IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.286 of 2020
Date of Decision :09.01.2020

M/s Shiv Shakti Transport Company

......Petitioner

Versus

Food Corporation of India and others

...... Respondents

CORAM: HON'BLE MR.JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE

Present : Mr. Narender Kumar Sharma, Advocate for the petitioner.

Arun Palli J.:

A writ in the nature of *certiorari* is prayed for to quash the order dated 15.02.2019 (Annexure P-1) vide which the contract between the parties has since been terminated and the petitioner has also been debarred from participating in any future tenders of the Corporation and also the order dated 18.09.2019 (Annexure P-2), whereby even the appeal/representation filed by the petitioner against the said decision has been rejected.

Facts that are required to be noticed are limited.

Pursuant to the tender enquiry dated 19.12.2017, the Food Corporation of India (for short 'the Corporation'), Haryana region invited online tender, under two bids system for appointment of Handling and Transport and Road Transport Contractors. In response, the petitioner participated in the tender process under MSME clause for appointment of Handling and Transport Contractor (H&TC) at Madlauda Centre. The bid submitted by the petitioner was evaluated by the Technical Bid Evaluation Committee and was found to be technically compliant. Further, for the petitioner was also the lowest tenderer (L-1), it was appointed as Handling and Transport Contractor (H&TC) for Madlauda Centre. For, the competent authority had approved the offered rates, accordingly, vide communication dated 02.04.2018, the petitioner was required to submit the original set of MTF/tender documents with signatures on each page. However, for, the petitioner failed to furnish the requisites, vide another letter dated 10.04.2018, it was again requested to sign the original MTF and submit copy of the Power of Attorney within three days. But, vide its response dated 11.04.2018, the petitioner rather required the Corporation to provide the rates/final price for consideration at which the contract was to be executed. To which, vide letter dated 21.05.2018, the Corporation informed the petitioner for, it had already quoted the rates and signed the necessary documents, the Corporation was not bound to respond to any of the queries and in case the required documents were still not submitted, the contract would be terminated and petitioner shall also be debarred to participate in any future tenders for a period of 5 years. But to no avail. And, eventually, vide notice dated 06.06.2018, the petitioner was afforded an opportunity of personal hearing on 07.06.2018, and for, he failed to submit anything in writing to justify its position, respondent No.2, vide letter dated 15.02.2019 (Annexure P-1), terminated the contract and debarred the petitioner from participating in future tenders of the Corporation for a period of 5 years. Aggrieved by the said decision, the petitioner had initially approached this Court, vide CWP No.6878 of 2019, which was dismissed as withdrawn on 13.03.2019, to enable the petitioner to avail the remedy of appeal in terms of the provisions of MTF. Resultantly, he filed an appeal/representation against the order dated 15.02.2019, which has since been rejected by the Grievance

Redressal Committee (GRC), vide orders dated 28.08.2019/18.09.2019 (Annexure P-2). This is how, as indicated above, the petitioner is before this Court.

Learned counsel for the petitioner submits, for, there were no separate columns for quoting rates/price for: (a) handling and transport work (b) labour operations, as was so in the old price bid documents, the petitioner while submitting its price bid for services or transportation quoted the rate at 74% above the rates given in the schedule of rate (ASOR), whereas, it filled next column to quote its rates for labour operation at 245% though the said column was meant to be filled if the price bid being offered was below the schedule of rates (BSOR). Therefore, he submits that the error that crept in was accidental. Further, it was not feasible to execute the contract at 245% below the rates given in the schedule. Therefore, he submits that decision of the Corporation to terminate the contract and debar the petitioner for a period of 5 years was apparently harsh and arbitrary.

We have heard learned counsel for the petitioner and perused the records.

Ex facie, the petitioner was found to be the lowest tenderer (L-I) and the rates offered by the petitioner having been approved by the competent authority, it was appointed as Handling and Transport Contractor (H&TC) for Madlauda Centre. Vide repeated communications on 02.04.2018, 10.04.2018, 18.04.2018 and 21.05.2018, it was required to sign the original MTF along with certified copy of the Power of Attorney, but it failed to furnish the necessary documents. Instead, vide letter dated 11.04.2018, it rather required the Corporation to indicate the final price of the contract for consideration and necessary action, which was apparently evasive and misconceived. For, it had quoted the rates, signed and uploaded tender submission undertaking, forwarding letter (appendix-II) and price bid etc. wherein it was certified that petitioner had thoroughly examined and understood the terms and conditions contained in the tender documents and agreed to abide thereby and unconditionally accept the conditions, thus, the petitioner was fully conscious of the rates it had quoted and its price bid. Not just that while inviting tenders, a period of 21 days was afforded to the participants to examine the MTF/NIT and terms and conditions contained in the tender documents before responding to any tender inquiry. Thus, in the given situation, the argument that it was owing to an accidental error the petitioner offered its rates below the schedule of rates for labour operation lacks conviction and cannot be countenanced. Rather, in the given situation, the only presumption that could be drawn: the petitioner, being conscious of the terms and conditions as also the specific columns set out in the tender documents submitted its price bid and offered to execute the contract at the rates specified therein. Thus, the only and the inevitable conclusion that could be reached: the petitioner was not willing to execute the contract at the rates he had offered and were approved by the authorities. Resultantly, the petitioner was debarred for a period of 5 years from participating in any tender inquiry of the Corporation in terms of Clause 6(i) of MTF which reads thus:-

> "***The Tenderer shall be permitted to bid on the express condition that in the case he resiles, or modifies his offer, or terms & conditions thereof, after submitting his tender, for any reasons whatsoever during the tender process, or any of the information furnished by him/her is found to incorrect or false, the Earnest Money Deposited by him shall***

> ***stand forfeited, without prejudice to any other rights and remedies of the Corporation under the Contract and law, and the tenderer will be liable for any loss suffered by the Corporation on account of its withdrawal,/modification etc. besides forfeiture of EMD. He will also be debarred from participating in any Tender Enquiry with the FCI for a period of Five Years".***

In the given facts and in the wake of clause 6(i) of MTF as referred to above, debarring the petitioner from participating in any future tender enquiries for a period of 5 years was inevitable and a necessary consequence. On being pointedly asked, learned counsel for the petitioner could not refer to anything on record to show if the decision of the Corporation was either arbitrary or *mala fide*.

That being so, we are dissuaded to interfere with the decision arrived at by the respondent authorities. The petition being bereft of merit is accordingly, dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

09.01.2020
Manoj Bhutani

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