

WRIT APPEAL

Present:

The Hon'ble Justice Pranab Kumar Chattopadhyay

And

The Hon'ble Justice Md. Abdul Ghani

Judgment on 02.09.2010

M.A.T. 330 of 2010

With

C.A.N. 2156 of 2010

Santi Ranjan Paul

Versus

Food Corporation of India & Others

Points:

**Consent Order-** Whether the authorities can turn around and refuse to grant relaxation in the experience clause to the appellant in terms of earlier order passed on consent-Service Law

Facts:

The appellant was engaged as handling and transport contractor by the Food Corporation of India for transportation of food grains etc. on regular basis for two years in 2005. There were disputes between the parties and matter came to this Court. Division bench of this Court disposed of the appeal interalia on consent directing " the Food Corporation of India to permit the appellant to participate in all future tenders without insisting on his having experience of execution of contract with the F.C.I. authorities in the years immediately preceding such future tenders". Subsequently in another tender notice the appellant submitted his bid but the authority arrived at the

conclusion that the appellant did not qualify in the technical bid without giving regard to the order of the said Division bench.

Held:

The Food Corporation of India authorities granted a specific concession only to the appellant herein. Therefore, the Food Corporation of India authorities subsequently, cannot turn around and refuse to grant relaxation in the experience clause to the appellant in terms of the earlier order of the Division Bench of this court dated 17<sup>th</sup> August, 2009 and render the aforesaid order of the Division Bench meaningless by refusing to perform its obligations under the said order. Para 24

Cases cited:

*West Bengal Electricity Board vs. Patel Engineering Co. Ltd. and others*  
*AIR 2001 SC 682; AIR 1954 Manipur 11 [Soraisem Kamini Singh vs. Chongtham Iboyaima Singh] ; Air 2001 SC 682 [West Bengal Electricity Board vs. Patel Engineering Co. Ltd. and others]*

For the Appellant : Mr. Partha Sarathi Sengupta,

Mr. Soumya Majumder,

Mr. Arjun Ray Mukherjee

For the Respondents-F.C.I. : Mr. L. K. Gupta,

Mr. Arunava Sengupta

For the Added Respondent : Mr. Arunava Ghosh,

Mr. Kallol Basu,

Mr. Manoj Malhotra

PRANAB KUMAR CHATTOPADHYAY, J.

This appeal has been preferred at the instance of the writ petitioner assailing the judgment and order dated March 3, 2010 passed by a learned Judge of this Court whereby and whereunder the said learned Judge dismissed the writ petition on merits. An application for stay has also been filed in connection with the said appeal.

2. We have heard the learned Counsel of the respective parties in connection with both the appeal and the connected Stay Application.

3. The facts leading to the instant appeal are briefly narrated hereinafter:

a) The appellant/writ petitioner herein was engaged as handling and transport contractor by the Food Corporation of India for transportation of food grains etc. from Suri railway siding to FSD-Abdarpur and vice-versa on regular basis for two years in terms of Tender No. F/1(575)/Cont./2005 dated 3rd August, 2005.

b) On certain allegations the appellant was debarred from participating in any tender enquiry of Food Corporation of India, West Bengal region in future by the order dated 24th September, 2007 issued by the General Manager, Food Corporation of India, West Bengal region and the said contract for the remaining period was also terminated with immediate effect pursuant to the aforesaid order.

c) The appellant preferred an appeal before the said General Manager, Food Corporation of India, West Bengal region for lifting the ban so that the appellant can participate in the tender enquiry of Food Corporation of India in West Bengal region in future. The said ban imposed upon the appellant was subsequently lifted by the order dated 18th March, 2009 subject to condition that the appellant should furnish surety bond of good conduct from two reputed persons. The appellant thereafter, submitted required bond but the same was not acceptable to the Food Corporation of India.

d) In the meantime, Food Corporation of India issued a tender notice on 16th March, 2009 for appointment of handling and transport contractor on regular basis for two years in respect of different works mentioned therein. On coming to know that the competent authority of Food Corporation of India has decided not to open the price bid of the appellant herein in respect of the said tender notice dated 16th March, 2009, a writ petition was filed by the said appellant before this court.

e) The said writ application was, however, dismissed by a learned Judge of this court wherefrom an appeal was preferred by the appellant herein. The said appeal being M.A.T. 596 of 2009 was disposed of by a Division Bench of this court by the order dated 17th August, 2009 modifying the order under appeal of the learned Single Judge as hereunder:

Mr. Sengupta, learned Senior Counsel representing the appellant submits that his client viz., the appellant herein will be satisfied in the event the respondents F.C.I. authorities allow the said appellant to participate in the future tenders without insisting on the experience clause regarding execution of any contract with the F.C.I. authorities during the immediately preceding years. Mr. L. K. Gupta, learned Senior Counsel representing the F.C.I. authorities submits that the aforesaid submissions made on behalf of the appellant is reasonable and his clients cannot have any objection in accepting the aforesaid proposals of the appellant. Considering the aforesaid submissions and suggestions of both the parties, we modify the order under appeal and direct the Food Corporation of India to permit the appellant to participate in all future tenders without insisting on his having experience of execution of contract with the F.C.I. authorities in the years immediately preceding such future tenders. This appeal thus stands disposed of with the

aforesaid modification of the order under appeal. In the facts of the present case, there will be, however, no order as to costs.

f) Subsequently, on 28th August, 2009 another tender notice for appointment of transport contractor was issued by the Food Corporation of India. The appellant participated in the said tender process by submitting his bids. The Tender Scrutinising Committee found the appellant eligible when the tender bid was opened on 24th September, 2009. Thereafter, some senior officers endorsed a note requesting the Tender Scrutinising Committee to re-examine the work experience of the tenderers once again.

4. It appears from the note-sheet annexed with the Stay Application that the Tender Scrutinising Committee further reexamined the work experience of the tenderers and ultimately, arrived at the conclusion that the appellant herein did not qualify in the technical bid. The appellant/writ petitioner was, however, not informed about the aforesaid revised decision of the Tender Scrutinising Committee but coming to know that his price bid was not going to be opened, another writ petition was filed by the said appellant which was finally disposed of by the judgment and order under appeal dated 3rd March, 2010 passed by a learned Judge of this court. The learned Single Judge in the aforesaid judgment and order under appeal recorded the following facts:

“.....From the records that have been produced before this Court by Mr. L.K. Gupta, learned Senior Counsel representing the respondents, it is not in dispute that on opening of the ‘technical bid’ of the petitioner on September 24, 2009, the Tender Scrutinising Committee (hereafter the Committee) found the petitioner eligible to have his ‘price bid’ opened. It is also not in dispute that the petitioner was asked by message dated November 24, 2009 to extend validity of his offer dated August 28, 2009 for another 30 days beyond December 3, 2009 and that accordingly, by letter dated December 1,

2009, he duly extended the validity of his offer. It has also not been disputed at the bar that the price bid of the other bidder, found eligible, was opened and it transpired that his offer is higher than the one offered by the petitioner.....”

5. The learned Single Judge further observed that the order passed earlier by the Division Bench cannot be construed to mean that the respondent-Food Corporation of India authorities cannot insist on work experience with other organisations. The learned Single Judge in the impugned judgment and order under appeal also observed:

“.....Further examination by the Committee revealed that the petitioner had not executed transport contract during immediately preceding two years either with any of the organizations mentioned in the tender notice other than FCI or even with FCI during the stipulated period for the specified value, thereby rendering the petitioner ineligible on this ground. The process of decision-making leading to the ultimate decision does neither suffer from error of law nor jurisdiction. It cannot therefore be faulted..... ”

6. Mr. Partha Sarathi Sengupta, learned Counsel representing the appellant submitted that the learned Single Judge failed to appreciate that the Food Corporation of India authorities could not insist on experience for executing contract with the Food Corporation of India during immediately preceding two years in view of the specific order passed earlier by the Division Bench on 17th August, 2009 while disposing of the earlier appeal being M.A.T. 596 of 2009. Mr. Sengupta further submitted that the revised decision of the Tender Scrutinising Committee declaring that the appellant did not qualify in the technical bid for not executing transport contracts with the Food Corporation of India in the immediately preceding two years was contrary to the specific direction passed earlier by the Division Bench on 17<sup>th</sup> August,

2009. Mr. Sengputa also submitted that the learned Single Judge committed serious error in holding that there is no bar to consider the eligibility of the appellant herein vis-à-vis his work experience in the immediately preceding two years with any other organisation.

7. In the tender notice dated 28th August, 2009 it has been specifically mentioned as hereunder:

“Ref. No. F/1(685)/(Cont./2009 Dated : 28-08-2009 TENDER NOTICE

On behalf of Food Corporation of India, the General Manager (WB) Regional Office (West Bengal) invites Sealed Offer of Rates from past or existing Transport Contractor (TC)/Handling & Transport Contractor (HTC) of FCI, Government Departments, Public Sector Undertakings or Public Limited Companies, dealing in food grains, fertilizers, cement or similar products for appointment of Transport Contractor (TC) on Regular basis for 02 (Two) years for the following works. The tenderer should have executed in the immediately preceding two years transport contracts, the total value of which is not less than 50% of the value of the contract to be awarded OR The tenderer should have executed in the immediately preceding two years any single contract, the value of which is not less than 25% of the value of the contract to be awarded, otherwise work experience will not be considered.....”

8. It has been argued on behalf of the learned Counsel of the appellant that since the said appellant submitted work experience of the required value with the Food Corporation of India, submission of any document claiming such experience with any other Government Departments or Public Sector Undertakings in terms of the aforesaid tender notice dated 28th August, 2009 did not arise.

9. Mr. Sengupta submitted, may not be in the immediately preceding two years from the date of issuance of the Tender Notice dated 28th August, 2009 but on previous occasions admittedly, the appellant herein executed transport contracts with the Food Corporation of India authorities of the required value. Mr. Sengupta further submitted that had the said appellant executed transport contracts with other Government Departments, Public Sector Undertakings or Public Limited Companies in the immediately preceding two years then in that event, the appellant had no occasion to submit before the earlier Division Bench on 17<sup>th</sup> August, 2009 for directing the Food Corporation of India authorities to allow the appellant to participate in the future tenders without insisting on the experience clause regarding execution of any contract with the Food Corporation of India authorities during the immediately preceding years.

10. Mr. Sengupta also submitted that the work experience with other Government Departments or Public Sector Undertakings during the period of two years immediately preceding the issuance of the tender notice would automatically entitle the appellant herein to participate in the tenders floated by Food Corporation of India even in absence of any work experience with the Food Corporation of India authorities since the work experience with the Food Corporation of India authorities was never considered to be the sole eligibility criteria for participating in the tender process by the Food Corporation of India. Mr. Sengupta submitted that the order of this Court cannot be read in such a manner as will render the same an exercise in futility, meaningless and with no legal effect.

11. On behalf of the Food Corporation of India authorities it has been submitted that the initial view expressed by the Tender Scrutinising Committee declaring the appellant qualified in the technical bid was



contrary to the terms of the tender notice issued as per the Model Tender Form (MTF) so far as the experience clause is concerned.

12. Mr. L. K. Gupta, learned Senior Counsel representing the Food Corporation of India authorities submitted that the earlier order passed by the Division Bench on 17th August, 2009 should be read and understood in the light of the legal principles settled by judicial precedents. Mr. Gupta further submitted that a Court of Law cannot alter the terms and conditions of a tender notice. Mr. Gupta referred to and relied on a decision of the Supreme Court in the case of *West Bengal Electricity Board vs. Patel Engineering Co. Ltd. and others* reported in AIR 2001 SC 682 (Paragraph 25).

13. Mr. Gupta submitted that the earlier order passed by the Division Bench will effect change of the tender terms which cannot be permitted being contrary to the settled law. The learned Senior Counsel of the Food Corporation of India authorities specifically submitted that the stand taken on behalf of the Food Corporation of India as recorded in the earlier order of the Division Bench dated 17th August, 2009 is to be understood as being consistent with the settled legal position as aforesaid and not seeking to wipe out the entire experience clause in the Tender Notice. 14. Mr. P. S. Sengupta, learned Counsel representing the appellant referred to the written communication of the said appellant dated 17th November, 2008 addressed to the General Manager (W.B.), Food Corporation of India and submitted that the Food Corporation of India authorities had specific knowledge that the appellant herein had no work experience with other Departments, Public Sector Undertakings or Public Limited Companies and in order to participate in the future tenders prayed before this court for issuance of a direction upon the Food Corporation of India authorities for not insisting on the experience

clause regarding execution of any contract with the Food Corporation of India authorities during the immediately preceding years. The relevant paragraph from the afore said written communication of the appellant dated 17th November, 2008 is set out hereunder:

“Sir, I have already suffered very heavily due to the harsh punishments as meted out by you. For the last more than one year, I have not been permitted to participate in the tenders floated by FCI, West Bengal Region, which is like snapping the only lifeline to my livelihood.”

15. In the aforesaid circumstances, according to Mr. Sengupta, the Food Corporation of India authorities had no scope to understand that the appellant herein would submit requisite work experience certificate from any Government Department, Public Sector Undertakings or Public Limited Companies for the period of two years immediately preceding the tender notice for the purpose of participating in the future tenders floated by the Food Corporation of India.

16. Mr. Gupta, learned Senior Counsel of the Food Corporation of India authorities, however, submitted that the aforesaid stand has been taken by the appellant before the Appeal court for the first time and the lawyers representing the said appellant on the earlier occasion had no knowledge whether the appellant herein had any work experience with other organisations. According to Mr. Gupta, aforesaid issue never came up for consideration before the Division Bench while considering the earlier appeal.

17. We are, however, not very much impressed by the aforesaid submissions of the learned Senior Counsel of the Food Corporation of India authorities.

18. The Food Corporation of India authorities had sufficient knowledge that the appellant herein used to work as the transport contractor with the Food Corporation of India only and the same has been specifically mentioned by the appellant in the aforesaid written communication dated 17th November, 2008. The appellant, in our opinion, decided to give up his battle in the earlier appeal and became satisfied with the only concession that the Food Corporation of India authorities would allow the said appellant to participate in the future tenders without insisting on the experience clause regarding execution of any contract with the Food Corporation of India authorities during the immediately preceding years.

19. Mr. Sengupta has rightly submitted that the appellant herein would not have submitted on the earlier occasion before the Division Bench for allowing him to participate in the future tenders of the Food Corporation of India without insisting on the experience clause regarding execution of any contract with the Food Corporation of India authorities during the immediately preceding years in the event, the said appellant had the experience of executing transport contracts with any other Government Departments Public Sector Undertakings or Public Limited Companies. We have sufficient reasons to believe that the appellant herein did not pursue the earlier appeal and remained satisfied with the aforesaid concession regarding relaxation of experience clause in order to participate in the future tenders of the said Food Corporation of India.

20. The Food Corporation of India authorities, most unfortunately, took the stand contrary to the aforesaid concession granted earlier as recorded in the order dated 17th August, 2009 passed by the earlier Division Bench while disposing of the appeal being M.A.T. 596 of 2009. It seems that the Food Corporation of India authorities were interested to award the contract in

favour of the other participant who admittedly, offered higher price bids and in order to eliminate the appellant herein from the tender process, aforesaid plea was taken afterwards to disqualify the appellant, which cannot be approved by this Bench.

21. The alleged subsequent understanding of the Food Corporation of India authorities with regard to the earlier order passed by the Division Bench of this court on 17th August, 2009 in M.A.T. 596 of 2009 has virtually befooled the appellant herein.

22. Mr. Sengupta has rightly submitted that an order of this court cannot be read in a manner so as to render it meaningless and futile which unfortunately, the respondent- Food Corporation of India authorities have done in the present case.

23. In view of the order passed earlier by the Division Bench of this court on 17th August, 2009, Food Corporation of India authorities had no occasion to insist on the experience clause regarding execution of any contract with the Food Corporation of India authorities during two years immediately preceding the tender notice while considering the offer of the appellant in connection with the tender notice dated 28th August, 2009 as the aforesaid earlier order dated 17th August, 2009 granted a special status to the appellant herein for participating in the tenders of the Food Corporation of India unlike other participants. The aforesaid special status of the appellant pursuant to the earlier order of the Division Bench dated 17th August, 2009 could not be ignored under any circumstances by the Food Corporation of India authorities.

24. Undisputedly, the Food Corporation of India authorities in course of hearing of the earlier appeal before the Division Bench of this court on 17th August, 2009 accepted the proposal of the appellant for allowing him to

participate in the future tenders without insisting on the experience clause regarding execution of any contract with the Food Corporation of India authorities during the immediately preceding years. Thus, the Food Corporation of India authorities granted a specific concession only to the appellant herein. Therefore, the Food Corporation of India authorities subsequently, cannot turn around and refuse to grant relaxation in the experience clause to the appellant in terms of the earlier order of the Division Bench of this court dated 17<sup>th</sup> August, 2009 and render the aforesaid order of the Division Bench meaningless by refusing to perform its obligations under the said order.

25. This Court cannot approve the aforesaid conduct of the Food Corporation of India authorities.

26. Mr. L. K. Gupta, learned Senior Counsel of the Food Corporation of India authorities submitted that neither the Council was authorised to grant such concession nor could the Food Corporation of India itself change any clause for a particular tender since the same would be violative of Article 14 of the Constitution of India.

27. The aforesaid submission is untenable since the offer made on behalf of the appellant herein before the earlier Division Bench was considered to be reasonable to the learned Senior Counsel of the Food Corporation of India authorities and the said learned Senior Counsel felt that his client cannot have any objection in accepting the aforesaid proposal of the appellant. The earlier Division Bench considering the submissions of the learned Counsel of the appellant passed the aforesaid order directing the Food Corporation of India authorities to permit the said appellant to participate in all future tenders without insisting on the experience clause regarding execution of any contract with the Food Corporation of India authorities during the

immediately preceding years. Furthermore, Article 14 cannot be violated since the same does not prohibit reasonable classification on the basis of intelligible differentia.

28. In the present case, considering the submissions of the respective parties, earlier Division Bench granted relaxation of a particular requirement only in respect of the appellant herein and therefore, the appellant belonged to a separate class based on intelligible differentia. The order of the Division Bench of this court on 17th August, 2009 having not been challenged by the Food Corporation of India authorities before the Supreme Court, the same attained finality and now it cannot be said that the aforesaid order passed earlier by the Division Bench results in violation of Article 14 of the Constitution of India.

29. Mr. Gupta, learned Senior Counsel of the Food Corporation of India authorities cited the following decisions in support of his arguments:

*1) AIR 1954 Manipur 11 [Soraisem Kamini Singh vs. Chongtham Iboyaima Singh] (Paragraph 8)*

*2) Air 2001 SC 682 [West Bengal Electricity Board vs. Patel Engineering Co. Ltd. And others]*

30. The aforesaid decisions, in our opinion, have no manner of application in the facts of the present case.

31. In the aforesaid cases, Hon'ble Supreme Court had no occasion to deal with a situation where a party was protected by an order of the Hon'ble High Court or any other Court.

32. Mr. Sengupta, learned Counsel of the appellant further submitted before this court that the appellant herein executed a single contract of the required value in terms of the tender notice and received amount of Rs. 99,41,724/- in the said single contract during the period immediately preceding two years

which has also been specifically recorded in the report of the Tender Scrutinising Committee.

33. Mr. L. K. Gupta, learned Senior Counsel of the Food Corporation of India, however, submitted that the appellant herein did not perform any part of the said single contract within the immediately preceding two years. The aforesaid single contract of 2005 was required to be executed during the period from 7<sup>th</sup> November, 2005 to 23<sup>rd</sup> September, 2007. Mr. Gupta submitted that the appellant herein had walked out of the aforesaid single contract by submitting a letter on 7<sup>th</sup> July, 2007 and specifically requested the Food Corporation of India authorities to appoint a fresh contractor for the remaining contract period.

34. It has been submitted on behalf of the Food Corporation of India authorities that the appellant herein did not perform any part of the aforesaid single contract thereafter and had received necessary payment in connection with the said single contract in August, 2007 notwithstanding the fact that the contract period was not over by then.

35. If the contract is a single contract, the entire contract cannot cover the aforesaid span of two years at any point of time during the preceding two years. During the preceding two years, a part of the contract should have been executed. If the entire contract was required to be executed in the immediately preceding two years, that would mean that such contract should be over only on 27<sup>th</sup> August, 2009 and will commence from a date two years prior to the said 27<sup>th</sup> August, 2009 since the present tender notice was issued on 28<sup>th</sup> August, 2009.

36. The aforesaid contention, therefore, should be regarded as an absurd one.

37. The Tender Scrutinising Committee in its report specifically observed:

“The Committee has observed that Sri Santi Ranjan Pal has fulfilled the tender provision for being qualified in the Technical Bid since he has received Rs. 99,41,724/- in single contract preceding two years and his Price Bid may be opened.....”

38. The Tender Scrutinising Committee, however, subsequently in order to revise its earlier decision only took into consideration that no payment was made to the appellant after August, 2007 i.e. during the last one month of the period of the said single contract. If it is a single contract, then the entire payment made against the said contract is to be considered and not the payment during the last one month period.

39. The learned Senior Counsel of the Food Corporation of India contended that the single contract aspect came to an end on 7<sup>th</sup> July, 2007 since the appellant himself stated in the letter dated 7<sup>th</sup> July, 2007 that “*let us depart*”. The aforesaid contention on the face of it is unacceptable because by the order dated 24<sup>th</sup> September, 2007, the contract in question was specifically terminated with immediate effect which means that the said single contract was valid till 23<sup>rd</sup> September, 2007.

40. From the records we also find that the Area Manager, Food Corporation of India, Birbhum in the written communication dated 18<sup>th</sup> May, 2009 specifically mentioned that the exact working period in respect of the single contract dated 3<sup>rd</sup> August, 2005 was from 7<sup>th</sup> November, 2005 to 23<sup>rd</sup> September, 2007 and further mentioned that the actual payment made to the appellant pursuant to the said contract was Rs. 99,41,724/-. The aforesaid document was considered by the Tender Scrutinising Committee while declaring the appellant qualified in the technical bid. The relevant extracts from the aforesaid letter of the Area Manager, Food Corporation of India, Birbhum are set out hereunder:



“ Sir,

Kindly refer to your FAX issued under Ref. No. F/1(676)/Cont/09/888 dated 18.5.09 and No. F/1(676)/Cont9 dated 11.5.09. In this connection the particulars as desired, are furnished hereunder for your kind perusal and necessary action.

1. Exact working period of the contract in respect of Sri Santi Ranjan Paul, ex T/C in terms of Tender No. F/1(575)/Cont/05 dt. 03.08.05. - Exact contractual period of T/C – 07.11.05 to 23.09.07

2. Actual payment made to Sri Santi Ranjan Pual against the above contract. - Actual payment made to S.R. Paul Rs. 99,41,724/- (Rupees Ninety nine lac fortyone thousand seven hundred twenty four only) (Net)”

41. Therefore, we hold that the earlier consideration and decision of the Tender Scrutinising Committee with regard to the eligibility of the appellant herein was the correct decision in terms of the tender notice in question.

42. In the aforesaid circumstances, on this count also the decision making process stands vitiated as the Tender Scrutinising Committee while revising its earlier decision illegally considered the payment received by the appellant during a particular month which is against the concept of a single contract.

43. The learned Counsel representing the added respondent namely, the successful tenderer virtually adopted the arguments advanced on behalf of the Food Corporation of India. Mr. Kallol Basu, learned Counsel of the added respondent submitted that the tender conditions cannot be varied in favour of one individual by granting concession in a legal proceeding. Mr. Basu further submitted that the Court cannot change the tender conditions in favour of the appellant in respect of the future tenderers of the Food Corporation of India.

44. We are unable to appreciate the aforesaid arguments made on behalf of the learned Counsel of the added respondent since in the earlier proceeding, Food Corporation of India authorities accepted the proposal of the appellant herein before the earlier Division Bench of this court regarding grant of relaxation of the experience clause during the immediately preceding years and the learned Senior Counsel of the Food Corporation of India authorities also specifically described the aforesaid proposal of the appellant as reasonable while accepting the same on behalf of the Food Corporation of India. The earlier Division Bench considering the submissions of the learned Senior Counsel of the Food Corporation of India authorities issued the specific direction to the Food Corporation of India authorities by granting relaxation of a particular requirement in case of the appellant herein since the said appellant decided not to proceed with the earlier appeal if such minor relaxation is granted to which the Food Corporation of India authorities had no objection as mentioned hereinabove. In any event, the order passed by the earlier Division Bench attained finality and the same cannot be questioned subsequently, either by the appellant or by this Division Bench.

45. For the reasons discussed hereinabove, we are convinced that the respondent-Food Corporation of India authorities in an arbitrary and illegal manner refused to open the price bid of the appellant by persuading the Tender Scrutinising Committee to revise its earlier decision in order to declare the said appellant disqualified in the technical bid. The Tender Scrutinising Committee presumably, under tremendous pressure of the superior authorities revised its earlier correct decision in respect of the appellant herein and wrongfully held that the appellant did not qualify in the technical bid although on the earlier occasion said Tender Scrutinising

Committee unanimously held that the appellant herein had qualified in the technical bid.

46. The Food Corporation of India authorities, most unfortunately, refused to comply with the order passed earlier by the Division Bench of this court on 17th August, 2009 in M.A.T. 596 of 2009 and illegally declined to perform its obligation under the aforesaid order.

47. We cannot permit the Food Corporation of India authorities to prejudice the interests of the appellant herein by refusing to act in terms of the order passed by the Division Bench of this court on 17th August, 2009 or to render the order passed earlier by this court meaningless and futile.

48. The learned Single Judge, in our opinion, has failed to consider the issues in its proper perspective. The said learned Single Judge has committed a serious error by not appreciating that the Food Corporation of India authorities could not act in violation of the order passed earlier by the Division Bench of this court and/or to act in a manner so as to render the said order passed by the earlier Division Bench of this court meaningless.

49. For the aforesaid reasons, the decision of the Food Corporation of India authorities to award the transport contract in relation to the tender notice dated 28th August, 2009 to the added respondent herein upon declaring the appellant disqualified in the technical bid cannot be sustained and same is accordingly, quashed.

50. The Food Corporation of India authorities are directed to take appropriate decision afresh for awarding the transport contract in connection with the aforesaid tender notice dated 28<sup>th</sup> August, 2009 after opening the price bid of the appellant and comparing the same with the other tenderer, who was found qualified in the technical bid earlier namely, the added respondent herein, upon treating the appellant qualified in the technical bid

as per the original decision of the Tender Scrutinising Committee dated 24th September, 2009.

51. For the reasons as specifically mentioned hereinbefore, the impugned judgment and order under appeal passed by the learned Single Judge cannot be sustained and the same is accordingly, set aside.

52. Both the appeal and the connected Stay Application thus stand allowed.

53. In the facts and circumstances of the present case, there will be, however, no order as to costs.

54. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

*[PRANAB KUMAR CHATTOPADHYAY, J.]*

MD. ABDUL GHANI, J.

I agree.

*[MD. ABDUL GHANI, J.]*

LATER :

55. After pronouncement of the judgment, a prayer has been made by the learned Counsel of the added respondent for staying the operation of the said judgment and order.

56. Mr. Soumya Majumder, learned Advocate representing the appellant opposes the aforesaid prayer for stay.

57. Considering the aforesaid submissions of the learned Counsel of both the parties, we do not find any reason for allowing the aforesaid prayer for stay.

58. Accordingly, the aforesaid prayer for stay is refused.

*[PRANAB KUMAR CHATTOPADHYAY, J.]*

*[MD. ABDUL GHANI, J.]*

