



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

213

CWP-2535-2019 (O&M)
Date of Decision:-06.06.2025

M/s Bhagwati Trading Company

....Petitioner

Vs.

Punjab Agro Food Grains Corporation Ltd and anr.

...Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Sandeep Khunger, Advocate
for the petitioner

Mr. Karan Singla, Advocate
for the respondents.

SUDEEPTI SHARMA, J.

1. The present petition has been preferred for quashing of order dated 03.01.2018 (Annexure P-13), vide which respondent No. 2 refused to refund the earnest money deposited by the petitioner. Further prayer of petitioner is for quashing of order dated 15.11.2018 (Annexure P-15) passed by respondent No. 2-Managing Director, Punjab Foodgrains Corporation Ltd, Chandigarh, vide which respondent No. 2 refused to refund the earnest money deposited by petitioner by passing a non-speaking and cryptic order.

2. Brief facts of the case as per pleadings are that respondents invited e-tenders from parties registered with Food Corporation of



India/Food & Supplies Department for disposal of 79377.280 MTs of damaged wheat, vide e-tender dated 28.11.2016/07.12.2016. In the tender document, terms and conditions for sale of damaged foodgrains were detailed and tenderers were required to deposit a sum of Rs.5000/- (non-refundable) for participating in e-tender and a sum of Rs.7,63,400/- as earnest money which was the pre-condition for filling up the tender. As per Clause No. 5 of the e-tender, respondent No. 2 was having the right to accept or reject the tender without assigning any reason and it was specifically mentioned that all tenders shall be irrevocable and remain open for acceptance for a period of one month from the date of opening of tenders. Clause No. 5 of the terms and conditions reads as under:-

"5. PAFC Ltd reserves the right to accept or reject without assigning any reason, the highest or any tender. All tenders shall be irrevocable and remain open for acceptance for a period of one month from the date of opening tenders. If the said date is declared to be a holiday for PAFC Ltd. office, the tender shall be deemed to remain open for acceptance on the following working day. The Managing Director PAFC Ltd. will have the discretion to extend this date. Conditional offers will be rejected."

3. As per terms and conditions of the e-tender, tenders were to be opened on 05.12.2016, however, respondent No. 2-Managing Director, Punjab Foodgrains Corporation Ltd, Chandigarh extended the date of opening the e-tenders from 05.12.2016 to 07.12.2016, as per notice (Annexure P-2). Subsequently, the tenders were opened by respondents on 07.12.2016 and offer of petitioner was found to be highest. However, on



06.01.2017, petitioner submitted a letter dated 06.01.2017 (Annexure P-3) for withdrawal of offer made by it and requested for refund of earnest money. The said letter was duly received in the office of the respondents on 09.01.2017.

4. Thereafter, respondents vide letter dated 10.01.2017 (Annexure P-4) accepted offer made by the petitioner and this letter was sent through e-mail to petitioner. The petitioner submitted another letter dated 07.02.2017 (Annexure P-5) informing respondents that the offer made by petitioner already stands withdrawn, prior to its acceptance by respondents, therefore, a request was again made to refund the earnest money.

5. The petitioner challenged the actions of respondents by way of filing CWP No. 26568-2017 before this Court, which was disposed of vide order/judgment dated 21.11.2017 while granting liberty to petitioner to file a detailed and comprehensive representation, raising all the pleas as raised in the writ petition before respondent No. 2 within one week and it was further directed that in the event of a representation being filed by the petitioner, the same shall be decided in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within two weeks from the date of receipt of the representation.

6. In compliance of the order/judgment dated 21.11.2017, respondents passed impugned orders dated 03.01.2018 and 15.11.2018 (Annexure P-13 and P-15 respectively). Hence, the present writ petition.

SUBMISSION OF LEARNED COUNSEL FOR THE PARTIES

7. Learned counsel for petitioner contended that as per above mentioned clause 5 of the terms and conditions, all the tenders were



irrevocable and remained open for a period of one month from the date of opening of tenders. Further tenders were to be opened on 05.12.2016, however, respondent No. 2- Managing Director, Punjab Foodgrains Corporation Ltd, Chandigarh extended the date of opening of tenders from 05.12.2016 to 07.12.2016. Petitioner was the highest bidder but his offer was not accepted within a period of 30 days from the date of opening of tender i.e up to 06.01.2017. Thereafter, on 06.01.2017 itself, the petitioner submitted letter for withdrawal of tender and requested for refund of earnest money, which was duly received in the office of the respondents on 09.01.2017. He further contends that the offer which was valid for a period of 30 days expired on 06.01.2017 and the petitioner withdrew his offer on 06.01.2017 itself, therefore, he is entitled for refund of earnest money.

8. Per contra, learned counsel for respondents contends that the impugned orders dated 03.01.2018 and 15.11.2018 (Annexure P-13 and P-15 respectively) are well reasoned order and since 08.01.2017 and 09.01.2017 were Saturday and Sunday, therefore, the period of bid continued till 09.01.2017. He further contends that as per the above Clause No. 5, the validity was further extended by respondent No. 2 up to 16.01.2017.

9. We have heard learned counsel for the parties and perused the whole file of this case.

10. A perusal of the petition reveals that e-tenders were floated on 28.11.2016/07.12.2016 and as per condition No. 5, all tenders were irrevocable and were to remain open for acceptance for a period of one month from the date of opening tenders i.e till 06.01.2017. The petitioner filed applications dated 06.01.2017, 07.02.2017, 22.03.2017 (Annexure P-3



P-5 and P-7) for withdrawal of offer and refund of earnest money amounting to Rs.7,63,400/- on the ground that the rates were withdrawn on 06.01.2017 by the petitioner and letter in this regard was duly received by the office of the respondents on 09.01.2017. Further no notice or corrigendum was published for extension of 10 days, therefore, the petitioner is entitled for refund of earnest money. Further as per impugned order dated 15.11.2018 (Annexure P-15), all the offers were open for acceptance till 06.01.2017. 07.01.2017 and 08.01.2017 being holidays, the case for extension of offer of acceptance period for 10 more days i.e for a period of 40 days from the date of opening of tenders was put up on 09.01.2017 and approval for the same was given on 09.01.2017. Thereafter, tenders were opened for acceptance up to 16.01.2017 and tender of the petitioner was accepted on 10.07.2017. Further, it has been observed in the impugned order that since petitioner failed to lift the wheat and loss of Rs.10.21 incurred by the Corporation in re-tendering the lots is more than the EMD of Rs.7,63,400/- deposited by petitioner, therefore, petitioner is not entitled to refund of earnest money.

11. Petitioner has placed on record copy of letter dated 10.01.2017/13.01.2017 (Annexure P-4) issued by respondent No. 2, which is acceptance of offer for purchase of damaged wheat against e-tender dated 28.11.2016/07.12.2016. Further as per reply dated 04.09.2017 (Annexure P-9) on record received under RTI Act, in column No. 4, it has been mentioned as under:-

| <i>Sr. No.</i> | <i>Information sought</i> | <i>Information being supplied</i> |
|-----------------------|--|---|
| 1. | <i>Time up to which the tender filled up by M/s Bhagwati Trading Company to remain</i> | <i>The bid of the parties was supposed to remain open upto one month from the date of</i> |



| | | |
|--|--------------|---|
| | <i>open.</i> | <i>opening of e-tender. Thus, the tender filled by the party was to remain open up to 06.01.2017.</i> |
|--|--------------|---|

12. Further the petitioner has placed on record communication of the department whereby legal advice was sought from its legal adviser regarding refund of earnest money against damaged wheat to successful bidder. The legal adviser gave his opinion which reads as under:-

| <i>Sr. No.</i> | <i>Query</i> | <i>Reply</i> |
|----------------|---|---|
| 5. | <i>Least but most important is if EMD of parties such as these are returned and not forfeited, parties will make it a precedent of not lifting damaged stocks wherever it is not in their interest to do so after allotment of tender</i> | <i>The party had withdrawn its tender well before the date of acceptance. The proposal of this office for extending the period of acceptance was made on 09.01.2017 I.e after withdrawal of tender by the party vide letter dated 06.01.2017. The legal advice was taken on issue and in view of its, approval for refund of EMD was given by worth MD.</i> |

13. In para No. 11 of the petition, petitioner has raised averments regarding RTI information and respondents in their reply to para No. 9 of the petition, have not denied the same, being matter of record. Further a bare perusal of the whole file of this case reveals that petitioner withdrew his offer on 06.01.2017. The tender was not to remain open thereafter. Acceptance of tender was beyond the said date and after withdrawal of offer by petitioner, as was the proposal for extension of period of acceptance. Such extension can thus be of no avail to respondents to deny refund to the petitioner. In the given factual matrix, petitioner is entitled to refund of the earnest money amounting to Rs.7,63,400/-.

14. In view of the above discussion, present writ petition is allowed and impugned orders dated 03.01.2018 and 15.11.2018 (Annexure P-13 and



P-15 respectively) are set aside. Respondents are directed to refund the earnest money amounting to Rs.7,63,400/- to the petitioner.

15. All the pending application (s), if any, also stand disposed of.

(LISA GILL)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

06.06.2025

Gaurav Arora

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No