
(2016) 05 P&H CK 0368
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 7585 of 2016

Massa Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 31-05-2016

Acts Referred:

Citation : (2016) 4 RCRCivil 966

Hon'ble Judges : S.J. Vazifdar, ACJ. and Arun Palli, J.

Bench : Division Bench

Advocate : Prateek Pandit, Advocate, for the Petitioner; Rajinder Goyal, Addl. A.G. Punjab, for the Respondents; C.S. Bakshi, Advocate, for the Respondent No. 4

Final Decision : Disposed Off

Judgement

S.J. Vazifdar, Actg. C.J. (Oral)—The petitioner has challenged the decision of 4th respondent- PUNGRAIN considering the petitioner's bid to be non-responsive and awarding the work in favour of respondent No.5. The respondents issued a notice inviting tenders pursuant to instructions to that effect from the Director, Department of Food, Civil Supplies and Consumer Affairs containing in letter dated 10.03.2016. The petitioner submitted a bid. The petitioner's bid has been rejected on the ground that he is ineligible in view of clause 24(iii) of the policy which admittedly is applicable to the tender. Clause 24 (iii) reads as under:-

"24. The Technical bid qualifications of Transportation contractor for all the Districts shall be as under:-

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(iii) It would be obligatory for the tenderer to have two years experience of transportation of food grains in his name and this experience certificate appended herewith as Appendix-B, should be got attested by the District Manager of concerned agency. The tenderer shall also submit at the spot the

turnover of the works executed by him under above said experience in one year on the basis of actual arrival during previous year of Mandi clusters as per the works shown as under to the District Tender Committee".

2. Mr. Bakshi, the learned counsel appearing on behalf of respondent No.4, firstly, contended that the bid was submitted in the name of M/s Baba Tega Singh Transport Company and not in the name of the petitioner and, therefore, the petitioner has no locus standi to file this writ petition.

3. The submission is not well founded. It overlooks the fact that the petitioner carries on the business in the firm name and style of Baba Tega Singh Transport Company as a sole proprietor thereof. It is irrelevant that a person carries on business in a firm name and style as a sole proprietor thereof. A sole proprietary firm is not a legal entity. There is no question, therefore, of the petitioner having no locus standi. The firm name is nothing but the name in which the petitioner himself carries on his business. The contention is, therefore, rejected.

4. It was then contended that the experience certificate is also issued in the firm name and not in the petitioner's name. For the same reasons, this contention is also liable to be rejected. The experience certificate being issued in the name in which the petitioner carries on business as a sole proprietor does not indicate that it relates to a person or entity other than the petitioner himself.

5. Lastly, it was contended that the petitioner does not have the experience of two years as required by clause 24(iii). The petitioner has, however, tendered the experience certificate issued by the Food Corporation of India, Kapurthala, which furnishes the details of the value of the work affirmed by the petitioner in such contract stating the "Time of work" to be 2010-11 and 2011-12. This covers a period of two years. Clause 24(iii) requires two years' experience of transportation of food grain. The certificate, therefore, is sufficient to establish the petitioner's eligibility. It is important to note that this certificate has not been challenged. It has never been questioned. It is not the respondents' case that it is a false or even an incorrect certificate.

6. Faced with this, respondent No.4, alleges that the petitioner worked only on an ad hoc basis.

7. Clause 24(iii), however, does not restrict the experience to the nature of the appointment. It may be full time, it may be part time, it may be on a regular basis or it may be on an ad hoc basis. This clause does not exclude the experience gained even on an ad hoc basis.

8. Lastly, it was contended that even this work on ad hoc basis was only for the period 14.01.2011 to 9.7.2011. The averment in the 4th respondent's written statement in this regard is: "With regard to the attached experience certificate it was made clear by the official of FCI that M/s Baba Tega Singh transport co. was awarded the work/contract of TC only for the period from 14-Jan-2011 to 09-July-2011". The averment is not accurate. We were informed that the letter

dated 11.05.2016 was issued by the Food Corporation of India at the fourth respondent's request. It was produced in Court. It merely states that the petitioner worked on ad hoc basis at TC, Kapurthala for the said period. It does not state that the petitioner did not work for the rest of the period referred to in the experience certificate issued by the F.C.I. itself which was for the period 2010-11 and 2011-12. The information in the letter dated 11.05.2016 is only qua the period 14.01.2011 to 9.7.2011. It would be unfair at this stage to reject the petitioner's bid only on the basis of what is stated in the letter dated 11.05.2016 especially when F.C.I. has not dis-owned the experience certificate issued by it dated 17.03.2016 (Annexure P-7).

9. The work for this season must have already been completed by the private respondent, who was served but has not appeared. The respondents have not opened the petitioner's bid in view of the reasons stated above and have not considered the same.

10. The petition is disposed of by directing respondent No.4 to consider the petitioner's financial bid. The work relating to the current season is over. The petitioner shall, therefore, be entitled to complete the balance work in the event of his bid being found to be the most competitive. Liberty to apply in the case of difficulty.