF, which mentioned that the petitioner had worked for FCI, Food Storage Depot (FSD) at Narela from 13th December, 2016 to 12th December, 2018. He buttresses his argument by stating that the petitioner has the required experience and cannot be penalised for error of the official of FCI who mentioned it as “handling contractor” in the certificate. The second limb of the argument is that the scope of work of present NIT and the work done by the petitioner at Narela is identical and reliance is placed upon clause 2B(I) of the MTF.

6. The second ground of rejection is challenged by stating that as per condition No. 3 of MTF, letter dated 24th August, 2018 issued by Assistant Provident Fund Commissioner, Regional Office, Karnal was attached intimating details of deposits made by the petitioner upto March, 2018.

7. Respondents No. 1 and 2 filed reply supporting the rejection of technical bid on both the grounds.

8. On 19th August, 2020, this Court passed the following order:

“Respondent-Food Corporation of India is directed to file a specific affidavit denying the assertions on behalf of the petitioner(s) that:-

- (i) FCI was issuing one consolidated experience certificate of handling only irrespective of the fact whether a contractor had undertaken a work of handling or rake handling;
- (ii) as also in the context of EPF stating on affidavit that no NOCs are issued in respect of clearance of arrears of liability under the EPF Act.”

9. In compliance to the order, affidavit dated 8th September, 2020 of Sh.D.R.Nanda, Assistant General Manager (Contract), FCI, Regional Office, Haryana alongwith annexures was filed.

10. Learned senior counsel for the FCI refuted the contentions raised by learned

counsel for the petitioner. He denied that the officials of FCI while issuing the experience certificate have wrongly termed the work done as “handling contractor”. He relies upon subject of NIT issued for allotment of Narela, i.e. “E-tender for appointment of contractor for handling of food grains at FSD, Narela”, submission is that the contract was for handling of food grains and allied material at FSD. It is further submitted that a common MTF is issued but the nature of work done is apparent from the NIT. Annexure R4/A attached with the affidavit dated 8th September, 2020, i.e. experience certificate issued to another firm by FCI is pressed into service to demonstrate that against each contract, in the column of 'nature of work/contract executed', 'transportation for rake movement' or 'handling' or 'casual labour', as the case may be, has been specifically mentioned.

11. The second contention raised regarding “No Dues Certificate” is contested by stating that in the letter attached by the petitioner, there was no mention of “No Dues”. The counsel draws support from certificate issued by Assistant Provident Fund Commissioner to another firm specifically mentioning “as per inspection report, no dues were found during inspection period”. He concludes his submissions submitting that the petitioner had not complied with conditions of NIT and MTF and hence, the technical bid was rightly rejected.

12. From clause 3 of MTF, it is evident that there is pre-requisite for a bidder to have experience of rake handling and/or transportation in preceding five years, with entities mentioned therein. As per the certificate attached, the petitioner had experience for 'handling contract' only not for rake handling or for transportation. In other words, the petitioner had no requisite experience.

13. The contention raised by the petitioner that the work done at Narela was identical to the work of the present NIT, falls flat. The nature of work mentioned in the NIT issued for Narela was for appointment of contractor for handling food grains for FSD, Narela. From another NIT placed on record by the FCI, it is evident

that where handling and transport contract includes work of rake handling, the link rail head is duly mentioned in the NIT, this is not the case in the NIT issued for Narela.

14. The submission of the petitioner that the experience certificate even if it mentions 'handling contractor' includes transportation or rake movement is noted only to be rejected. The experience certificate produced by the FCI issued to another dealer specifically mentions the nature of the work and the contract executed.

15. As per condition No. 3 of NIT, the petitioner was required to attach “No Dues Certificate” from the concerned Regional Provident Fund Commissioner to the effect that provident fund dues for the workers engaged by him for the experience/contract period was deposited correctly and in time. As per clause 3(b) of the NIT, copies of monthly challans for the experience period were to be attached. The certificate attached by the petitioner only intimates details of deposits made by the petitioner for a particular period but nowhere mentions that there are no dues. On the other hand, the same officer had issued the certificate to M/s Dharam Pal and Company, Kaithal specifying that there were no dues during the inspection period.

16. In view of the above, the rejection of technical bid is upheld on both the grounds.

17. The writ petition is dismissed.

(AVNEESH JHINGAN)
JUDGE

(S.MURALIDHAR)
JUDGE

11th September, 2020
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Whether speaking/reasoned:	Yes
Whether Reportable:	Yes