

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CWP No.23867 of 2015

Date of Order: 06.10.2017

Narinder Singh and Ors.

....Petitioners

Versus

State of Punjab and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. M.S. Khaira, Sr. Advocate with
Mr. Ripudaman Sidhu, Advocate for the petitioners.

Mr. Abhaypal Singh Gill, AAG, Punjab.

Mr. J.S. Puri, Advocate for respondent Nos.2 to 4.

Mr. M.K. Singla, Advocate for
Mr. Dinesh Kumar, Advocate for respondent No.5.

RAKESH KUMAR JAIN, J (ORAL)

The petitioners have challenged the validity of order dated 13.5.2015 (P.4) passed by the General Manager (Region) of the Food Corporation of India by which it was decided to terminate the Transport Contract of respondent No.5 with forfeiture of security deposit along with Bank Guarantees and pending payments lying with FCI without prejudice to other right and remedies.

In short, respondent No.5 was appointed as Handling & Transport Contractor (HTC) Nabha for a period of two years by the FCI on 17.4.2013. The contract was to start from 14.5.2013. Respondent No.5 was directed to deposit security amount of Rs.13,49,200/- besides another sum of ₹26,98,400/-, equivalent to 10% of value of contract in the form of irrevocable and

unconditional bank guarantee issued by the State Bank of India and its associate Banks. Respondent No.5 was allegedly not in a position to arrange the above mentioned Bank Guarantee, therefore, the petitioners, who are being on good terms with respondent No.5 submitted bank guarantee of ₹9 lacs each by way of term deposits and same were handed over to the FCI along with other security amount of Rs.13,49,200/-. Another personal bank guarantee in the shape of FD was given by respondent No.5 himself. Respondent No.5 has allegedly defaulted in paying the wages in the accounts of contract labour and as a result, notice was issued to him by respondent Nos.2 & 4. Ultimately, respondent No.2 terminated the contract of respondent No.5 on 13.5.2015 (P.4) by passing a detailed order and also ordered for forfeiture of security deposit along with Bank Guarantees.

Learned counsel for the petitioners has made only one prayer that the dues of the FCI be first directed to be deducted from the amount due to be paid by the FCI to respondent No.5 and from the FDRs/Bank guarantees tendered by respondent No.5 before forfeiture of the FD's/bank guarantees submitted by the petitioners.

In reply, Sh. Puri, learned counsel appearing for respondent Nos.2 to 4 has submitted that insofar as the petitioners are concerned, they have no privity of contract with them as FD's/bank guarantees were submitted by respondent No.5. It is also submitted that in case the allegations made by the petitioners are correct, then it would be some internal arrangement between the petitioner and respondent No.5 for which FCI is not concerned

and that the liability of guarantor co-exists with the principal borrower.

Insofar as respondent No.5 is concerned, it is submitted on his behalf that he is not aggrieved against the impugned order, therefore, he has not challenged the same as the contract has been terminated and security deposit has been forfeited. It is also submitted that in case the petitioners have any claim against him, they have their separate remedy.

I have heard learned counsel for the parties and after examining the record, am of the considered opinion that there is no merit in the present petition because the petitioners, even if they are presumed to have stood as guarantors for respondent No.5 and submitted their FDS as bank guarantees etc, it was between the petitioners and respondent No.5 for which respondent Nos.2 to 4 are least concerned and are entitled to recover the amount from the principal borrower, namely, respondent No.5 or from the Guarantor as per their choice and if the petitioners have any grievance about the amount in question, then they may recover it by adopting the procedure of law against respondent No.5.

With the aforesaid observations, the petition stands disposed of.

October 06, 2017
manoj

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No