

CWP No.19224 of 2012

[1]

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

**CWP No.19224 of 2012
Date of decision: 24 .08.2016**

M/s Vishwas Dhaliwal Cold Store ...Petitioner

Versus

Union of India and others ..Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Ms. Reeta Kohli, Senior Advocate, with
Mr. Manik Bhandari, Advocate, for the petitioner.

Mr. Vishwajit Bedi, Advocate,
for respondents No.2 and 3.

Mr. Tribhawan Singla, Advocate, for
Mr. Abhey Kumar Jindal, Advocate, for respondent No.4.

Rakesh Kumar Jain, J.

The petitioner is a partnership firm. It is registered as a Small Scale Unit with the Department of Industries, Punjab. The petitioner has challenged the decision of the respondents dated 18.07.2011, declining the Letter of Intent and has prayed for a direction to them to release 40% subsidy.

The case set up by the petitioner is that the Ministry of Agriculture, Government of India, set up an autonomous society known as “National Horticulture Board” (hereinafter referred to as the “Board”) with a view to promote integrated development of commercial horticulture. The Board formulated various schemes for the development of Horticulture Sector. The said schemes are as under:-

- “Scheme-1: Development of Commercial Horticulture through Production and Post Harvest Management of Horticulture Crops,
Scheme-2: Capital Investment Subsidy Scheme for construction/expansion/modernization of Cold Storages/Storages of Horticulture Produce,
Scheme-3: Technology Development and Transfer for promotion of Horticulture,
Scheme-4: Market Information Service Horticulture Crops,
Scheme-5: Horticulture Promotion Service.”

The petitioner planned to set up a cold storage project with the project costs of ₹230.00 lacs but the Board later on changed the norms to set up new cold storage w.e.f. April 2010, enhancing the cost of the project from ₹230.00 lacs to ₹325.00 lacs. The petitioner is concerned with Scheme-2 i.e. “Capital Investment Subsidy Scheme for construction/expansion/modernization of Cold Storages/Storages of Horticulture Produce”. As per this scheme, the Scheme-2 is for installation of cold storage for preservation of fruits and vegetables with an installed capacity of 1,00,000 bags per season/5000 MT. It is alleged that the petitioner set up its cold storage with two chambers having capacity of 5000 MT with project cost of ₹325.00 lacs in the land situated in Khata/Khasra No.381/656 and 666, village Darraj, Tehsil Barnala, District Barnala. The projected cost of the petitioner of ₹325.00 lacs included capital of ₹70 lacs, subsidy from National Bank for Agriculture and Rural Development (NABARD)/National Horticulture Board (NHB) of ₹120.00 lacs and term loan of ₹135.00 lacs. It is alleged that the petitioner, in view of the assistance to be provided by the Board, with the legitimate expectation, availed the sanctioned term loan from the State Bank of Patiala,

Tapa Branch of ₹135.00 lacs for construction of cold storage and purchase of machinery for cold storage @ 5.50% above basic rates i.e. 8.50% and the effective rate of interest inter-chargeable on the loan account is 14.00%. It is further averred that after sanctioning of the above said term loan by the State Bank of Patiala, the petitioner filed the application to the Board for financial assistance i.e. subsidy claim through online submission of application for grant of Letter of Intent (LOI). The petitioner also submitted ₹10,000/- by way of bank draft. It is alleged that in the pre-inspection of the project conducted on 20.04.2011, the Assistant Director, Industries, made the following observations:-

- “1. Land development started on 15.10.2009.
2. Status of cold store building civil/pre engineered as on inspection date-completed.
3. Installation of power transformer and electricity supply equipment-completed.
4. Installation of Refrigeration cooling system-completed.
5. Type of produce proposed to be stored-potato.
6. Whether cold storage is functioning-yes, 20th April, 2011.
7. Remark of inspection officer-project is in running condition.
8. Recommendation of Pre-inspection officer-95% work of the project has been completed, construction work as floor of shed, boundary wall are in progress.”

It is alleged that the petitioner had availed the term loan of ₹135.00 lacs from the Bank on the assurance extended by respondents No.2 and 3 that it would be granted LOI under Scheme-2 of the Board but vide letter dated 18.07.2011, the petitioner was informed that its request for grant of LOI has been rejected because 95% work of the cold storage has already been completed and only 5% work of plaster of walls is left. The petitioner

has, thus, challenged that order dated 18.07.2011 and prayed for the grant of subsidy.

Counsel for the respondents has submitted that the term loan was sanctioned on 28.07.2010, additional loan was sanctioned on 27.12.2010 and, thereafter, the petitioner applied for LOI on 09.02.2011, which was never obtained as the proposal was rejected by the Board because 95% work had already been completed. In support of his submissions, counsel for the respondents has referred to the provisions of the Scheme-2 in which it is provided that “System of Letter of Intent (LOI)- LOI to be obtained by the promoter prior to undertaking construction of cold storage needs to be introduced”. The case of the respondents is that the LOI has been applied by the petitioner after 95% construction was over though it was required to wait till the LOI is issued to it. It is further submitted that the Board cannot go beyond the provisions of the scheme in which the words used are “prior to undertaking construction” and not subsequent to the construction of the cold storage.

Counsel for the petitioner, while rebutting the arguments raised by learned counsel for the respondents, has submitted that the subsidy is not granted to the needy persons, as projected by the respondents, rather it has to be provided in terms of the provisions of the Scheme and since the petitioner had already applied for the LOI, therefore, it hardly makes any difference that the work of construction of cold storage has already been completed at the time of pre-inspection.

I have heard learned counsel for the parties and examined the available record with their able assistance.

CWP No.19224 of 2012

[5]

There is no dispute that the petitioner had applied for the LOI after completion of 95% construction work of its cold storage, whereas it has been specifically provided in the scheme that the LOI has to be obtained by the promoter prior to undertaking construction of the cold storage.

The argument of the petitioner that the construction was raised prior to the LOI on the basis of a legitimate expectation that the petitioner would be released 40% subsidy in terms of the guidelines of 2010 is totally misplaced. The petitioner should have availed LOI at the first instance before starting the construction as it could not have offended the provisions of the Scheme in which the words “prior to undertaking construction” have been specifically used which cannot be interpreted in any other manner.

In view of the aforesaid admitted facts and circumstances, there is no error on the part of the respondents in declining the LOI to the petitioner.

Consequently, the present writ petition is hereby dismissed being denuded of any merit.

August 24, 2016
vinod*

(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No