IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11552-2019
Reserved on: 19.05.2022
Date of Decision: 27.05.2022

Jaswinder Singh

. . . . Petitioner

Vs.

Union of India and others

. . . . Respondents

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CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR JUSTICE H.S. MADAAN

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Present: - Mr.Khushwant Singh Mann, Advocate,
for the petitioner.

Mr.Sudhir Nar, Senior Panel Counsel,
for respondent No.1-Union of India.

Mr.Harsh Chopra, Advocate, for respondents No.2 & 3.

Mr.Saurav Verma, Advocate, for respondent No.4-PNB.

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M.S. RAMACHANDRA RAO, J.

The Background facts

The National Horticulture Board [NHB] (respondent No.3) initiated various certain *Credit Linked Capital Investment Subsidy Schemes* to encourage private investment in specified activities, areas and technology in relation to horticulture activities, and one such scheme framed by it is '*Scheme-I: Development of Commercial Horticulture through Production and Post Harvest Management of Horticulture Crops'*.

Annexure P-1 contains the General Guidelines for availing the subsidy under the said Scheme by farmers and other interested in horticulture.

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Petitioner, who is a farmer, came to know about the said Scheme and decided to set up a project of '*Rose Cultivation under Poly/net house'* on his land admeasuring 8000 sq. mtrs. under the said Scheme.

As required by the operational guidelines of the NHB under the above Scheme, he availed a term loan from respondent No.4-Bank for his project at Village Korwa Khurd, Distt. Ambala, Haryana.

According to the petitioner, the loan was disbursed from 2016 onwards and petitioner completed the construction/erection of the shade net house on 27.03.2017 and started Rose cultivation at the project site.

Petitioner contends that he submitted a financial subsidy claim under a direct category without LOI through respondent No.4-Bank for the said project, *after completion of the project* and disbursement of term loan for cultivation of roses in his land under the Scheme referred to above, and whatever information was sought by NHB was also submitted.

The NHB constituted a Joint Inspection Team comprising of it's representatives and those of the State Department of Horticulture, Govt. of Haryana and the lending bank to inspect and submit a report, and make appropriate recommendations as per prescribed guidelines of the NHB.

Such inspection was done by the Joint Inspection Team on 22.08.2017 and a report was submitted.

Vide Joint Inspection Report (P2), a recommendation was made by the said Committee stating as under: -

> *"No subsidy either from NHB or NHM has been availed earlier for the same project as per record",* and *"project was found completed, all the infrastructure as proposed as available. Bank has released its full term loan. EPC has been assessed as ₹93.80 lakh, accordingly, 50%*

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> *back ended subsidy works out to ₹46.90 lakh, as recommended by Joint Inspection Team."*

Thereafter, in the agenda for a Project Approved Committee [PAC] meeting of NHB (P3-C) to be held on 26.02.2018, *the Joint Director and the Deputy Director of the NHB*, relying on the above said recommendation of the Joint Inspection Team, *recommended the PAC to consider and approve the back-ended subsidy of ₹46.90 lakh to the petitioner* but, the PAC, however, 'deferred' its decision on 26.2.2018 for a revisit for confirming technical specification of shade net house by a committee of NHB. It also mentioned "*lacking documents/documentation will be examined by the concerned Division*."

Thereafter a revisit was done on 21.05.2018 and *the technical expert*, as per Annexure P-5 (Agenda for PAC Meeting to be held on 21.6.2018), *confirmed the technical specification of shade net house as per NHB standards and found rose crop also. He stated that the project is viable and recommended for approval of subsidy as per NHB guidelines*.

The *Joint Director and Dy. Director of the NHB* who prepared the Annexure P-5 *also recommended to the PAC to approve the back-ended subsidy of ₹46.90 lakh 'subject to furnishing detailed financial appraisal note of the project'.*

But strangely the PAC of NHB in it's meeting held on 22.06.2018, rejected the petitioner's application for final subsidy giving the following reasons:-

> *"Rejected*
> *Committee discussed the proposal in detail and rejected due to selected variety is not suitable for Cultivation of Rose for cut flower.*

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Committee also observed that photographs taken at the time of revisit, rose crop condition found poor. Appraisal of the project was also not done properly"

This was informed to the petitioner by respondent No.3 on 17.07.2018 (P7).

Petitioner subsequently, made representation to the Grievance Redressal Committee of respondent No.3 but, no action was taken thereon.

The Writ Petition

So the petitioner filed the present Writ Petition to declare the proceedings of the PAC meeting held on 22.06.2018 to the extent it relates to the proposal of the petitioner as void and illegal; to quash the same by issuing a Writ of certiorari; and to issue a Writ of Mandamus directing the respondents to release the subsidy of ₹46.90 lakh to the petitioner on the basis of the recommendation and report of the Joint Inspection Team in accordance with the guidelines of the NHB.

He also sought for a compensation for the losses suffered by him on account of the interest charged by the Bank on the proportionate term loan amount of ₹46.90 lakh which is equal to the amount of the subsidy payable by the NHB.

Reply of respondents No.1 to 3

Respondents No.1 to 3 filed a reply opposing the claim of the petitioner.

It is admitted that respondent No.3 was set up by Government of India in 1984 as an autonomous society under the Societies Registration Act, 1860, and it frames various schemes under the overall supervision and

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guidance of its Board of directors as well as the Department of Agriculture & Cooperation, Ministry of Agriculture, Government of India.

It is stated that it was set up by the Government of India as an autonomous body with a mandate to promote commercial horticulture and to establish a sound infrastructure with special emphasis on post-harvest management and cold chain to reduce post-harvest losses.

It is contended that the Writ Petition itself is not maintainable and that any assistance by way subsidy from the public exchequer can only be given in strict compliance and literal interpretation of the guidelines enumerated in the policy; and that the petitioner was erroneously interpreting the policy as per his own whims and fancies and is illegally/dishonestly trying to receive it from respondent No.3.

It is alleged that the subsidy schemes initiated by respondent No.3 are for the benefit of small, marginal and women farmers and not for the particular group/firm/organization as claimed by the petitioner. It is also contended that no citizen has a right to claim any subsidy.

It then referred to the terms of the Scheme as well as receipt of the proposal from the petitioner on 03.04.2017 for seeking grant of back ended subsidy for cultivation of Rose under shade net house on the land of 2 acres under the said scheme. It admitted that the project cost was proposed as per bank appraisal for ₹105.29 lakh and term loan was also sanctioned by respondent No.4 for ₹59.32 lakh.

The Joint Inspection reports of the inspections conducted on 22.08.2017 and 21.05.2018 as well as the PAC meeting agenda of 26.02.2018 are admitted.

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But, it is stated that the rejection of the petitioner's proposal in the PAC meeting on 22.06.2018 was valid, and so the petitioner is not entitled to claim subsidy.

It is denied that there was any discrimination in evaluating the eligibility of the proposals submitted by the petitioner for grant of subsidy, and that there is no violation of the Constitution of India. It was also denied that the petitioner suffered losses.

Reply by respondent No.4

Respondent No.4-Bank stated that it has nothing to do with respondents No.1 to 3 and has an independent right to recover the outstanding loan amount from the petitioner.

It is contended that certain defaults were committed by the petitioner, and a sum of ₹68.79 lakh is owed by him, and it is entitled to recover the same in accordance with law.

Counsels for the respective parties reiterated the claims of their respective clients referred to above.

Consideration by the Court

We have perused the operational guidelines of the scheme contained in Annexure P1.

The salient features of the scheme

It indicates that the Scheme came into force on 01.04.2014 and an *individual farmer* is also entitled for assistance under the Scheme as per Clause 2.4.

Scheme-1 deals with Development of Commercial Horticulture through Production and Post-Harvest Management of Horticulture Crops.

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Clause 1.2 of the Scheme-1 states as under: -

"1.2 Commercial Horticulture Development in protected cover on project mode

The Board will also take up commercial horticulture development projects under protected cover on project mode including components viz planting material, plantation, irrigation, fertigation, mechanization etc. for projects having area over 2500 sq. meter. Activities like construction of green houses, shade net house, plastic mulching, and plastic tunnel, anti bird/hail nets etc would be promoted. Provision has been made for selecting a variety of construction material for green houses and shade nets houses. Preference will be given to using locally available material to minimize cost of construction of such structures. However, for availing subsidy, all material / technology should conform to prescribed standards.

Pattern of assistance

Credit linked back-ended subsidy @ 50% of the total project cost limited to ₹56.00 lakh per project as per admissible cost norms for green houses, shade net house, plastic tunnel, anti bird/hail nets & cost of planting material etc."

Thus, horticulture projects under the Scheme are not prohibited for Roses and are in fact permitted subject to the project having an area over 2500 sq. mtr. which the petitioner fulfills, and the shade net house cultivation of Roses is specifically permitted, and the Scheme envisages *credit linked back-ended subsidy @ 50% of the total project cost limited to ₹56 lakh* per project as per admissibility costs norms for shade net house & green house etc.

Claims must be filed within 18 months of the date of release of first installment of term loan.

Admittedly the petitioner had made the application for subsidy through respondent No.4-Bank way back on 3.4.2017 as per Annexure P5. But strangely, in spite of the Joint Inspection Report dt.22.08.2017 showing

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that the petitioners fulfilled all the norms and recommending release of the subsidy, the claim of the petitioner for subsidy was 'deferred' in the PAC meeting on 22.06.2018 on the hyper technical ground of confirming the technical specification of the shade net house (without there being any such technical specification in the Scheme itself).

The impugned letter rejecting petitioner's claim for subsidy:

Three reasons have been assigned in the impugned rejection letter P7 dt.17.7.2018

- Selected variety not suitable for cultivation of rose cut flower.
- Rose crop condition was found poor
- Appraisal of project not proper

A. **Reason 'selected variety not suitable for cultivation of rose cut flower' not acceptable**.

The scheme nowhere mentions what particular varieties of rose flowers or other flowers can be grown to claim subsidy under it.

To a specific question put by us to the counsel for the NHB as to why the PAC rejected petitioner's proposal for back-ended subsidy in its meeting held on 22.06.2018, citing the reason of the '*selected variety being not suitable for cultivation of Rose for cut flower*', counsel for respondent No.3 had no answer, and could not point to any provision in the Scheme for rejecting a proposal under the Scheme for the said reason.

Once both the Joint Inspection reports for the inspection held on 22.8.2017 (P-2) and 21.5.2018 (as mentioned in P5) stated that the petitioner's project conforms to technical specifications as per NHB

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standards, the NHB cannot reject the petitioner's claim for subsidy on this ground.

B. <u>Reason 'Rose crop condition was found poor' not acceptable</u>

As regards the above reason, we may point out that at the time of the first inspection on 22.8.2017, as per P2 report **at cl.23**, it was mentioned '*crop was in good condition'*.

Even at the time of the second inspection held on 21.5.2018, the Joint Inspection team did not say that the crop was in poor condition. *It noted the existence of the rose crop.*

The view that the crop was in poor condition appears to have been formed based on certain photographs taken at the time of revisit which happened on 21.05.2018 without the Joint Inspection team saying so.

So this reason also cannot be accepted.

C. **<u>Reason 'Appraisal of project not proper' not acceptable</u>**.

As regards the last reason, we may point out that Clause 1 of the '*Guidelines for Making Subsidy claims and Release of Subsidy under the Commercial Horticulture Scheme (Scheme No.1) and the Cold Storage Scheme (Scheme no.2)'* states that either (i) an advance of subsidy can be taken initially and later the balance can be sought or (ii) full and final subsidy can be obtained *after* completion of the project.

Cl.1.1.1.1. thereof states that *financial appraisal report* of the Bank is necessary only if the *former* is opted for; but for the *latter*, as per Cl.1.1.1.2, three documents (a) Completion certificate by the Bank (b) Term Loan disbursement details wise and (iii) Statement of expenditure incurred certified by the Bank, are to be submitted.

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The petitioner, in the instant case secured the first installment of loan of Rs.18 lakhs from the respondent no.4 on 28.6.2016 and later the balance loan as well, completed constructions/erection of the shade/net house on 27.3.2017 *and then* submitted ‘final claim for subsidy’ on 3.4.2017.

So his case falls in the latter category i.e claim for full subsidy made after taking term loan and completion of the project. For this category, no financial appraisal report is necessary as per cl.1.1.1.2.

It is therefore not open to the NHB to reject his claim on ground that ‘financial appraisal report was not proper’.

Moreover the report dt. 21.05.2018 states that the debt equity ratio was good and within the Bank norms, and the promoter’s contribution/margin of 25% was exceeded as the petitioner had provided margin of 43.66% above the Bank norms.

There was no doubt an observation that ‘*the Bank had not submitted the agreement note*’, and so no comment could be made on ‘*economic viability of the project*’, but, this cannot be put against the petitioner if respondent No.4-Bank had not submitted certain papers to NHB though the said material was available in it’s custody.

Also the respondent No.4-Bank had advanced substantial amount after appraisal of the project and it was its duty to place the said documents before NHB. Had the project not been apprised properly, respondent No.4 would not have granted any loan to the petitioner at all.

Thus the reasons given by the NHB for rejecting petitioner’s subsidy claim are arbitrary, perverse, contrary to the record and the norms

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mentioned in the Scheme framed by the NHB and also violative of Articles 14 and 300A of the Constitution of India.

The NHB would undoubtedly fall within the ambit of the term *State* used in Article 12 of the Constitution of India, and if it had laid down certain standards or norms of eligibility for a benefit such as a subsidy, it cannot arbitrarily apply new norms to reject a claim for subsidy or ignore the norms laid by it in the very Scheme framed by it.

In **Ramana Dayaram Shetty Vs. International Airport Authority of India and others**[1], the Supreme Court had held that an Executive Authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain invalidation of an act in violation of them.

This principle was also reiterated in **Poonam Verma and others Vs. Delhi Development Authority**[2].

Though counsel for respondent No.4 sought to file an affidavit giving fresh reasons to sustain the order dt.17.07.2018, we are not inclined to grant such permission for the reason that the said order must be judged by the reasons mentioned in it, and those reasons cannot be supplemented by other reasons through an affidavit or otherwise as held in **Mohinder Singh Gill and another** Vs. **The Chief Election Commissioner, New Delhi and another**[3] and **Commissioner of Police, Bombay** Vs. **Gordhandas Bhanji**[4]**.**

The principle of *promissory estoppel* is also attracted in the instant case since on the assumption of receiving subsidy on fulfillment of

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[1] 1979(3) SCC 489
[2] 2007 (13) SCC 154
[3] AIR 1978 SC 851
[4] AIR 1952 SC 16

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norms prescribed in the Scheme (P1), the petitioner had approached respondent No.4-Bank, obtained a loan, completed the project and thus changed his position.

There is no basis to hold that the petitioner had either suppressed facts or has played any fraud to secure the subsidy from respondent No.3 or was erroneously interpreting the policy as per his own whims and fancies.

The Rules of equity, fairness and *promissory estoppel* require that this Court should set aside the impugned order dt.17.07.2018 on the ground of it being wholly arbitrary, unreasonable and contrary to the terms of the Scheme.

Coming to claim of petitioner for compensation for the losses suffered by him on account of the interest charged by the Bank on the proportionate term loan amount of ₹46.90 lakh which is equal to the amount of the subsidy payable by the NHB, this requires evidence and it cannot be adjudicated conveniently in this Writ Petition filed under Art.226 of the Constitution of India.

Accordingly, the Writ Petition is allowed; proceeding dt.17.07.2018 issued by respondent No.3 rejecting petitioner's claim for subsidy of ₹46.90 lakh is declared as arbitrary, illegal and violative of Articles 14 and 300A of the Constitution of India; and respondent No.3 is directed to release the same to the petitioner within *four weeks* from today with interest @ 9% per annum from the date of the petitioner making such claim i.e. 24.04.2017 till date of payment.

Petitioner is granted liberty to claim any additional compensation from the NHB in an appropriate forum.

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NHB- Respondent No.3 shall also pay costs of ₹25,000/- to the petitioner within 4 weeks.

(M.S. Ramachandra Rao)
Judge

27.05.2022 **(H.S. Madaan)**
Vivek **Judge**

1. Whether speaking/reasoned? *Yes/No*
2. Whether reportable? *Yes/No*

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