IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.28260 of 2019(O&M)
Reserved on:18.09.2024
Pronounced on: 19.12.2024

M/s Hans Rice Mills ....Petitioner

V/s

State of Punjab and another ....Respondents

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

Present: Mr. Vaneet Soni, Advocate, for the petitioner.

Mr. Jastej Singh, DAG, Punjab, for respondents-State.

Mr. Avinit Avasthi, Advocate, for
Mr. Siddhant Chattopadhyaya, Advocate, for respondent No.2

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VIKRAM AGGARWAL, J.

1. The petitioner prays for the issuance of a writ of mandamus directing respondent No.2 (Punjab State Grains Procurement Corporation Limited) to refund the security/earnest money deposit of Rs.2,10,000/- along with interest @ 18% from the date of deposit till the date of realization.

2. The facts, as set out in the writ petition, are that a tender (Annexure P-1) for the sale of 1509 variety of paddy lying in various godowns of different agencies and belonging to MARKFED, PUNGRAIN, PUNSUP, PSWC & PAFC was issued. The closing date and time for downloading of the tender document and submission of technical bid Part-1 and price bid/commercial bid Part-II was 12.08.2016 up to 11.00 a.m. The technical bid was to be opened on 12.08.2016 at 2.30 p.m. and the price bid

was to be opened on 16.08.2016 at 11.30 a.m.

3. Pursuant to the issuance of the tender, the petitioner submitted his bid and deposited security/earnest money of Rs.2,10,000/- @ Rs.100/- per qtl. for allotment of 210 mt. of paddy. As per the petitioner, in terms of Clause 23 of the terms and conditions of the tender document, all tenders would be irrevocable and would remain valid for acceptance for a period of 15 days from the date of opening of tenders. It has been averred that the tenders were opened on 16.08.2016 at 11.30 a.m. However, no information was given to the petitioner as regards acceptance or rejection of its tender up to 30.08.2016. An e-mail dated 02.09.2016 (Annexure P-3) was received by the petitioner having an attached letter dated 30.08.2016 (Annexure P-2), stating that the rates quoted by the petitioner had been approved with regard to sale of paddy lying in District Mansa. The petitioner, however, vide communication dated 08.09.2016 (Annexure P-4) wrote back to the respondents that since there was a delay in conveying the approval to the petitioner, he was no longer interested in purchasing the paddy and requested for cancellation of the approval and refund of the earnest money.

4. The earnest money was, however, not refunded, as a result of which certain representations (Annexure P-5 to Annexure P-11) were submitted. No response having been received, the petitioner filed the instant writ petition.

5. The writ petition has been opposed by the respondents. In the reply submitted by respondent No.1, certain preliminary submissions have been made to the effect that the petitioner had the efficacious remedy of filing a civil suit for recovery, as also to invoke clause 27 which provides for arbitration. On merits, the issuance of the tender and sending of email dated

02.09.2016 along with approval letter dated 30.08.2016 has been admitted. It has, however, been denied that any loss had been caused to the petitioner. It has been averred that in fact loss was suffered by the respondents as they had to go through the process of re-tendering and as against a rate Rs.19030/- per MT quoted by the petitioner and approved by the authorities, the subsequent successful bidder namely Gee Gee Agrotech, Moga quoted a rate of Rs.16510/- per MT as a result of which, a loss of Rs.5,29,200/- was suffered by the respondents.

6. A separate reply has been filed by respondent No.2 on the same lines. Reliance has been placed on Clause 20 of the terms and conditions of the tender document to justify forfeiture of the earnest money.

7. Learned counsel for the parties were heard.

8. It was submitted by Mr. Vaneet Soni, learned counsel representing the petitioner that the forfeiture of the earnest money is illegal and arbitrary, for there was a delay in communication of the acceptance of the rates of the petitioner by the respondents. Reference has been made to the provisions of Clause 23 of the terms and conditions of the tender document which provides that the tender would remain valid for acceptance for a period of 15 days from the date of opening of the tender.

9. *Per contra*, learned counsel for the respondents opposed the argument addressed by learned counsel for the petitioner. Reference was made to Clauses 20 and 27 of the terms and conditions of the tender document.

10. Having considered the submissions made by learned counsel for the parties, we find the writ petition to be devoid of merit for the following reasons.

11. The tender document provided for opening of the technical bids on 12.08.2016 and price bids on 16.08.2016. Clause 23, reliance upon which has been placed by the petitioner provides that all tenders would be irrevocable and would remain valid for acceptance for a period of 15 days from the date they are opened;

> ***"23) Managing Director(s) of all the procurement agencies reserves the right to accept or reject any or all the tender(s) wholly/partly without assigning any reason. All tenders shall be irrevocable and remain valid for acceptance for a period of 15 days from the date of opening of tender(s).***

12. Further Clauses 20 and 27 of the terms and conditions of the tender document reliance upon which has been placed by the respondents laid down as under;

> ***"20) If the tenderer fails or neglects to observe or perform any of his obligations in respect of any damage, losses, charges, expenses, or cost, that may be suffered or incurred by any of the procurement agency during the contract, it shall be lawful for the concerned procurement agency and in its absolute discretion to adjust either in whole the security deposit i.e. earnest money and performance guarantee furnished by the tenderer or any part thereof. The decision of the concerned procurement agency, in this respect, shall be final and binding on the tenderer.***
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> ***xxx xxx xxx***
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> ***27) In case of any dispute arising out of the contract, the matter shall be referred to the Managing Director of concerned procurement agency to arbitrate in the matter, who can arbitrate himself or appoint anybody including concerned agency's officer to arbitrate in the matter. The said arbitration proceedings shall be held under the jurisdiction of Chandigarh only & as per provision of the Arbitration & Conciliation Act, 1996."***

13. After the opening of the tender, communication dated

30.08.2016 (Annexure P-2) was issued to the petitioner informing it that the competent authority had approved the rates quoted by the petitioner. The petitioner was advised to contact the concerned District Manager and to deposit the security amount @ Rs.250/- per qtl. within a period of 3 working days in terms of Clause 3 of the terms and conditions. It was also stated that a release order would be issued as per the terms and conditions of the tender. This letter was communicated to the petitioner vide email dated 02.09.2016. The petitioner, however, shot off a communication dated 08.09.2016 that the approval be cancelled on account of late information. It is not understood as to what prejudice had been caused to the petitioner on account of the late communication. The communication issued by the respondents is of 30.08.2016, though it was sent to the petitioner on 02.09.2016. What possible prejudice could have been caused to the petitioner with this delay of 2 days has not even been stated in the writ petition nor was it pointed out during the course of arguments. On the contrary, the respondents suffered a financial loss as retendering process had to be resorted to.

14. Instead of availing the remedies under the general common law or invoking arbitration as provided for in Clause 27, the petitioner chose to file the instant writ petition. However, it is the categoric stand of the respondents that as financial loss was suffered by them on account of the request of the petitioner to cancel the approval, they had forfeited the earnest money of Rs.2,10,000/-.

15. In the considered opinion of this Court, the authorities were well within their right in view of the provisions of Clause 20 of the terms and conditions to forfeit the earnest money. It has also come on record and

not denied by way of replication that the petitioner had backed out on account of decrease in the rates of paddy. The petitioner appears to have not brought the true picture before the Court and appears to have raised a very weak ground of 2 days delay in communication of the approval. We are, therefore, not inclined to interfere in the decision taken by the respondents to forfeit the sum of Rs.2,10,000/- deposited by the petitioner as security/earnest money.

16. In view of the aforesaid, we do not find any merit in the present writ petition and the same is accordingly dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Reserved on : 18.09.2024
Pronounced on : 19.12.2024
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No