

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-20043-2017

Date of Decision: 5.9.2017

Nirbhai Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

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

PRESENT: Mr. Parminder Singh, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 21.8.2017 (Annexure P-5) whereby his representation for allocation of the labour contract for all six cluster centres of Malerkotla having L-1 of one centre in the light of Clause 11 of the Labour Policy 2017-18 was rejected. Further, a writ of mandamus has been sought directing the official respondents to consider the representation dated 14.4.2017 (Annexure P-3) in terms of the Policy dated 28.2.2017 for grant of labour contract work of all the centres of Malerkotla having L-1 @ 23% and above.

2. A few facts necessary for adjudication of the instant writ petition may be noticed. In March, 2017, the petitioner submitted his online

the Punjab Warehouse tender having rate as 23% above. The petitioner was called for negotiation and vide order dated 13.4.2017 (Annexure P-1), the labour work of Punjab Warehouse Corporation was approved in his favour. As per Clause 11 of the Tender Policy dated 28.2.2017 (Annexure P-2), the Tender Allotment Committee shall make negotiation. In case at one storage centre, different rates were received for the different agencies, then the tenderer shall also be offered the work at the lowest rate quoted or the District Tender Committee can allot the work of other agency to the same contractor on his consent on the rate finalized for one agency. The petitioner was granted the work of Punjab Warehouse Centre in Malerkotla @ 23% above whereas the private work for the other agencies of Malerkotla had got the tender @ 48% above. Even the petitioner was ready to do the labour work of other agencies at Malerkotla centre @ 23% above. Accordingly, he moved a representation dated 14.4.2017 (Annexure P-3) in this regard. The petitioner also approached the Department on 13.4.2017 for giving consent for labour contract work of all other cluster centre of Malerkotla and due to holiday on account of Baisakhi, his request was not considered. Thereafter, the petitioner filed CWP-10729-2017 and this Court vide order dated 18.5.2017 (Annexure P-4) disposed of the said writ petition with a direction to the official respondents to consider the representation of the petitioner within two weeks. However, the District Controller, Food, Civil Supplies and Consumer Affairs, Sangrur vide order dated 21.8.2017 (Annexure P-5) rejected the representation of the petitioner holding that Clause 11 of the Labour Policy 2017-18 was not applicable as the petitioner had not given the consent at the time of finalization of tenders of other agencies and, therefore, the work of other agencies could not be allotted to

the petitioner. Hence, the present writ petition.

3. After hearing learned counsel for the petitioner, we do not find any merit in the writ petition.

4. The petitioner had submitted the online tender of Malerkotla cluster of Punjab State Warehouse Corporation Agency @ 23% above. He was called on 13.4.2017 for negotiation and the petitioner agreed to work @ 23% above for labour work for Central Warehouse Agency Malerkotla which was approved by the Tender Committee. The tenders of various other agencies were given to various persons at the rate of 48% above on 13.4.2017. It was thereafter on 14.4.2017 (Annexure P-3), the petitioner moved a representation that he was ready to do the work of other agencies of Malerkotla at the rate of 23% above and the work be allotted to him as per Clause 11 of the Labour Policy of 2017-18. Clause 11 of the Labour Policy of 2017-18 reads thus:-

“If at one storage centre the different rates are received for the different agencies then the other tenderer shall also be offered the work at the lowest rate quoted. In case at one storage centre the tender gets finalized for any one agency and L-1 of other agencies do not agree to do the work on the same rate then the District Tender Committee can allot the work of other agencies to the same contractor on his consent on the rates finalized for one agency.”

5. The petitioner had applied only for the tender of Punjab State Warehouse Corporation agency and had not given the consent to work at the rate of 23% above of other agencies on 13.4.2017. He had moved the

representation only on 14.4.2017 after the finalization of the tenders of the other agencies. It was further recorded that Clause 11 of the Labour Policy 2017-18 was not applicable to the case of the petitioner and the tender of other agencies could not be allotted to the petitioner as he had not given the consent at the time of finalization of the tenders of other agencies. The relevant observations of the Tender Allotment Committee reads thus:-

“The representation of the petitioner as well as pleading of other parties was considered by Tender Allotment Committee. Perusal of the record clears that on 13.04.2017 the petitioner applied only for the tender of PSWC agency and the petitioner did not give the consent to work at the rate of 23% above of other agencies on 13.04.2017 and the petitioner gave the representation dated 14.04.2017 only after the finalization of tenders of other agencies. In this regard the petitioner also wrote on tender form that only PSWC agency at the rate 23%.

In view of the facts and circumstances of the case the Clause 11 of the labour policy 2017-18 is not applicable in the case of the petitioner as the petitioner did not give the consent at the time of finalization of tenders of other agencies. Therefore, the Tender Allotment Committee has taken the decision that the petitioner Nirbhay Singh could not be allotted the work of other agencies.”

6. In the tender or contract matters, interference by the courts is very limited. Power of judicial review will not be invoked to protect private

interest at the cost of public interest or to decide contractual disputes. Interference is permissible if the process adopted or decision made is malafide or intended to favour someone or the same is so arbitrary and irrational that no responsible authority acting under the law could have arrived at it or it affected the public interest. Learned counsel for the petitioner has not been able to produce any material on record to show that the impugned order, Annexure P-5, is arbitrary, malafide or irrational. No illegality or perversity could be pointed out by the learned counsel for the petitioner in the order dated 21.8.2017 (Annexure P-5) passed by the District Controller, Food, Civil Supplies and Consumer Affairs, Sangrur, which may warrant interference by this Court under Articles 226/227 of the Constitution of India.

7. Accordingly, finding no merit in the writ petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

September 5, 2017
gbs

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes