

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

108+247

**CM-11955-CWP-2022 in/and
CWP-26766-2021 (O&M)
Date of Decision: 16.08.2022**

GURVINDER SINGH

... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

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

Present: Mr. Karan Bhardwaj, Advocate
for the petitioner.

Ms. Sudeepti Sharma, Addl. A.G., Punjab.

Mr. Akshay Bhan, Sr. Advocate with
Mr. Arjun Pratap Atma Ram Advocate and
Mr. Sushant Kareer, Advocate
for respondents No.9 to 11.

Mr. Arjun Pratap Atma Ram, Advocate
for respondent No.8.

Mr. P.S. Bawa, Advocate
for respondents No.12 to 17.

VINOD S. BHARDWAJ, J. (ORAL)

CM-11955-CWP-2022:

This is an application under Section 151 of the CPC, 1908 for placing on record reply and the accompanying annexures P-11 to P-29.

For the reasons mentioned in the application, the same is allowed subject to all just exceptions.

The reply to CM-11459-CWP-2020 filed by respondents No.9 to 11 under Order 1 Rule 10(2) of the CPC read with Section 151 of the CPC

alongwith the accompanying annexures P-11 to P-29 are taken on record. The Registry is directed to tag the same at appropriate place and page mark the same.

MAIN CASE

The instant petition has been filed under Articles 226/227 of the Constitution of the India for issuance of a writ in the nature of mandamus directing the respondents especially the respondents No.4 to 7 to take appropriate action on the complaint No.6 of 2020 dated 04.10.2019 (Annexure P-3) forwarded by State Vigilance Bureau, Punjab and further forwarded by respondent No.6 to respondent No.7 highlighting the rampant overloading of the vehicles by tampering with the dimensions of the vehicles, thus, endangering the life of the people on road.

Learned counsel for the petitioner contends that the petitioner is a small transporter and lost his livelihood to an illegal practice of overloading of vehicles. It is stated that the respondent No.8 HMEL runs a Refinery at Bathinda and in order to cater the pressing requirement of various materials like Bed Ash, Fly Ash, Sulfur, Pet Coke (Coal) etc., the services of private respondents/transporters are availed. He alleged that the transport contractors have indulged in a practice of tampering with the dimensions of the vehicles viz. length, breadth and height which is in conflict of the dimensions approved under the Central Motor Vehicles Act, 1988 as well as rules framed thereunder and that the said vehicles are also rampantly overloaded. He contends that despite the complaint having been submitted to the authorities, no action has been taken thereupon till date. Thus, the petitioner has been compelled to approach this Court by means of filing of instant petition.

Consequent upon the notice having been issued, the responses from the contesting parties/respondents have been filed. Respondent No.8 HMEL has

stated that the writ petition is not maintainable against them considering the fact that the trucks in questions are not owned by the company or by the petitioner himself. He further contends that the tax invoices also do not relate to the answering respondents and that in the event of any prejudice being caused, it would be open to the petitioner to take recourse to the alternative and efficacious remedies with the concerned statutory authorities under the Central Motor Vehicles Act, 1988 and the rules framed thereunder including before the Motor Vehicle Inspector/Regional Transport Authority, who are obligated to stop the overloading of the vehicles plying on road and also to seize/confiscate the vehicle that have been modified in violation of the mandate of law. A specific stand has also been taken by the officials of the company for having been impleaded wrongly as party in the present petition as no relief has been claimed against them. The contract had been signed by the company and the end user of the raw material/waste. There is no privity insofar as the answering respondent or the company i.e HMEL and the transport contractors are concerned. Such a contract exists *inter se* between the private entities and the writ petition against the private individual would not be maintainable. He further contends that there is a non-disclosure of essential aspects as the allegations set out in the present petition were earlier agitated before the State and that an inquiry into the same was conducted by the Superintendent of Police, Bathinda and a report in that regard was also furnished to the Senior Superintendent of Police, Bathinda. The same has been attached alongwith the present writ petition as Annexure P-8/1, as per which the Inquiry Officer had sought report from the R.T.O. and the vehicles in questions were found in fit condition. It was also noticed that in case any tampering/modification of the vehicles has been done by the transporters, the same is required to be checked by the Motor Vehicle Inspector and the same is

within the purview of Transport Department. Further insofar as the overloading of the vehicles and the allegations and evasion of tax is concerned, the same is also not within the domain of Investigating Agency and that appropriate action in this regard has to be taken by the Transport Department/Taxation Department.

A short reply by way of an affidavit of Sandeep Singh, PPS, Deputy Superintendent of Police, Vigilance Bureau, Range Bathinda, Punjab has also been filed on behalf of respondent No.2. The relevant extract of the same is reproduced herein below:

“1 to 3 XXX XXX XXX

4. That on the basis of this complaint and to verify the veracity of these allegations, record of above said twenty vehicles was summoned from the Secretary Regional Transport Authority Hoshiarpur. These vehicles have been registered in the name of M/S West Coast Logistics JK Complex Village and Post Office Chohal District Hoshiarpur. The fitness/ passing certificates of these vehicles were issued by the Motor Vehicle Inspector, after inspection of the vehicles mentioned in the complaint. The other vehicles mentioned in the complaint are not related to Punjab State. The above said twenty vehicles were issued fitness/ passing certificate in the year 2017-2018 as per record. Besides this Mohinderpal Motor Vehicle Inspector office of Regional Transport Authority Bathinda revealed in his statement that at the time of passing of these Motor Vehicles, the Motor Vehicle Inspector did not get the process of passing the vehicles video graphed and as such the allegation made by the complainant can-not be established. There is nothing to verify the allegation that at the time of passing of vehicles these were under over or normal sized. Statement of Dealing Hand Beant Singh Junior Assistant of Regional Transport Authority Hoshiarpur was also recorded. He produced the record of passing of these vehicles.

5. *That the inquiry officer concluded by suggesting that in the absence of video-recording of inspection and passing of the motor-vehicles, the allegation made by the complainant could not be established. Therefore a recommendation was made to the Transport Department to get the process of passing of vehicles video recorded, so that the whole process becomes transparent.*

6. *That the English Translation of above said enquiry report, which was submitted through the Senior Superintendent of Police Vigilance Bureau. Bathinda to the Chief Director, Vigilance Bureau, Punjab vide his No. VB/AC-3 Dated 06.07.2022, is enclosed herewith as ANNEXURE R-1/T for the ready reference of Hon'ble High Court*

7. *That it is pertinent to mention here that the Chief Director Vigilance Bureau, Punjab, has also forwarded a copy of the complaint, bearing No. 6/2020, submitted by complainant/ petitioner Gurvinder Singh to the Principal Secretary, Punjab Government, Department of Transport, vide its No.23238 /VB/ S-11 dated 13.07.2020 for taking necessary action on it at their own level.*

8. *That another identical complaint submitted by one Gunit Singh son of Balwant Singh resident of village Ram Sra Ramon, District Bathinda was also forwarded by the Chief Director Vigilance Bureau, Punjab, to the Principal Secretary, Punjab Government, Department of Transport, vide its No.5493/ VB/S-11 dated 06.02.2020, requesting him to take necessary action in the matter.”*

I have heard the learned counsel for the respective parties and have also gone through the material available on record.

Without commenting anything on the merits of the present petition and without recording a finding of fact as regards the allegations levelled in the present petition, the present petition is disposed of with the consent of the

parties, by issuing directions to the respective authorities to take appropriate steps of conducting a physical verification of the vehicles concerned and that in the event of the vehicles deployed by the transport contractors are found in violation of the provisions of Central Motor Vehicles Act, 1988 and the rules framed thereunder, appropriate action shall be taken in accordance with law. Further, such necessary steps have already been set in motion by the State of Punjab to conduct the verification of the vehicles. The exercise of physical verification of the vehicles (the registration numbers whereof have been furnished in Annexure P-10) has been undertaken by the State and that it shall be completed by the respondent-State within a period of five months from today.

Needless to mention that in the event of any of the vehicles is found to be non-compliant of the statutory provisions, appropriate action shall be taken by the competent authority in accordance with law.

So far as the other grievances amongst the parties pertaining to the allegations leveled against each other are concerned, the same is a private dispute amongst the parties and they are at liberty to espouse the same in accordance with law before the competent forum.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

16.08.2022
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*