IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P.No.23450 of 2012 (O&M)
Date of Decision: May 12, 2017

M/s Kartar Cold Storage, Village Larsiwal, District Jalandhar

...Petitioner

Versus

Union of India & others

...Respondents

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

Present: Mr.Maninder Arora, Advocate,
for the petitioner.

Mr.Namit Kumar, Advocate,
for respondent No.1.

Mr.Yatinder Sharma, Addl.A.G.Punjab,
for the State.

*****

AMIT RAWAL, J. (Oral)

The grievance of the petitioner in the present writ petition is for non-granting of the subsidy to the extent of 40% of the total cost, which has erroneously been rejected without assigning any reasons, much less cogent reasons vide orders dated 12.3.2012 and 24.5.2012 (Annexures P-8 & P-9).

Mr.Maninder Arora, learned counsel for the petitioner submits that the Government of Punjab had invited the NRIs to invest in the State of Punjab with an assurance that their problem would be sorted out immediately or on priority and in response to the said assurance, the petitioner decided to invest in the State of Punjab by constructing a cold storage with capacity of 2256 MT in Village Lersriwal, P.O.Adampur, District Jalandhar. He submitted an application for obtaining the loan from the Oriental Bank of Commerce by enclosing the project report (Annexure P-1). The Bank had granted the loan of Rs.80.00 lacs vide sanction letter dated 15.2.2010 (Annexure P-2). The necessary permission from the concerned departments, i.e., Punjab Pollution Control Board and other departments had been obtained.

On 5.10.2010, an application for obtaining the subsidy for the project of cold storage to the tune of Rs.52.50 lacs @ 40% of the total costs of Rs.137.50 lacs in view of the policy of the Centre Government, was applied vide Annexures P-4 and P-5. However, the respondents authorities only sanctioned subsidy to the tune of Rs.22.56 lacs per 1000/MT for total of 2256 MT in the meeting of the Empowered Committee (EMC) of National Horticulture Mission held on 20.10.2011 (Annexure P-6), whereas the petitioner acquired the knowledge that the persons, who have been advanced the loan before the cut off date, i.e., 1.4.2010, had also been extended the benefit of 40% and, therefore, there is clear cut discrimination. Even the impugned orders Annexures P-8 and P-9 are bereft of the reasoning as the Empowered Committee (EMC) had not considered the report of the Chief Consultant. He has drawn the attention of this Court to the observations and the decision of the Chief Consultant, which reads as under:-

> "*OBSERVATIONS OF THE CHIEF CONSULTANT:*
>
> *a. Civil works of cold storage chambers were started in 2009.*
>
> *b. Promoters got sanction of 80.00 lakh as term loan from OBC bank on 15.02.2010.*
>
> *c. Civil works were completed before April 2010 but main refrigeration equipments received at site on 17.01.2011, 19.01.2011.*

d. OBC bank as per its disbursement statement dated 08.11.2011, disburse the major amount after 01.04.2010.

In view of the above back ended subsidy of 54.14 lakh may be considered on new cost norms latest 40% of the normative cost of 6000/MT against earlier sanction of 22.56 lakh being 25% of the normative cost of 4000/MT.

DECISION OF EMC:

EMC considered the proposal and decided not to approve the proposal to provide additional subsidy."

He further submits that the specific pleading with regard to the list of the persons, who have been granted 40% benefit, has not been denied in the written statement and, therefore, in view of the admission, the petitioner is entitled to 40% of subsidy.

Mr.Namit Kumar, learned counsel for respondent No.1 submits that the cases cited by the petitioner vide Annexure P-12 have been duly replied in the additional affidavit dated 10.2.2017 and, therefore, the petitioner cannot claim parity with the aforementioned persons. Even otherwise, the cut off date was 1.4.2010 and concededly the petitioner had been granted the sanction prior to cut off date, i.e. on 15.2.2010 and most of the work had been completed and, therefore, the petitioner is not entitled to 40% of the subsidy and rightly so, by taking into consideration the eligibility, petitioner had been granted benefit of 25% of the subsidy and, thus, urges this Court for dismissal of the writ petition.

Mr.Yatinder Sharma, learned Addl.A.G.Punjab, representing the State has also accepted the arguments of Mr.Namit Kumar.

I have heard the learned counsel for the parties and appraised the paper book.

On perusal of the reasoning, I am of the view that the

Empowered Committee (EMC) had not assigned any reasons in not accepting the report of the Chief Consultant and the communication Annexure P-9 is also bereft of reasons. The Consultation Officer had given the opinion with regard to the disbursement of the amount, much less the disbursement statement dated 8.11.2011, where the major amount was disbursed after 1.4.2010 and recommended for reimbursement of 40% subsidy instead of 25%. In my view, the aforementioned reasoning does not conform to the touchstone of reasonability, but definitely fall within the realm of the judicial review. The officers, who are at the helm of affairs, are required to apply their mind in a most pragmatic and objective manner, but not in the manner and mode as indicated above.

Resultantly, the impugned orders Annexures P-8 and P-9 are hereby set-aside and the matter is remanded back to the Empowered Committee (EMC) to decide the matter afresh by taking into consideration the observations of the Chief Consultant in a most pragmatic and objective manner after giving opportunity of hearing to the petitioner, perfectly within a period of three months from the receipt of certified copy of this order.

The writ petition stands disposed of in the aforementioned terms.

May 12, 2017 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**