

CWP-21817-2025 (O&M)

2025:PHHC:098536-DB



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

CWP-21817-2025 (O&M)
Date of Decision: August 04, 2025

M/s Shiva Biofuels Private Limited

..... Petitioner

Versus

Nabha Power Limited and others

..... Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Sanjay Kaushal, Senior Advocate with
Ms. Ojaswini Gagneja, Advocate for the petitioner.

Mr. Maninder Singh, Advocate for respondent No. 2-PSPCL.

Mr. R.S. Pandher, Addl. AG, Punjab for respondent No. 3 – State.

LISA GILL, J.

1. Prayer in this writ petition is for setting aside clause 34 of 'General Terms and Disclaimers' of Bid Document dated 15.07.2025 issued by respondent No. 1.

2. It is submitted that petitioner is an enterprise engaged in manufacture and supply of Agro-residue-based biomass pellets having its registered office at village Tibbi Hari Singh Wala, Sardulgarh, District Mansa. It had earlier participated in biomass supply tender floated by respondent No. 1 namely Nabha Power Limited (NPL). Petitioner, now is aggrieved of insertion of clause 34 of Nabha Power Limited under heading of 'General Terms and Disclaimers' of Bid/Tender Document by respondent No. 1 on 15.07.2025 on the

premise that this clause equates a terminated contractor with one who is debarred/blacklisted. Clause 34 reads as under:-

“ 34. Bidder(s) including any partner of consortium (in case the bid is being submitted through consortium) shall (a) not have a history of abandoning projects/contracts/work orders and (b) at present are not suspended/terminated/debarred/blacklisting for supplies of Agro Residue based non-torrefied Pellets by any State/Central/PSU organisations or by other thermal power plants located in Punjab for the works carried out for power plant. In such a case/situation, the Bid shall be rejected, in addition to other rights & remedies available to NPL under the Bid Document.”

3. Learned counsel for petitioner submitted that on earlier occasion, petitioner had participated in tender floated on 04.07.2024 by respondent No. 1 and was declared the successful bidder. Letter of Award dated 20.08.2024 (Annexure P2) was issued alongwith purchase order dated 21.08.2024. Due to unforeseen circumstances, which included though not limited to logistical and operational constraints, petitioner was unable to complete supplies on time. Furthermore, dispute was being raised by respondent No. 1 regarding quality of supply due to which petitioner had to deposit liquidated damages with respondent No. 1. Reference is made to credit notes (Annexure P5) and further communications from respondent No. 1 whereby petitioner was intimated about short supply and taking of action as per terms of contract. It was submitted that petitioner upon realising its inability to continue supply and acting in good faith, sought termination of purchase order dated 21.08.2024 and issued termination notice dated 20.01.2025. Respondent No. 1, it is submitted, in an illegal manner issued terminated letter dated 29.03.2025 whereby amount deposited as a contract performance security was also forfeited. This, it is stated, is an illegal and arbitrary act because once petitioner itself had submitted notice for

termination and had deposited liquidated damages, it was not open to respondent No. 1 to have taken action by way of termination letter/order dated 29.03.2025.

4. Learned counsel for petitioner submits that subsequently fresh tender dated 15.07.2025 has been floated whereby clause 34 has been incorporated which has the effect of excluding the petitioner from tender process. Learned counsel for petitioner vehemently argued that such a clause is absolutely illegal and arbitrary because it equates mere termination of contract with blacklisting or debarment which by its very nature means civil death. Order of blacklisting or debarment is distinct from termination. Excluding such person/entity from participation in public tenders is clearly illegal, arbitrary and a colourable exercise of power. It is, thus, prayed that this writ petition be allowed; clause 34 be set aside to the extent it equates termination with blacklisting or debarment and petitioner be permitted to participate in tender process.

5. Learned counsel for respondents No. 2 and 3 (on advance notice) have refuted the arguments as raised. It is submitted that the purpose, intent and effort of respondents is absolutely clear and clause in question has a direct nexus with the purpose to be achieved. Dismissal of writ petition is sought.

6. We heard learned counsel for parties at length and have gone through the file with their able assistance.

7. At the very outset, it is to be noted that the very purpose of insertion of clause 34 is clear. It is specifically provided that bidders including any partner of a consortium (in case the bid is being submitted through consortium) shall not have (i) a history of abandoning projects/contracts/work orders and (ii) at present are not suspended/terminated/debarred/blacklisting for supplies of Agro Residue based non-torrefied Pellets by any State/Central/PSU

organisations or by other thermal power plants located in Punjab for the works carried out for power plant.

8. In the present case, petitioner was admittedly declared successful bidder in the earlier tender dated 04.07.2024 floated by respondent No. 1. For reason(s) which are not necessary for us to delve upon in the present proceedings, contract stood terminated. It is the case of petitioner itself that it realised its inability to continue supply, therefore, termination notice dated 20.01.2025 was issued. Merely because petitioner itself asked for termination cannot be taken as a ground in its favour as has been argued by learned counsel for petitioner. Learned counsel for petitioner tried to take us through merits and nuances of terms and conditions of earlier contract, the consideration of which, in fact, is not called for at all in present proceedings as it can, in no manner, have a bearing on the controversy at hand. Perusal of clause 34 reveals that intent of respondents is to avoid necessary consequences which would arise due to termination/debarment/ suspension/abandoning of projects. We find no merit in the arguments raised by learned counsel for petitioner. It is the various eventualities and conditions which have been mentioned in clause 34, existence of which would lead to rejection of the bid.

9. It is a settled position that it is the prerogative of authority/entity to insert necessary and relevant clauses as may be considered essential and suited to its requirement. It is useful to refer to judgment of Hon'ble the Supreme Court in **M/s. N.G. Projects Ltd. Vs. M/s. Vinod Kumar Jain and others, 2022 AIR SC 1531**, wherein it is specifically held that in matters regarding allotment of contract etc., writ court should be reluctant to cause interference and especially in contracts involving technical issues as there is a requirement of necessary expertise to adjudicate upon such matters. Approach of the Court

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should not be to find fault with a magnifying glass in its hands but only to examine whether there is total arbitrariness in the procedure. In the case of **Principal Chief Conservator of Forest and others Vs. Suresh Mathew and others 2025 AIR SC 2118**, Hon'ble the Supreme Court while referring to its earlier judgments has reiterated that judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides and when this power is invoked in matters relating to tenders or award of contracts, it should be borne in mind that a contract is a commercial transaction and evaluating tenders and awarding contracts are essentially commercial functions and that power of judicial review should not be invoked to protect private interest or to decide contractual disputes.

10. Learned counsel for petitioner is unable to point out any ground whatsoever to indicate that Clause 34 of 'General Terms and Disclaimers' of Bid Document dated 15.07.2025 is illegal, arbitrary, irrational or not having any nexus to the purpose to be achieved, hence liable to be set aside. Keeping in view facts and circumstances as above, we do not find any ground to cause interference in this matter in exercise of jurisdiction under Article 226 of Constitution of India.

11. No other argument has been addressed.

12. Writ petition is, accordingly, dismissed being devoid of any merit.

(LISA GILL)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

August 04, 2025
Rts

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