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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Decided on: 13th July, 2021

+ W.P.(C) 9371/2020 & CM APPL. 30205/2020

M/S SHIVA TRANSPORT COMPANY THROUGH ITS
PARTNER SH. SUNIL KHASA Petitioner

Through: Mr. Karan Bharihoke, Adv.

versus

FOOD CORPORATION OF INDIA & ANR. Respondents

Through: Mr. Manoj St. Counsel for FCI with
Ms. Aparna Sinha, Adv. for R-1
Ms. Meenakshi Arora, Sr. Adv. with Mr. Jasbir
Singh Malik, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH , J (ORAL)**

1) The present writ petition has been filed by the Petitioner seeking the following substantive prayers:-

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- i) *Issue of a writ, order or direction especially a writ in the nature of Certiorari for quashing the Award letter dated 14.10.2020 (Annexure P/8) whereby the Respondent No.2 has been appointed as the handling contractor for FSD Narela for a period of 2 years without considering the fact the technical bid submitted by the said contractor was contrary to the terms and conditions of the NIT and the documents submitted were not in pursuance to the documents required as per the NIT dated 21.7.2020 (Annexure P/1) and the*

MTF issued by the FCI and hence the technical responsiveness qua the said contractor is illegal and arbitrary and the same ought to be rejected in the facts and circumstances of the present case;

- ii) *Issue of a writ in the nature of Mandamus directing the Respondent No.1 to technically disqualify the Respondent No.2 on account of having submitted the EPF Code issued by the said authority in the name of another entity and contrary to the provisions as specified under Clause IX(C) of the MTF whereby the tenderer is required to be registered with the EPFO as an independent employer having separate code number as required under the provisions of EPF and MP Act, 1952 and EPF scheme in the interest of justice.*
 - iii) *Issue of a writ in the nature of Mandamus directing the Respondent No.1 to get the work undertaken by the Petitioner herein in the event the bid of the Respondent No.2 is found non-responsive due to non compliance of the provisions of the NIT and the MTF in the interest of justice, equity and fair play;”*
- 2) The case set up by the Petitioner in a nutshell is that the Petitioner is a Partnership firm and Mr. Sunil Khasa is its partner. It is submitted that the Respondent No.1 being Food Corporation of India (FCI) vide NIT dated 21.07.2020, issued an e-tender for appointment of Handling Contractor (HC) at FSD Narela under Delhi region for a period 12.12.2020 to 11.12.2022. The terms and conditions to be complied with by the tenderer as stated in the Notice Inviting Tender (NIT) are to be read with the Model Tender Form (MTF) issued by the FCI.

Clause 5 of the E-Tender Notice No.03/2020 reads as under:

“5. List of Documents to be uploaded in Technical Bid folder/cover:

- iii) *Scanned copy of “Tender Submission Undertaking” accepting terms*

and conditions of the tender as per Annexure – “AA” of the MTF

Annexure AA, clause 2 (of the MTF document):

*“I/ We hereby certify that I/we have read the entire terms and conditions of the tender documents from **Page No. 01 to 70** (including all documents like annexure (s) schedule(s), etc.) which form part of the contract agreement and I/we shall abide hereby by the terms/conditions contained therein.”*

- 3) The relevant Clause [i.e. Clause IX(C)] of the MTF relied upon by the Petitioner, is as under:

“.....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.”

- 4) It is submitted that in pursuance to the NIT, the Petitioner duly submitted his technical bid in compliance of the terms and conditions of the NIT. The Respondent No.2 also submitted its technical bid. It is the case of the Petitioner that the EPF Code submitted by the Respondent No.2 (which is a partnership firm) is not its own, but that of an individual and therefore, the mandatory requirement of the MTF has been violated by Respondent No.2.
- 5) Vide technical evaluation summary dated 16.09.2020, the bids of the Petitioner as well as Respondent No.2 were found responsive. The main crux of the Petitioner’s arguments as raised in the Writ Petition is that the Respondent No.2 being a partnership firm, in whose name the tender has been submitted and allotted, does not have an independent EPF Code, which is contrary to Clause IX(C) of the

MTF and consequently the tender allotted to Respondent No.2 vide award letter dated 14.10.2020 must be quashed.

- 6) This Court on 12.01.2021 recorded that Respondent No.2 was the lowest bidder and is executing the contract. This court further recorded in the said order that the rates offered by the Petitioner were much higher than those offered by Respondent No.2.
- 7) The Respondent No.2 has filed a counter affidavit and has stated that EPF Code allotted to Respondent No.2 is HR/RTK/22215, and it has annexed the Registration Certificate dated 02.05.2008. It is also submitted that Respondent No.2 is technically qualified to be registered with EPFO as an independent employer under the provisions of EPF and MP Act, 1952 and the schemes framed thereunder.
- 8) It is further stated by Respondent No.2 that the Respondent No.2 was a partnership firm even on 01.10.2020.
- 9) It was submitted that the price bid of Respondent No.2 quoted/ offered was 8.43% ASOR (Above Schedule of Rate), whereas the Petitioner quoted/ offered the rate 42% ASOR and Respondent No.2 emerged as L-1, by a mile.
- 10) Lastly, it is submitted that on the basis of bogus complaints of the Petitioner, Respondent No.2 was called thrice on 22.09.2020, 25.09.2020 and 29.09.2020 by FCI to join the inquiry being conducted by its Committee, and the Respondent duly submitted its

reply on 30.09.2020. It was only after thorough investigation of the complaints of the Petitioner, that the price bids came to be uploaded only on 14.10.2020, wherein the Petitioner's bid was found to be almost 5 times higher than the Respondent No.2

- 11) Another issue which, though not raised in the writ petition, but is argued before us is that the Respondent No.2 was blacklisted by the District Tender Committee, Panipat and hence Respondent No.2 was disqualified to participate in the tender of the Respondent No.1.
- 12) We have carefully perused the records and heard the learned counsels for Respondent No.1 and Respondent No.2.
- 13) It will be most relevant to point out that the Respondent No.1 constituted a Committee on 22.09.2020 to look into and examine the complaint filed by the by the Petitioner on 21.09.2020 against Respondent No.2. The committee comprised of:

<i>Kamta Prasad</i>	<i>AGM (S&C)</i>
<i>Rakesh Kumar</i>	<i>AGM (Fin)</i>
<i>Gaurav Pawar</i>	<i>AGM (Accts)</i>
<i>Arun Kumar</i>	<i>AGM (Law)"</i>

- 14) The 2 issues flagged by the Committee were as under:

- "1. The contractor M/s RS Labour and transport contractor doesn't have a valid EPF Registration Number and using the EPF Registration Number granted in the name of M/s RS Labour and Transport Contractor which is a proprietorship concern.*
- 2. M/s Shiva Transport also alleges that M/s RS Labour and Transport Contractor has been blacklisted by the District Tender Committee,*

Panipat due to non-submission of security deposit and submitted the office order dated 22.09.2020 passed by the District Tender Committee, Panipat.”

- 15) The Respondent No.2 submitted the following documents before the Committee:

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- *Copy of Form A under Indian Partnership Act, 1932*
- *Screenshot of Employer's EPF Portal depicting verification of PAN number of the firm*
- *Copy of DSC letter submitted in the department on 02.03 2020*
- *Screenshot of Employer Portal of EPFO depicting the status of approval of DSC*
- *Copy of the inquiry carried out by FCI to verify the ownership of the firm*
- *Copy of GST Registration of the firm*
- *Copy of the MSME Registration Certificate of the firm*
- *Copy of Register of firm under the Indian Partnership Act, 1932*
- *Copy of one of the Labour Licenses awarded to the firm”*

- 16) The partner of Respondent No.2 informed the Committee that it was only on account of some technical issues, that the status of his firm on EPF Website was reflecting as proprietorship firm. Sh. Raj Singh, Partner of Respondent No. 2 produced a screenshot of Form 5A taken from EPF website, which is showing the PAN No. of the partnership firm which is also matching with the PAN No. submitted while applying for the tender
- 17) The Committee after examination of documents submitted by the Respondent No.2 and also after verification of the constitution of

Respondent No.2 on EPF website, came to the conclusion that EPF registration GNRTK0022215000 is in the name of the bidder M/s RS Labour and Transport Contractor, which is a partnership firm.

18) As regards the blacklisting of Respondent No.2 is concerned, the Committee found that the Respondent No.2 had been blacklisted by Tender Committee, Panipat on 22.09.2020. The order of blacklisting was submitted by the Petitioner on 24.09.2020. However, the price bid was opened on 21.09.2020, on which date Respondent No. 2 was not blacklisted

19) Para 4 of MTF regarding the disqualification condition states as follows:

“Clause (I) of Para 4-"Tenders who have been blacklisted or otherwise debarred by FCI or any department of Central or State Government or any other public sector undertaking will be ineligible during the period of such blacklisting or for a period of 5 years from the date of blacklisting/ debarment, whichever is earlier.

Clause (III) of Pare 4-" Tender's whose earnest money deposit and/or security deposit has been forfeited by Food Corporation of India or any department of central or state government or any other PSU, during the last five years, will be ineligible."

20) A bare perusal of the clause of the MTF clearly shows that the tenders **who have been** blacklisted or otherwise debarred by FCI or any department of Central or State Government or any other public sector undertaking will be ineligible.....A combined reading of the above two clauses of the MTF clearly shows that order of blacklisting must be subsisting on the date of applying for the tender. In the present case, even on the date of opening of price bid on

21.09.2020, Respondent No.-2 was not blacklisted.

- 21) The opinion of the Committee, as observed by us in the preceding paragraphs, is clear and unambiguous. Respondent No.1 cleared Respondent No.2 of both the allegations levelled against it. It will be relevant to reproduce the relevant paragraphs of the Committee report as under:

“Committee Opinion:-

Considering the facts and figures and also the submission by both the parties, the committee opinion on issues involved in the complaint as mentioned above is as follows:-

1. **Regarding EPF No:-** After examination of documents submitted by the M/s RS Labour and Transport Contractor and also verification of constitution of M/s RS Labour and Transport Contractor on the EPF website, the committee finds no merits in the complaint. The EPF registration no. GNRTKOO22215000 is in the name of M/s RS Labour and Transport Contractor, which is a partnership firm. The screenshot taken from EPF website is also enclosed as Annexure-1.
2. **Regarding EMD forfeiture and blacklisting M/s RS Labour and Transport Contractor by District Tender Committee, Panipat:-** M/s RS Labour and Transport Contractor has been blacklisted by the District Tender Committee, Panipat on 22.09.2020. The order of blacklisting was submitted by M/s Shiva transport on 24.09.2020 which is subsequent of opening of price bid on 21.09.2020. Para 4 of MTF regarding disqualification conditions states as follows:-

Clause (I) of Para 4-"Tenders who have been blacklisted or otherwise debarred by FCI or any department of Central or State Government or any other public sector undertaking will be ineligible during the period of such blacklisting or for a period of 5 years from the date of blacklisting/ debarment, whichever is earlier.

Clause (III) of Pare 4-" Tender's whose earnest money deposit and/or security deposit has been forfeited by Food Corporation of India or

any department of central or state government or any other PSU, during the last five years, will be ineligible."

The above clauses of MTF make the bidder ineligible only if the bidder is blacklisted or his EMD and/or security deposit is forfeited during the last five years. Since the order of blacklisting and forfeiture of EMD by District Tender Committee, Panipat submitted by M/s Shiva Transport on 24.09.2020 is subsequent to opening of price bid on 21.09.2020, the committee is of the view that the blacklisting and forfeiture of EMD does not make any impact on the technical qualification/ eligibility of M/s RS Labour and Transport Contractor.

<i>Kamta Prasad</i>	<i>Rakesh Kumar</i>	<i>Gaurav Pawar</i>	<i>Arun Kumar</i>
<i>AGM (S&C)</i>	<i>AGM (Fin)</i>	<i>AGM (Accts)</i>	<i>AGM (Law)"</i>

- 22) The Respondent No.2, has also filed an additional affidavit wherein it was stated that the Director Food, Civil Supplies and Consumer Affairs Department of Haryana – Chandigarh, being the appellate authority, vide its order dated 05.10.2020 has set aside the order of Deputy Commissioner-cum-Chairman (DLTC) The operative portion of the order dated 05.10.2020 reads as under:

"... Hence, the order dated 22.09.2020 is hereby set aside and it is directed that the work may be allotted to the firm as per terms and condition of the tender document and order of blacklisting is also set aside and earnest money may be adjusted as per terms and conditions."

- 23) In view of the discussions as above, it is clear to us that there is no ambiguity with regard to the EPF registration of the Respondent No.2. It is also clear to us that the day on which the tender was applied by Respondent No-2 and the date on which the price bids were opened by Respondent No.1, the Respondent No.2 was not blacklisted. The order of blacklisting was also set aside subsequently

on 05.10.2020. Hence, no fault can be found with the award letter dated 14.10.2020 wherein the tender in issue has been awarded to the Respondent No.2.

- 24) Even otherwise, the complaints raised by the Petitioner were duly considered by a Committee set up exclusively to look into the allegation of the Petitioner and the Committee after conducting a detailed inquiry, hearing Respondent No.2 and after going into the documents submitted by Respondent No.2, has come to a categorical finding that both the allegations of the Petitioner, namely, (i) regarding EPF registration and; (ii) regarding blacklisting, were meritless and required no action on the part of Respondent No.1.
- 25) The Committee's Report is a fact-finding report and is based on material placed before them and also as placed before us.
- 26) In addition to the factual matrix above, even legally the petitioner has failed to make out a case. In our judgment in **SRSC Infra Private Limited v. National Highways Authority of India 2021 SCC OnLine Del 3640** we have quoted with approval, the Supreme Court judgment **Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd. & Anr. (2016) 16 SCC 818**, wherein, the Supreme court by relying on **Central Coalfields Ltd. And Anr. v. SLL-SML (Joint Venture Consortium) &Ors. (2016) 8 SCC 622** observed that "*the decision making process of the employer or owner of the project in accepting or rejecting the bid of a tenderer should not be interfered with. Interference is permissible only if the decision*

making process is mala fide or is intended to favour someone.....In other words, the decision making process or the decision should be perverse and not merely faulty or incorrect or erroneous.”

- 27) The conclusions drawn by the Respondent No.1 on the complaint of the Petitioner, against Respondent No.2 appear to be reasonable and are plausible. They cannot be termed as either irrational, or arbitrary, or a result of non-application of mind, or malafide. The same does not call for interference in these proceedings. The award letter dated 14.10.2020 issued by Respondent No.1 in favour of Respondent No. 2 suffers from no factual or legal infirmities, which would prompt us to interfere therewith.
- 28) We see no merit in the writ petition and in the award of tender to Respondent No.2 and, consequently, the petition is dismissed.

JASMEET SINGH, J

VIPIN SANGHI, J

JULY 13, 2021/ ‘ms’