

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : CWP No.10707 of 2020

Date of Decision : July 28, 2020

Sushil Kumar		Petitioner
vs.		
The State of Punjab and another		Respondents

**CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY.
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA.**

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Present : Mr.Anurag Chopra, Advocate
for the petitioner.

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MEENAKSHI I. MEHTA, J. :

Feeling aggrieved by the order dated 17.07.2020 (Annexure P/6) whereby respondent No.2 rejected the representation of the petitioner seeking participation in the tender process initiated by respondent No.1 for labour and cartage of foodgrains, on the ground of his being inexperienced contractor, the petitioner has sought the indulgence of this Court for issuance of a writ in the nature of certiorari quashing the above-said order as well as Clause 5(ii)(G) of the Punjab Foodgrains Labour and Cartage Policy, 2020-21 (for short “PFLC Policy”) and has made a further prayer for issuance of a writ in the nature of mandamus directing the respondents to permit him to participate in the tender processes within the State of Punjab and to consider his bids.

2. Bereft of unnecessary details, the factual-matrix, as canvassed by the petitioner in this petition, is that the State of Punjab had issued a policy for the transportation and cartage of the foodgrains earlier also debarring the first-

policy, the respondents had issued a notice on 06.03.2020 for inviting tenders. However, the said policy and the notice inviting tenders were challenged by way of **CWP No.6699 of 2020** titled as **Rajiv Kumar Deora vs. State of Punjab and others**. In the meantime, the respondents amended the afore-said policy vide a corrigendum dated 15.03.2020 and extended the last date of submission of the bids but the bar for the first-time tenderers qua participation in the tender process, was still kept intact. Resultantly, the amended policy was also challenged in this Court vide **CWP No. 7088 of 2020** titled as **Rajiv Kumar Deora vs. State of Punjab and others** which had been disposed of on 18.03.2020 with a direction to the respondents to adjudicate the representation of the petitioner therein. However, in the wake of the outbreak of pandemic COVID-19, all the tender processes for the year 2020-21 were suspended and the contracts pertaining to the year 2019-20 were extended till 30.06.2020.

3. The petitioner has, further, averred that thereafter, the respondents issued a notice on 24.06.2020 for inviting tenders and later-on, vide corrigendum dated 06.07.2020, the last date for the submission of the bids in respect thereof was extended to 18.07.2020. He sent a legal notice dated 08.07.2020 to the respondents raising issues qua the legality of Clause 5(ii)(G) of the PFLC Policy therein but due to inaction on the part of the respondents on the said legal notice, he was constrained to file **CWP No.9822 of 2020** in this Court to assail the legality of the afore-mentioned clause of the PFLC Policy and the same was disposed of on 15.07.2020 with a direction to the competent Authority to decide his above-said representation by passing a speaking/ detailed order in accordance with law on or before 18.07.2020. In compliance

hearing to him on 17.07.2020 but he passed the impugned order (Annexure P/6) on the same day rejecting his said representation. The impugned clause of the PFLC Policy is illegal and arbitrary as it restricts the participation of the first-time tenderers in the tender process and the impugned order has also been passed on the frivolous grounds. Therefore, the said clause of the PFLC policy as well as the impugned order are liable to be quashed/set-aside.

4. We have heard learned counsel for the petitioner in the present petition and have also perused the file thoroughly.

5. Learned counsel for the petitioner contends that the impugned clause is arbitrary as well as illegal because it provides that for applying for cartage, a tenderer must have the minimum turn-over from the cartage work of the foodgrains of the Government Agencies in any one financial year out of the previous three financial years, i.e. during the years from 2017-18 to 2019-20 and thus, it debars the first-time tenderers like the petitioner from participating in the bidding/tender process and the impugned order regarding rejection of the representation moved by the petitioner for challenging the legality of the said impugned clause, has also been passed arbitrarily on illogical grounds. Lastly, he has contended that Annexure P/7 is the Model Tender Form (for short “MTF”) wherein Clause 3(iii) provides that where the contract value of the work is less than Rs. Seven crores and fifty lakhs, a tenderer, not having the requisite experience, may also participate in the bidding process subject to fulfilment of certain conditions as stipulated therein whereas in the impugned Clause of the PFLC Policy, this part does not find mention meaning thereby that the impugned clause is not in consonance with the MTF and therefore, the

6. However, we do not find the afore-discussed contentions to be tenable at all because a bare perusal of the impugned order (Annexure P/6) reveals that it has been specifically mentioned therein that “cartage” which was categorized as “unskilled work” till the previous year, i.e. 2019-20, has now been included in the category of the “skilled work” as per the decision taken by the Council of Ministers, Punjab on 02.03.2020. Even otherwise, undoubtedly, the foodgrains are perishable goods/items. It being so, the timely and proper handling of the same after its harvesting, i.e loading, transportation, unloading and storage thereof, is of utmost importance to keep the same preserved for being distributed and utilized so as to achieve the object and the goal behind the enactment of the Food Corporation of India Act, 1964 (as amended from time to time) and this work certainly involves skill.

7. Undisputedly, framing/floating of a policy is exclusively within the domain of the Executive. The Authority/Agency seeking any work to be got done through the tender process is supposed to be well within its rights to determine/stipulate the terms and conditions regarding the mode and manner of the execution of the said work. It is also well settled that the Courts should not sit over the decisions taken by the Executive/the Government as the Court of Appeal or the Reviewing Authority except in the eventualities where such decisions are mala-fide or arbitrary. When applied on the touch-stone of the above-said proposition, the impugned clause of PFLC Policy requiring a tenderer to have the experience in the cartage of foodgrains, the same being a categorized skilled work, for at least one year in the preceding three years, cannot be held to be malafide or arbitrary. Resultantly, the impugned order

any interference by this Court.

8. As regards the last contention of learned counsel for the petitioner regarding the impugned clause being contrary to Annexure P/7 while claiming this document to be the MTF, it is worth-while to mention here that a plain reading thereof shows that it has been issued by the General Manager (Region), Food Corporation of India Regional Office, Haryana, Panchkula. Hence, the same cannot be taken to be the MTF meant to be followed throughout the country. Thus, Annexure P/7 is also of no avail to the petitioner to substantiate his claim in this petition.

9. As a sequel to the foregoing discussion, it follows that the present petition, being devoid of any merit, deserves dismissal. We order accordingly.

(DAYA CHAUDHARY)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

July 28, 2020

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Whether speaking/reasoned ?

Yes/No.

Whether reportable ?

Yes/No.