

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.10462 of 2017
Date of Decision: July 27, 2017

Harvinder Singh

...Petitioner

Versus

State of Punjab & others

...Respondents

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

Present: Mr.R.S.Randhawa, Advocate,
for the petitioner.

Mr.I.P.S.Doabia, Addl.A.G.Punjab,
for the State.

Mr.Sumeet Goel, Advocate,
for respondent Nos.4 & 5.

Mr.T.S.Sidhu, Advocate,
for respondent Nos.7 & 8.

Mr.Vishal Deep Goyal, Advocate,
for respondent Nos.11 to 14.

AMIT RAWAL, J.

Short reply by way of affidavit filed on behalf of respondent
Nos.1 to 3 today in Court is taken on record. Copy thereof has been
supplied to the counsel opposite.

The petitioner has approached this Court with the following
prayer:-

*“Petition under Articles 226/227 of the Constitution of India
for issuance of a writ in the nature of certiorari for setting
aside order dated 20.04.2017 (Annexure P-12) communicated*

on 24.04.2017 at 03:00 p.m.through Email, passed by Respondent no.3, whereby the petitioner has been blacklisted and his security amount has been forfeited being illegal, arbitrary and against the labour and cartage policy 2017-18.

AND/OR

Issue any other writ, order or direction which this Hon'ble Court may deem fit in the peculiar facts and circumstances of the present petition.”

Mr.R.S.Randhawa, learned counsel representing the petitioner submitted that respondent No.4-PUNSUP floated a Tender Notice for allotment of Labour and Cartage work for the Rabi Season of 2017-2018 by causing advertisement in the Newspapers from 19.3.2017 to 24.3.2017. In pursuance thereof, the petitioner submitted the tender along with the requisite documents on 28.3.2017 (Annexure P-1). Being successful in the tender process, the petitioner was allotted the contract of Maloud Cluster in District Ludhiana consisting of six agencies, i.e., Pungrain, Markfed, PSWC (Punjab Warehouse), PUNSUP, Punjab Agro and Food Corporation of India commencing from 1.4.2017 to 31.3.2018. In pursuance to the allotment of tender, the petitioner entered into an agreement and deposited the security, which fact is evident from agreement dated 1.4.2017 (Annexure P-3), demand drafts (Annexure P-4 Colly) and receipt dated 6.4.2017 (Annexure P-5).

He further submitted that when the petitioner started the work, the members of the Truck Union stopped the Trucks employed by the petitioner and extended threats to the drivers of dire consequences and as a result thereof, the wheat started accumulating in the Ramgarh Sardara Mandi. The petitioner in this regard submitted representations to the Deputy Commissioner, Ludhiana and Additional Deputy Commissioner, Ludhiana

on 15.4.2017 (Annexures P-6 and P-7) respectively. He also forwarded representations to the Senior Superintendent of Police, Khanna and Commissioner of Police, Ludhiana on 15.4.2017 (Annexures P-8 and P-9). The said anomalous situation was also brought to the notice of the District Manager, FCI, Ludhiana being procuring agency at Ramgarh Sardara, Cluster Maloud. The petitioner was constrained to approach this Court through Civil Writ Petition No.8197 of 2017 for providing police protection to him and his employees for execution/performance of handling and transportation of trucks and the said writ petition was disposed of in terms of the order dated 18.10.2011 passed in Civil Writ Petition No.19510 of 2011 (Dhillon Brothers Cold Store Versus The State of Punjab and others). However, vide impugned order dated 20.4.2017, the Chairman, Tender Allotment Committee-Cum- Deputy Commissioner, Ludhiana not only blacklisted the petitioner but also forfeited the security. Such action of the respondents suffers from vice of illegality and arbitrariness inasmuch as the photographs (Annexure P-16) clearly demonstrates the intention of the petitioner for executing the work of lifting the wheat. In this regard, the petitioner had also served legal notice dated 24.4.2017 (Annexure P-17) and submitted representation dated 25.4.2017 (Annexure P-18) to respondent Nos.2 and 3 as well as to the District Food Supplies Controller, Ludhiana, District Manager, Markfed, District Manager, PUNSUP, District Manager, Punjab Agro Food Grain and District Manager, Warehouse Ludhiana, but of no avail.

In order to buttress his argument, he drew the attention of the Court to the impugned order to contend that no opportunity of hearing was afforded to the petitioner before passing the impugned order. The principle

of *audi alteram partem* had been flouted with impunity. The Chairman, Tender Allotment Committee-Cum- Deputy Commissioner, Ludhiana was legitimately expected to follow the principles of natural justice before taking any punitive action against the petitioner.

Mr.I.P.S.Doabia, learned Additional Advocate General, Punjab, appearing on behalf of respondent Nos.1 to 3 does not dispute the factum of awarding of the contract to the petitioner, but supported the order of blacklisting. He relied upon Clause 19 of the Policy dated 28.2.2017 (Annexure R-1) to urge that after approval of tenders of storage centre or PEG Godowns in case the successful contractor does not turn up to execute the work or during the season leave the work unexecuted, then he shall be given a personal hearing by issuing one day notice to show cause through his E-mail ID or through SMS on registered mobile. Further, in case he does not appear for personal hearing, the District Tender Committee shall have right to allow agency to get the work executed at his risk and cost from L-2/L-3/ other sources or Commission Agents at approved rates of the concerned tender holder and shall also be liable to be blacklisted. It was, thus, claimed that before passing the impugned order, the petitioner was provided sufficient opportunity by giving personal hearing. The concerned DFSC Ludhiana as well as SDM Payal along with other concerned officials had already heard him in the Mandi, but he insisted for getting further time to execute the work. The petitioner was issued notices dated 16.4.2017 and 17.4.2017 reminding him to execute the work as he had been provided police protection. It was contended that in such circumstances, the petitioner cannot be permitted to urge and raise the point of non-compliance of principles of natural justice and referring to Clause 19 of the Policy,

justified the impugned order, vide which not only the security of the petitioner has been forfeited, but has been blacklisted.

According to the learned counsel, Clause 13 of the Policy also envisages non-transferability of the tender to any tender holder, particularly to the labour contractors, who have been blacklisted for any reason, in essence debarred from submitting the tender. It was also pleaded that as per Clause 24 of the Policy, the petitioner has an alternative remedy by approaching the Managing Director under the Arbitration Act, who shall appoint an arbitrator. With the aforementioned fact, he concluded his argument by submitting that the writ petition deserves to be dismissed with exemplary costs.

We have heard the learned counsel for the parties, appraised the paper book as well as the documents annexed with the writ petition and also the written statement.

It would be expedient to refer to Clause 19 of the Policy on which heavy reliance has been placed by learned State Counsel. Clause 19 of the Policy reads thus:-

“After approval of tenders of storage centre or PEG Godowns, if any successful contractor do not turn up to execute the work or during the season leave the work unexecuted then he shall be given a personal hearing by issuing one day notice to Show Cause through his E-MAIL ID/ through SMS on registered mobile. In case he does not appear during his personal hearing or does not satisfactorily justify his part then the District Tender Committee shall have right to allow agency to get the work executed at his risk and cost from L-2/L-3/other sources or Commission Agents at approved rates of concerned tender holder forfeiting his security amount, after declaring him blacklisted.”

A plain reading of Clause 19 of the Policy clearly envisages that the alleged defaulter would be given a personal hearing by issuing one day notice to show cause through his E-mail ID/SMS or registered mobile before forfeiting the security deposit and blacklisting him. A perusal of the written statement though refers to grant of opportunity of hearing to the petitioner on 16.4.2017 and 17.4.2017 which fact was seriously controverted by learned counsel for the petitioner. Learned State Counsel, when confronted to substantiate the plea in the written statement with reference to any material on record, was unable to do so. In fact, the plea of personal hearing on 16.4.2017 and 17.4.2017 is only a bald assertion without any material on record to establish it. Further hearing of the petitioner would not amount to sufficient compliance of principles of natural justice. The essential requirements of Clause 19 of the Policy had, thus, not been followed as State Counsel could not show sending of E-mail/SMS or as notice on registered mobile before forfeiting securities and blacklisting the petitioner. The communication between the parties related to lifting of the material and not for taking any punitive action of blacklisting him.

The Government personnel or the statutory bodies/corporations are legitimately expected to follow the principles of natural justice before passing any order resulting in civil consequences or is punitive in nature. The respondents, having failed to adhere to the said legal requirement, essentially the impugned order Annexure P-12 is liable to be set-aside. Ordered accordingly.

It is, however, clarified that it shall be open to the said respondent to pass fresh speaking order within a period of one month from

the date of receipt of copy of the same after affording opportunity of hearing to the petitioner in accordance with law. Needless to say, anything observed hereinbefore shall not be taken to be expression of opinion on the merits of the controversy.

The writ petition stands disposed of.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**July 27, 2017
ramesh**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No