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

(i) CWP-21994-2024

M/s Roshan Lal & Co. ...... Petitioner

Versus

Food Corporation of India and another ...... Respondents

(ii) CWP-22011-2024

Mahinder Pal and another ...... Petitioners

Versus

Food Corporation of India and another ...... Respondents

Reserved on : 03.09.2024
Pronounced on : 17.09.2024

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

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Present : Mr. H.P.S.Binder, Advocate
for the petitioner in CWP No.21994 of 2024.

Mr. D.S.Patwalia, Senior Advocate with
Mr. Gauravjit Singh Patwalia, Advocate
for the petitioners in CWP-22011 of 2024.

Mr. Sunish Bindlish, Advocate
for the respondent(s).

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VIKRAM AGGARWAL, J

1. The issue raised in both the afore-titled writ petitions being identical, they are being disposed of by way of a common judgment. The

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facts are being extracted from CWP No.21994-2024.

2. The petitioner has impugned the order dated 24.08.2024 (Annexure P-15), passed by respondent No.1-Food Corporation of India (hereinafter referred to as 'the respondent-Corporation') vide which the objections raised by the petitioner to respondent No.2 having been declared technically responsive have been rejected.

3. A Notice Inviting Tender (NIT) (Annexure P-1) was issued on 06.05.2024 by the respondent-Corporation for appointment of a Handling and Transport Contractor (HTC) at Sultanpur Lodhi Centre, District Kapurthala (Punjab). There were eight applicants including the petitioner and respondent No.2 in CWP No.21994-2024 and both petitioners in CWP No.22011 of 2024.

4. It is the case of the petitioner that respondent No.2 had submitted various documents alongwith his bid in the shape of income tax returns, Udyam Registration Certificate, GST Registration Certificate, Aadhar Card, EPF Registration Certificate, Experience Certificate etc. and in many of the aforesaid documents, different addresses were mentioned indicating that the documents were false, having fraudulent business addresses. It is the case of the petitioner that in the letter dated 09.04.2015 (Annexure P-2) vide which provident fund code number was stated to have been issued to respondent No.2, the address of the Regional Office of the establishment was mentioned as House No.530/2, Model Town, Ward No.1, Ludhiana. In the GST Registration Certificate (Annexure P-3), the address mentioned was Rahon Road, Model Town, Samrala Road, Khanna, District Ludhiana. Similarly, in

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the Udyam Registration Certificate (Annexure P-4), the address given was Booth No.28, Grain Market, Khanna, District Ludhiana and Form No.5-A (Annexure P-5) generated through the Web portal Employees' Organization, mentioned the address of the establishment of respondent No.2 as House No.530/2, Model Town, Ward No.1, Khanna, District Ludhiana. The Aadhar Card (Annexure P-6) also mentioned this very address whereas the Forwarding Letter dated 06.05.2024 (Annexure P-7) with the Appendix-I at the time of participation in the e-tender process mentioned the address as booth No.28, Grain Market, Khanna, District Ludhiana which was the address mentioned in Appendix-II (Annexure P-8) also.

5. When the aforesaid fact came to the knowledge of the other bidders, petitioner No.2 Vijay Kumar in CWP No.22011 of 2024 submitted a complaint dated 27.06.2024 (Annexure P-9) to the respondent-Corporation bringing to its notice the said discrepancies in the documents submitted by respondent No.2.

6. Thereafter, technical evaluation of the bids was carried out in which two bidders were held to be non-responsive whereas the remaining six bidders including the petitioners and respondent No.2 in both the petitions were held to be technically responsive and were, therefore, held to be qualified for evaluation of their financial bids.

7. Upon evaluation of the financial bids, respondent No.2 was declared L-1, petitioner No.1 in CWP No.22011 of 2024 namely Mohinder Pal was declared L-2, petitioner M/s Roshan Lal and Company in CWP No.21994-2024 was declared L-3 and petitioner No.2 Vijay Kumar in CWP

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No.22011 of 2024 was declared L-4 whereas the remaining bidders were declared as L-5 and L-6 respectively. The result of the technical evaluation and the financial evaluation of the bids have been placed on record as Annexures P-10 and P-11 respectively.

8. Instead of acting on the complaint submitted by Vijay Kumar, the respondent-Corporation permitted respondent No.2 to submit an undertaking (Annexure P-12) that he was having two addresses i.e. House No.530, Model Town, Khanna, District Ludhiana which was his residential address and the same was used for participating in the tender process whereas his office address was Booth No.28, Grain Market, Khanna.

9. Aggrieved by this action, the petitioner preferred CWP No.16680 of 2024 which was disposed of by this Court vide order dated 19.07.2024 (Annexure P-13) with a direction to the respondent-Corporation to decide the representation submitted by Vijay Kumar by passing a speaking order after affording an opportunity to all stake-holders.

10. Pursuant to the order dated 19.07.2024, written submissions dated 29.07.2024 (Annexure P-14) were submitted by the petitioner. However, the respondent-Corporation passed an order dated 24.08.2024 (Annexure P-15) holding the bid of respondent No.2 as valid and responsive, leading to the filing of the instant writ petition.

11. Learned counsel for the petitioners and Mr. Sunish Bindlish, Advocate, learned counsel representing the respondent-Corporation, who had caused appearance on advance copy having been served, were heard.

12. It was strenuously urged by Sh. D.S.Patwalia, learned Senior

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Counsel representing the petitioners in CWP No.22011 of 2024 and Sh. H.P.S.Bhinder, learned counsel representing the petitioner in CWP No.21994 of 2024 that the action of the respondent-Corporation in ignoring the glaring discrepancies in the documents submitted by respondent No.2 clearly indicates that the respondent-Corporation was bent upon awarding the contract to respondent No.2 and ignored the discrepancies in an illegal and arbitrary manner. Reference was made to the documents (Annexures P-2 to P-8) submitted by respondent No.2, the result of the technical evaluation of bids (Annexure P-10), the order dated 19.07.2024 (Annexure P-13) passed by this Court and the impugned order dated 24.08.2024 (Annexure P-15) and it was submitted that the action of the respondent-Corporation is not sustainable and, therefore, deserves to be quashed. It was also submitted that under similar circumstances, the respondent-Corporation had disqualified various bidders including the petitioner in CWP No.22011-2024 on account of documents submitted with the bids having minor discrepancies such as different dates of birth etc. It was submitted that the respondent-Corporation was expected to adopt the same yardstick for all bidders and should not adopt a pick and choose policy to the detriment of other bidders.

13. Per contra, it was submitted by learned counsel representing the respondent-Corporation that the documents annexed by respondent No.2 with the bids were not ingenuine nor had they been cancelled by any authority and under the circumstances, a view had been taken by the respondent-Corporation vide which the documents were accepted and the discrepancies were not found to be of such a nature which would entail rejection of the

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technical bid of respondent No.2. It was submitted that as regards the other cases pointed out by learned Senior Counsel, there were different dates of birth in different documents which is a serious discrepancy and under the circumstances, those bids were rejected. It was submitted that in any case, it cannot be said that because bids in those cases had not been held to be technically responsive, the same principle would have to be applied in the present cases because each case has to be tested on its own facts and documents. No general principle can be laid down to be made uniformly applicable to all cases.

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

15. The Notice Inviting Tender (NIT) is on record as Annexure P-1. These were e-tenders, invited under the two bid system from financially sound parties having business competence for appointment of Regular Handling and Transport Contractor (HTC) for a period of two years for the Sultanpur Lodhi Centre, District Kapurthala. The estimated contract value was Rs.8,75,76,000/- and the HTC was to be appointed for two years. Admittedly, there were eight bidders. The whole dispute is as regards the documents submitted by respondent No.2 with his bids which have been placed on record as Annexures P-2 to P-8. A perusal of the said documents would show that essentially, the petitioner has given three addresses in these documents, the first one being House No.530/2, Model Town, Wards No.1, Khanna, District Ludhiana, the second being Rahon Road, Model Town, Samrala Road, Khanna, District Ludhiana and the third one being Booth

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No.28, Grain Market, Khanna, District Ludhiana. Annexure P-2 is the document issued by the Employees' Provident Fund indicating the Provident fund code number to respondent No.2 which mentions the address of the firm of respondent No.2 as House No.530/2, Model Town, Ward No.1, Khanna, Ludhiana. Same is the address given on Form 5-A issued by the Employees' Provident Fund Registration (Annexure P-5) and the Aadhar Card (Annexure P-6). On the GST Registration Certificate, the address mentioned is Rahon Road, Model Town, Samrala Road, Khanna, District Ludhiana and the registration was from 2019 onwards. In the Udyam Registration Certificate (Annexure P-4) and the Forwarding letter (Annexure P-7) issued by respondent No.2 alongwith the appendix-I and appendix-II, the address was mentioned as Booth No.28, Grain Market, Khanna, District Ludhiana. When the issue was raked up by the bidders, as per the petitioner, no action was taken leading to the filing of CWP No.16680 of 2024 which was disposed of by this Court vide order dated 19.07.2024 calling upon the respondents to hear the stake holders and pass a speaking order. The parties were duly heard and a speaking order was passed on 24.08.2024 in which the objections raised by the petitioners were duly noted. As regards alleged violation of Clause 5 (a) and Clause 13 of the MTF, after examining all aspects, the respondent-Corporation came to the conclusion that there were minor variations in individual documents and the bidder could have more than one address which could not be taken as a major discrepancy. It was also observed that ultimately the bidder was to submit SD @ 5% and BG @ 10% of the contract value within 15 days of receiving the award letter and could

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initiate work only after that. It was also observed that respondent No.2 was not a new bidder and was already working with the respondent-Corporation. The contention as regards rejection of other bids on account of discrepancies was also noticed and was also held that rejection of separate bidders in separate tenders on different grounds could not be compared. It was, therefore, held that bids were not to be rejected on trivial and frivolous grounds;

> **“The petitioners have alleged violation of Clause 5(a) and Clause 13 of MTF:**
>
> **Clause 5 (a)**
>
> **“The Tenderer must fill up and sign the forwarding letter in the format given in Appendix-I and also furnish full, precise and accurate details in respect of information asked for in Appendix-II attached to the form of tender. The filled and signed Appendices I and II are to be scanned and uploaded at the space provided in the GeM Portal."**
>
> **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 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."**

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The petitioners have stated that while submitting his bid Sh Satnam Singh filled the checklist pertaining to the clause 3(a), "Experienced Bidder" but has not checked option (ix) thereof to indicate that other supporting documents have been uploaded and therefore in absence of such indication, the aforesaid undertaking, which is otherwise not part of the documents to be uploaded by the bidder is not liable to be taken into consideration. Further the undertaking is liable to be discarded as the same is not as per the prescribed format, not on any stamp paper, not addressed to anyone and neither signed nor dated.

Further, the petitioners have alleged that Sh. Satnam Singh has dishonest intent and submitted documents with different addresses intentionally to avoid civil and other legal liabilities in case of any dispute related to the contract.

In reference to above allegations made by petitioner, pointwise reply/clarification was submitted by Sh. Satnam Singh which is as under:

1. It is submitted that all allegation made by petitioner are wrong and baseless as all the valid documents are furnished by Sh. Satnam Singh.

2. With the regard to the addresses mentioned on the documents like EPF no., Form 5A and GST, the tender had given his home address as the place of business to EPF and GST authorities for any further correspondence with him.

3. Further, address on Udyam Registration

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certificate is concerned, at the time of applying above said certificate he started his business from booth no. 28, Grain Market, Khanna District Ludhiana. So he is conducting business from his home as well as above mentioned address Booth no. 28, Grain Market. Khanna District Ludhiana.

4. Furthermore, in undertaking uploaded by Sh. Satnam Singh, he specifically mentioned his house address as House no. 530, Model Town, Samrala Road Khanna, District Ludhiana and Business address as Booth no. 28, Grain Market, Khanna District Ludhiana, with the request to FCI to accept his both addresses.

5. Additionally, with regard to allegation of escaping from civil liability is concerned, hereby it is submitted that he is working with FCI since, 2021. He was awarded his tender in the year of 2021 for HTC Garhshankar, HTC Bhadson & HTC Khanna and he duly completed the above said tender work to the satisfaction of FCI. Presently he is working as HTC Mehal Kalan and performing the work to the satisfaction of FCI. Further, in the present tender process (HTC Sultanpur Lodhi) he had submitted the Bank Guarantee of Rs. 87,57,600/- and Security amount of Rs. 22 Lakh, so there is no question of liability.

The above allegations of the petitioners with

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submission of Sh. Satnam Singh have been examined by the undersigned. The petitioners have alleged that there is great variation in the addresses of Sh. Satnam Singh in various documents. From the documents, it is seen that Sh Satnam Singh has mentioned only two addresses. H. No. 530/2, Model Town, Ward No.1, Khanna, Ludhiana and Booth No. 28, Grain Market Khanna, Ludhiana, with minor variation in individual documents. A bidder can have more than one address and such variation in the addresses in the various documents is not a major discrepancy. The contention regarding the wrong format of the undertaking submitted by Sh. Satnam Singh does not have merit since the MTF does not provide format for such undertakings. Moreover, the undertaking was not unsigned as alleged. The non-checking of option (ix) to indicate that other supporting documents have been uploaded was only a minor omission which was not worth considering.

To avoid any loss to the Corporation in case of any dispute that might arise during the currency of contract, the bidder has to submit SD @ 5% and BG @ 10% of the contract value within 15 days of receiving the award letter and can initiate work post that only. Further, Sh Satnam Singh is not a new bidder and is already working with FCI The petitioner has contended that FCI has rejected bids because of discrepancies in the tender documents in the past. The rejection of separate bidders in separate tenders on different grounds cannot obviously be compared

The information submitted by Sh. Satnam

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> **Singh has been scrutinized by the Technical Evaluation Committee at this office in a transparent manner and was found to be in order and as per the requirements of the NIT/MTF. Further, as per FCI HQ Circular No. F1 (Misc) /2014/Cont (209)/Circular/Vol I dated bids are not to be rejected on trivial and frivolous grounds.**
>
> **In view of the abovementioned facts and in compliance of the order of Hon'ble High Court in respect of CWP 16680-2024 the representation/ written submission of Sh. Vijay Kumar is found to be without merit and accordingly disposed of. "**

16. A perusal of the aforesaid order does not reflect any illegality or arbitrariness and respondent No.2 was not to be adjudged technically non-responsive on the mere objections raised by the petitioner. We have not found any semblance of malafides in the decision making process of the respondents and are, therefore, not inclined to interfere. While arriving at this conclusion, we are reminded of the principles enunciated in the cases of **Jagdish Mandal versus State of Orissa and others 2007 (14) SCC 517**, **Silppi Constructions Contractors versus Union of India and Anr. Etc. Etc. 2020 (16) SCC 48**9, **State of Punjab and others versus Mehardin 2022 (5) SCC 648, TATA Cellular versus Union of India (1994) 6 SCC 651**, **Rajeev Suri Versus Delhi Development Authority 2022 (11) SCC 1, Balaji Ventures Pvt. Ltd. Versus Maharashtra State Power Generation Company Ltd. & Anr. 2022 LiveLaw (SC) 295 and Netai Bag and others versus State of W.B. and others (2000) 8 Supreme Court Cases 262.**

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In view of the aforementioned facts and circumstance, we do not find any merit in both the writ petitions and the same are hereby dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Reserved on : 03.09.2024
Pronounced on : 17.09.2024
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No

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