

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

CWP-18024-2017 (O&M)
Date of decision : 03.10.2018

M/s Dharmender Sharma Transport Co.

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Gaurav Gaur, Advocate,
for Mr. Mukesh Yadav, Advocate,
for the petitioner.

Mr. S.K. Saini, AAG, Haryana.

Mr. Pritam Saini, Advocate,
for respondent Nos.2 to 4.

JITENDRA CHAUHAN, J.

Prayer in the instant petition is for issuance of a direction to the respondents to consider and decide the claim of the petitioner for refund of security deposit and the Bill of transport fair for the session 2016-2017, along with interest.

It is the case of the petitioner that the respondents have unlawfully withheld an amount of ₹ 25,00,000/- furnished by the petitioner as security as well as the Bill amount of ₹ 18,89,218/- for the transportation work executed by the petitioner. No action was taken in pursuance of the representation filed by the petitioner (Annexure P-6 colly.)

On the other hand, learned counsel for the respondents contends that the security amount of the petitioner has been forfeited on

account of registration of a criminal case against his drivers. The amount of freight to ₹ 18,70,327/- has already been paid to the petitioner.

Heard.

Clause 25(a) of the tender document reads as under:-

“25) Summary Termination:-

a) In the event of the contracts having been declared insolvent or going into liquidation or winding up their business or making arrangements with their creditors or failing to observe any of the provisions of this contract or any of the terms and conditions governing the contract, DM Confed with the prior approval of Deputy Commissioner shall be at liberty to terminate the contract without prejudice or any other rights or remedies under the contract and to get the work done for the un-expired period of contract at the risk and cost of the contractors and claim from the contractors entire loss sustained or costs incurred. In case, any FIR is lodged against the contractor on account of diversion or misappropriation of food grains or mishandling or wrong transportation to the Fair Price Shops, Schools, Anganwari Centres, LPG Consumers and transportation of sugar at Confed focal point in the State of Haryana, DM Confed with prior approval of Deputy Commissioner is competent to terminate the contract and to forfeit the security money. Other action for recovery shall also be taken.”

There is no denial of the fact that two of the drivers of the petitioner have been nominated as accused in FIR No.402 dated 30.12.2016, registered under Sections 7 and 10 of the Essential Commodities Act, read

with Sections 420, 406 and 120-B of the Indian Penal Code and in FIR No.409 dated 28.08.2016 registered under Section 7 of the Essential Commodities Act read with Section 420 of the Indian Penal Code. Therefore, by invoking Clause 25(a) of the tender document, the security amount deposited by the petitioner has been rightly forfeited. Moreover, there is an arbitration clause in the agreement (Annexure R-2) itself. Therefore, the petitioner ought to have approached the Arbitrator for redressal of his grievance. No cause of action has accrued in favour of the petitioner for invoking the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India. The petitioner has failed to controvert the fact that the amount of freight of ₹ 18,70,327/- had been paid to it through cheque No.201053 dated 29.08.2017.

In view of the above discussion, finding no merit in the instant petition, the same is hereby dismissed.

03.10.2018

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(JITENDRA CHAUHAN)

JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No