



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

141**CWP-2329-2025****Date of Decision: 30.01.2025****Deepak Kumar**

....Petitioner

Versus

Food Corporation of India

....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Anurag Chopra, Advocate
for the petitioner.

Mr. Sunish Bindlish, Advocate (Standing Counsel FCI)

Mr. Viney Kumar, Advocate

Ms. Ridhi Bansal, Advocate

Mr. Sagar Ratusaria, Advocate for respondent-FCI.

Sureshwar Thakur, J. (Oral)

1. The writ petitioner prays for the quashing of the rejection order Annexure P-4, whereby the petitioner's representation against the rejection of his technical bid became rejected. At the very outset, the subject works are at a nascent stage, inasmuch as, though the subject works stand awarded to the successful bidders, but the services asked to be performed by the successful bidders have not yet commenced.

2. The above nascent stage of the works allotted to the successful bidders, is of grave importance, inasmuch as, it may ultimately effectively sway this Court to the extent, that in case this Court is convinced that the disqualification entailed upon the petitioner's technical bid, thus was as ill



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made disqualification, thereby, this Court may be further led to after quashing the allotment of works to the successful bidders, to make a mandamus upon the respondents to re-float fresh invitations to offer.

3. The learned counsel for the writ petitioner becomes aggrieved from the requisite tender condition embodied in clause 14(IV) of the tender form conditions, conditions whereof becomes extracted hereinafter:-

“IV. MSEs must indicate their registration number and date of their MSE registration, which should be valid as on last date of submission of tender. MSEs seeking exemption and benefits should upload an attested/self-certified copy of valid registration certificate i.e. Udyam Registration Certificate, giving details such as stores/services etc. Failing which they run the risk of their bid being passed over as ineligible for the benefits applicable to MSEs.”

4. The petitioner claims that he was operating a Micro and Small Enterprises and thereby he was required to be endowed the exemption *vis-a-vis* the payment of earnest money. However, the supra espousal as made by the petitioner, became not accepted by the respondent. Since the respondent concluded that the present petitioner is not to be endowed the benefit of his operating a micro and small enterprises (MSEs), thereby, when he did not also along with the tender document make payment of the earnest money, thereby, his technical bid was rejected.

5. Arguments have been addressed by the learned counsel for the petitioner as well as by the learned counsel for the respondents. The learned counsel for the petitioners, has placed on record, a judgment rendered by the Apex Court in case titled **M/s N.G. Projects Limited Vs. M/s Vinod Kumar**



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Jain and others, 2022 (6) SCC 127, whereby the writ Courts have been restrained from, in the exercise of writ jurisdiction, to interfere with tender matters or in respect of disputes appertaining to commercial genre(s). Moreover, the learned counsel for the respondent has also placed on record the relevant exemption clause which becomes extracted hereinafter:-

“EMD EXEMPTION: The bidder EMD exemption, must submit the valid supporting document for the relevant category as per GeM GTC with the bid. Under MSE category, only manufacturers for goods and Service Providers for Services are eligible for exemption from EMD. Traders are excluded from the purview of this Policy.”

6. In addition, learned counsel for the respondent, has placed, on record an order issued on 23rd March, 2012 by the Ministry of Micro, Small and Medium Enterprises, wherein, in clause 10 thereof, clause whereof becomes extracted hereinafter, the necessity of exempting Micro and Small Enterprises from payment of earnest money, thus becomes spoken:-

“10. Reduction in transaction cost. % to reduce transaction cost of doing business. Micro and Small Enterprises shall be facilitated by providing them tender sets free of cost, exempting Micro and Small Enterprises from payment of earnest money, adopting e-procurement to bring in transparency in tendering process and setting up a Grievance Cell in the Ministry of Micro, Small and Medium Enterprises.”

7. The nerve center of the entire controversy becomes initially rested upon the significance to be imparted viz-a-viz the speakings which occur in the Udyam Registration Certificate (hereinafter for short called as the URC). On making insightful readings and an in-depth legal analysis, of the



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Udyam Registration Certificate, which became issued in respect of the present petitioner, contents whereof becomes ad verbatim extracted hereinafter:-

“UDYAM REGISTRATION CERTIFICATE

Udyam Registration Number		UDYAM-PB-06-0032183			
Name of Enterprise		Deepak Kumar			
Type of Enterprise	S.No.	Classification Year	Enterprise Type	Classification Date	
	1	2024-25	Micro	25/12/2024	
Major Activity	TRADING [For availing benefits of priority Sector Leading (PSL) ONLY]				
Social Category of Entrepreneur		General			
Name of Unit(s)	S. No.	Name of Unit(s)			
	1.	Deepak Kumar			
Official Address of Enterprise	Flat/Door/Block No.	H.No.598	Name of Premises/Building	Ward No.13	
	Village/Town	Machhi Ram Halwai Street	Block	Jalalabad	
	Road/Street/Lane	Jalalabad	City	Jalalabad	
	State	Punjab	District	Fazilka, PIN 152024	
	Mobile	8195998000	Email:	deepak.jalalabad86@gmail.com	
Date of Incorporation/Registration of Enterprise		23.12.2024			
National Industry Classification (Code(s))	S.No	NIC 2 Digit	NIC 4 Digit	NIC 5 Digit	Activity
	1	49 – Land transport and transport via pipelines	4923 – Freight transport by road	49231 – Motorised road freight transport	Services
	2	52 – Warehousing and support activities for transportation	5224 – Cargo handling	52241 – Cargo handling incidental to land transport	Services
Date of Udyam Registration		25.12.2024			

8. Though, the learned counsel for the respondents, has contended with much vigor before this Court, that since the present petitioner is, therebys



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permitted to only engage in tradings, besides, when at the top of the certificate, it is declared that the said, endowed permissibility to the present petitioner, but is only for the benefit of priority sector lending (PSL). Therefore, it is argued by the counsel for the respondent, that as such, when the petitioner in the certificate supra, has been permitted to engage in trading activities, thus, limited to priority sector lending. Resultantly, in the wake of the said, the learned counsel for the respondent, also refers to the letter dated 25.03.2022 wherewith, becomes appended question No.18 and the answer thereto both whereof become extracted hereinafter:-

Q No.18: Whether this policy is applicable for works/trading activities also?

Ans. Policy is meant for procurement of only goods produced and services rendered by MSEs. However, traders/distributors/sole agents/ work contract are excluded from the purview of Public Procurement Policy for MSEs Order, 2012.

9. Consequently, he argues that in the wake of the apposite supra question and the answered thereto, the endowments through the supra certificate to the present petitioner, thus, to embark only in trading activities, but limited only for availing benefits of priority sector lending, rather thereby completely forestalling him from availing the benefit of said tender conditions. Resultantly, it is argued by the counsel for the respondent, that since the present petitioner, at the time of submitting his bid, also did not then deposit the requisite earnest money, therefore, it is argued that the rejection of the petitioner's disqualification technical bid, thus was both valid and proper.

10. For the reasons to be assigned hereinafter, the said argument is of



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no significance and is rejected:-

- i. Initially for the reason that the said arguments stems, from the learned counsel for the respondents, rather only reading the heading of the URC Certificate. Though the apposite heading(s) clearly states, that the petitioner was endowed the privilege to engage himself in trading activities limited for availing the benefits of priority sector lending. However the two tables thereunders, especially the table detailed at serial No.1, but explicitly speaks qua the endowment of permissibility to the petitioner, thus to engage in enterprises of a micro genre.
- ii. If so, since an allusion has been made by the counsel for the respondent, thus only to the mentionings which occurs, at the top of the certificate, manifesting that, besides the permissibility to the petitioner to engage in trading activities, yet the said permissibility being limited for availing benefits of priority sector lendings, but yet the learned counsel for the respondent has remained unmindful to the further permissibilities as become thereunders endowed upon the petitioner.
- iii. Conspicuously also when the second table, which occurs beneath the top of the certificate supra, rather makes echoings, qua the present petitioner being permitted to engage in enterprises of a micro and small genre.
- iv. Therefore, yet the learned counsel for the petitioner submitting that no validity can yet be assigned to the said table, but appears to be an untenable submission.

11. For the further reasons to be assigned hereinafter, even the said submission, does not find any favour by this Court, as the supra declarations made in the second table occurring underneath the top of the certificate, but do naturally efface the effect of the mentionings at top of the table, whereby the

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apposite declarations beneficial to the present petitioner, thus could not be discarded. Moreover, the supra isolated manner of reading of the certificate by the counsel for the respondent, rather has erased the effects of those declarations, thus beneficial to the petitioner, as occur in the apposite table beneath the top of the certificate. The discarding of those speakings beneficial to the present petitioner, are not countenanced by this Court.

12. Since the learned counsel for the respondents has also been unable to place on record, any material suggestive, that the declarations which occurs in the apposite tables, whereby the present petitioner was endowed a privilege to receive the benefit of the said tender condition, rather are stained with vices of fraud, manipulation, collusion or concoction. Therebys, also this Court discountenances the arguments supra made by learned counsel for the respondents, that yet, thus the therebys conferred apposite benefits to the present petitioner, but are discardable.

13. Even otherwise, since the certificate is loaded on the portal maintained by the Ministry of MSME, therebys, when as such, the present petitioner, is in terms of sub-condition No.2 of condition No.2 of the tender document, thus, registered with the relevant Ministry as a MSME, therebys, his technical bid was not required to be rejected, only on the account that he had not fulfilled the sub condition No.2 of supra extracted tender conditions, relating to, at the time of his submitting the bids, thus the earnest money becoming also submitted.

14. The learned counsel for the respondents has also not been able to controvert the oral submissions made before this Court by learned counsel for



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the petitioner, that the present petitioner has been, till the floating of the instant invitation to offer, thus, assigned works similar to the present subject works, but on an adhoc basis. As such, when therebys the respondent accepts that the present petitioner, was qualified to render or perform his earlier adhoc work, thus similar to the present subject work. Moreover, since therebys he acquired the requisite skill and experience, to effectively execute the subject tender, therebys it appears that *prima facie*, merely on account of complete misreadings of the supra certificate, besides on making misapplications of the supra questions and answers *vis-a-vis* the present certificate, that, *prima facie*, an ill drawn conclusion has been recorded by the respondent concerned, whereby, they have further made a grave error to conclude, that the benefit of sub condition No.2 of the tender conditions, thus was not required to be assigned to the present petitioner.

15. Since, as stated supra, the work allotted to the successful bidders, have not yet commenced, therebys, this Court is constrained to after accepting the writ petition, to pass a mandamus upon the respondent to scrap the subject tender, thus, for ensuring better competition for all concerned and also for receiving better bids. Moreover, for also ensuring that a more transparent and well engaged deliberations are made by all concerned, that therebys a fresh tender becomes necessitated to be floated. Furthermore, the entire proceedings in respect thereof, be expeditiously concluded, so that public amenities, do not suffer. Insofar, as the submissions addressed before this Court by the learned counsel for the respondent based upon the supra judgment, thus restricting the invocation of writ jurisdiction by this Court in tender matters or in respect of



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matters appertaining to commercial genre, rather is concerned, yet the said restriction may not be applicable to the instant case, as for all the reasons stated supra, there has been, but a completely flawed rejection order.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

January 30, 2025

Varinder

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