

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 7493 of 2021 (O&M)
Date of decision:- 02.09.2021

M/s Shri Ram Logistic CompanyPetitioner
Versus
Food Corporation of India and another ...Respondents

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

Present:- Mr. Anurag Chopra, Advocate, for the petitioner.
Mr. Sumeet Goel, Senior Advocate with
Mr. Manav Bajaj, Advocate, for respondent No.1.
Mr. Jastej Singh, Advocate, for respondent No.2.
(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, CHIEF JUSTICE (oral)

CM No. 10578 of 2021

The application for preponing the date of hearing is allowed for
the reasons mentioned therein. The case is taken up on board for hearing.

CWP No. 7493 of 2021

This petition has been filed by the petitioner firm, whose
technical bid has been rejected by the respondent-authorities which was
submitted pursuant to the tender notice dated 18.12.2020, issued for the
purposes of calling bids to award the contract of handling and transport of
HTC Rania to RH Sirsa, on the ground that the petitioner firm has not
uploaded the copy of the EPF code, which was required to be done in terms
of clause 28 of the Notice Inviting Tender, Appendix II, Document No.6 and
clause IX(C) of the MTF.

Learned counsel appearing for the petitioner submits that in
pursuance to the tender notice dated 18.12.2020 the petitioner firm had
applied under the inexperienced category and was exempted from filing the
EPF Code as per the terms and conditions of the Notice Inviting Tender

itself. He submits that the authorities without looking into the aforesaid aspect technically rejected the petitioner's bid on the ground of not filing the EPF code by communication dated 16.03.2021 (Annexure P-4). He submits that the petitioner firm had filed a representation before the respondent authorities against the rejection of its technical bid, which has also been rejected vide the impugned order dated 25.03.2021 (Annexure P-6) on the same grounds.

Learned counsel for the petitioner firm further submits that a bare reading of relevant clauses of the tender documents and the conditions enumerated therein, it is evident that the petitioner firm was not required to upload the EPF code. Learned counsel has taken this Court through clause-8 of Appendix-II of the MTF at page 50 of the petition enumerating the documents that have to be submitted by a bidder under the inexperienced category. He submits that in the said list, there is no mention of the EPF code. He submits that the petitioner firm having submitted its bid as an inexperienced firm has specifically mentioned in the tender documents that it has not filed the EPF code number which is evident from a perusal of page 49 of the petition.

Learned counsel for the petitioner has also referred to clause-3 of the terms and conditions of the NIT and the General Information to Tenderers contained in paragraph-3(iii) of the MTF dealing with the technical bids. Learned counsel for the petitioner while relying upon the same submits that the petitioner firm having submitted its bid under the inexperienced category was not required or to file the EPF code along with the tender form and therefore, rejection of its technical bid by the authorities is perverse and patently illegal.

Learned counsel appearing for the respondent-Food Corporation of India, per-contra, while referring to clauses 3 and 28 of the terms and conditions of the NIT as well as Appendix-II, Document No.6 of the General Information to tenderers and clause IX(c) of the MTF, submits that a bare perusal of the said clauses makes it clear that the person submitting his bid either under the experienced or the inexperienced category, is required to furnish the EPF code. It is submitted that the aforesaid condition of the tender document is crystal clear and as admittedly the petitioner firm has not furnished the EPF code, therefore, rejection of its technical bid by the respondent-authorities on this ground is in accordance with law and does not call for any interference.

Learned counsel appearing for the private respondents has reiterated the submission made by learned counsel for the respondent-Food Corporation of India.

We have heard learned counsel for the parties at length.

To appreciate the rival submissions of the parties, it is necessary to take into consideration the relevant terms and conditions of the tender documents. Clauses 3 and 28 of the NIT are to the following effect:-

“ **3.** In case of Handling & Transport Contract:

i) Experienced contractors 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 has to submit the following documents:

(i) NDC from RPFC.

OR

(ii) Confirmation from EPF authorities and confirmation from principal employer.

OR

(iii) Inspection report from EPF authorities and confirmation from principal employer.

OR

(iv) Confirmation of principal employer if the EPF was deducted and submitted by the principal itself in its own code.

3 (ii) The contractors submitting tenders having experience in handling contract has to submit the following documents in proof of deposit of EPF compliance.

(i) NDC from RPFC.

OR

(ii) Confirmation from EPF authorities and confirmation from principal employer.

OR

(iii) Inspection report from EPF authorities and confirmation from principal employer.

OR

(iv) Confirmation of principal employer if the EPF was deducted and submitted by the principal itself in its own code.

28. The tenderer should be registered with EPFO as an independent employer, having separate code number as required for an employer under the provision of EPF and MP Act, 1952 and the EPF scheme framed thereunder and upload scanned copy of EPF code failing which tender will be summarily rejected.”

Sub clause (iii) of clause 3 of the MTF, which has specifically been relied upon by learned counsel for the petitioner, is to the following effect:-

“ **3 (iii)** Where the estimated contract value of Handling & Transport Contract is less than Rupees Seven Crores and Fifty Lakhs, Tenderer without the requisite experience as mentioned above may also participate subject to providing an undertaking that an additional Performance Guarantee in the form of Bank Guarantee of 10% of the contract value from ‘Scheduled Commercial Bank’ notified by RBI (excluding all Urba/Rural /State co-operative Banks and Gramin Banks) will be given, if selected. The format of the Bank Guarantee to be provided in such cases is at Appendix-V of Annexure-1.”

Appendix-II of the tender form relates to the Master Data to be provided by the tenderer alongwith copy of the GST Registration certificate and the list of documents alongwith the tender form and clause-6 of the same is to the following effect:-

“6. Copy of EPF code number and proof of Deposit of EPF for the relevant experience period, if applicable: Yes/**No**✓

Clause-IX(c) of the MTF, which has been referred to by learned counsel for the parties, is to the following effect:-

“IX (c) Upon satisfactory performance of the services and on completion of all the obligations by the contractor under the terms of contract and on submission of “Compliance Certificate/**Confirmation of deposit of EPF by way of affidavit duly executed by the Employer (i.e. Contractor/Bidder)** No Due Certificate” from the concerned authority designated under EPF and MP Act 1952 showing due and correct deposit in respect of the employees employed by or through him for the contract period and on obtaining a “No Demand Certificate” from the assigned authority of Food Corporation of India, the Security Deposit will be refunded to the contractor subject to deductions, if any from the Security as may be necessary for recovering the claims of Food Corporation of India against the contractor. The Food Corporation of India will not be liable for payment of any interest on the Security Deposit. **For any EPF violations which may be detected at any later stage, the contractor shall be liable and will be proceeded against as per law.**

The tenderer should be registered with EPFO as an independent employer, having separate code number as required for an employer under the provisions of EPF and MP Act 1952 and the EPF Scheme framed thereunder.”

From a perusal of the aforesaid clauses, it is evident that those experienced contractors of Food Corporation of India participating in new tenders having insufficient experience may apply by giving undertaking that 10% of additional bank guarantee would be submitted for relaxation of experience and also submit the documents that have been enumerated in clause 3 of the terms and conditions of the e-tender notice which relates to the provisions of EPF and MP Act, 1952.

We are not required to go into the factual aspect as it is admitted by the petitioner firm that it has not filed any document relating to EPF as enumerated in clause 3 of the terms and conditions of the tender notice. It is further clear from a perusal of the aforesaid clause-3 that the

documents relating to EPF have to be filed by those contractors who are bidding as the persons having insufficient experience as well as those who are submitting the tenders as having experienced certificate.

Clause 28 of the notice inviting tender, which is applicable to all the tenderers, experienced, inexperienced or otherwise, further provides that the tenderer should be registered with EPFO as an independent employer, having separate code number as required for an employer under the provisions of EPF and MP Act, 1952 and he is also required to upload the scanned copy of the EPF code, **'failing which the tender would be summarily rejected'**.

Clause IX (c) of the MTF in bold letters at the bottom stipulates that the tenderers of all categories should be registered with EPFO as an independent employer, having separate code number as required for an employer under the EPF and MP Act, 1952 and the EPF scheme framed thereunder.

From the aforesaid clauses of the e-tender notice as well as the MTF, it is evident that even those persons who are applying under the inexperienced category are required to furnish the EPF code.

In the instant case, it is an admitted fact that the petitioner firm has not done so and is also evident from a copy of the petitioner's tender documents submitted by it before the respondent-authorities specifically at page 49 of the petition wherein the petitioner has marked 'No' in relation to item No.6 which relates to filing of a copy of EPF code number. Though it is stated that the petitioner firm does possess the EPF code, it is, however, undisputed that no such document relating to the EPF code was filed by the petitioner alongwith the tender documents.

From a perusal of the impugned communication dated 16.03.2021 (Annexure P-4) rejecting the petitioner's technical bid as well as order dated 25.03.2021 (Annexure P-6) rejecting the petitioner's representation, it is luminescently clear that the authorities have technically rejected the petitioner's bid by relying upon clause 28 of the notice inviting tender and Appendix II, Document No.6 and clause IX (c) of the MTF. As held by us in the above paragraph, the aforesaid clauses did require and mandate the filing of the EPF code by the petitioner firm even if it had filed the tender form as an inexperienced category and in such circumstances we do not find any illegality or perversity in the orders rejecting the petitioner's technical bid or representation by the respondent-authorities.

It is also worth noting that though the petitioner has relied upon paragraph-3 (iii) of the MTF relating to the qualification conditions of the tenderer, we are of the considered opinion that the said clause does not in any way further the cause of the petitioner. The aforesaid clause deals with the amount of experience to be possessed by the experienced FCI contractors and provides that in case the tenderer possesses less than the experience that has been mentioned in clause 3(iii) of the MTF, he may apply under the insufficient experienced category by furnishing an additional bank guarantee of 10% of the contract value from a 'Scheduled Commercial Bank' notified by the RBI. The said clause does not in any manner exempt the petitioner from furnishing the EPF code as mandated by clause 28 of the NIT, Appendix-II and clause IX (c) of the MTF nor does it provide that the person who is applying under the inexperienced category is exempted from filing the documents relating to the EPF code.

On the contrary, as held by this Court, clause 28 of the NIT makes it absolutely clear that the tenderer must be registered with EPFO as an independent employer having separate code number and must upload the scanned copy of the EPF code, failing which the tender will be summarily rejected.

In the instant case, admittedly, the petitioner has not furnished the EPF code in the tender form and therefore, the authorities had no option but to reject the petitioner's technical bid at the time of its technical evaluation. The authorities having done so in accordance with the terms and conditions of the tender documents, we find no illegality or perversity in the impugned orders nor do we find any merit in the contentions raised by the petitioner. The petition is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

02.09.2021

ravinder

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No