

(2022-1)205 PLR 320

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Chief Justice Ravi Shanker Jha and Mr. Justice Arun Palli.

AAKASH JULKA – Petitioner,

versus

FOOD CORPORATION OF INDIA and others – Respondents.

CWP-20502-2021 (O&M)

Court - Had simply recorded the statements of the parties to the effect that the representation shall be filed within a week and decided by the authorities within two weeks thereafter - It was nowhere mentioned in the said order that on the lapse of the period of two weeks, the authorities would lose the power to decide the representation - The time of hearing was fixed on the statement of learned counsel for respondents such, the authorities would have the authority to decide the representation and would not or did not lose the power to do so.

Mr. G.C. Dhuriwala, for the petitioner. Mr. Krishan Kumar Gupta, for respondents No. 1 and 2. (through video conferencing)

Ravi Shanker Jha, C.J. (Oral) - (7th October, 2021) - The petitioner has filed this petition for quashing the impugned orders dated 21.09.2020 (Annexure P-3) and 30.09.2020 (Annexure P-6) passed by respondent No. 2 rejecting his appeal dated 21.09.2020 (Annexure P-4).

2. The petitioner further prays for issuance of a direction to respondents No. 1 and 2 to declare his technical bid as valid and further fix the date for opening of his financial bid as he is fully eligible and fulfills all the terms and conditions.

3. The petitioner further prays for a direction to respondents No. 1 and 2 to effect recovery of the amount paid to respondent No. 3 on account of awarding the HTC contract pursuant to an order dated 20.05.2021 (Annexure P-13) passed by this Court in CM-6681-2021 in CWP-16586-2020.

4. It is observed that previously the petitioner had filed two writ petitions before this Court which were registered as CWP-16543-2020 and CWP-16586-2020 and were disposed of vide common order dated 29.07.2021 directing the respondent-authorities to consider and decide the petitioner's representation/appeal against the rejection of his technical bid.

5. The petitioner thereafter moved an application being CM-10830-2021 in CWP-16586-2020 seeking recall of the order dated 29.07.2021 which was disposed of vide

order 20.08.2021 with an observation/modification to the effect that the authority to decide the petitioner's representation/appeal would be the General Manager, Regional and not the Grievance Redressal Authority.

6. While disposing of CM-10830-2021 in CWP-16586-2020, the statements of the parties were recorded to the effect that in case the petitioner approaches the General Manager, Regional within a period of one week, he shall consider and decide the matter by passing a reasoned order within a period of two weeks thereafter. The petitioner approached the General Manager, Regional by filing a representation dated 23.08.2021 (Annexure P-9). It is stated that inspite of filing the representation in terms of the order passed by this Court, the respondent-authorities did not decide the same within two weeks. The petitioner submits that on 16/17.09.2021, the respondent-authorities issued a notice (Annexure P-10) for granting personal hearing to the petitioner on 20.09.2021. In response thereto, the petitioner filed a reply dated 17.09.2021 (Annexure P-11) stating that the General Manager, Regional had lost the power to decide the representation as the period of two weeks mentioned in the order dated 20.08.2021 passed by this Court in CM-10830-2021 in CWP-16586-2020 had lapsed. The petitioner made a categorical statement before the authorities concerned to the effect that he does not wish to argue the matter which may be consigned to record and that he would file a fresh writ petition in this Court as per legal advice. Thereafter, the petitioner has approached this Court by filing the present writ petition.

7. It is contended by learned counsel appearing for the petitioner that as the two weeks' time prescribed by this Court on the statement of learned counsel for respondents No. 1 and 2 - Food Corporation of India in CM-10830-2021 in CWP-16586-2020 which was disposed of on 20.08.2021 had lapsed, the competent authority had no power to decide the representation of the petitioner and in such circumstances, the petitioner approached the authorities asking them not to decide the same and has filed the present writ petition again seeking the same relief as had been sought and prayed for in CWP-16586-2020.

8. Learned counsel appearing for respondents No. 1 and 2 - Food Corporation of India, on advance copy, submits that in the representation (Annexure P-9) filed by the petitioner on 23.08.2021 before the authorities, pursuant to the order dated 20.08.2021 passed by this Court in CM-10830-2021 in CWP-16586-2020 on the statement of the parties, the petitioner stated that he would be filing a certified copy thereof. He further submits that the certified copy of the order dated 20.08.2021 was placed before the authorities on 14.09.2021 and, thereafter, they issued the notice dated 16/17.09.2021 fixing 20.09.2021 as the date on which personal hearing was to be given to all the parties concerned. It is submitted that the petitioner instead of appearing before the authorities filed the representation dated 17.09.2021 (Annexure P-11) merely stating that the authorities could not decide the representation of the petitioner after a lapse of two weeks as stated in the order of this Court and in such circumstances he did not wish the competent authority to decide his representation which may be consigned to record and that he had decided to file a fresh writ petition before this Court as per legal advice. He further submits that in such circumstances, the respondent-authorities are still willing to decide the representation of the petitioner and, if so required, would do so within three days. It is submitted that the

authorities did not decide the representation as the petitioner himself had made a statement before them not to decide the same.

9. Learned counsel for respondents No. 1 and 2, however, tenders an unconditional apology for the fact that the matter was not taken up and decided within two weeks in accordance with the statement made by them before this Court which was recorded in the order dated 20.08.2021 passed in CM-10830-2021 in CWP-16586-2020. He further submits that the confusion arose on account of the fact that the authorities were awaiting the certified copy of the order. He further tenders an unconditional apology for non-compliance of the undertaking given before this Court and for mis-representation or misunderstanding of the order of this Court.

10. We have heard learned counsel for the parties at length.

11. From a perusal of the documents, it is evident that the petitioner has already filed CWP-16543-2020 and CWP-16586-2020 seeking the same relief as claimed in the present writ petition which were disposed of by this Court vide order dated 29.07.2021. It is also evident that the said order was subsequently clarified/modified by this Court vide order dated 20.08.2021 passed in CM-10830-2021 in CWP-16586-2020, wherein the petitioner was directed to file the representation within one week which shall be decided by the authorities within two weeks thereafter in terms of the statements of the parties before this Court. Thus, this Court has already taken up the matter and decided it. The question of filing another writ petition for the same relief does not arise. Moreso, when the petitioner has himself stopped and prevented the authorities from deciding the matter by filing the reply dated 17.09.2021 (Annexure P-11) which was in fact filed on 20.09.2021.

12. We are of the considered opinion that a bare perusal of the order passed by this Court on 20.08.2021 makes it clear that this Court had simply recorded the statements of the parties to the effect that the representation shall be filed within a week and decided by the authorities within two weeks thereafter. It was nowhere mentioned in the said order that on the lapse of the period of two weeks, the authorities would lose the power to decide the representation. The contrary interpretation of the order on the part of the petitioner is, thus, totally mis-conceived. We are also of the considered opinion that the time of hearing was fixed on the statement of learned counsel for respondents No. 1 and 2, and, as such, the authorities would have the authority to decide the representation and would not or did not lose the power to do so. In any case, since this Court has already disposed of the previous two writ petitions filed by the petitioner with a direction to the respondent-authorities to decide the representation, it, therefore, has to be complied with by them in letter and spirit. Therefore, in terms of the statement by learned counsel for respondents No. 1 and 2 before this Court today, the present writ petition is disposed of with a direction to the respondent-authorities to decide the representation within three days and communicate the order to the petitioner.

13. Learned counsel for the petitioner submits that he shall appear before the authorities on 08.10.2021 at 2.30 P.M.

14. Learned counsel for respondents No. 1 and 2 submits that the authorities shall hear all the parties concerned on the issue and thereafter pass the final order latest by 11.10.2021.

15. A certified copy of this order be furnished to learned counsel for the parties under signatures of the Bench Secretary.

Sd/- Arun Palli, J. R.M.S.

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