

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

CWP-23604-2015 (O&M)
Date of decision:- 05.12.2015

Sukhdev Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. J.S. Mehndiratta, Advocate,
for the petitioner.

Mr. Rajinder Goyal, Additional Advocate General, Punjab.

Mr. Tejeshwar Singh, Advocate,
for respondents No. 3 and 5.

Mr. Ashish K. Gupta, Advocate,
for respondent No. 6.

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S.J. VAZIFDAR, A.C.J. (ORAL)

The petitioner has challenged an order dated 20.10.2015 forfeiting his security deposit and blacklisting him for three years.

The petitioner also seeks a writ of mandamus directing the respondents to allow him to carry out the work which was awarded to him being the most competitive tenderer, namely, of loading and transporting paddy from the grain markets.

The petitioner has also challenged the award of the said work to respondent No. 6.

2. It is not necessary to deal with the facts in detail. Suffice it to note that the petitioner was bound under the terms of the notice inviting tenders to produce one hundred trucks on 15.10.2015 for inspection. The petitioner was unable to do so. The petitioner's case is that there were at that time serious

disturbances in the State of Punjab and especially in the areas through which the trucks would have to be plied to reach the site for inspection. It is not denied that there were serious disturbances in the State of Punjab.

3. The respondents, however, contend that other transporters were able to ply their vehicles. There is a serious dispute in this regard. It is possible that the other transporters' vehicles were within the area where the inspection was to be carried out, whereas the petitioner's trucks had to be brought in from or through the disturbed areas. The respondents also contend that the petitioner had been given sufficient opportunities both by the official respondents and by this Court to produce the one hundred trucks, but the petitioner was unable to do so.

4. Whether the petitioner failed and neglected to do so or was prevented from doing so is also an issue which requires consideration after affording the petitioner an opportunity to lead evidence and dealing with the evidence that may be produced by the official respondents.

5. Even assuming that the petitioner was prevented from producing the trucks for inspection for no fault of his, the official respondents cannot be faulted for having withdrawn the work from the petitioner and having awarded it to the private respondent No. 6. The work involved the transport of food-grains. The same could not be held up for any reason. The petitioner's alleged genuine difficulties cannot be a cause for grievance against the official respondents of having the work done by another party. Whether the respondents at any given point of time prevented the petitioner from performing the contract malafide or not is a separate issue.

6. The relief(s), therefore, cannot be granted directing the official respondents to permit the petitioner to carry out the work which was awarded to him pursuant to the tender process.

7. The official respondents by a letter dated 17.10.2015 informed the petitioner that they had disbelieved his excuses for not producing the trucks for inspection and gave him yet another opportunity to produce the trucks on 18.10.2015. The petitioner was informed that if he failed to do so, proceedings would be taken against him for blacklisting as per the provisions of the policy.

8. The impugned order was passed on 20.10.2015 i.e. in less than three days. The impugned order noted the petitioner's failure to comply with his obligation. The order further states that as per the conditions of the policy, the surety amount deposited by him was forfeited and that he was blacklisted for three years.

9. Admittedly, the petitioner has not been afforded an opportunity of being heard before passing the order of blacklisting. There are several other important aspects which require consideration. A decision whether or not to blacklist the petitioner can only be taken thereafter. At least, as far as the initial inability to produce the trucks is concerned, prima-facie the petitioner was prevented from doing so for no fault of his own, but in view of the disturbances in the State of Punjab.

10. In these circumstances, the impugned order is set aside to the extent that it blacklists the petitioner and forfeits the security deposit. As we intend directing the official respondents to afford the petitioner a hearing before taking any action regarding the blacklisting and forfeiture, we do not intend passing an order directing the official respondents to return the security deposit at this stage, although the order is quashed.

11. In these circumstances, the petition is disposed of by quashing the impugned action forfeiting the security deposit and blacklisting the petitioner with liberty, however, to the official respondents to initiate

proceedings for blacklisting. If no proceedings are initiated for forfeiture within four weeks from today, the respondents shall refund the security forthwith thereafter. If proceedings for forfeiture are initiated within four weeks from today, the security shall abide by the order and the result of the challenge thereto, if any.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

05.12.2015

Amodh