

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-9728-2018 (O&M)
Date of Decision: 28.05.2018

The Faridkot Paledaar Co-operative
Labour Society Ltd.

--Petitioner

Versus

State of Punjab & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Nitin Kaushal, Advocate
for the petitioner.

Mr. Avinit Avasthi, A.A.G., Punjab.

Mr. Surender Garg, Advocate for
respondent no.4.

TEJINDER SINGH DHINDSA.J

1. Challenge in the instant petition is to the order dated 17.4.2018 (Annexure P-7), whereby the tender allotted to the petitioner for labour and cartage work at Faridkot-I Cluster, Faridkot, has been canceled and the petitioner has been blacklisted up to 31.3.2019.

2. Present petition came up for preliminary hearing on 20.4.2018 and this Court observed that prima facie the action of blacklisting the petitioner is contrary to clause 11(B) of the Policy of the Govt. of Punjab, Department of Food, Civil Supplies and Consumer Affairs dated 6.3.2018 (Annexure P-2). While staying the order of blacklisting the following order was passed by this Court on 20.4.2018:

“Notice of motion.

*Mr. Avinit Avasthi, Assistant Advocate General,
Punjab accepts notice on behalf of the respondents.*

*Prima-facie the notice black listing the petitioner
is contrary to clause-11(B) of the policy of the Government of
Punjab, Department of Food and Civil Supplies and Consumer*

Affairs dated 06.03.2018 (Annexure P-2). For instance, one of the agencies, namely, the Punjab Agro Food Grains Corporation Ltd. Faridkot entered into an agreement with the petitioner on 16.04.2018 for labour and cartage work.

On 16.04.2018 itself, a notice was served stating that the petitioner had not sent the labour on 15.04.2018 and 16.04.2018 for loading the goods. The petitioner was warned that any breach of the policy would result in cancellation of the contract and black listing it. Again on 16.04.2018 itself at 2.32 P.M. an e-mail was addressed to the petitioner stating that all the agencies had already purchased 200000 bags of wheat and as per the government policy the same was to be lifted within 72 hours. The notice further states that the petitioner had not provided sufficient vehicles and that till 15.04.2018 the petitioner had lifted only 16000 bags of all the agencies. This aspect requires consideration for as we mentioned earlier the contract with the agency itself was entered into only on 16.04.2018. Moreover, as per Clause 11 of the policy, the food grains were to be lifted within 72 hours.

The petitioner was invited to a meeting at 8.00 P.M. On 16.04.2018. On 17.04.2018, the impugned order cancelling the contract and black listing the petitioner was passed but the same was received by the petitioner at 1.26 P.M. On 17.04.2018.

From the above facts, it appears that the entire process of terminating the contract and black listing the petitioner was undertaken within only 24 hours of the contract having been entered into. Prima-facie this appears to be contrary to the provisions of clause-11 (B) of the policy.

In the circumstances, the order of black listing the petitioner shall remain stayed. However, as the matter pertains to the labour and cartage of food grains, we intend directing the respondents to permit the petitioner to carry on the work if the respondents are satisfied that the petitioner is capable of doing so as per the policy till further orders and if the work

has already not been allotted to any other party.

The petitioner shall be entitled to rely upon any other documents to satisfy the respondents that they have carried out the work as per the agreement and that they are capable of doing so.

Adjourned to 08.05.2018.

Liberty to the respondents to apply early for modifying/vacating this order after giving the petitioner's Advocate 48 hours notice in writing.

A copy of this order be given dasti to the learned counsel for the parties under the signatures of the Bench Secretary.”

3. In response to the petition a joint reply on behalf of respondents no.1 to 3 has been filed. Stand taken on behalf of the State is that since petitioner had failed to lift the purchased wheat stock within 72 hours as per clause 11(B) of the Labour Cartage Policy, the tender was cancelled, petitioner was blacklisted and respondent no.4 was issued the work order. Learned State counsel has even adverted to the Meeting Proceedings dated 25.4.2018 and appended as Annexure R-3 along with the reply to submit that in due deference to the notice of motion order passed by this Court and the observations contained therein an exercise of review was also undertaken and it was opined that since work has already been allotted to the Vijay Co-operative L & C Society Ltd. (respondent no.4 herein) at basic rates, it would not be appropriate to permit the petitioner to carry out the work in question.

4. Learned counsel representing the petitioner has vehemently contended that the exercise of review was a sham and an eye wash. It is submitted that the petitioner was never associated in the review proceedings dated 25.4.2018 and the factum of the petitioner having completed the

lifting of rice special of 40,173 bags of rice on 16.4.2018 and another 20,630 bags of wheat till 17.4.2018, has been overlooked. Counsel submits that this was in addition to the 16,000 bags of wheat that had already been lifted by petitioner till 15.4.2018 and which would in itself demonstrate the readiness and willingness of the petitioner-society to complete the work and having sufficient labour and vehicles to do so.

5. On a specific query having been put, learned State counsel concedes that the petitioner had not been granted an opportunity of hearing during the course of review proceedings dated 25.4.2018. It has been brought to our notice that the petitioner has the remedy of filing an appeal under clause 16 of the Policy for Labour and Cartage of Foodgrains year 2018-2019 against the cancellation of contract as also blacklisting before the competent authority i.e. the Director, Food, Civil Supplies and Consumer Affairs Department, Punjab. Learned State counsel submits that the order at Annexure P-4 passed in pursuance to Meeting Proceedings dated 25.4.2018 during the exercise of review may be treated as non-est and the petitioner be relegated to avail the remedy of appeal.

6. We are of the considered view that the stand taken on behalf of the State is fair and just.

7. Accordingly, the instant writ petition is disposed of with a direction to treat the order dated 24.4.2018 (Annexure R-4) during the course of review as non-est. Petitioner is granted liberty to file a comprehensive appeal against the impugned order dated 17.4.2018 (Annexure P-7) within a period of one week. In the eventuality of any such appeal being preferred by the petitioner, the Appellate Authority i.e. the Director, Food, Civil Supplies and Consumer Affairs Department, Punjab

would examine the appeal on merits and would take a final decision thereupon by passing a well reasoned speaking order after affording an opportunity of hearing to the petitioner society as also respondent no.4, within a period of four weeks from the date of submission of the appeal.

8. The interim order passed by this Court as regards staying the order of blacklisting, the same would continue and would be subject to the final order to be passed by the Appellate Authority.

Writ petition is disposed of, accordingly.

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

28.05.2018

lucky

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No