

Before, Krishna Murari, CJ and Arun Palli, J.

**M/S GARG RICE MILLS, UBHAWAL ROAD, SANGRUR,
THROUGH ITS PROPRIETOR ARUN KUMAR—Petitioner**

versus

FOOD CORPORATION OF INDIA AND OTHERS—Respondents

CWP No. 9813 of 2018

July 02, 2019

Constitution of India—Art. 226—Tender—Unjust Enrichment—Clerical error in submitting price bid of Rs. 17,900—Reserved price Rs. 1,790—Immediately informed authorities—Not permitted to rectify bid—Declared winner—Allocation cancelled and earnest money forfeited—Held, no wilful default —Retention of earnest money—Unjust enrichment.

Held that in the given situation, neither could the petitioner be accused of any lapse or a wilful default or even for breach of any tender condition. Thus, once the authorities were convinced that the petitioner was merely a victim of an accidental omission, it would have been rather expedient if the former had exercised its wisdom and power to set the records straight. We are conscious that, at this juncture, the prayer of the petitioner requiring the respondents to revise his bid and consider his claim for re-allocation of wheat stocks is not feasible. However, in the given situation and circumstances, forfeiture of the earnest money and retention thereof by the FCI was nothing but an unjust enrichment. Thus, we consider it just and equitable to direct the respondents to refund a sum of Rs.17,90,000/-, to the petitioner, retained as a result of forfeiture of earnest money.

(Para 9)

Anil Rana, Advocate
for the petitioner.

J.S.Puri, Advocate
for the respondents.

ARUN PALLI, J.

(1) Certiorari is prayed for, to quash the letter dated 16.3.2018, vide which the claim of the petitioner for rectification of his price bid has illegally been rejected, as also for quashing the sanction order dated 28.3.2018 and a letter of an even date, whereby the earnest money

deposited by the petitioner was forfeited and 1000 metric tonnes of wheat allocated to the petitioner has since been cancelled. The petitioner also seeks a Mandamus commanding the respondents to either provide wheat at the reserved price, i.e. Rs.1,790/- per quintal or refund the earnest money, i.e. Rs.17.90 lakh, illegally forfeited.

(2) Briefly, the case set out by the petitioner is that, vide notice dated 5.3.2018, the respondent-Food Corporation of India (hereinafter referred to as 'the FCI'), invited financial bids from empanelled bulk consumers/private traders, under the Open Market Sale Scheme (hereinafter referred to as 'the Scheme'), for sale of wheat through E-auction. The last date to deposit the earnest money was 7.3.2018. And, the online bidding was to commence on 8.3.2018 at 11:00 AM and to end the same day at 2:00 PM. The reserved price of wheat was fixed at Rs.1790/- per quintal, which included loading and handling charges. The petitioner, who is an empanelled trader of the FCI, intended to purchase 1000 metric tonnes of wheat (10,000 quintals) stocked at Sunam Centre, mentioned at Sr. No. 92 in the list appended at Appendix-1, with the notice. Further, in terms of Clause 5 of the notice dated 5.3.2018, 10% of the value of wheat intended to be purchased at a reserved price was to be deposited as earnest money. Accordingly, the petitioner deposited Rs. 20 lakh in this regard on 7.3.2018.

(3) As indicated above, the online bidding started on 8.3.2018, but mistakenly the petitioner submitted his price bid @ Rs.17,900/- per quintal, though, as indicated above, the reserved price was Rs.1,790/- only. As a result, his bid for 10,000 quintals of wheat swelled to Rs. 17,90,00,000/-. But, immediately, vide E-mail dated 8.3.2018 at 11:56 AM, he informed the General Manager (Sales) of the FCI that by mistake, he bid at Rs.17,900/- per quintal instead of Rs.1,790/- per quintal, and thus, he be permitted to rectify his bid, for it was a clerical error. Likewise, vide two separate E-mails on 8.3.2018 itself, he also made similar request to the Executive Director (Sales) and the Chairman, FCI. In response, the Assistant General Manager (Commercial), Punjab, forwarded the E-mail of the petitioner to the General Manager (Sales), FCI Headquarter, Delhi, soliciting suitable advise, for as per the tender conditions, there was no provision in the E-auction Module to revise the bid. However, while this was pending, the petitioner was declared winner in the E-auction, considering his bid value as Rs.17,90,00,000/-. And accordingly, vide E-mail dated 8.3.2018 at 5:30 PM, he was informed to deposit the balance amount by 17.3.2018. And later, the Executive Director (Sales), vide letter

dated 16.3.2018, even declined his request for rectifying his bid, as there was no provision in the Model Tender Form (hereinafter referred to as 'MTF') for downward revision of bids. Upon which, vide letter dated 20.3.2018, the petitioner requested the General Manager, FCI, to refund his earnest money deposits, i.e. Rs. 20 lakh. But, as a reaction thereto, the FCI, vide letter dated 28.3.2018, not only cancelled the allocation of 1000 metric tonnes of wheat to the petitioner, but also forfeited the earnest money, i.e. Rs.17,90,000/- out of Rs.20,00,000/-, he had deposited. And, the balance amount, i.e. Rs.2,10,000/- was refunded. Thus, this petition.

(4) In the reply filed by the FCI, it is pleaded, *INTER ALIA*, that in terms of the liability clause contained in Clause 10A(iii) of the MTF governing the sales and the instructions to be followed for submitting the bid, in the event the successful bidder fails to deposit the balance cost, along with applicable taxes and levies, within the stipulated time, his bid is liable to be cancelled and the EMD furnished is forfeited. Thus, the claim of the petitioner for refund of the earnest money was misconceived.

(5) We have heard learned counsel for the parties and perused the records.

(6) Learned counsel for the petitioner submits that concededly, the reserved price of wheat was Rs.1,790/- per quintal, whereas, while submitting his price bid, the petitioner had wrongly entered the amount as Rs. 17,900/- per quintal. Thus, it was an apparent mistake. Further, though the FCI acknowledged that it was an error, but for lack of any specific provision in the MTF, request of the petitioner to revise his bid was rejected. It is contended that once it was not disputed that bid submitted by the petitioner was a result of an accidental error, it could always be rectified. And, in any case, the earnest money deposited by the petitioner could not be forfeited under any circumstances.

(7) As oppose to this, though learned counsel for the FCI does not dispute the above narrated factual position, but it is urged that petitioner participated in the auction process and submitted his bid @ Rs.17,900/- per quintal, and thus, having been declared winner in the E-auction, and issued an acceptance letter dated 8.3.2018, the downward revision of his bid was not feasible. Further, for the petitioner failed to deposit the balance amount, i.e. Rs. 17,70,00,000/- by the prescribed date, the FCI was well within its rights to cancel the allocation of wheat and forfeit the earnest money.

(8) Ex facie, in terms of the tender notice, dated 5.3.2018, the reserved price of wheat was Rs.1,790/- (One thousand seven hundred ninety only), per quintal. It is not disputed either, for the petitioner intended to purchase 1000 metric tonnes (10,000 quintals) of wheat, in sync with clause 5 of the tender notice, he deposited Rs. 20 lakh as earnest money, i.e. 10% of the price or value of the intended quantity of wheat sought to be purchased at the reserved price. Apparently, to begin with, the petitioner intended to bid for 10,000 quintals of wheat at a reserved price of Rs. 1,790/- per quintal, the value whereof would have been Rs. 1,79,00,000/-. However, while submitting his online financial bid, owing to an accidental slip and/or error, he entered one extra 'zero' (0), or added another 'zero' (0) to the actual reserved price. Thus, rather than Rs.1,790/-, his price bid was registered at Rs.17,900/- per quintal. As a result, value of 10,000 quintals of wheat, he intended to purchase, swelled to Rs. 17,90,00,000/- (Seventeen crores, ninety lakh only), rather than Rs.1,79,00,000/- (One crore, seventy nine lakh). Indisputably, to bid @ Rs.17,900/- per quintal was neither his intent nor viable, by any stretch of imagination. Significantly, the reserved price of wheat in whole of the Punjab region was also Rs.1,790/- per quintal. And, the result of E-auction dated 8.3.2018 also shows that even other buyers/bidders were allocated wheat @ Rs.1,790/- or Rs.1,795/- per quintal. Still further, this is not the case of the respondents that post cancellation of allocation of the wheat to the petitioner, the said stocks were sold at a price higher than the reserved price, i.e. Rs. 1,790/- per quintal. Another fact that has a decisive bearing on the matter in issue is that: it is not the case of the FCI either that the price bid submitted by the petitioner @ Rs.17,900/- per quintal was anything, except an accidental error. The only ground upon which the FCI declined to rectify the error and revise his bid was: **there was no provision in the MTF for downward revision of bids.**

(9) Apparently, the authorities failed to perceive the matter from a correct perspective and deal therewith in the right earnest. For this was not a case where the petitioner submitted his financial bid, preceded by a calculated and conscious decision, and then sought to resile to his suitability or requested for downward revision in his price bid. Rather, the situation at hands was where the petitioner actually intended to bid @ Rs.1,790/- per quintal, but owing to a bonafide error, one extra 'zero' (0) was added to the reserved price, which was instantly sought to be rectified. Thus, in the given situation, neither could the petitioner be accused of any lapse or a willful default or even for breach of any tender condition. Thus, once the authorities were

convinced that the petitioner was merely a victim of an accidental omission, it would have been rather expedient if the former had exercised its wisdom and power to set the records straight. We are conscious that, at this juncture, the prayer of the petitioner requiring the respondents to revise his bid and consider his claim for re-allocation of wheat stocks is not feasible. However, in the given situation and circumstances, forfeiture of the earnest money and retention thereof by the FCI was nothing but an unjust enrichment. Thus, we consider it just and equitable to direct the respondents to refund a sum of Rs.17,90,000/-, to the petitioner, retained as a result of forfeiture of earnest money.

(10) In the wake of the above, the writ petition is allowed. And, as a consequence, letters dated 16.3.2018 (Annexure P-9), 28.3.2018 (Annexure P-11) and another letter of an even date, i.e. (Annexure P-12) are set aside. The respondents shall refund Rs.17,90,000/- (Seventeen lakh, ninety thousand only), to the petitioner within a period of two weeks from today, failing which, he shall be entitled to realise the said amount along with interest @ 12% per annum, w.e.f. 28.3.2018, when the authorities ordered forfeiture.

Shubreet Kaur