

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 5700 of 2016

Date of Decision: 28.3.2016

M/s Ekom Enterprises Co-owners, Rampuraphul and others

....Petitioners.

Versus

State of Punjab and others

...Respondents.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.**

PRESENT: Mr. Gurminder Singh, Senior Advocate with
Mr. J.S. Gill, Advocate for the petitioners.

AJAY KUMAR MITTAL, J.

1. The petitioners have invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the notices dated 20.8.2015, 1.10.2015, 9.11.2015 and 17.11.2015 (Annexure P-10 Colly) issued by Punjab Grains Procurement Corporation Limited (in short "the PUNGRAIN") directing them to deposit the service tax on the income received from renting/lending of immovable property and withheld the godown rent. Further, a writ of mandamus has been sought directing respondent No.3 to release the storage charges of the godowns hired by the PUNGRAIN for storage of agricultural produce under Private

Entrepreneurs Scheme, 2008 (in short "the Scheme").

2. In the year 2010, under the Scheme, the PUNGRAIN invited tender form (Annexure P-1) under two bid systems for construction of covered godowns for Food Corporation of India (FCI) storage requirement for a minimum guarantee period of seven years on build, own and operate/lease basis for the storage of foodgrain at various locations of Punjab. In pursuance thereto, the petitioners applied for various locations in Punjab. The tender submitted by petitioners No.1 to 9 was not accepted by the PUNGRAIN but they were given counter offer (copy of the counter offer dated 24.2.2011 given to one of the petitioners is Annexure P-2) for construction of covered godowns under the Scheme at the lower rate which was accepted by petitioners No.1 to 9. The tender submitted by petitioners No.10 to 14 was accepted at the rate quoted by them. In pursuance thereto, the agreements (copy of the agreement dated 18.3.2011 executed between the PUNGRAIN and one of the petitioners is Annexure P-3) were executed between the PUNGRAIN and the petitioners. Thereafter, the petitioners constructed the covered godowns as per the conditions laid down in the agreement which was subsequently inspected by the Assistant General Manager along with XEN, PWD (B&R) vide inspection report dated 10.4.2012 (Annexure P-4). Thereafter, the Managing Director, PUNGRAIN, Chandigarh wrote letters to the District Manager of the concerned Districts to take over the godowns constructed under the Scheme, including letter dated 3.7.2012 (Annexure P-5) written to the District Manager, Bathinda. Vide another letter dated 26.7.2012 (Annexure P-6), in case of some of the petitioners, the direction was issued to the District Manager for taking over the godowns and execution of necessary

agreements. In pursuance thereto, the agreements including the agreement dated 20.7.2012 (Annexure P-7) were executed. The amount as agreed between the PUNGRAIN and the petitioners is firstly paid by the PUNGRAIN to the petitioners and then the PUNGRAIN got reimbursed it from the FCI. As per the agreement dated 27.11.2012 (Annexure P-8) executed between the FCI and the PUNGRAIN, the FCI reimbursed the rent charges to the PUNGRAIN with a further 15% supervision charges on godown rent. The petitioners were issued various notices including the notices dated 3.2.2015, 20.2.2015 and 7.7.2015 (Annexure P-9 Colly) by the Central Excise and Service Tax Range asking for the details of income received from renting/lending of immovable property to the PUNGRAIN and payment of service tax thereon. Thereafter, the PUNGRAIN had issued the notices dated 20.8.2015, 1.10.2015, 9.11.2015 and 17.11.2015 (Annexure P-10 Colly) to the petitioners for stopping the payment of storage charges for the godowns. The petitioners moved a representation dated 2.9.2015 (Annexure P-11) to the Managing Director, PUNGRAIN, Chandigarh against the said notices, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioners submitted that the petitioners have moved a representation dated 2.9.2015 (Annexure P-11) to the Managing Director, PUNGRAIN, Chandigarh for releasing the storage charges of the godowns, but no action has so far been taken thereon. They, however, prayed that liberty be granted to the petitioners to file a detailed and comprehensive representation before the appropriate authority by incorporating the grievance as raised in the present writ petition and direction be issued to the authority concerned to

decide the representation expeditiously in a time bound manner in accordance with law.

4. After hearing learned counsel for the petitioners, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by granting liberty to the petitioners to file a detailed and comprehensive representation against the notices (Annexure P-10 Colly) raising all the pleas as raised in the present writ petition before respondent No.3 within a period of 15 days from the date of receipt of the certified copy of the order. It is directed that in the event of a representation being filed by the petitioners, the same shall be decided in accordance with law by passing a speaking order and after affording an opportunity of hearing to them within a period of three months from the date of receipt of the representation. The petitioners shall be entitled to lead any evidence to substantiate their claim before respondent No.3.

(AJAY KUMAR MITTAL)
JUDGE

March 28, 2016
gbs

(RAJ RAHUL GARG)
JUDGE