



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

CWP-16166-2024

Date of Decision: 16.07.2024

Ram Saroop

....Petitioner

Versus

Food Corporation of India and Another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. Puneet Bali, Senior Advocate, with
Mr. Nitin Kaushal, Advocate, for the petitioner.

Mr. Sunish Bindlish, Advocate
for respondent No.1-FCI.

VIKRAM AGGARWAL, J.

1. The petitioner assails the Show Cause Notice dated 12.07.2024 (Annexure P-4) and the corrigendum dated 12.07.2024 (Annexure P-5).
2. A Notice Inviting Tender (NIT) was issued on 17.05.2024 (Annexure P-1) vide which e-tenders were invited for appointment of Handling and Transport Contractor (HTC) for a period of two years at FCI, Moga Centre. The estimated value was Rs.40,88,94,000/-, the earnest money deposit (EMD) was Rs.81,77,880/- and the security amount was Rs.2,04,44,700/-. The petitioner being a Micro/Small/Medium Enterprise (MSME) participated in the aforesaid tender. In terms of Clause 14 of the Model Tender Form (MTF), the petitioner, being a MSME was exempted from the payment of earnest money as well as any document cost for the tender.
3. As per the case set up by the petitioner, before the acceptance or award of contract to the petitioner, the petitioner, vide e-mail dated 04.07.2024 (Annexure P-2), addressed to respondent No.2, withdrew the bid offered by him.

**CWP-16166-2024****-2-**

On account of withdrawal of the bid by the petitioner, respondent No.2 issued a fresh tender on 05.07.2024 being tender enquiry dated 26.07.2024 (Annexure P-3).

4. A Show Cause Notice dated 12.07.2024 (Annexure P-4) was issued to the petitioner alleging violation of Clause 6 (i) and Clause 13 of the MTF which, according to the petitioner would not be applicable to the petitioner. On the same day i.e. on 12.07.2024 at about 11:29 AM, without waiting for the reply to the Show Cause Notice, a decision was taken and a corrigendum was issued that the subsequent tender enquiry dated 26.07.2024 was being called for at the risk and the cost of the petitioner.

5. The petitioner submitted a reply to the Show Cause Notice on 12.07.2024 (Annexure P-6) explaining how there was no violation of Clauses 6(i) 13 of the MTF by the petitioner and that the issuance of the corrigendum was arbitrary and violative of the principles of natural justice because the respondents had not even waited to pass an order after the issuance of the Show Cause Notice and had, with a pre-determined mind, issued the corrigendum (Annexure P-5).

6. We have heard learned counsel for the parties.

7. Mr. Puneet Bali, learned Senior Advocate representing the petitioner has strenuously urged that the action of the respondents in issuing the corrigendum on 12.07.2024 itself just few minutes after the issuance of the Show Cause Notice is grossly arbitrary and illegal besides being violative of the principles of natural justice. Learned Senior counsel has submitted that the corrigendum is, therefore, not sustainable because it smacks of unreasonableness and shows the highhandedness of the respondents. Learned Senior counsel has submitted that the respondents should have waited and should have passed an order once a reply to the Show Cause Notice had been given and only after that,

they should have proceeded.



CWP-16166-2024

-3-

8. Mr. Sunish Bindlish, learned counsel representing respondent No.1-FCI, who is present on advance notice having been served, submits that a speaking order shall be passed by the respondents after examining the reply submitted by the petitioner to the Show Cause Notice dated 12.07.2024 (Annexure P-4) within a period of 03 working days.

9. We have considered the submissions made by learned counsel for the parties and have perused the paper book.

10. Clauses 6 (i) and 13 of the MTF read as under:-

“Clause 6(i):

The tenderer shall be permitted to bid on the express condition that in case he resiles, or modifies his offer, or terms & conditions thereof, after submitting his tender, for any reason whatsoever during the tender process, or any of the information furnished by him/her is found to be incorrect or false, the Earnest Money Deposited by him shall stand forfeited, without prejudice to any other rights and remedies of the Corporation under the Contract and Law, and the Tenderer will be liable for any loss suffered by the Corporation on account of its withdrawal/modification etc. besides forfeiture of EMD. He will also be debarred from participating in any other Tender Enquiry with FCI for period of two years”.

Clause 13:

If the information given by the Tenderer/Party in the Tender Document and its Annexures & Appendices is found to be false/incorrect or has violated/breached any of the terms & conditions of the contract, at any stage, Food Corporation



CWP-16166-2024

-4-

of India shall have the right to disqualify/summarily terminate the contract, forfeit EMD/SD/BG, make good any other losses caused to the Corporation and debar the party for two years, without prejudice to any other rights that the Corporation may have under the Contract and law."

A perusal of the aforesaid Clauses shows that where a tenderer resiles or modifies his offer or the terms and conditions of his bid after submitting his bid during the tender process or any information furnished by the tenderer is found to be incorrect or false, the earnest money deposited shall stand forfeited and the tenderer would be liable for any loss suffered by the corporation on account of its withdrawal/modification etc. besides forfeiture of the EMD and further that the tenderer would be debarred from participating in any other tender enquiry with FCI for a period of two years.

11. Admittedly, Show Cause Notice dated 12.07.2024 (Annexure P-4) was issued to the petitioner alleging violation of the aforesaid conditions on account of the withdrawal of his bid by him and he was asked to explain as to why action as envisaged under the said Clauses be not taken against him. On the same day, corrigendum (Annexure P-5) was issued in which it was stated that on account of withdrawal of the bid by the petitioner, the tender enquiry dated 26.07.2024 was being floated at the risk and the cost of the petitioner and that any loss suffered by the corporation would be recovered from the petitioner.

12. Learned counsel representing the respondent-FCI has very fairly submitted that a speaking order shall be passed upon the Show Cause Notice after considering the reply submitted by the petitioner and after affording him an opportunity of hearing. Under the circumstances, the apprehensions of the petitioner appear to be unfounded. The only merit which the submission made by

the petitioner has is that the corrigendum does in one way or the other indicate that the respondent-FCI published that the fresh tender was being floated at the risk and the cost of petitioner and that any loss suffered by the corporation would be recovered from him whereas the matter is yet to be finally decided in so far as the petitioner is concerned.

Keeping in view of the entirety of the matter and the statement given by learned counsel representing the respondent-FCI, the writ petition is disposed of accordingly. However, the statement in the corrigendum that the tender enquiry dated 26.07.2024 was being floated at the risk and cost of the petitioner and that any loss suffered by the corporation would be recovered from him would not be taken as a final determination of the issue by the respondents and they would pass a speaking order as has been stated by learned counsel representing the respondent-FCI on the merits of the issue after hearing the petitioner and being uninfluenced by the aforesaid statement in the corrigendum dated 12.07.2024.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

16.07.2024
Prince Chawla

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