IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11842 of 2016
Date of decision: 20.12.2017

K.K.Traders, 138, Master Tara Singh Nagar Market, Jalandhar, TIN No.03681099368 through its proprietor Shri Anil Khanna son of Joginder Pal Khanna

……Petitioner

Vs.

State of Punjab and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Pankaj Midha, Advocate for the petitioner.
Mr.Pankaj Gupta, Addl. A.G. Punjab.
Mr. Piyush Kant Jain, Advocate for respondent No.6.

Ajay Kumar Mittal,J.

1. Prayer in this petition filed under Articles 226/227 of the Constitution of India for a direction to the respondent-authorities to take strict disciplinary/departmental action resulting into awarding major punishing against respondent No.6-Rajesh Verma, Excise and Taxation Officer-cum-Designated Officer, Jalandhar-I for the lapses committed by him intentionally which is duly proved from the material brought on record. Further prayer has been made for a direction to respondent Nos. 4 and 5 to initiate criminal action against respondent No.6 as he failed to discharge the duties of a public servant, acting with criminal intent to cause loss to the petitioner and for demanding illegal gratification from him.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is involved in the business of sale of automobile glasses and silicon. In the business, he used to

import/purchase silicon material from the manufacturer situated out of the State of Punjab. Respondent No.6 acting with malafide intention and to cause wrongful loss to the petitioner started harassing him on the pretext that the tax leviable on the silicon is 13.75% and not as 5.5%. On 29.6.2015, respondent No.6 served notices for assessment under Section 29 of the Punjab VAT Act, 2005 (in short, "the Act") for the assessment year. During the assessment proceedings, respondent No.6 demanded bribe of ₹ 5 lacs from the petitioner. The petitioner showed his inability to pay. Respondent No.6 sent Excise and Taxation Inspector namely Smt. Parveen Chaba to the shop of the petitioner to collect the amount of bribe. Accordingly, the petitioner paid ₹10000/- to the Excise Inspector who came at the behest of respondent No.6. Respondent No.6 inspected the business premises on 14.7.2015 and started threatening him by using un-parliamentary language and pressurized him to pay ₹ 5 lacs as bribe money for finalization of assessment cases. Respondent No.6 also asked the petitioner to deposit ₹ 2 lacs for the inspection. Since the petitioner did not make payment of ₹ 5 lacs as bribe money, respondent No.6 started harassing the petitioner by serving notices under Section 29 of the Act read with Rule 47 of the Punjab VAT Rules, 2005 and under Section 9(2) of the Central Sales Tax Act, 1956 for the assessment years 2012-13 and 2013-14. Aggrieved thereby, the petitioner made a complaint to the Deputy Excise and Taxation Commissioner, Jalandhar Division, Jalandhar by furnishing an affidavit dated 3.9.2015 giving all the details. Respondent No.6 also threatened the petitioner that in case the demand was not met, his TIN number would be blocked and the assessment cases would be decided against him and huge tax liability alongwith penalty would be raised against him. On 2.9.2015, respondent No.6 in a single day finalized the assessment proceedings for the years 2010-

11 and 2011-12 and issued four notices under Section 29 and 30 of the Act. In the month of September 2015, respondent No.6 blocked the TIN number of the petitioner for three months. The petitioner requested respondent No.6 several times to unlock the TIN number but in vain. According to the petitioner, the illegal act of respondent No.6 was reported in many newspapers from time to time but no action was taken by the higher authorities. The petitioner sought information under Right to Information Act, 2005 (in short, "the Act") and requested to supply information pertaining to the assessment years in question. The petitioner was shocked to see from the record that some orders were ante-dated and documents/notices in record had also been tampered/forged. The petitioner has also come to know through RTI that in the enquiry, respondent No.6 has been found guilty but no action has been taken till today. Hence the instant petition by the petitioner.

3. Separate written statements have been filed by the official respondents as well as respondent No.6 controverting the averments made in the petition. Replication has also been filed by the petitioner to the written statements reiterating the averments made in the petition.

4. We have heard learned counsel for the parties.

5. On 7.9.2017, it was recorded by this Court that in order to verify the credentials and test the bonafides of the petitioner, a demand draft amounting to ₹ 5 lacs in favour of Registrar General of this Court be produced by him so that in case, the averments or allegations made against respondent No.6 are found to be incorrect, the same shall be forfeited on account of costs. On 26.9.2017, the petitioner produced a demand draft amounting to ₹ 5 lacs in favour of Registrar General of this Court. It was further recorded that whether the said amount was to be treated as costs, the

same shall be subject to final outcome of the writ petition. On 14.12.2017, learned counsel for the petitioner informed the Court that as per the information received by him under the RTI Act, inquiry against respondent No.6 had been concluded. Accordingly, learned State Counsel was directed to produce the inquiry report as well as other relevant record for perusal of the court. In compliance thereto, enquiry report dated 13.8.2017 and other relevant record was produced. A perusal of the said report shows that all the charges have been proved against respondent No.6. Further, a copy of the memo dated 22.9.2017 issued to respondent No.6 has also been produced wherein respondent No.6 had been asked to submit his reply within a period of one month and in case of failure to submit the reply, further action in accordance with the relevant rules/instructions will be taken.

6. In view of the above, the writ petition is disposed of as infructuous as after the charges have been proved against respondent No.6, further disciplinary action is being taken against him in accordance with the relevant rules. The learned counsel for the petitioner urged that the petitioner is entitled for the damages and other ancillary relief in the writ petition. In our opinion, it would be for the petitioner to approach the appropriate forum for the redressal of his grievance in accordance with law. The Registrar General shall refund the amount of ₹ 5 lacs deposited by the petitioner in this Court either to his learned counsel against proper receipt or send the same to the petitioner in the form of a demand draft.

(Ajay Kumar Mittal)
Judge

December 20, 2017 **(Amit Rawal)**
'gs' **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes**