

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

CWP No.9950 of 2021
Date of decision: 19.05.2021

Attari Border Truck Operators Association

...Petitioner

Vs.

State of Punjab and others

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Sunil Chadha, Senior Advocate,
with Ashish Aggarwal, Advocate,
for the petitioner.

Ms. Lavanya Paul, AAG, Punjab.

Ritu Bahri, J. (oral)

Petitioner-association is seeking a writ in the nature of certiorari for quashing the order dated 27.04.2021 (Annexure P-17) passed by the Principal Secretary, Food, Civil Supplies and Consumer Affairs, Punjab, whereby appeal filed by it (petitioner) against the order dated 08.12.2020 (Annexure P-15) passed by the Director, Food, civil Supplies and Consumer Affairs, Punjab, has been dismissed.

Mr. Sunil Chadha, learned senior counsel for the petitioner, has vehemently argued that respondent No.3-Prem Kumar son of Sham Saroop was given a tender for shifting and transportation of food grains pursuant to the advertisement dated 24.06.2020 (Annexure P-5), which was also published in the newspaper(s). Respondent No.3 had applied for joint tender (Annexure P-8) for three different clusters i.e. Attari, Chheharta and

required for the purpose of transportation of food grains for the year 2020-2021 for all the three clusters. Respondent No.3 was allotted the conditional tender, vide letter dated 31.08.2020 (Annexure P-12), for lifting and transportation of food grains for the year 2020-2021 for Attari cluster. Against this allotment, petitioner made a representation dated 27.07.2020 (Annexure P-13) to the Deputy Director (Field) giving all the details of irregularities done on the part of official respondents while awarding the tender to respondent No.3. Thereafter, petitioner approached this Court by filing CWP No.14784 of 2020 seeking setting aside of the tender process initiated by the official respondents. The said petition was disposed of vide order dated 18.09.2020 (Annexure P-14) by observing that the appellate authority will decide the appeal against allotment letter dated 31.08.2020 (Annexure P-12) within three weeks.

Vide order dated 08.12.2020 (Annexure P-15), the First Appellate Authority accepted the appeal of the petitioner and rejected the technical bid of respondent No.3. However, technical bid of the petitioner-association was also rejected while referring to Clause 4 (C) of the policy. Thereafter, petitioner again approached this Court by filing CWP No.22034 of 2020, which was later on, dismissed as withdrawn vide order dated 18.12.2020 (Annexure P-16) and liberty was granted to the petitioner to approach the Second Appellate Authority for redressal of its grievance. Consequently, petitioner-association preferred an appeal before the Second Appellate Authority i.e. the Principal Secretary, Food, Civil Supplies & Consumer Affairs, Punjab. Respondent No.3-Prem Kumar also preferred an appeal against the order dated 08.12.2020 (Annexure P-15) passed by the First Appellate Authority, to the extent of dismissing his technical bid. The

Second Appellate Authority took up both the appeals together and dismissed the appeal filed by the petitioner, whereas appeal filed by respondent No.3 was allowed, vide order dated 27.04.2021 (Annexure P-17). In this backdrop, present petition has been filed.

Learned counsel for the petitioner has argued that this petition was filed on 12.05.2021 and thereafter on a telephonic call made by one of the official respondents, petitioner had sent an email on 17.05.2021, at 5.10 P.M., giving his willingness to complete the work for transportation on the rate as per L-1 (83% above) in the same cluster. Learned counsel for the petitioner has produced copies of two emails dated 17.05.2021, which the petitioner had sent to the department after getting a telephonic call to do the transportation work, which was left by respondent No.3. He, however, stated that respondent No.3 could not complete the entire tender work and in this backdrop, petitioner was asked to complete the said work. The petitioner had informed the department, vide aforesaid two emails, that the contractor/respondent No.3 (L-1) must be black listed firstly before issuing letter to it (petitioner association) for continuing the pending work of L-1. In the second email, it was reiterated that the allotment made in favour of L-1 must be cancelled firstly.

Grievance of the petitioner is that vide letter dated 17.05.2021, the District Tender Committee has cancelled the tender of respondent No.3, however, the petitioner's offer being L-2 tenderer has been declined. Learned counsel for the petitioner argued that once the authority has cancelled the tender of L-1 tenderer i.e. respondent No.3 and the petitioner has made his offer vide emails dated 17.05.2021 to complete the work of transportation, there was no reason to reject the case of the petitioner.

At this stage, Ms. Lavanya Paul, AAG, Punjab, while referring to the Policy for Transportation of Food Grains (year 2020-2021) dated 05.03.2020 (Annexure P-2), which deals with the liability of the successful tenderer, has argued that as per Rule 10 (ii), if the tenderer fails to perform his obligations within the stipulated period and gives in writing that he is unable to do the work, then the remaining work can be got done from the commission agents at the L-1 approved rates. Thereafter, she referred to the impugned order dated 27.04.2021 (Annexure P-17) to contend that L-1 tenderer has been given the tender on 83% above the technical evaluation and the petitioner being L-2 tenderer was seeking 98% above, which was higher than the rate offered by Prem Kumar-respondent No.3. In this backdrop, as per Rule 10 (ii) of the policy, the authorities could give the remaining work to the commission agents and by invoking this provision, the District Tender Committee, vide order dated 17.05.2021, has allotted this work to the commission agents at the increase of 83% of the rates of L-1 tenderer. Hence, this order was rightly passed as per the terms of the policy. Even as per the emails sent by the petitioner, it (petitioner association) was ready to do the transportation work as per L-1 83% above. Hence, the tender has been rightly given to the commission agents as per the Rule 10 (ii) of policy (Annexure P-2) and the official respondents have given this contract to the commission agents as per terms of the tender policy at 83% above rate.

After hearing learned counsel for the parties, this petition deserves to be dismissed. Hon'ble the Supreme Court in Montecarlo Ltd. vs. NTPC Ltd., 2016 (10) JT 229, has held that tenders cannot escape the scrutiny of judicial review, but the exercise of power of judicial review

would be called for only if, the approach is arbitrary or mala fide or procedure adopted is meant to favour one. If a decision is taken in consonance with the language of tender document or subserves the purpose for which the tender is floated, the court should follow the principle of restraint.

In the facts of the present case, respondent No.3 could not complete the work beyond 50% and the petitioner was ready to complete the remaining work at the rate 98% above. However, the District Tender Committee, while exercising the powers as per Rule 10 (ii) of the policy dated 05.03.2020 (Annexure P-2), has awarded this work to the commission agents. There is no irregularity or any *mala fide* in the procedure adopted while allotting the unfinished work of tender to the commission agents as the said Committee has a right to do so as per Clause 10 (ii) of the policy dated 05.03.2020 (Annexure P-2).

No merits.

Dismissed.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

19.05.2021
ajp

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