

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No. 11343 of 2019 (O&M)

Date of decision:- 12.10.2022

M/s Sahib Transport 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. Rajesh Arora, Advocate, for the petitioner.

Mr. K.K.Gupta, Advocate, for the respondents.

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RAVI SHANKER JHA, CHIEF JUSTICE (oral)

This petition has been filed by the petitioner-firm being aggrieved by the order dated 15.02.2019 by which the petitioner-firm has been held to be indulged in cartelization and on that sole ground the earnest money deposited by it has been ordered to be forfeited and it has been debarred from participating in any tender enquiry with the Food Corporation of India for a period of five years.

Brief facts leading to the filing of the petition are that the petitioner-firm applied for award of handling and transport contract in Radaur (FCI at District Kurukshetra) pursuant to the tender enquiry dated 31.07.2018. As one of the partner of the petitioner-firm, namely, Sher Jang Singh had also applied for the same tender in his individual capacity, therefore, the respondent-authorities passed an order under Clause 12 of the tender to the effect that it was a clear case of cartelization and therefore, vide order dated 10.09.2018, the earnest money of the petitioner firm was forfeited and it was debarred for a period of five years from participating in any tender proceedings with the Food Corporation of India.

The petitioner firm being aggrieved by the said order filed a writ petition before this Court, which was registered as Civil Writ Petition No. 28383 of 2018, and this Court vide order dated 28.09.2018 by recording a finding to the effect that the impugned order has been passed without issuing any show cause notice or giving an opportunity of hearing to petitioner had remitted the matter back to the respondent-authorities for taking a decision afresh in accordance with law after notice and opportunity to the petitioner firm. Pursuant to the aforesaid direction issued by this Court, the respondent-authorities had passed the impugned order dated 15.02.2019 (P-10) again forfeiting the earnest money deposited and debarring the petitioner firm from participating in any tender enquiry with the Food Corporation of India for a period of five years.

Learned counsel for the petitioner-firm submits that in the instant case the respondent-authorities had not afforded any opportunity of hearing to the petitioner-firm despite issuance of a direction by this Court vide order dated 28.09.2018. He further contends that the authorities have also not recorded any finding to the effect as to how the petitioner-firm has failed to comply with the MTF provisions thereby debarring it for a period of five years. He submits that on account of the aforesaid facts, the impugned order passed by the respondent-Food Corporation of India deserves to be quashed as the petitioner-firm has in fact not found to be indulged in cartelization nor has it violated the MTF provisions.

Learned counsel for the petitioner-firm further contends that Clause 12 of the MTF provisions only provides for forfeiture of EMD on arriving at a conclusion that there is a clear indication of cartelization but does not provide for debarment of five years. He submits that the issues relating to forfeiture of earnest money and debarment are contained in

Clause 6 of the MTF provisions which can be ordered only in case of eventualities mentioned in Clause 6 are not complied with which are not present in the present case. Therefore, in such circumstances, the impugned order debarring the petitioner-firm from participating in any tender enquiry with the Food Corporation of India for a period of five years without affording of any opportunity of hearing or recording any finding to that effect is liable to be quashed.

Learned counsel for the respondent-Food Corporation of India per-contra has vehemently supported the impugned order dated 15.02.2019. He, however, fairly concedes that from a perusal of the aforesaid order, it is evident that the respondent-FCI has not recorded any finding as to whether the petitioner-firm and its working partner had formed a cartel and that forming of such cartel had directly or indirectly affected the bidding. He also fairly concedes that the authorities have also not given detailed reasons as to how the petitioner-firm has violated or not complied with the MTF provisions. He submits that in such circumstances the respondent-FCI will take up the matter afresh by issuing show cause notice and affording an opportunity of hearing to the petitioner-firm and thereafter again decide the matter by a reasoned order within a period of 10 days. The aforesaid statement made by learned counsel for the respondent-FCI is not opposed by learned counsel for the petitioner.

Taking the statement of learned counsel for respondent-Food Corporation of India on record and in terms thereof, the petition filed by the petitioner-firm is disposed of by quashing the impugned order dated 15.02.2019 and grant liberty to the respondent-FCI, if so advised, to take up the matter afresh by issuing show cause notice and affording an opportunity of hearing to the petitioner-firm and thereafter decide the matter by passing a

detailed reasoned order within a period of 10 days, if they choose to take up the matter afresh.

With these observations, the petition stands disposed of.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

12.10.2022
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No