

CWP No.9081 of 2016

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

CWP No.9081 of 2016
Date of decision: 26.10.2016

Ram Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. D.S. Malwai, Advocate for the petitioner.
Mr. Rajinder Goyal, Addl. A.G., Punjab.

RAMENDRA JAIN, J.

In pursuance to the e-tender notice (Annexure P-1) issued by respondent No.1 regarding transportation of stock articles, grain and for labour work in the godowns/storage centre and for PEG godowns at Dhuri (01.04.2016 to 31.03.2017) (Rabbi and Kharif season) for the year 2016-17, petitioner submitted his bid and was successful. Consequently, he was allotted the work vide letter Annexure P-6. However, during the subsistence of the contract, Punjab Pradesh Palledar Union, Mall Godown road, Dhuri, through its President Master Telu Ram started causing obstruction in his work to be carried out and consequently, the petitioner had filed CWP No.7103 of 2016 under Articles 226 and 227 of the Constitution of India seeking protection to his life and liberty and his labour and also restraining the said union from causing obstruction in his labour work. The said writ petition was disposed of vide order dated 12.04.2016

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this Court and intervention of Deputy Commissioner and Senior Superintendent of Police, he was not allowed to enter the godown to perform his duty as per the contract allotted to him. Police party only did the formality of visiting the spot and did not remove/take action against the persons causing obstruction in entering the petitioner in godown to perform the labour work. Due to non-performance of contract allotted to him, tender of the petitioner has been cancelled vide Annexure P-16.

2. Hence, by way of present writ petition filed under Articles 226 and 227 of the Constitution of India petitioner has sought issuance of writ in the nature of *certiorari* for quashing the order dated 01/02.05.2016 (Annexure P-16) vide which respondent No.2 has cancelled the tender allotted to the petitioner of PEG godowns, Dhuri for the years 2016-17.

3. Learned counsel for the petitioner submitted that despite directions of this Court, Senior Superintendent of Police did not take any effective steps to take action against the persons, who were causing obstruction in the work of the petitioner to be carried out as per tender allotted to him. Hence, completion of contract was beyond his control, despite making all necessary arrangements to complete the contract. Petitioner approached all the authorities i.e. Deputy Commissioner, Sangrur; Senior Superintendent of Police, Sangrur; Station House Officer, Dhuri; District Manager, PUNGRAIN, Sangrur; Inspector, PUNGRAIN, Dhuri; and Deputy Director (Field), Food and Civil Supplies and Consumer Affairs, Sangrur Division, Sangrur, but no heed was paid to his requests for removing the obstruction caused by huge members of the Punjab Pradesh Palledar Union, not allowing him to complete his labour work. Learned

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counsel for the petitioner further submitted that respondents without considering the genuine grouse of the petitioner, illegally and arbitrarily cancelled the contract of the petitioner for the current year vide Annexure P-16, which is liable to be set aside.

4. Perusal of impugned order (Annexure P-16) shows that the petitioner remained unsuccessful in completion of contract and his contract was cancelled to save the Government from any financial loss. Further perusal of the reply submitted by respondent No.2 shows that the petitioner was unable to do his work as he failed to provide labour for the work of unloading of wheat even after issuing several notices in PEG godowns for the year 2016-17. Petitioner did not make proper arrangements for the required labour. Despite oral requests to the petitioner, necessary/required labour could not be arranged by him. District Manager, MARKFED, Sangrur vide his letter dated 28.04.2016 (Annexure R-5) informed that unloading work by the petitioner was being not carried out in the PEG godowns. It was also informed by the Truck Union, Sherpur, that there was no arrangement of labour at PEG godowns. The trucks loaded on 24.04.2016 were not unloaded till 29.04.2016 on account of which truck drivers suffered financial loss and exploitation as a result thereof they could not make arrangement of any truck/vehicle for PEG godown, Saron. Despite issuance of notice to the petitioner when he remained unsuccessful in unloading and lifting the wheat and also considering the financial loss to Government, tender allotted to the petitioner was cancelled by the Tender Committee on 01.05.2016.

5. After perusal of the record and giving our thoughtful

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consideration to the submissions made by learned counsel for the petitioner, we find that this writ petition is completely devoid of any merit because disputed question of fact whether the petitioner could not complete his work due to his own inefficiency or on account of reasons beyond his control, is involved in this writ petition which can only be appreciated by leading of evidence by the petitioner. It is needless to mention here that this Court under the extra ordinary writ jurisdiction in the absence of evidence and material on record, cannot adjudicate such questions of fact. Thus, action of the respondents in cancelling the tender of the petitioner cannot be said to be illegal or arbitrary.

6. Examining the scope of writ jurisdiction under Article 226 of the Constitution of India where disputed questions of facts are involved, a Division Bench of this Court in *N.C.Mahendra v. Haryana State Electricity Board and others*, AIR 1984 Punjab 26 had laid down that ordinarily a writ would not issue in favour of a person where disputed questions of fact are raised. The relevant portion reads thus:-

“12. An identical legal position ensures within this country and High Courts have repeatedly held that the exercise of jurisdiction under Article 226 of the Constitution is discretionary and not obligatory without being exhaustive, it is settled law that the Court would not ordinarily issue a writ in favour of a person, who has (i) an adequate alternative remedy, (ii) who is guilty of delay which is unexplained, (iii) who is guilty of conduct disentitling him to relief, (iv) where the interest of justice do not require that relief should be granted, (v) where the petitioner raises a disputed question of fact, (vi) where the grant of writ would be futile, and (vii) where the impugned law has not come into force. It would follow from

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the above that the grant or refusal of a writ is within the judicial discretion of the Court and that indeed is the line which divides the extra ordinary remedy from the ordinary one by of a civil suit.” (Emphasis supplied).

The Hon'ble Supreme Court in *State Cadre Authority and another v. K.S.Bajpal and others*, 1990(Sup) SCC 713, *Bhagubhai Dhanabhai Khalasi and another v. The State of Gujarat and others*, 2007(4) SCC 241 and *Mukesh Kumar Agrawal v. State of UP and others*, 2009(13) SCC 693 has held that wherever disputed question of fact is raised in writ proceedings, the writ petition was not an appropriate remedy.

7. Dismissed.

(RAMENDRA JAIN)
JUDGE

October 26, 2016
R.S.

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No