

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-25286-2024
Date of Decision: 30.09.2024

Om Prakash Arya

....Petitioner

Versus

Food Corporation of India and Others

....Respondents

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

Present: Mr. Gaurav Chopra, Senior Advocate with
Ms. Himani Jamwal, Advocate and
Mr. Anurag Chopra, Advocate
for the petitioners.

VIKRAM AGGARWAL, J.

1. The petitioner assails the technical evaluation summary dated 27.08.2024 (Annexure P-5) vide which the technical bid submitted by the petitioner for being appointed as Handling and Transport Contractor for Center Gohana, Rail Head, Gohana was rejected and the order dated 10.09.2024 (Annexure P-8) vide which representation dated 31.08.2024 (Annexure P-6) moved by the petitioner in compliance with the order dated 03.09.2024 (Annexure P-7) passed by this Court in ***CWP No.21995 of 2024*** titled as '***Om Prakash Arya Vs. Food Corporation of India and Another***' was rejected and the order dated 27.08.2024 was upheld.

2. A Notice Inviting Tender (NIT) dated 19.06.2024 (Annexure P-1) was issued by the Food Corporation of India (respondent No.1) for appointing of Handling and Transport Contractor (HTC) at Center Gohana under the two bid system from financially sound parties having requisite business competence. The terms and conditions of the NIT were to be read with the Model Tender Form (MTF) (Annexure P-2).



CWP-25286-2024

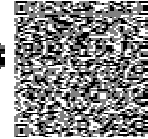
-2-

3. The petitioner submitted its bid on 10.07.2024 (Annexure P-3) and the technical evaluation report dated 27.08.2024 was mailed to the petitioner vide which the petitioner was declared to be technically non-responsive. As per the petitioner, the e-mail was perused by the petitioner on 30.08.2024. It is the case of the petitioner that the petitioner had been erroneously held to be technically non-responsive and that the bid was rejected in a Hyper-Technical Manner stating that the bank statement of last one year for the period ending on the date of publication of the NIT had not been submitted. It is the case of the petitioner that the bank statement was to be submitted from 20.06.2023 to 19.06.2024 for the limited purpose of KYC but the petitioner had submitted the statement from 03.07.2023 to 10.07.2024 which fell short by 13 days.

4. Aggrieved by the aforesaid order, the petitioner instituted ***CWP No.21995 of 2024*** titled as '***Om Prakash Arya Vs. Food Corporation of India and Another***'

which was disposed of vide order dated 03.09.2024 (Annexure P-7) with a direction to the respondents to consider the concerns/grievances of the petitioner and to pass appropriate orders in accordance with law.

5. In compliance with the aforesaid order, representation dated 31.08.2024 was submitted by the petitioner which has now been rejected vide order dated 10.09.2024 (Annexure P-8). It is the case of the petitioner that the rejection is beyond the relevant terms and conditions as stated in the NIT and the MTF floated by the Corporation without considering the fact that the petitioner had complied with each and every requirement. It is also the case of the petitioner that the rate quoted by the petitioner is 1/6th of the rate quoted by respondent No.3 who has been awarded the work vide allotment letter dated 12.09.2024

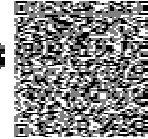
**CWP-25286-2024****-3-**

(Annexure P-9). It has, therefore, been averred that if the petitioner is held to be technically responsive and work is allotted to it, the same shall benefit the Corporation as also the State Exchequer. It is the further case of the petitioner that initially the tender in respect of the Gohana Center was floated on 24.01.2024 wherein a similar anomaly by one Noratan who was one of the bidders was overlooked and he was declared to be technically responsive. However, at a later stage the said tender was scrapped. Another example of one Deepu Verma who had submitted his bid in pursuance to another tender floated on 18.03.2024 with regard to the same center has been given. It has been averred that he was declared technically responsive despite his bank statement being short by few days but the said tender was also subsequently scrapped after which the present tender inquiry was floated.

6. We have heard learned Senior counsel for the petitioner.

7. Mr. Gaurav Chopra, learned Senior counsel representing the petitioner has strenuously urged that the holding of the petitioner to be technically non-responsive and the subsequent speaking order dated 10.09.2024 is illegal and arbitrary. Learned Senior counsel submits that the bank statement had to be submitted only for the purpose of KYC and that in any case, the same was short by only 13 days. Learned Senior counsel also points out about the previous two instances wherein similar discrepancies were overlooked and the bidders were held to be technically responsive. Learned Senior counsel submits that the speaking order does not deal with the issue at all and the concerned authority has again in fact passed a non-speaking order.

8. Having heard learned Senior counsel for the petitioner, we find no reason to interfere with the impugned orders.



CWP-25286-2024

-4-

9. Initially, on 27.08.2024, the petitioner was held to be technically non-responsive holding as under:-

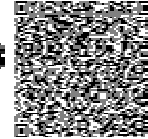
“Technical Bid submitted by the bidder is not in accordance with the criteria laid down in NIT/MTF. Bidder has not submitted bank statement of last one year for the period ending on the date of publication of NIT in case of non-assesse as required under clause 3(b)(iv). Hence bidder technically disqualified as in experience bidder.”

10. The petitioner then filed *CWP No.21995 of 2024* titled as ‘*Om Prakash Arya Vs. Food Corporation of India and Another*’ before this Court which was disposed of on 03.09.2024:-

“Vide Notice Inviting Tender (NIT), dated June 19, 2024 (P-1), the respondent-Corporation had invited e-tenders for appointment of regular contractor for handling and transport of foodgrains and allied material etc. at Centre Gohana, for a period of two years.

Concededly, the petitioner participated in the tender process and submitted his bid. However, upon technical evaluation of his bid, the authorities, vide order dated August 27, 2024 (P-5), declared him noncompliant/non-responsive, as he failed to submit the bank account statement of the last one year, for the period ending on the date of publication of NIT.

Learned counsel for the petitioner fairly draws our attention to Clause XVIII(c) of the Tender Documents, which postulates that in the event, a tenderer is disqualified, he can, within two working days from the date of his disqualification, submit his grievance to the General Manager (Region) through GeM portal. And, the General Manager (Region) is to redress his grievance(s) by passing Speaking Order within seven (7) working days, and thereafter the price bid(s) would be opened. He submits, although the technical results were uploaded by the Corporation on August 27, 2024, but inadvertently and due to certain unforeseeable circumstances, the petitioner did not check the results uploaded till August 30, 2024. However, immediately after coming to know that he was declared ineligible, the petitioner, vide representation dated August 31, 2024 (P-6), questioned the validity of the decision of the respondent-authorities by which he was declared noncompliant. It is submitted that the price



bid submitted by the petitioner is 214% ASOR below as compared to M/s Jind Transport, the tenderer who has been adjudged L1. Be that as it may, he submits that the respondent-Corporation has failed to respond to the representation submitted by the petitioner, which is still pending consideration. Thus, this petition.

Served with the advance copy of the petition, Mr. K.K. Gupta, Advocate is present in Court on behalf of the respondent-FCI. At the outset, he submits, as concededly the petitioner did not submit any objection/ grievance in terms of Clause 18(c) of the Tender Documents, the authority, in sync with the time-lines envisaged under the tender, has opened the price bid(s), upon which M/s Jind Transport was adjudged L1. However, it is urged, for the respondent-authority is already in seisin of the representation (ibid) alleged to have been submitted by the petitioner, let the petition be disposed of, to enable the competent authority to consider the concerns/grievances of the petitioner. And pass appropriate orders, in accordance with law.

Learned counsel for the petitioner is agreeable to the course suggested by learned counsel for the respondent(s). However, he submits, the matter being time sensitive, the authorities be directed to take a decision within a specified time.

In response, learned counsel for the respondent(s) submits that necessary orders shall be passed within a period of 7 days from today.

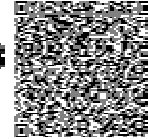
That being so, learned counsel for the petitioner submits that let the petition be disposed of in terms of the statement made by learned counsel for the respondent(s).

In the wake of the position sketched out above, as also the statements made by learned counsel for the parties, the petition is accordingly disposed of.

This Court is sanguine that the respondent-authority shall consider/examine the matter in the right earnest, and as submitted by learned counsel appearing on its behalf, would pass the necessary orders within the stipulated period.”

11. The authority has now passed a speaking order:-

“This order is to decide a representation of Om Prakash Arya dated 31.08.2024 received through e-mail against his disqualification for participating in HTC Gohana RH Gohana in which the bidder has submitted the Bank Statement of Last one-year w.e.f. 01st July



2023 to 10th July 2024. This is in the wake of Hon'ble Punjab & Haryana High Court Order dated 03-09-2024.

On 19.06.2024, this office issued Tender Notice GeM/2024/B/5067588 dated 19.06.2024 for the appointment of Handling & Transport Contractor (HTC) at Centre HTC Gohana for a period of two years.

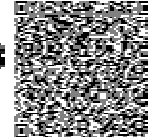
On 10.07.2024, The bidder Om Prakash Arya submitted its Bids/Documents for being appointed as the contractor for HTC Gohana. The other two bidders being Jind Transport Company & Poonam Transport Company.

On 27.08.2024 the bid of Om Prakash Arya was technically rejected on GeM by the technical evaluation committee citing reason "The technical bid submitted by the bidder i.e. OM PRAKASH ARYA is not in accordance with the technical criteria laid down in the MTF/NIT. The bidder has not submitted the bank statement of last one year for the period ending on the date of publication of NIT in case of non-assesse as required under clause 3(b)(iv) (List of documents to be uploaded by the bidders). Hence, the bidder may be technically disqualified as in-experienced bidder." Accordingly, the same was uploaded on GeM.

The bidder could not upload its one-time grievance seeking remedial measures through the GeM Portal within two days from the date of disqualification as specified under Clause XVIII (c) Laws governing the Contract & Dispute Resolution. However, the bidder represented through email on 31.08.2024.

Further, a committee comprising of three DGMs was constituted to review the representation dated 31.08.2024, keeping the view of gravity of the case. The committee analyzed the documents submitted by the bidder along with technical evaluation report and found the report in order.

The undersigned has gone through the contents of the representation dated 31.08.2024 of Om Prakash Arya vis-a-vis Technical Requirements, reasons of rejection of the Technical Bid. On perusal of the concerned file/records of the case, the Technical Bid Evaluation Committee found that the bidder has not submitted the bank statement of last one-year period ending on the date of publication of NIT in case of non-assesse as required under clause 3(b)(iv) (List of documents to be uploaded by the bidders) in accordance with the MT (for specific period i.e. 20- 06-2023 to 19-06-



2024) and accordingly the bidder was technically disqualified. The decision of Technical Evaluation Committee and later three DGMs Committee have been found in order as the documents have not been uploaded on GeM portal while submitting the tender.

In view of above, representation dated 31.08.2024 of Om Prakash Arya, having found devoid of merit and is hereby rejected in light of the above factual position vis-a-vis the provisions contained in the NIT/MTF.”

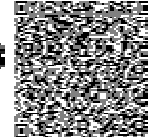
A perusal of the initial order dated 27.08.2024 shows that the petitioner was held to be technically non-responsive because he had not submitted the bank statement for last one year for the period ending on the date of publication of the NIT as required under Clause 3(b) (iv). After the directions issued by this Court, the order dated 10.09.2024 has been passed in which it has been noticed that the bids were submitted by the petitioner on 10.07.2024. On 27.08.2024, the bid was technically rejected. The bidder did not upload its one time grievance seeking remedial measures through the GeM Portal within 02 days from the date of disqualification as specified under Clause XVIII (C):-

“XVIII.

Laws Governing the Contract & Dispute Resolution

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(C) The results of technical evaluation will be uploaded on the GeM Portal. In case there are technically disqualified bidders, the reasons for disqualification will be uploaded and price bid shall be opened only after two working days. If any of the bidders is disqualified, he may submit grievance (if any) to General Manager (Region) only through GeM portal within two working days from the date of disqualification. However, no new documents will be accepted. In case of receipt of grievance, General Manager (Region) will redress the grievance by passing Speaking Order within seven (7) working days after which the price bid will be opened.”



CWP-25286-2024

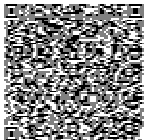
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However, he submitted a representation dated 31.08.2024 for which a committee comprising of three Deputy General Managers (DGMs) was constituted to review the same keeping in view the gravity of the case. The committee analyzed the documents submitted by the bidder alongwith the technically evaluation report and found the said report to be in order. The authority concerned then noticed that the representation dated 31.08.2024 had been perused *vis-a-vis* the technical requirements. The reasons for rejection of the technical bid had also been perused. The authority concerned also perused the report of the committee of three DGMs and found the action to be in order as the documents had not been uploaded on the GeM Portal while submitting the tender. The representation dated 31.08.2024 was accordingly rejected.

12. We do not find any error in the impugned orders because admittedly, the bank statement was incomplete and the contention of the petitioner that it was short by only 13 days is devoid of merit because a document which is required to be submitted has to be submitted and failure to submit the same, would go to the disadvantage of the bidder. It has to be borne in mind that mandatory provisions had to be complied with and it would not be open to bidders to contend that the document was not required for important purposes. The argument that in previous two tender inquiries, similar discrepancies had been overlooked is devoid of merit because the said tenders were scrapped and, therefore, the said examples are virtually of no relevance.

13. A perusal of the aforesaid order does not reflect any illegality or arbitrariness. 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



CWP-25286-2024

-9-

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.* 2020 (16) SCC 489, *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.

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

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

30.09.2024
Prince Chawla

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