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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19675 of 2015
Date of decision:04.07.2016

Bipin Shankar Giri and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. J.S.Mannipur, Advocate,
for the petitioners.

Mr. Ish Puneet Singh, Advocate, for
Ms. Jatinder Jit Kaur, Advocate, for respondent No.9.

Mr. Ravi Singh, Advocate, for
Mr. C.S.Bakshi, Advocate, for PUNGRAIN.

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Rakesh Kumar Jain, J.

This order shall dispose of a bunch of 12 petitions bearing CWP Nos.19675 to 19686 of 2015 as the issue involved in all these cases is the same. However, for the sake of convenience, the facts are being extracted from CWP No.19675 of 2015.

The petitioners are the members of the Punjab Pardesh Palledar Majdoor Union, Branch Sangrur (hereinafter referred to as the “Majdoor Union”), who have been appointed as Three Members Committee, vide its resolution dated 27.04.2015, for pursuing their case to recover the payment of work done of loading and unloading, from the respondents @ 132%

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above ASOR. According to the petitioners, they had worked for different agencies, namely, Warehouse, Pungrain, Punsup, Punjab Agro and Markfed and the cost of their total labour assessed @ 132% above ASOR comes to ₹64,47,072/-. It is alleged that the work was executed without any tender but on the basis of a settlement dated 26.04.2015, which was admittedly signed by the aforesaid agencies except the Food Corporation of India (FCI). Before approaching this Court, the petitioners served a demand notice upon the respondents through their advocate on 03.08.2015 and have prayed that the payment of the work having been executed by them be released but the needful has not been done by the respondents.

In brief, the Government of Punjab every year invites tenders for loading and unloading the wheat and paddy for a period of one year. The period in question is of the year 2015-2016, which is effective from 01.04.2015 to 31.03.2016. According to the policy/instructions issued for the labour work dated 18.03.2015, the tenders were to be invited for labour work for storage point (open plinth and covered godowns) P.E.G. Godowns upto 31.03.2015. According to respondent No.5, the tenders were invited online again and again on 20.03.2015, 08.04.2015, 17.04.2015, 20.04.2015 and 25.04.2015 for the labour for storage of foodgrains for the year 2015-2016 on behalf of the State Procurement Agencies i.e. Markfed, Pungrain, Punjab State Warehousing Corporation, Punsup and FCI. However, no tender was received due to strike and boycott by the labour unions and the tender could not be finalized till 26.04.2015 except for the Amargarh centre at District Sangrur where the tender was finalized in favour of Joginder Pal and Company @ 51% above ASOR and the work was executed by the said contractor. It is alleged that because of the strike and boycott by the labour unions, the tender could not be finalized and a heavy penalty in the form of demurrage amounting to ₹9 lacs due to non-loading of gunny bags was incurred. The mandis were flooded with wheat during peak season and the farmers started staging protests on account of non-loading of the foodgrains, as a result thereof, the law and order situation deteriorated. The farmers sat on Dharna and staged road blocks and highway in the month of April 2015 for non-lifting of the wheat which piled up in the Grain Market, Sangrur and since the work of loading and unloading of foodgrains had to be completed in a time bound manner being a perishable commodity, therefore, an urgent meeting was called with the members of the Majdoor Union on 26.04.2015 wherein a demand letter of executing the labour work @ 132% above ASOR was kept as a condition by the members of the Majdoor Union. The settlement, which is attached as Annexure P-3, relied upon by the petitioners, was signed by all the agencies except for the FCI and, thereafter the work was executed by the Majdoor Union. After executing the work, they demanded the payment @ 132% above ASOR which has been declined by the FCI on the ground that it is too excessive. However, it has been admitted in its reply by the FCI that the labour work has actually been executed and it had already released 70% of the payment calculated @ 132% above ASOR but it cannot be forced to make the remaining 30% payment as it is highly excessive.

Counsel for the petitioners has submitted that had there been no settlement on 26.04.2015, they would not have executed the work of loading and unloading but once the work has been executed in terms of the settlement dated 26.04.2015, the respondents cannot refuse to make the payment accordingly.

On the other hand, counsel for the respondents have not denied the execution of the settlement, except by the FCI, as it is alleged on its behalf that it is not the signatory to the settlement but he does not deny the execution of the labour work by the Majdoor Union and release of 70% payment to them calculated @ 132% above ASOR.

The only objection raised by the respondents is that the rates quoted by the petitioners on 132% above ASOR is very excessive.

I have heard learned counsel for the parties and perused the available record from which it is found that the respondents, except the FCI, had entered into a settlement with the Majdoor Union because of the arrival of more than 60% wheat to the mandis and the difficulties being faced by the farmers. Thus, the work of loading and unloading was executed at the rates quoted by the petitioners which were accepted by all the agencies, working at the instance of the FCI, and the payment has been released by the FCI though to the extent of 70%. In these facts and circumstances, the equity lies in favour of the petitioners to recover the remaining 30% amount from the FCI, as the case may be, as the Majdoor Union had executed the work only after the settlement was signed by the government agencies, may be in the absence of the FCI, because it was the need of the hour to save the wheat worth crores of rupees from being perished. In case it is found by the

FCI that the Government agencies had acted in contravention of its instructions at the time of entering into the settlement with the petitioners, it may take any suitable action against those agencies, if so advised, but insofar as the petitioners are concerned, they are definitely entitled to their remaining 30% payment.

Consequently, all the petitions are hereby allowed and a direction is issued to respondent Nos.5 and 9 to release the entire payment of the petitioners in all the cases wherever it has been partly made for the work done by them @ 132% above ASOR, within a period of 3 months from the date of receipt of certified copy of this order.

July 04, 2016 **(Rakesh Kumar Jain)**
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