

CWP-COM No.85 of 2017 (O&M)

[1]

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

**CWP-COM No.85 of 2017 (O&M)
Date of decision:25.05.2017**

Avtar Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. K.K.Goel, Advocate,
for the petitioner.

Mr. Suresh Singla, Addl. A.G., Punjab.

Mr. Manoj Pundir, Advocate, for
Mr. Sumit Jain, Advocate, for respondent no.7.

Ms. Deepali Puri, Advocate,
for respondent no.8.

Mr. Sanjiv Gupta, Advocate,
for respondent no.10.

Mr. Karan Gupta, Advocate,
for respondent no.11.

Rakesh Kumar Jain, J.

Respondent no.2 invited tenders for transportation of food grains and other articles from labour and labour cartage contractors by giving advertisement in different news papers on 19.03.2017 and later on by making partial amendment in the tender notice, the tenders were re-invited, which were opened on 31.03.2017. The petitioners submitted its bid for allotment of labour and labour cartage contract of three food agencies i.e. Markfed, Punsup and Pungrain at three purchase centres i.e. Bhunerheri, Balbehra and Dakala,

District Patiala. The work was allotted to the petitioner for two purchase centres i.e. Balbehra and Bhunerheri. As per the agreement executed between the parties, the petitioner agreed to undertake the work of Markfed for Mandi Balbehra at 56% above basic rate and at 81% above basic rate of Punsup and Pungrain for Mandi Bhunerheri. The contract was for a period of one year commencing from 01.04.2017 to 31.03.2018. After executing the agreement with the concerned food agencies, the petitioner deposited the security amount and allegedly arranged vehicles and labour for transportation of food grains. After submitting his joining report on 05.04.2017, the petitioner started lifting the food grains i.e. wheat at Mandi Bhunerheri and Mandi Balbehra. However, the armed goons and supporters of respondents no.10 and 11 stopped the petitioner's drivers and labour from transportation of food grains and from executing the labour and labour cartage contract because of the reason that the petitioner was an outsider and did not hire trucks from their union. On 10.04.2017, the petitioner received a notice from the District Manager, Markfed, Patiala, stating therein that the Markfed had purchased approximately 2500 MT wheat on 08.04.2017 and 09.04.2017, which was lying at the open plinth of M/s Jasbir Singh, Khasian and comes under the local cartage and if the said wheat is not removed/transported, then it would cause the glut. After receiving the notice, it is alleged that the petitioner arranged 20 more trucks and started loading the wheat bags in the trucks and when more than 800 bags were loaded in the truck bearing registration No.PB-11-4851, the goons/supporters of respondents no.10 and 11 came at the spot and stopped the petitioner from loading and unloading the wheat bags.

Thereafter, the petitioner received another show cause notice at

7.30 pm on 11.04.2017 from the District Manager, Markfed, Patiala, stating therein that if the wheat is not lifted from Mandi Bhunerheri upto 5.00 PM on 11.04.2017, then he would be blacklisted and the security amount deposited by him would be forfeited. On receipt of the aforesaid show cause notice, the petitioner met respondent no.3 at 9.30 am on 12.04.2017 and made a representation to him for providing police protection to his drivers and labour, who were engaged for transportation of the wheat. It is also averred that respondent no.3 immediately directed the SDM, Patiala to look into the matter for smooth operation of the contract awarded to the petitioner. Respondent no.4 convened a meeting at 3.30 pm on 12.04.2017 inviting all officials of the truck union and District Food Supplies Controller, Patiala, in which the petitioner also participated where members of respondent no.11 openly abused the petitioner and threatened him that they would not allow him to execute the awarded contract at any cost. The petitioner has allegedly prepared a video CD in his mobile phone of the threats given to him.

Thereafter, the petitioner made a representation to the Senior Superintendent of Police, Patiala, Deputy Commissioner, Patiala and District Food and Supplies Controller, Patiala but he was not provided with the police protection for the purpose of executing the contract rather the order was passed on 13.04.2017 against the petitioner by the District Tender Allotment Committee (hereinafter referred to as the "Committee") that too in the absence of the Deputy Commissioner, who is the Chairman of the Committee, of blacklisting the petitioner.

It is averred in the petition that in view of Clause 19 of the policy for labour contracts and labour work for the year 2017-18 (hereinafter referred

to as the “policy”), the order of blacklisting the petitioner could not have been passed without giving personal hearing to the petitioner. Clause 19 of the aforesaid policy is reproduced as under:-

“19. If any successful tenderers after approval of his tender for any storage centre of PEG godowns does not come present for executing the allotted work or during season period leaves the work then one day show cause notice be served upon his email id by way of SMS or on his registered mobile phone. After that personal hearing has to be given to him. If he does not appear during the personal hearing or does not give any satisfactorily reply, the District Tender Committee shall by forfeiting his earnest money/security amount shall black list him. The committee has a right to have get executed the remaining work either from L2/L3 or through some other sources or from the commission agents at the approved rates of the tenderer that to at the risk and cost of the contractor.”

It is further alleged that respondent no.11 had become successful in its evil design because its Manager-cum-Munshi, who is impleaded as respondent no.10, got the contract being L-2.

Counsel for the petitioner has, thus, submitted that all the respondents have joined hands in ousting the petitioner because the official respondents, be it respondent no.3 or respondent no.4, did not provide police protection to the petitioner and respondent no.11 created all sort of obstacles through their goons, armed with deadly weapons, to prevent the petitioner from executing the work and ultimately, the tender was allotted to respondent no.10, being L-2, in terms of Clause 18 of the policy, which is reproduced as under:-

“12. In case L-1 tenderer stops the work after acceptance of the tenders or refuses to undertake the work, then his earnest money shall be forfeited and he shall be blacklisted and work shall be got done from L-2 on the approved rates of L-1 and in case L-2 also refuses, then from L-3 or from any other sources. If it cannot be

done, then fresh tenders shall be called.”

Counsel for the petitioner has relied upon a Division Bench judgment of this Court rendered in the case of **Jagsir Singh vs. State of Punjab and others**, CWP No.7585 of 2012, decided on 05.07.2012 and submitted that even the Committee convened its meeting on 13.04.2017, which was a public holiday in Punjab being Vaisakhi and in the absence of the Deputy Commissioner/Chairman, the Committee passed the order of blacklisting the petitioner.

In the reply filed by respondents no.1, 2, 6 and 9, it is submitted that the petitioner has been blacklisted because of the reason that he did not execute the work allotted to him, causing glut like situation in the mandis. It is also submitted that the action has been taken against the petitioner in terms of the policy.

Respondent no.7 filed their separate reply, in which also the same stand has been taken by alleging that notice of blacklisting was given to the petitioner, therefore, the petitioner cannot allege that there is a violation of Clause 19 of the policy.

Respondents no.3, 4 and 5 also filed their reply, in which Deputy Commissioner has accepted that he is the Chairman of the Committee and has the responsibility of smooth lifting of the food grains from the mandis in time and to maintain law and order situation. It is alleged that as per Clause 11 of the policy, the wheat was to be lifted from the mandis within 72 hours from the time it was brought in the mandi by the farmers. The purchase of the wheat started from 08.04.2017 and upto 10.04.2017, total 4448 MT wheat was procured by the different agencies but the petitioner failed to lift even a single

bag. On 12.04.2017, total 7930 MT of wheat was procured but the petitioner failed to lift even a single bag from Bhunerheri Mandi despite the fact that the petitioner was given notices on 10.04.2017 and 11.04.2017. It is also averred that the meeting was convened by the SDM, Patiala for resolving the issue but it was denied that the petitioner had made any representation before the Committee for providing police protection upto 12.04.2017. However, it is nowhere denied by the Deputy Commissioner that the petitioner had made a representation to him rather it is submitted that the SDM, Patiala, convened a meeting to resolve the issue.

Respondent no.8 has only stated in its reply that the petitioner was blacklisted by the Committee vide order dated 13.04.2017 and accordingly, vide order dated 19.04.2017, the security amount deposited by the petitioner was forfeited.

Respondent no.10 has alleged that since the petitioner did not perform his part of the contract, therefore, the contract was awarded to him being L-2. However, he denied all other allegations made by the petitioner.

The petitioner filed replication to the reply filed by respondents no.1, 2, 6 and 9.

I have heard learned counsel for the parties and examined the available record with their able assistance.

Undisputedly, the petitioner was L-1 and respondent no.10 was L-2 and is admittedly a part and parcel of respondent no.11, the truck union. The petitioner submitted his joining report on 05.04.2017 for starting the execution of work. The consistent stand of the petitioner was that he was ready and willing to execute the contract in terms of the agreement executed

between the parties and had also arranged the trucks, drivers and labour etc. but being an outsider belonging to SBS Nagar, was strongly opposed by respondent no.11 with their goons armed with deadly weapons, who did not allow the petitioner either to lift the wheat from the mandis or to further transport the same. The petitioner made complaints to the procurement agencies and also the Deputy Commissioner, Patiala and requested for police protection. The Deputy Commissioner, Patiala, entrusted the matter to the SDM, Patiala, who had admittedly convened the meeting in which all the stakeholders were present including respondent no.11 but according to the petitioner, he was not only badly harassed by the persons of the truck union/respondent no.11 but he was also abused and threatened by them in the said meeting in the presence of the SDM, Patiala, and the Committee, even in the absence of its Chairman, passed the order dated 13.04.2017 blacklisting the petitioner and forfeited his earnest money. This action of the Committee is totally perverse and it is not in consonance with Clause 19 of the policy, in which it is provided that if the successful tenderer does not start execution of the allotted work or during season period, leaves the work, then he would be given one day show cause notice and, thereafter, he would be given personal hearing and if he does not give any satisfactory reply, then the Committee would forfeit his earnest money and he would also be liable for blacklisting. It also provides that the Committee would have the right to get the unexecuted work done either from the L-2 or L-3 or through some other sources or from the commission agents at the approved rates for the tenderer at the risk and cost of the contractor. In the present case, there is no notice given to the petitioner for blacklisting by the Committee rather the letter dated 11.04.2017 served

upon him by the District Manager, Markfed, Patiala is being considered by the respondents as a show cause notice. The Markfed is only a procuring agency and is a part of the Committee but the decision for blacklisting the petitioner has been taken by the Committee who should have served one day notice upon the petitioner in terms of Clause 19 of the policy and after affording him an opportunity of hearing, if it was not satisfied with the reply given by the petitioner, it could have passed such a drastic order of blacklisting the petitioner and forfeiting his earnest money.

No such procedure has been followed, therefore, the entire action of the respondents in blacklisting the petitioner vide order dated 13.04.2017 is patently erroneous and illegal.

In **Jagsir Singh's case (supra)**, relied upon by counsel for the petitioner, somewhat similar facts were there and this Court allowed the writ petition, quashed the order of blacklisting and forfeiture of security amount and further ordered that the petitioner therein would continue to execute the work and directed the civil authorities to ensure adequate security by way of police protection to the petitioner to execute the remaining work because the contract was awarded for one year.

I am in full agreement with the contentions raised by the petitioner who has been put under threat of his life and also of his labour and drivers, who would have worked on his behalf for the purpose of loading and transporting the wheat, and the district administration was a total silent spectator and did not even provide adequate police protection to the petitioner despite his repeated requests. As a result thereof, respondent no.11 became successful in his evil designs of getting the contract in favour of respondent

no.10, who was L-2 and a part and parcel of respondent no.11, being the Munshi of the truck union.

Thus, in view of these facts and circumstances, the impugned order dated 13.04.2017, blacklisting the petitioner and forfeiting the security amount, is hereby set aside and it is ordered that the petitioner shall continue to execute the contract and respondent no.3 shall ensure adequate police protection to the petitioner for the purpose of completion of the remaining work of the contract for the rest of the year.

The writ petition stands allowed with costs of ₹1,00,000/-, which shall be paid by the respondents to the petitioner.

May 25, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No