

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 7244 of 2015 (O&M)

Date of Decision: 24.05.2016

Balour Singh and others

..Petitioners

versus

State of Punjab and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE ARUN PALLI.**

Present : Mr. Aakash Singla, Advocate, for the petitioners.
Mr. Rajinder Goyal, Addl. Advocate General, Punjab.
Mr. S.S.Rangi, Advocate, for respondent No.3.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The petitioners have challenged clause-2 of the communication dated 18.03.2015 addressed by the Principal Secretary, Government of Punjab, Food Civil Supplies and Consumer Affairs Department to all the District Controllers of the department.

2. While testing the validity of clause-2 it would be necessary to consider clause-19. Clauses 2 and 19 of the impugned communication read as under:-

“In reference to the above subject, following policy guidelines/directions are issued for labour work of the storage of agricultural produce at storage points (open plinth and covered godowns)/P.E.G. godowns for year 2015-16.

2. The loading work of agricultural produce shall be done by commission agents on the rates fixed by Punjab Mandi Board.

XX XX XX

XX XX XX

19. After the auction of agricultural produce in Mandi, the commission agents shall be bound to complete work of

labour (loading) within 48 hours, and in event of not doing so, agency shall have right to get the work executed at his risk and cost from other sources at approved rate of concerned tender. Excess expenditure shall be recovered from the commission agents. The Punjab Mandi Board shall have responsibility for taking disciplinary action against the defaulter commission agent.

(A) The payment of work of loading done by the commission-agents shall be made directly to the commission agents and loading shall be submitted by commission agents by preparing it separately."

3. The petitioners' grievance is that as a result of clause-2 of the instructions, the parties persons other than commission agents are excluded from bidding for the said work.

4. It is true that absent anything else, every party is entitled to participate in the commercial activities of the State and of the instrumentalities of the State. The State cannot discriminate against any party. It cannot choose to contract with some parties alone or to exclude others arbitrarily or irrationally. The State is, however, entitled in certain circumstances to deal with certain specified persons depending on the peculiar requirements of a case. It is also entitled to stipulate the eligibility conditions. We are not concerned here with the validity of the conditions of eligibility. We are concerned here with the decision of the respondents to award the contract only to a certain class of persons, namely, the Commission Agents. Normally, the State would not be entitled to do so. The question is whether the State has in this case justifiably decided to award the contract only to a particular class of persons, namely, the Commission Agents.

5. Considering the facts and circumstances of the case we are of the opinion that the decision cannot be said to be

arbitrary, unreasonable or malafide. The decision making process is also reasonable and satisfactory. We have been unable to notice any arbitrariness or malafides in the process.

6. The respondents have filed two affidavits which indicate the decision making process and the decision, neither of which can be said to be unsatisfactory on the basis of the record that is available. It is important to note at this stage itself that there has been no replication to the written statement/affidavits in reply filed by the respondents.

7. The case of the respondents is as follows:-

Prior to the notification the work was carried out by the labour cartage contractors. The work was found to be unsatisfactory. The respondents found that it was suffering at the hands of the labour cartage contractors on account of the delay in the procurement and delivery of food grains from the Mandis to the storage points. The labour contractors did not lift the grains within the stipulated time leaving the food grains lying in open. Food grains are perishable commodities. On account of the delay and mishandling the food grains perished. Moreover as a result of the delay the food grain which was not lifted in time occupied valuable space in the Mandis which was required for the food grains that arrived thereat.

Upon arrival of the food grains in the Mandis, they are cleaned and auctioned through the commission agents who are paid commission at 2.5%. The commission agents perform other transactions as well. They are registered with the Punjab Mandi Board and are, therefore, directly under their control as per their bye-laws and are answerable to the Board for any irregularity or

default in the performance of the work in the Mandis. The procurement agency is entitled to complain against the commission agents to the Board. If the complaint is well founded, the action is taken against the commission agents by the board. The commission agents are registered with the board and all the works relating to the Mandis' operations such as loading, unloading, cleaning, weighing, filling, stitching are carried out by the commission agents. Upon completion of the work, they submit the bills for payment to the concerned procurement agency for approval. Upon approval the payment is made to the commission agents who in turn pay the dues to the labour engaged by them. In this manner, the board has complete control over the commission agents.

8. We will ignore for the purpose of this judgment the respondents' allegation that the petitioners failed to deduct the EPF and to pay the dues of the labour. The food grains are to be loaded within 48 hours as specified in clause 19 set out earlier. As the commission agents are involved in the entire operation in the Mandis it is in their interest to ensure that the food grains are loaded, removed and transported as soon as possible for it is only upon the removal of the stock promptly that further food grains can be accommodated in the Mandi as their remuneration depends upon the transactions within the Mandi. They have an incentive to perform this crucial task relating to the essential commodities efficiently.

9. The respondents' action is, therefore, in respect of essential commodities, namely, food grains and with the object of ensuring timely removal and delivery thereof at the locations

concerned for further distribution. The respondents' infact found the work carried on earlier by the labour societies to be unsatisfactory. The reason for arriving at the conclusion is logical. The manner in which the respondents came to this conclusion is also satisfactory. The above conclusions and reasoning and the resultant decision emanated from the process adopted by the respondents.

10. On account of the complaints received all the State procuring agencies were asked to offer their comments and suggestions on the previous system of the work of loading of food grains in Mandis done by the contracting labour through the open tender system. By a letter dated 09.02.2015 addressed to the procurement agencies, namely, Punjab State Cooperative Supply & Marketing Federation Ltd. (MARKFED), Punjab State Civil Supplies Corporation Ltd. (PUNSUP), Punjab State Warehousing Corporation (PSWC) and Punjab Agro Industries Corporation Ltd. (PAFC), the Managing Director of PUNGRAIN (Punjab Grains Procurement Corporation Ltd.) noted that a meeting was held under the chairmanship of the Principal Secretary Food, Civil Supplies & Consumer Affairs, Punjab on 09.02.2015 to implement the points regarding the labour, transport and labour work in PEG godowns during the year 2015-16 and mentioned that the following issues were deliberated:-

- “1. To get the work of loading done in Mandis through commission agents.
2. To call the tenders marketing committee-wise in all the District of Punjab.
3. To appoint the Deputy Commissioner as Chairman of the Tender Allotment Committee.

4. To call the Tender Mandi-wise in all District of Punjab.”

The procurement agencies were directed to send their comments and suggestions. PUNSUP and Markfed submitted their comments and suggestions. The decision was, therefore, taken after taking into consideration the relevant facts and consulting the relevant parties.

11. As we mentioned earlier, there is no affidavit in reply/written statement. This was essentially a policy decision based on administrative exigencies. The principal reasons appear to have been not merely the difficulties faced with the labour contractors in the past but also the benefit of control of the commission agents and the possibility of expediting the work by engaging them. It is not for the Court to sit in judgment over the decision of the party inviting tenders. They are the best judges of their requirements and the method of meeting them. It is for them to weigh the pros and cons of a system with respect to their commercial, administrative and financial requirements.

12. The petition is, therefore, dismissed.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

24.05.2016
'ravinder'

(ARUN PALLI)
JUDGE

To be referred to the reporter	√ Yes	No.
--------------------------------	-------	-----