

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.20814-2020 (O&M)
Date of decision:- 04.12.2020

R.K.Agro Poly IndustriesPetitioner
Versus

Food Corporation of India and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE.**

Present:- Dr. Puneet Kaur Sekhon, Advocate, for the petitioner.
Mr. K.K.Gupta, Advocate, for respondent-FCI.
Mr. Ashish Rawal, Advocate, for respondents No.3 and 4.
(The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual Court).

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RAVI SHANKER JHA, C.J. (ORAL)

This petition has been filed by the petitioner being aggrieved by the order dated 26.10.2020 (Annexure P-19) whereby the contract awarded to the petitioner for supply of LDPE covers has been terminated and the security deposit/bank guarantee deposited by him has been forfeited. The petitioner has also assailed the letter dated 29.06.2020 (Annexure P-10) whereby the supply of LDPE covers proposed to be made by the petitioner has been rejected and the penalty of 2% liquidated damages is imposed upon the petitioner. The petitioner has further prayed for a direction to the respondent-authorities to accept the supply of LDPE covers made by the petitioner by treating them to be conforming to BIS specifications.

Learned counsel for the petitioner submits that contract awarded to the petitioner for supply of LDPE covers has been terminated de hors the provisions of the Indian Contract Act, 1872.

Learned counsel appearing for the respondent-Food Corporation of India has vehemently opposed the submission of the petitioner and submitted that LDPE covers supplied by the petitioner are not in conformity to BIS specifications and the contract awarded to the petitioner has been terminated in accordance with the clauses of the agreement/contract. He further submits that after issuing notice, even personal hearing was afforded to the petitioner and thereafter the impugned order was passed.

Having heard learned counsel for the parties, it is observed that previously the petitioner had approached this Court by way of Civil Writ Petition No. 10602 of 2020 against the proposed action to be taken by the respondent-authorities by issuing notice dated 22.07.2020. The said petition was disposed of on the statement of learned counsel for the respondents that they would take into consideration the reply to the notice filed by the petitioner and thereafter decide the matter.

Subsequent to the order dated 24.07.2020 passed by this Court in the aforesaid writ petition No. 10602 of 2020, the reply to the notice filed by the petitioner was considered and a detailed order i.e. impugned order dated 26.10.2020 has been passed by the respondent-authorities terminating the contract and rejecting the LDPE covers supplied by the petitioner by stating that they are not in accordance with the specifications. The order has been passed by the authorities invoking clause XX(9)(C) of the MTF and the security has been forfeited as per clause XIII(7).

Apparently, the dispute raised by the petitioner in the present petition involves several disputed questions of fact and law which cannot be gone into by this Court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India. The matter being contractual and the order having been passed by the authorities in terms of the contract, appropriate remedy available to the petitioner is to invoke the forum prescribed by the common law seeking appropriate relief.

Accordingly, the present petition is disposed of granting liberty to the petitioner, if so advised to file a civil suit for mitigation of its grievances.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

04.12.2020
ravinder

Whetherspeaking/reasoned	Yes/No
Whetherreportable	Yes/No