IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

108

RSA No.1038 of 2006 (O&M)
Date of decision: 25.01.2019

Kashmir Singh **...... Appellant**

Versus

Market Committee Pehowa and others **...... Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rakesh Gupta, Advocate
for the appellant.

Mr. Namit Gautam, Advocate
for the respondents.

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<u>ANIL KSHETARPAL, J. (ORAL)</u>

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court reversing the judgment of the trial Court.

The basic dispute between the parties is with respect to recovery of Rs.1,00,930/- from the appellant vide order dated 22.07.1988 modified in appeal vide order dated 03.07.1990. The operative part of the order under challenge is reads as under:-

> *"Perusal of the file shows that the plaintiff was posted as E.O.-cum-Secretary in Market Committee, Pehowa in the year 1982. Vide letter dated 196.1982, Zonal Marketing Enforcement-cum-Secretaries, Market Committee in Karnal, Kurukshetra and Ambala Districts that the zonal Marketing Enforcement Officer be apprised to take further steps for the equipment of the dealers with sufficient covering material in order to save the agricultural produce in the fields and in the market from untimely rains.*

Copy of letter has been placed on the record as Ex.P1. Vide letter dated 21.5.1982, it was intimated by the Chief Administrator, Haryana State Agricultural, marketing Board, Chandigarh to all the Executive Officers-cum-Secretaries, Market Committees in Haryana to make arrangements to procure tarpaulins or other covering material to provide small and marginal producers for protecting their produce on the threshing floor. Joginder Kalia vide his letter dated 7.6.1982, placed on the record as ExP-3, had given a proposal to purchase 200 tarpaulins. It was firstly allowed by the Executive Officer-cum-Secretary i.e. plaintiff and on his advise, the Administrator had allowed the purchase of 200 tarpaulins. The charge framed against the plaintiff is that the plaintiff had not worked out the requirement and without working the requirement, on the asking of Accountant 200 tarpaulins were ordered to be purchased, whereas there was no necessity to purchase tarpaulins in huge numbers. It does not lie in the mouth of the plaintiff to say that he was not resposible for the purchase of 200 tarpaulins, as on the asking of the Accountant, the plaintiff, who was E.O.-cum-Secretary of the Market Committee, had allowed the purchase of 200 tarpaulins. The plaintiff has failed to prove as to he had worked out the requirement of small and marginal producers. It is not apparent on the record as to how he came to the conclusion that 200 tarpaulins would be sufficient to protect agricultural produce from untimely rains. When the enquiry was conducted, the plaintiff was found guilty in not working out the requirement and for placing order of 200 tarpaulins of his own. Appeal against the said order dated 22.7.1988 passed by the then Administrator was filed by the plaintiff. Vide order dated 03.07.1990 passed by the Commissioner and Secretary to Government, Haryana, Agricultural Department, the plea of the plaintiff was again rejected.

The next charge against the plaintiff was that he did not inform the Administrator, Market Committee that there was no budget provision under the appropriate account for purchase of tarpaulins. He also failed to bring to the notice of Administrator *that it was necessary to seek sanction of the Haryana State Agricultural Marketing Board for budgetary revision before incurring expenditure on any item not provided for in the sanctioned budget. Ex.P4 shows that the plaintiff had written letters to six firms seeking quotations for the supply of tarpaulins. Learned counsel for the plaintiff has failed to place on record any document showing that before inviting applications or quotations form six firms, any publication was made in any of the Newspaper or intimation was sent through inter-net. It is also not apparent on the record that at any time tenders were invited from the supplier. How these six firms were chosen by the plaintiff is also not apparent on the record. Exs.P5, P6, P7, P8 and P9 are the different quotations sent by the different dealers. It is also not apparent from the records as to these quotations were received in the sealed parcels and were handed over to the Administrator, Market Committee and were also opened by him. The record shows that the quotations from all the six companies were received by the plaintiff, he had sort out the rates and he moved a letter dated 24.6.1982 that the rate of ESS-n-CEE, Dealer from New Delhi, were the lowest and order be placed before him. Copy of the said letter has been placed on the record as Ex.P10. It is no doubt that it is also counter-signed by the Administrator, Market Committee, Pehowa. Ex.P11 shows that the plaintiff had written to M/s ESS-n-CEE Company, New Delhi for the supply of Purchase of 200 tarpaulins. The size was mentioned as 9x12 meters and the tarpaulins must be of ISI specifications. 200 tarpaulins were supplied by M/s ESS-n-CEE Company, New Delhi. Ex.P14, copy of invoice dated 2.7.1982, shows that a sum of Rs.2,53,935/- was paid to M/s ESS-n-CEE for the purchase of 95 tarpaulins and Ex.P18, copy of invoice dated 5.7.1982, shows that payment of Rs.2,80,665/- was paid to M/s ESS-n-CEE Company for the purchase of 105 tarpaulins. It is pertinent to mention here that on Ex.P-15, copy of invoice dated 2.7.1982 and Ex.P-18, copy of invoice dated 5.7.1982, the plaintiff has himself certified that 95+105 tarpaulins received, are as per specification conforming* *to ISI standard and its dimension is 12x9 meters. It is worthwhile to point it out here that at the time of making payment of tarpaulins on 2.7.1982 and 5.7.1982, the tarpaulins had not been tested nor sent for test at any laboratory. Though in the reply, the plaintiff has stated that he payment was ordered to be made after receiving report from the laboratory at Gurgaon, yet, the position on the record is otherwise. Ex.P12 shows that the plaintiff had sent one tarpaulin, as sample drawn from the supply of M/s ESS-n-CEE, New Delhi to the Superintendent, Quality Marking Center, Gurgaon for test. Ex.P13 is the test report and is dated 7.7.1982. It is pertinent to mention here that first installment of the payment of Rs.2,53,935/- was released on 2.7.1982 and the second installment for the sum of Rs.2,80,665/- was released on 5.7.1982. By that time the report of the Laboratory from Gurgaon had not been received. The Record shows that the report was received on 7.7.1982 and that time payment of Rs.5,34,600/- had already been released by the order of the plaintiff in favour of M/s ESS-n-CEE, New Delhi. This argument of the learned counsel for the plaintiff has no force that after getting tested the tarpaulins from the laboratory, the amount was ordered to be released. Rather, the record shows that even letter was sent for getting tested the tarpaulins on 5.7.1982, whereas the first installment of payment of Rs.2,53,935/- had already been released in favour of M/s ESS-n-CEE, New Delhi. The second installment was paid on the same day when the letter was sent for testing the tarpaulins. Ex.P12, the letter vide which the testing of sample was sought, shows that only water proofness of the sample was sought to be tested and the working requirements were neither asked for nor received. When the complaints were received, two samples were taken out from the residue tarpaulins and sent to Laboratory at Panipat. The report was received that one of the samples did not conforms to the specific standard. At the time of arguments and also at the time of adducing evidence before the Enquiry Officer, though it was argued on behalf of the plaintiff that the samples were taken by* *the Enquiry Officer, after sufficient long time and the possibility cannot be ruled out that with passage of time the tarpaulins might have damaged, yet Ex.P22 office order dated 22.7.1988 passed by the Chief Administrator and Ex.P27 order dated 3.7.1990 passed by the Commissioner, show that the sample was taken after a months of the purchase of tarpaulins. It cannot be said that the orders had been passed after the testing of the sample. Even the report was dated 11.9.1988 by the Quality-marking Centre, Panipat. Since one sample was conformed to the first standard and other was not, a lenient view was taken by the Commissioner in awarding punishment the amount to be recovered as loss to the Committee was reduced by the Commissioner by 50%. It shows that sub-standard tarpaulins were purchased at the behest of the plaintiff.*

It has been argued by the learned counsel for the plaintiff that all the purchases of the tarpaulins were made as per direction of the Administrator. The plaintiff was having no authority to purchase more than 50 rupees. It was the Administrator, under whose signatures the purchase was finalized. In order dated 3.7.1990 passed by the Commissioner, it has been observed that the Secretary of the Committee is the whole-time Chief Executive Officer whose main job is to properly aid and advise the Market Committee as per provisions of the Act, rules made thereunder and the instructions issued by the Board from time to time or instructions of the Chief Administrator or the Secretary of the Board. The Committee is not supposed to know the various rules and procedures. It is for the Secretary of the Committee to properly aid and advise the Committee in the discharge of its functions. Rule 14 of Punjab Agricultural Produce Markets (General) Rules, 1962 also deal with regard to duties of the Secretary. It has been rightly observed by the Commissioner that on the recommendation of the plaintiff, the orders were passed by the Administrator.

The learned trial Court has wrongfully come to the conclusion that the order for purchase of tarpaulins was placed on the recommendation of the Administrator. Rather on the

> *recommendation of the Cashier/Accountant, without working the requirement, the order was placed for the purchase of tarpaulins. It is also apparent on the record that no tenders were invited and no publicity was done with regard to inviting of tenders. It is also proved on the record that the tenders were neither sealed nor placed before the Administrator. They were found open by the plaintiff and the lowest rate of M/s ESS-n-CEE, New Delhi were found and orders were placed for the supply of 200 tarpaulins. The learned trial Court has also wrongfully concluded that the payments were released after receiving the testing report. On the other hand, it is apparent on the record firstly payments were released and later on letters were sent to Testing Centre for obtaining the report. It is also clear that the plaintiff had not informed the Administrator that there was no provision in the budget for the purchase of tarpaulins. Financial constraints were not considered by him. The plaintiff while acting as E.O.-cum-Secretary, Market Committee had hurriedly made the payment. The Sub-standard or tarpaulins become apparent when the samples were sent to the Quality Marking Centre, Panipat, which is a Government Laboratory for checking the quality."*

Basically, two reasons have been given by the Secretary to the Government. One that appellant has failed to perform his duties as enshrined in the various clauses of Rule 14 of the Punjab Agricultural Produce Markets (General) Rules, 1962 and second that tarpaulins was purchased at higher price. Learned trial Court after appreciation of evidence decreed the suit whereas First Appellate Court has recorded following reasons to set aside the judgment of the trial Court.

1. Plaintiff had not worked out the requirement of 200 tarpaulins before placing order.
2. He did not inform the Administrator of the Committee that there was no budget.

3. Before purchase of the tarpaulins, no public notice was given.

4. The payment of the tarpaulins supplied was released before the test report was received.

5. The suit is not maintainable.

Two circulars were issued to all the Market Committees in Haryana by the Chief Administrator of the Board. One dated 21.05.1982 Ex.P-2 and other dated 19.06.1982 Ex.P-1 directing the Market Committees to make arrangement for procuring tarpaulins and other covering material to the arthiyas i.e. commission agents and small and marginal producers for protecting their produce. On the basis of the aforesaid circular, the accountant put forth a proposal before the appellant who was working as Executive Officer-cum-Security Market Committee that 200 tarpaulins are required to be purchased. The Executive Officer i.e. appellant acted on the aforesaid proposal and invited quotations from six different firms in different cities. After inviting quotations, the proposal was put to the Administrator who approved the same on 24.06.1982 which is Ex.P-10 on the record. On the basis of the aforesaid approval, supply order was placed on 25.06.1982 vide Ex.P-11. The appellant on 05.07.1982 got send a sample to test the water proofness test to Quality Marketing Centre, Gurgaon and the report was received on 07.07.1982 and sample was found upto standard mark and quality. The test report is Ex.P-13. Thereafter, the payment was released to the supplier. In the year 1983 i.e. after almost 10 months, an inquiry was started in the purchase of tarpaulins as proper procedure has not been followed. A vigilance Inquiry was conducted by the State Vigilance Bureau, Haryana and the plaintiff-appellant was found innocent vide report dated 29.04.1983 Ex.P-42. However, thereafter, the

Department started conducting its own inquiry and sent two samples for quality check to Panipat Laboratory. The Panipat Laboratory reported that one sample is upto mark and standard but second sample was not found upto mark.

On the basis of the report and a report of an official deputed to collect information with regard to the rate prevalent at that time, the appellant has been punished.

Learned counsel for the appellant has submitted that the requirement was worked out by the Accountant and the Administrator of the Market Committee had approved the same. Still further, there is no material on the file that the tarpaulins which were purchased were more than the requirement. He further submitted that the purchase was made for saving the food grains as directed. The circular provided that tarpaulins have to be purchased to protect the small farmers/growers/marginal producers, therefore, provision in the budget as has been found by the learned First Appellate Court was never the issue. The purchases were being made under a circular which was need of the hour and the purchases were approved by the Administrator against whom no action has been taken only on the ground that he was a part time Administrator. Learned counsel has further submitted that there was no provision for inviting any applications through tender process or public notice. The appellant collected quotations and thereafter, put up before the competent authority who approved the lowest rate. He further submitted that the payment has not been released before report from the test laboratory came on 07.07.1982. He further submitted that the suit is very much maintainable as prior notice has been served.

Learned counsel for the respondents, on the other hand, has tried to defend the order by referring to Rule 14 of the Punjab Agricultural Produce Markets (General) Rules, 1962 to assert that the Secretary of the Market Committee is to guide senior officials and he has to carry out the duties in accordance with the provisions of the Act, rules and bye-laws. Hence, he submits that the appellant failed to discharge that function. He further submitted that the purchase was made at a higher rate than the actual market rate prevalent on that day.

Learned counsel was asked to point out the material for returning a finding that the purchase was made at an inflated rate. He submitted that an official was deputed namely Sh. IPS Bakshi who visited the market and gathered information. The information gathered is not part of the file, therefore, the material on the basis whereof opinion was formed is not part of the file and a report of the official deputed to the market to collect information could not be made sole basis to punish the appellant. As regards release of payment, it is apparent that the complete payment was not released. Only half of the payment was released. Still further, learned counsel for the respondents could not point out any instructions or provision in the rule which restrict the right of the Executive Officer to purchase the material under the circular only if budget has been sanctioned. The circular is directing the market Committees in all districts in Haryana to purchase tarpaulins/covering material for marginal farmers.

As regards public notice, the rules do not provide for the same and an official cannot be punished just on the basis of assumption.

Still further, as noted above, no action has been taken against the Administrator of the Market Committee who had approved placing of the order as well as purchase of the material at a particular rate.

In view thereof, the judgment under challenge cannot be sustained and hence, set aside. The judgment and decree of the trial Court is restored.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Regular Second Appeal is allowed.

(ANIL KSHETARPAL)
JUDGE

25.01.2019
Dinesh Bansal

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No