

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

CWP-12640-2017 (O&M)

Judgment reserved on : 23.09.2022

Judgment pronounced on : 12.10.2022

HARVINDER SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by: Mr. Chanchal K. Singla, Advocate
for the petitioner.

Mr. Saurav Verma, Addl. A.G. Punjab
for respondents No.1 and 2.

Mr. Naresh Gopal Sharma, Advocate for
Mr. Mehardeep Singh, Advocate
for respondents No.3 and 4.

Mr. Karan Singla, Advocate
for respondent No.5.

None for respondent No.6.

VINOD S. BHARDWAJ. J.

The instant petition raises a challenge to the order dated 18.01.2017 (Annexure P-11) whereby the respondent no.2-Director, Department of Food and Civil Supplies & Consumer Affairs, Punjab has directed payment of only 03 Mandis in Maloud Center/Cluster and has disallowed the payment of the entire Cluster Maloud which comprises of 05 Mandis. The petitioner claims that he was allotted work of the entire

Cluster consists of the 05 Mandis and that the payment has been wrongly withheld in violation of the allotment order dated 29.03.2016 (Annexure P-4).

2. Briefly summarized, the facts of the case that the respondent No.2- Director, Department of Food and Civil Supplies & Consumer Affairs, Punjab floated a tender notice for allowing the labour and cartage work. The petitioner submitted his tender at 64% above the basic rate, however, after negotiations the rate was reduced to initially 42% and thereafter finally accepted the bid at the rate of 35% above the Scheduled rate for the 03 agencies i.e. Punjab Agro, Markfed and Punsup.

3. Accordingly, Labour and Cartage work for the Maloud Cluster comprising of 05 Mandis i.e. Maloud, Sihan, Daud, Sihar and Ramgarh Sardaran for the three aforesaid agencies was allotted to the petitioner whereas the tender was not allotted qua the FCI. He claims that despite the work having been allotted to him, the Truck Union, Maloud, i.e. respondent No.6 claimed to have been allotted tender @ 57% more than the basic price and the aforesaid fact came to the notice of the petitioner after 04 months. He claims that the aforesaid act of the respondents was malafide and arbitrary. Thus, a mail was sent by the petitioner to the respondents No.3 to 5 seeking redressal of his grievance on 12.08.2016. Since there was no response to the same, the petitioner approached this Court by filing CWP-20139 of 2016 titled 'Harvinder Singh versus State of Punjab and others' wherein a direction was issued to the respondent No.2, therein, to take a decision on the said e-mail by passing a speaking order in accordance with law within period of one

month, vide order dated 27.09.2016 (Annexure P-8). It is claimed by the petitioner that after the Court's interference, the respondents allowed the petitioner to work in the Maloud Cluster and the entire work was completed by the petitioner to the complete satisfaction of the respondents. However, payment was released to the petitioner only with respect to the 03 Mandis i.e. Sihora, Ramgarh Sardaran and Sihar. No payment was ordered for Maloud and Daud even though the work in question had been performed by the petitioner. He contends that the respondent No.2-Director, Department of Food and Civil Supplies & Consumer Affairs, Punjab has passed the impugned order in compliance to the directions given by this Court. The said order suffers from inherent contradictions and illegalities on the part of the respondents and is liable to be set aside.

4. Short Reply to the writ petition was filed by way of affidavit of Surinder Kumar Beri, Department of Food and Civil Supplies & Consumer Affairs, Punjab on behalf of respondents No.1 & 2 wherein following standard was adopted:-

"6. The petitioner was allotted the work at the rate 35% ASOR for the three agencies Markfed, Punsup & Punjab Agro, being L-1 after making negotiations with the tender allotment committee for Maloud mandi for the year 2016-17. According to the provision of labour & Cartage policy for the year 2016-17, the petitioner was to deposit the amount of security within the specified period of 3 (three) days as per Clause-20 of the Labour & Cartage policy which reads as under:

"20. Successful tender holder will have to deposit the security amount within three days

on the name of head of the concerned procurement agency, failing which the Tender Committee shall have right to allot work to the next tenderer to execute the work on the rates mentioned by the previous tenderer after making negotiations.

7. *That as the petitioner did not turn up to deposit the security amount as per clause 20 and to get executed the agreement for the work which was been allotted to him, thus L-2 was asked to do the work of labour & Cartage at the rate which was approved to L-I. But L-II refused to carry out the work.*

The rabi season started in the month of April 2016, in the second week of April, the arrival of wheat had started. In the Rabi Season, the procurement of wheat was to be done by FCI agency only in the said mandis. As submitted no tender had been finalised for Labour & Cartage work for FCI agency and petitioner being L-1 did not turn up to submit the security amount and execute any agreement for the work allotted of other agencies to him by tender process because the tender was for year 2016-17 (includes both seasons) as per policy guidelines. Therefore bid was offered with the work of labour and Cartage of other agencies but he refused to do the work at the rate of L-1. In such situation and in the light of glut been created there due to arrival of huge quantity of foodgrains in the Mandi, the then authorities are empowered to re-call tenders for all agencies as per the policy. So a tender notice dated 18.4.2016 was published in the newspaper "Jagbani" for the information of public at large. After going through the bids received in this regard, the work was allotted to Truck Operator Union, Maloud, being L-1, at the rate of 57% ASOR for all the four procurement agencies i.e. MARKFED, PUNSUP & PUNJAB AGRO alongwith FCI by

the Tender Allotment Committee after following due process of law as per policy guidelines. Further, the petitioner reported back after a gap of four months when the season was almost completed. A Show Cause Notice dated 20.10.16 was issued to the petitioner asking for clarification pursuant to the above facts. The reply of the petitioner was found unsatisfactory and he was blacklisted vide order memo No. A-1/8321 dated 25.11.2016 by the Committee through its Convenor for a period of one year.

8. *That aggrieved by the allotment of labour and Cartage tender to the Truck Operator Union Maloudh on 18-04-2016 for Markfed, Punjab Agro and Punsup, the Petitioner filed CWP 20139 of 2016, which culminated into an order dated 27-09-2016 with a direction to the respondent to consider and decide the communication dated 12-08-2016 (Annexure P7). As per the direction passed by the Hon'ble High Court of Punjab & Haryana, in Civil Writ Petition No.20139 of 2016, the petitioner was given another opportunity of being heard by providing personal hearing along with the other private respondents on 03.01.2017. However, the petitioner could not submit reasonable cause for non submission of security amount to execute agreement within specified period, to substantiate his claim. During the course of hearing, it was brought to the notice of Respondent no. 2 by both the parties and District Contoller Ludhiana East that during the Kharif Season 2016-17, the work in three mandies namely Sihora (Markfed & Punjab Agro), Ramgarh Sardaran (Punsup) and Sihar(Markfed and Punsup) in the cluster Maloudh, was done by the petitioner. The submissions made by all the concerned parties were taken on record on the factual position of the case and a speaking order dated 19.01.2017 was passed by the Director, Food Civil Supplies & Consumer Affairs, Punjab. The operative part of the order dated 19.01.2017 reads as under:*

11. After hearing the parties and going through all the record available thoroughly, I hereby revoke the order of the Tender Allotment Committee, Ludhiana dated 25.11.2016 vide which the petitioner was blacklisted for a year as before re-calling the tenders on 18.04.2016, no notice was issued to the petitioner nor was he granted any opportunity of being heard. I also deem it necessary to specify that the payment for actual work, admittedly done by the petitioner, Harvinder Singh during the Kharif season 2016 17 in 3 mandis namely Sihorha (Markfed & Punjab Agro), Ramgarh Sardaran (Punsup) and Sihar (Markfed and Punsup), be made to him on the rates already negotiated with him as per Tender Allotment Committee proceedings dated 29.03.2016. While making these payments, it should be also ensured that no double payment is made for the work."

9. That now in the present writ petition the petitioner has sought direction of this Hon'ble Court to quash the order dated 19.01.2017 (Annexure P-11) passed by the Respondent No.2 whereby it has been directed that the payment of 3 mandis in the Malaud Centre/Cluster be made to the petitioner. The aforesaid order dated 19.01.2017 was passed in compliance of the direction issued by the Hon'ble High Court of Punjab & Haryana at Chandigarh on 27.09.2016 in CWP No. 20139 of 2016 titled as Harvinder Singh Vs state of Punjab & Others to resolve the issue after affording an opportunity of hearing on 03.01.2017 and which was passed reaching to the decision amicably in mutual agreement between the petitioner and private party to the petition. The factual position is appended here in the following table:

**FACTUAL POSITION OF WORK
DONE IN THE MANDIS UNDER
THE MALAUD CLUSTER**

NAME OF THE TENDERER ALLOTTED WORK FOR THE MANDI YEAR 2016-17	NAME OF THE AGENCY	WORK EXECUTED BY TENDERER	PAYMENT MADE TO & AT THE RATE.
Harvinder Singh/Sihora	Markfed & Punjab Agro	Harvinder Singh	Harvinder Singh/35% ASOR
Harvinder Singh/Ramgarh SARDARAN	Punsup	Harvinder Singh	Harvinder Singh/35 % ASOR
Harvinder Singh/Sihar	Markfed & Punsup	Harvinder Singh	Harvinder Singh/35 % ASOR
The Truck Operator Union Maloud/Maloud	Markfed, Punsup, Punjab Agro, Pungrain, PS WC.	The Truck Operator Union Maloud	TRUCK UNION/35 % ASOR (Pungrain, PSWC and Pb. Agro have already made the payments)
The Truck Operator Union Maloud/Sihan Daud	Pungrain, Punsup	The Truck Operator Union Maloud	TRUCK UNION/35% ASOR (Pungrain has already made the payments)

5. A separate statement was filed on behalf of respondent No.3, respondent No.4 as well as respondent No.5. A similar reply was adopted by the said respondents as well. It is significant to contend that the reply on behalf of respondents No.1 & 2 was filed on 05.12.2017, however, no rejoinder was filed controverting the stand adopted by the respondent-State of Punjab.

6. Learned counsel appearing on behalf of the petitioner reiterated the said facts and he claimed that since the work for the Maloud Cluster had been executed by him, he is entitled to the

disbursement of the entire payment for the tender as per the work allotment order and that any denial thereof is clearly in violation of the terms and conditions of the tender allotment.

7. Per contra, learned counsel appearing on behalf of the respondents have submitted that the petitioner has concealed essential facts from this Court and has deliberately chosen not to disclose that he did not deposit the security amount within a period of 03 days from the date of finalization of the tender as per the mandatory clause 20 of the Labour and Cartage Policy. In order to remove the said glut, the tender allotted in favour of the petitioner on 29.03.2016 was recalled and another tender notice dated 18.04.2016 was published. The work was, thereafter, allotted to the Truck Operator Union, Maloud being the lowest bidder @ 57% above the Schedule Rate for all the 04 procurement agencies instead of 03. However, upon negotiations, the said truck operator union agreed to execute the work at 35% of the above Scheduled Rate. The petitioner reported to the office of the District Food and Civil Supplies Controller, Ludhiana for the first time only on 12.08.2016 after a lapse of more than 04 months from the date of finalization of tender dated 29.03.2016 when the Rabbi season had already ended and requested for being allowed work of Labour and Cartage.

8. The petitioner had also filed CWP-20139 of 2016 in which order dated 27.09.2016 was passed calling upon the Department to decide the communication. It is also contended that the Tender Allotment Committee had already initiated the proceedings for blacklisting the petitioner and an order in this regard was also passed on

25.11.2016. However, at the stage of consideration of the communication dated 12.08.2016, it was brought to the notice of the Director, Department of Food and Civil Supplies & Consumer Affairs, Punjab that the work of 03 Mandis in the Cluster Maloud was done by the petitioner pursuant to a settlement *inter se* amongst the respondent No.6,-Maloud Truck Operator Union and the petitioner. Resultantly, taking into consideration the factual matrix and adopting a practical approach towards resolution to the dispute, the apportionment of the compensation was done in terms of the settlement else, the tender in favour of the petitioner had already been recalled and another tender notice had been published on 18.04.2016. It is also submitted that the Labour and Cartage Agreement was executed with the petitioner on 29.03.2016 and that the petitioner did not fulfill the pre-requisites of the Labour & Cartage policy. He also submits that in any event, as there is a disputed question of fact, the same has to be redressed in terms of arbitration clause contained in the Agreement executed with the petitioner. The relevant clause reads thus:

All the disputes and differences arising out of or in any manner touching or concerning this agreement whatsoever (except as to any matter the decision of which is expressly provided for in the contract) shall be referred to the sole arbitration of the Managing Director, PAFC, Chandigarh or any person appointed by him in this behalf. There will be No objection to any such appointment that the person appointed is or was an employee of PAFC or that he had to deal with the matter to which the contract relates and that in the course of his duties such employee of the PAFC had expressed views on all or any of the matter in dispute or difference. The award of such arbitration shall be final and

binding on the parties to this contract. It is a term of this contract that in the event of the arbitrator being transferred or vacating his office or being unable to act for any reason, the Managing Director at the time of such transfer, vacation of office, death or inability shall appoint another person to act as arbitrator. Such a person shall be entitled to proceed with reference from and the stage where it was left by his predecessor.

Provided further that any demand for arbitration in respect of any claim(s) of the Contractor, under the contract shall be in writing and made within one year of the date of completion or expiry of the period of contract. If the demand is not made within the period, the claim(s) of the Contractor shall be deemed to have been waived off and released of all liabilities under the contract in respect of these claims.

9. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the instant petition with their able assistance.

10. It is worthwhile to note that even though the reply on behalf of the Government had been filed in the year 2017 and the petition has been finally argued in September, 2022, however, no replication was filed by the petitioner controverting the stand of the respondent. Resultantly, there can be no basis for this Court to assume that the factual aspect narrated and relied upon by the respondent-State is inaccurate or a distortion of the facts.

11. Accordingly, this Court is drawn to safely assume at this stage that the tender allotted to the petitioner had been recalled and a new tender had been floated on 18.04.2016 which stood allotted to Maloud Truck Operator Union, Maloud being the lowest bidder and

there was some settlement amongst the petitioner and the respondent No.6- Truck Operators Union, Maloud where upon the respondent No.2-Director, Department of Food and Civil Supplies & Consumer Affairs, Punjab had taken a practical view to sort out inter se dispute amongst the parties and had directed release of payment with respect to the 03 Mandis in favour of the petitioner qua the work executed by him while the payment for the other two Mandis had been released in favour of respondent No.6-Truck Operators Union, Maloud. The aforesaid factual aspect is being disputed by the petitioner at this stage without rebutting the same through appropriate response despite the reply having been filed for more than 05 years before the petition was heard finally, any such contention raised at the time of argument is at best the disputed question of fact and cannot be finally commented upon. Since the entire claim of the petitioner is based upon its agreement dated 29.03.2016 which claimed to be in force, the arbitration clause as contained in clause No.09 of the said agreement would be applicable.

12. Accordingly, taking into consideration that disputed questions of fact are involved and there is an efficacious, alternative remedy stipulated in the said agreement, I do not feel that sufficient grounds exist for exercising writ jurisdiction of this Court.

13. Accordingly, the present petition stands dismissed for the above reason. Liberty is, however, granted to the petitioner to take recourse to the alternative remedy available to him as per the agreement. Nothing stated herein above should, however, be construed as an expression of final opinion on the merits of the case and that the facts have been noticed to highlight the controversy as well as the stand

adopted by the respective parties and to adjudicate the present writ petition.

OCTOBER 12, 2022
Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

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