

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

CWP-5159-2021(O&M)
Date of Decision:-20.4.2021

Sultan Simgh

... Petitioner

Versus

National Fertilizer Ltd. and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. A.B.S. Sidhu, Advocate
for the petitioner.

Mr. Vipin Mahajan, Advocate
for respondent No.1.

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

The petitioner has challenged the impugned order/E.mail dated
21.10.2020 (Annexure P-2) whereby his technical bid for handling and
transport contract of fertilizer for Mansa Rake Point was rejected by
respondent No.1, without assigning any reason.

The case of the petitioner is that respondent No.1 invited E-
tenders for handling and transport of fertilizer at different rake points vide
notice dated 22.7.2020 (Annexure P-1). The petitioner submitted his bid.
His technical bid was declined vide e.mail (Annexure P-2), which reads as
follows:-

“Sir

With respect to your request letter dated 20.8.2020 it is hereby informed that Price Bids of Mansa Rake Point will be opened on 22.10.2020 at 11 a.m. at Zonal Office, Chandigarh. It is also informed that your Price Bid will not be opened since you did not fulfill the eligibility criteria.

*Hanuman Singh
Zonal Office, National Fertilizer Limited
Chandigarh”*

The grievance of the petitioner is that he was fully eligible to participate in the tender process but his technical bid was disqualified without giving any reasons. His technical bid was rejected simply by saying that he did not fulfill the eligibility criteria. No opportunity of hearing was provided to the petitioner before declaring him disqualified. The counsel for the petitioner has relied upon Annexure P-1 to Annexure P-6 in support of his case. The counsel for the petitioner submitted that after the receipt of E-mail (Annexure P-2), legal notice dated 24.11.2020 (Annexure P-3) was served to respondent No.1. In response to the same, respondent No.1 gave reply dated 10.12.2020 (Annexure P-4), as per which petitioner was asked to submit required experience certificate and other short documents by 22.9.2020, vide letter dated 15.9.2020 and as petitioner failed to do so within the stipulated period, his tender was rejected. The counsel for the petitioner further argued that petitioner gave counter-reply dated 17.1.2021 (Annexure P-5) to reply (Annexure P-4) to the effect that no such letter dated 15.9.2020 was ever sent to the petitioner and his tender was rejected illegally without affording him any opportunity of hearing. The counsel for

the petitioner next argued that impugned order (Annexure P-2) was passed in violation of the Principles of Natural Justice and thus is non-est.

Assistance of Mr. Vipin Mahajan, Advocate who is having advance copy of the petition, is taken. He relied upon reply (Annexure P-4) to refute the contentions raised by the counsel for the petitioner.

We have considered rival submissions of both the parties.

Admittedly, in response to notice inviting tenders (NIT) dated 22.7.2020 (Annexure P-1), petitioner submitted his bid. However, the same was rejected by respondent No.1 vide order/E-mail dated 21.10.2020 (Annexure P-2). On this, he served legal notice dated 24.11.2020 (Annexure P-3) to respondent No.1. In response to the same, respondent No.1 sent reply dated 10.12.2020 (Annexure P-4), in which it was specifically stated that on opening of technical bids, it was noticed that petitioner had not submitted required documents including relevant work experience certificate and he was asked to furnish the said documents, vide letter dated 15.9.2020. As per the said reply (Annexure P-4), the petitioner failed to submit the requisite documents including experience certificate within the stipulated period and consequently his tender was rejected.

As per the petitioner, he sent counter reply dated 17.1.2021 (Annexure P-5) whereby he denied any such letter dated 15.9.2020 issued by respondent No.1 asking him to submit the required documents by 22.9.2020. Finally, the present petition was filed by the petitioner on 2.3.2021.

The petitioner has placed reliance upon experience certificate (Annexure P-6) in support of his case. In the said experience certificate, it was specifically mentioned that it was issued on 15.10.2020 at Sangrur. The said experience certificate was issued under the signatures of Manager (Cont.) for Div. Manager Food Corporation of India (in short 'FCI') and bears date 16.10.2020 underneath the signatures of the issuing authority. It means that the said experience certificate was issued on 15.10.2020 but was signed by the issuing authority on the next day i.e. 16.10.2020. This fact itself speaks volumes about the credibility of the petitioner.

The respondent No.1 has brought to the notice of this Court that the tender process stands concluded. Even from the perusal of the writ petition it is clear that the tender was already allotted to respondent No.2, prior to the filing of the present writ petition. The petitioner has not challenged the allotment of contract to respondent No.2.

Also, it is settled law that evaluating tenders and awarding contracts are essentially commercial transactions/contracts. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. The Court does not sit as a Court of appeal in such like matters. In this regard reference be made to **Tata Cellular vs. Union of India (1994) 6 SCC 651** and **M/s Municipal Corporation Ujjain and another vs. BVG India Ltd. and Others, Civil Appeal No.3330 of 2018, decided on 27.3.2018.**

Furthermore, the Hon'ble Supreme Court in **Air India Ltd. vs. Cochin International Airport Ltd. (2000)2 SCC 617** observed that even

when some defect is found in the decision making process, the Court must exercise its discretionary powers under Article 226 of the Constitution with great caution and should exercise it only in furtherance of public interest and not merely on the making out a legal point.

In the present case, the fact of allotment of tender to respondent No.2 is not disputed. At this stage, when execution of allotted work has started, the interference is likely to prejudice the successful bidder (respondent No.2).

It being the position, we are not inclined to deal with the disputed question of fact as to whether any such letter dated 15.9.2020 was issued by respondent No.1 to the petitioner.

In view of the above, we find that no case is made out in extra ordinary jurisdiction under Article 226 of the Constitution, to interfere.

The writ petition is hereby dismissed.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

20.4.2021
Gaurav Sorot

Whether reasoned / speaking?

Yes / No

Whether reportable?

Yes / No