IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.24593 of 2015

Date of decision:14.12.2015

M/s Balaji Transport Company ... Petitioner

versus

Haryana State Federation of Consumers Cooperative Wholesale Stores & another

... Respondents

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

Present: Mr. Dhiraj Chawla, Advocate for the petitioner.

Mr. Lokesh Sinhal, Advocate for the respondents.

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE.

The petitioner has challenged the order dated 13.11.2015 by which the respondents had cancelled the contract issued to the petitioner. The petitioner has submitted a bid in response to the notice inviting tender for the work of handling and transportation of food grains. Clause 25 (a) of the agreement reads as under:

*"25) **Summary Termination:-***

a) In the event of the contracts having been declared insolvent or going into liquidation or winding up their business or making arrangements with their creditors or failing to observe any of the provisions of this contract or any of the terms and conditions governing the contract, DM Confed with the prior approval of Deputy Commissioner shall be at liberty to terminate the contract without prejudice or any other rights or remediless under the contract and to get the work done for the un-expired period of contract at the risk and cost of the contractors and to claim from the contractors entire loss sustained or costs incurred. In case any FIR is lodged against the contractor on account of diversion or misappropriation of *foodgrains or mis-handling or wrong transportation to the Fair Price Shops, Schools, Anganwari centers, LPG consumers and transportation of sugar at Confed focal point in the State of Haryana, DM Confed with prior approval of Deputy Commissioner is competent to terminate the contract and to forfeit the security money. Other action for recovery shall also be taken."*

2. The respondent received complaints from the owners of the Fair Price Shops stating that the food grains had not been supplied to them in district Gurgaon. The respondents, therefore, by a communication dated 28.10.2015, cancelled the petitioner's tender for the blocks at Gurgaon and Pataudi, forfeiting the security amount for the years 2015-16 and blacklisted the petitioner for future contracts. The order dated 28.10.2015 merely refers to the said Clause 25(a) and is passed only in view of the fact that two FIRs dated 25.07.2015 and 29.07.2015 had been registered against the petitioner.

3. The present writ petition, however, pertains to the block Bahadurgarh in district Jhajjar and not the ones at Gurgaon.The impugned order however refers to the order dated 28.10.2015. It also alleges that the petitioner has violated Clause 25(a) as the said FIRs had been registered against the petitioner. It is apparent that this order was also passed only on the basis that the FIRs had been registered against the petitioner.

4. The respondents appear to have taken a view that the mere filing of an FIR is sufficient to cancel the contract. The respondent's interpretation of Clause 25(a) is incorrect. The mere filing of an FIR does not, without anything more, entail a cancellation of the contract or warrant any other action in respect thereof. The last but one sentence of Clause 25 (a) merely provides that in case, FIR has been lodged against a Contractor, the DM Confed is with prior approval of the Deputy Commissioner,

competent to terminate the contract and forfeit the security money. The words "is competent to" indicate that the DM Confed is entitled to terminate the contract and to forfeit the security money. He is not bound to do so. This is infact understandable and reasonable what is contemplated in the case of filing of the FIR. When FIR is lodged, it is not mandatory for the DM Confed to terminate the contract or to take any other action against the Contractor. This would depend on a variety of facts and circumstances. If the allegation is not of a serious nature, strict action may not be taken. Further the extent of the adverse action would be proportionate to the offence alleged and committed by the DM Confed to be true.

5. In the circumstances, the impugned action insofar as it is taken only in view of the FIR having been filed cannot be sustained.

6. Mr. Lokesh Sinhal, Advocate appearing on behalf of the respondents relied upon the fact that the petitioner had not challenged the said order dated 28.10.2015 in respect of the blocks at Gurgaon and Pataudi. That would make no difference. The petitioner was entitled to challenge all or any of the orders. It is for the petitioner to decide which of the orders to challenge.

7. Under the circumstances, the impugned order is set aside. The DM Confed shall take a fresh decision whether or not to terminate the contract and/or to forfeit the security money after considering facts and circumstances of this case and after affording the petitioner an opportunity of being heard. As the period of the contract expires on 31.03.2016, the respondents are directed to take a decision by 07.01.2016. The petitioner shall attend the office of the respondents at 11 a.m. on 17.12.2015 in the first instance and thereafter as directed by the respondents. The petitioner

agrees not to seek any adjournment before the respondents. Needless to add that the petitioner is always at liberty to challenge the order if it is adverse to him.

8. The writ petition is accordingly disposed of.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

14.12.2015
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