

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

CWP-27714 of 2019

Date of decision : 17.12.2019

Madan Lal

.... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM :- HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SHARMA

Present: Mr. Chetan Mittal, Senior Advocate, with
Mr. Kunal Mulwani, Advocate, and
Mr. T.S. Attariwala, Advocate,
for the petitioner.

Mr. Suveer Sheokand, Additional Advocate General, Punjab,
for respondents No.1 to 4.

Mr. D.S. Patwalia, Senior Advocate, with
Mr. Nitin Kaushal, Advocate,
for respondent No.5.

* * *

RAVI SHANKER JHA, CHIEF JUSTICE

Reply by way of affidavit of the District Collector-cum-
Convener, District Tender Committee, Ludhiana, filed in Court today on
behalf of respondents No.1 to 4 is permitted to be taken on record.

2. This petition has been filed by the petitioner praying for
quashing of order dated 28.08.2019 passed by respondent No. 2 – first
appellate authority and order dated 17.09.2019 passed by respondent No. 1
– second appellate authority, whereby the tender in favour of the petitioner

has been cancelled in view of Clause 5 (E) of the Punjab Labour & Cartage Policy 2019-2020, with a further direction to go for re-tendering. The petitioner in this petition has also prayed for quashing and staying the fresh tender enquiry dated 10.09.2019, issued by the official respondents, pursuant to the orders passed by the first and second appellate authorities.

3. The brief facts leading to the filing of this petition are that the petitioner as well as respondent No.5 applied for awarding of handling contract for Khanna Cluster, pursuant to an advertisement dated 25.04.2019, issued by the official respondents. The petitioner was found to be successful bidder, while the bid of respondent No.5 was rejected. Respondent No.5, being aggrieved by the rejection of his bid, filed an appeal under the Punjab Labour & Cartage Policy 2019-2020 before the first appellate authority. The first appellate authority, vide impugned order dated 28.08.2019, ordered recalling of fresh e-tenders for the work of Khanna Cluster of District Ludhiana, while holding that not just respondent No.5, but the petitioner too was disqualified and was not entitled to be awarded the contract. The petitioner, being aggrieved by the order passed by the first appellate authority, filed a second appeal before the second appellate authority, which has been dismissed vide the impugned order dated 17.09.2019.

4. It is submitted by the learned counsel for the petitioner that even before passing of the order dated 17.09.2019 by the second appellate authority, in compliance with the directions issued by the first appellate authority, the official respondents issued an advertisement calling for re-tender of the contract on 10.09.2019 in respect of Khanna Cluster, Ludhiana. It is stated that this Court vide interim order dated 26.09.2019 has

stayed the finalisation of the re-tendering process and in the meanwhile has permitted the petitioner to continue to execute the work.

5. Learned counsel for the petitioner submits that the petitioner was the successful bidder and allotment of the work to the petitioner was not challenged by respondent No.5 before the first appellate authority, in spite of which the first appellate authority set aside the work allotted to the petitioner by recording a finding that the undertaking on affidavit given by the petitioner was not in accordance with Clause 5 (E) of the Punjab Labour & Cartage Policy 2019-2020. It is submitted that though the appellate authority took note of the fact that the petitioner had already executed 50% of the work at the time of decision of the first appeal and that the Tender Committee had in fact accepted the undertaking on affidavit given by the petitioner by treating it to be in accordance with Clause 5 (E) of the Punjab Labour & Cartage Policy 2019-2020 at the initial stage, however in spite of doing so, the impugned order has been passed.

6. Learned counsel for the petitioner submits that even otherwise, a bare reading of Clause 5 (E) of the Punjab Labour & Cartage Policy 2019-2020 makes it clear that the undertaking given by the petitioner is in accordance with the said Clause and the finding to the contrary recorded by the first and second appellate authorities is perverse.

7. Learned counsel appearing for respondent No.5 submits that respondent No.5 had filed first appeal against the rejection of his tender. However, during the pendency of the first appeal, respondent No.5 discovered that the petitioner had given a false undertaking regarding the labour available with him and therefore, an application for placing on record

documents Annexure A-3 to Annexure A-9 showing submission of wrong affidavit by the petitioner and further to show that the technical bid submitted by the petitioner was in contravention of Clause 5 (E) (Note 2) as also Clause 5(E) of the Punjab Labour & Cartage Policy 2019-2020, was filed before the first appellate authority. It is submitted that the first appellate authority taking the aforesaid aspect into consideration and after affording due opportunity to the petitioner to respond to the same and calling for a report from the District Tender Committee took a decision by recording a finding of fact to the effect that the list of labourers submitted by the petitioner was common with that of one submitted by Shri Raj Kumar, who had been awarded tender in Cluster Patti on 10.04.2019, prior to the awarding of the contract to the petitioner. It is submitted that the aforesaid fact is clearly established by the documents on record and, therefore, no fault can be found with the order passed by the first appellate authority.

8. Learned counsel appearing for respondent No.5 submits that the second appellate authority has affirmed the finding recorded by the first appellate authority, which does not require any interference by this Court.

9. It is submitted by learned counsel for respondent No.5 that the petitioner has been permitted to execute the work by this Court only on account of a statement being made to the effect that respondent No.5 had never challenged the awarding of contract to the petitioner in spite of which the first appellate authority had set aside the same, which is factually incorrect, as is evident from the perusal of documents on record. It is submitted that in such circumstances, no case for interference is made out.

10. Learned Additional Advocate General, Punjab, appearing on behalf of respondents No.1 to 4, submits that two authorities – the first appellate authority and the second appellate authority have recorded a concurrent finding of fact against the petitioner, which does not suffer from any illegality or perversity and, therefore, cannot be interfered with by this Court in proceedings under Article 226 of the Constitution of India. It is submitted that the finding recorded by the authorities to the effect that the undertaking given by the petitioner was contrary to Clause 5 (E) of the Punjab Labour & Cartage Policy 2019-2020 is based on facts and documents on record and does not call for interference by this Court.

11. We have heard the learned counsel for the parties at length.

12. From a perusal of the record, it is evident that the first and second appellate authorities have cancelled the work allotted to the petitioner on the ground that the undertaking on affidavit given by the petitioner is contrary to Clause 5 (E), Note 2 of the Punjab Labour & Cartage Policy 2019-2020. Clause 5 (E), Note 2 of the Punjab Labour & Cartage Policy 2019-2020 is in the following terms :-

“Note 2 : To avoid misuse of lists of the labourers, the tenderer must give an undertaking duly sworn before the Executive Magistrate that in case of finding a tender being awarded at any other centre elsewhere in the State before the date of award of the instant tender using the same list of workers/labourers or with common names of workers/labourers in the list uploaded by him, his tender shall be liable to be declared qualified.”

13. A bare reading of the aforesaid Clause makes it clear that to

avoid misuse of lists of labourers, the tenderer must give an undertaking to the effect that in case a tender is awarded at any other centre elsewhere in the State before the date of award of the tender in question, and the list of labourers is found to be same or with common names with the list of labourers uploaded by the tenderer, his tender shall be liable to be declared disqualified.

14. The first and second appellate authorities, on the basis of the documents on record, have recorded a finding to the effect that the list of labourers given by the petitioner and that given by Shri Raj Kumar are common to a great extent and, therefore, has cancelled the tender awarded to the petitioner, and directed the authorities to go for fresh tendering.

15. The fact that the list of labourers is common between the petitioner and Shri Raj Kumar is clearly borne out from the finding recorded by both the appellate authorities. The petitioner, in response, has submitted an affidavit of certain labourers indicating that the common labourers in the lists submitted by the petitioner and Shri Raj Kumar have stated and clarified that they had not given their names to Shri Raj Kumar for the purpose of uploading of the list of labourers for obtaining the contract and they had only done so for the petitioner. However, the fact that the labourers in two lists are common and as on date, the said labourers are working for Shri Raj Kumar is clearly borne out from the documents on record, including the documents relating to payment of EPF by Shri Raj Kumar in respect of the labourers concerned.

16. Learned counsel appearing for the petitioner, at this stage, submits that the petitioner has in fact complied with the requirement of

Clause 5 (E) of the Punjab Labour & Cartage Policy 2019-2020, and has given an undertaking to the effect that the list of labourers submitted by him is not common with any list submitted by him in any other tender proceeding.

17. We are afraid that the interpretation of Clause 5 (E) of the Punjab Labour & Cartage Policy 2019-2020 sought to be made by the petitioner is absolutely misconceived. A bare reading of the Clause makes it clear that the Clause has been inserted with a view to avoid misuse of lists of labourers and that the undertaking required to be given by the tenderer is to the effect that the list of workers/labourers given by him is not common or same with that of any other tenderer, who has been awarded work at any other centre elsewhere in the State before the date of award of the work to the tenderer. Apparently, the undertaking is required to be given to the effect that the list of labourers submitted by the tenderer is not common with any other person, who has already been awarded contract for labour and cartage.

18. In these circumstances, as the findings recorded by the first and second appellate authorities are based on documents on record, we are of the considered opinion that there is no perversity or illegality in the orders passed by the first and second appellate authorities, and the same do not warrant interference, as both the authorities have rightly recorded a finding to the effect that the undertaking of the petitioner is not in accordance with Clause 5 (E) of the Punjab Labour & Cartage Policy 2019-2020, and therefore no fault can be found with the orders passed by the first and second appellate authorities.

19. The petition filed by the petitioner being devoid of merit is dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

December 17, 2019
ndj

(RAJIV SHARMA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No