

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 26726 of 2021 (O&M)

Date of decision:- 30.03.2022

R.S.Labour and Transport Contractor

.....Petitioner

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE.**

Present:- Mr. Alok Mittal, Advocate, for the petitioner.

Mr. Deepak Balyan, Addl. Advocate General, Haryana
for respondents No.1 to 6.

Mr. Anurag Chopra, Advocate and
Mr. Keshavam Chaudhari, Advocate, for respondent No. 7.

* * * *

RAVI SHANKER JHA, CHIEF JUSTICE (oral)

This petition has been filed by the petitioner being aggrieved by orders dated 10.12.2021 (Annexure P-16) and 20.12.2021 (Annexure P-18) passed by the Deputy Commissioner cum Chairman, District Tender Committee, Panipat, black-listing the petitioner-firm for a period of three years from participating in any tender proceedings.

A brief narration of facts that have led the petitioner to the current stage shall be expedient:- The petitioner firm was awarded a contract on 21.04.2020 for labour and cartage operations of food grains for the years 2020-21 in respect of State procuring agencies by the department of Food Civil Supplies and Consumer Affairs, Haryana. A complaint was filed by respondent No.7 that petitioner had obtained the tender by submitting a false EPF Code. Whereupon, the respondent-authority on due consideration of

the said complaint and examining the necessary documents concluded that petitioner had obtained tender on production of forged documents and had concealed fact as regards EPF Code from the Department. Accordingly, vide order dated 10.12.2021 (Annexure P-16), the petitioner firm was black-listed for a period of three years. Aggrieved by the said order (ibid), the petitioner filed a Civil Writ Petition No. 25319 of 2021 alleging that the respondent-authority had passed the impugned order without even affording any opportunity of hearing. The said writ petition was disposed of vide order dated 14.12.2021 (Annexure P-17) in view of the statement of the learned Additional Advocate General, Haryana that in case the petitioner makes any representation to the authorities qua its concerns and grievances, the same would be considered and decided within three days. In the meanwhile, the petitioner was permitted to submit its bid in response to the fresh tender notice issued by the authority, which was to be opened on 15.12.2021, with a further observation that tender proceedings would not be finalized till the petitioner's representation was decided. Hence the representation submitted by the petitioner was considered and rejected by the concerned authority vide order dated 20.12.2021 (P-18) and the black listing of the petitioner for a period of three years was affirmed. Thus, this petition.

Learned counsel for the petitioner submits that the impugned order passed by the respondent-Deputy Commissioner-cum-Chairman, District Tender Committee is erroneous as the authority concerned apparently overlooked that a similar complaint was filed by respondent No.7 against the petitioner as regards another tender issued by the Food Corporation of India (FCI) in July, 2020. And the matter was eventually examined by Delhi High Court in Writ Petition (C) No. 9371 of 2020 (*M/s*

Shiva Transport Company through its partner vs. Food Corporation of

India and another), wherein it was held that the petitioner had not suppressed any material facts while submitting his tender and appended therewith the same document on the basis of which it has been black-listed in the present case. Thus, it is submitted that the impugned order deserves to be set aside.

Learned counsel for the petitioner submits that the petitioner is a partnership firm which came into existence on 06.07.2009. It is submitted that at that point of time, the petitioner was registered with EPF authorities but as a proprietorship concern. He submits that the petitioner thereafter applied for registration with the EPF authorities as a partnership firm and a fresh EPF code was awarded to the petitioner firm on 17.03.2015 (P-22).

It is urged that although the said document clearly mentions the PAN No. AALFR5986R, which is of a partnership firm and is also connected with EPF Code GNRTK0022215000 which is allotted to the petitioner's partnership firm, however, in the said document, in column No. 6 of the said documents, that indicates ownership type, the petitioner was wrongly mentioned as '**proprietary firm**'. It is submitted that on the strength of this document, the petitioner applied and obtained certain contracts not only from the respondent-authority but also from other organizations as a '**partnership firm**' which were duly awarded and executed by the petitioner. Further, the petitioner deposited all the EPF dues as a '**partnership firm**' in respect of the work done during this period.

Learned counsel for the petitioner while referring to the order passed by Delhi High Court heavily relied upon the report submitted by a committee constituted by the Food Corporation of India. The petitioner maintains that Food Corporation of India constituted a committee comprising of four Assistant General Managers, who examined the

complaint of respondent No.7 and thereafter submitted a report in September-2020. Wherein, it was observed that although the document, on the basis of which the petitioner had participated in the tender proceedings, indicated its status as '**proprietorship firm**', but the petitioner submitted the said tender as '**partnership firm**'. However, it was held that status of the petitioner reflected on the web portal of EPF organization as '**proprietorship firm**' was a mistake, as the petitioner had in fact applied for registration as a '**partnership firm**' and not as a '**proprietorship firm**'. Therefore, there was no illegality committed by the respondent-authority in permitting the petitioner to participate in the tender proceedings or in awarding the contract. Further, the said report (ibid) was taken into account by Delhi High Court and approved in its order dated 13.07.2021 (Annexure P-6). It is submitted that on the complaint of respondent No.7, the State of Haryana had black-listed the petitioner on 22.09.2020, against which the petitioner had filed an appeal before the Director, Food and Civil Supplies, who vide order dated 05.10.2020 set aside the order of black listing. The said order was also placed before Delhi High Court and after considering the same, the claim of respondent No.7 that petitioner was disqualified on account of black listing by the respondent-authority was rejected. It is urged that despite that being the position, the respondent-authority has now again passed the impugned order dated 20.12.2021 (Annexure P-18) black listing the petitioner for a period of three years.

Per contra, learned Additional Advocate General appearing for the respondent-State of Haryana submits that in the instant case the respondent-authority had received a complaint dated 05.02.2021 (Annexure P-13) against the petitioner from respondent No.7 that it had obtained a contract as a '**partnership firm**' but the documents it had submitted in

support of its claim were of a “***proprietorship firm***”. It is urged that the matter was thoroughly examined and having found the allegations to be true, the order of black-listing/debarring the petitioner firm for a period of three years was passed. He submits that the matter was again re-examined in view of the statement made by the respondent-State before this Court in Civil Writ Petition No. 25319 of 2021 filed by the petitioner. It is submitted that the authorities had granted several opportunities to the petitioner to appear before it on 08.10.2021 and thereafter on 09.10.2021, however, the petitioner requested for being granted 10 working days to submit its reply. Whereafter, the matter was taken up on 29.10.2021, but the petitioner did not appear. And eventually the petitioner appeared before the respondent-authority on 01.11.2021 and was granted personal hearing and opportunity to submit a reply. Whereafter, the first order of black listing was passed by the authority on 10.12.2021 (Annexure P-16).

Learned Additional Advocate General, Haryana further submits that it is an undisputed fact that the petitioner is a partnership firm. However, a bare perusal of the document filed by the petitioner (P-22) at page 118 indicates that though the petitioner was and continued to be a partnership firm since 2009, but the document issued by EPF organization shows the ownership status of the petitioner as a “***proprietorship firm***”. He points out that the tender notice was issued in the instant case on 09.04.2020. The petitioner applied for award of contract as a “***partnership firm***”, but the documents issued by the EPF organization, that were appended in support of its claim showed it as a “***proprietorship firm***”. He submits that in such circumstances, the authority concerned black listed the petitioner for a period of three years. And concededly the change in the EPF ownership status of the petitioner was brought to the notice of the EPF authorities for

the first time on 05.10.2020. Thus from 15.04.2020 and 24.04.2020, (the cut off dates to apply for tender), the status of the petitioner remained unchanged and was reflected as a '**proprietorship firm**' in the EPF documents. The respondents in their written statement have relied upon Annexure R-9, a document issued by EPF organization, which establishes that prior to 05.10.2020, the status of the petitioner was recorded as a '**proprietorship firm**'.

The contentions raised by the learned Additional Advocate General, Haryana have been reiterated even by learned counsel appearing for respondent No.7 that conduct of the petitioner deserved an order of black-listing for misleading and misrepresenting the authorities and obtaining several contracts in the process.

We have heard learned counsel for the parties at length.

From a perusal of the aforesaid documents filed by the parties, it is not disputed by the petitioner firm that till 05.10.2020, its ownership status in the EPF organization was of a '**proprietorship firm**' and not a '**partnership firm**'. Further, in response to a clarification sought by the Food and Civil Supply Department, Haryana, even the EPF organization vide communication dated 15.11.2021 (Annexure R-9) clarified that prior to 05.10.2020, the petitioner firm was registered as a '**proprietorship firm**'. Meaning thereby even though a proprietorship firm was converted into a '**partnership firm**', pursuant to a partnership-deed dated 06.07.2009, yet in the record of the EPF organization, it continued to be recorded as a '**proprietorship firm**'.

It is also clear from the records that when a similar issue was raised by respondent No.7 before Delhi High Court, a committee constituted by the Food Corporation of India examined the matter and stated that on the

date of the award of contract (14.10.2020) to the petitioner in respect of the tender proceedings before Delhi High Court, the status of the petitioner had since changed to that of a '**partnership firm**'. From a perusal of the report of the said Committee (P-4, page 39), it is evident that though the Committee took into consideration that originally the petitioner was registered as a '**proprietorship firm**' with the EPF authorities and continued as such till 05.10.2020 but on the date of the award of contract (14.10.2020) to the petitioner, its status had changed to a partnership firm in the EPF record. However, whether the ownership status of the petitioner prior to 05.11.2020, recorded in the EPF record as a proprietorship concern would have any kind of adverse impact on the petitioner's conduct, no finding was recorded in this regard. Except an observation that as the status of the petitioner's firm had changed and thus, there was no merit in the complaint.

On the contrary, from a perusal of the impugned order dated 20.12.2021 (Annexure P-18), it is evident that having taken into account every possible aspect, a finding was recorded by the respondent-authority that petitioner had applied for allotment of tender, in the present case, on 15.04.2020 and 21.04.2020 and on the said dates the petitioner was registered as a '**proprietorship firm**' with the EPF organization and with the EPF authorities, its status was changed to a '**partnership firm**' only on 05.10.2020. Thus, the petitioner had applied for award of contract being a '**partnership firm**' but on the strength of the documents that pertained to a '**proprietorship concern**'.

Significantly, this position is not disputed by the petitioner even before this Court. In fact, it is fairly conceded that though the petitioner had applied before the EPF authorities for being registered as a partnership firm, post execution of the partnership deed on 17.03.2015 but the petitioner

firm continued to be registered as a proprietorship concern till its status was changed, on the request of the petitioner, on 05.10.2020. The fact, which is also substantiated from the document (R-9); the information furnished by the EPF authorities on 15.11.2021.

Learned counsel for the petitioner, however, submits that this was a mistake on the part of the EPF authorities and was not a deliberate act on the part of the petitioner which is established by the fact that PAN number mentioned and stated by the EPF authorities on the document issued by it on 17.03.2015 is the PAN number of the partnership firm and not the proprietorship firm. It is submitted that this itself makes it clear that though the petitioner applied for registration with the EPF authorities as a partnership firm but the EPF authorities wrongly showed the status of the petitioner firm as a '**proprietorship firm**'. Therefore, the petitioner cannot be made to suffer owing to the mistake committed by the EPF authorities. Further, this aspect having escaped the attention of the EPF authorities renders the impugned order bad in the eyes of law.

Be that as it may, the fact remains that admittedly the petitioner firm itself was always conscious of the fact that even though, as alleged, it had applied for registration as a partnership firm with the EPF authorities but the authorities had registered it as a proprietorship firm in the year 2015. Further, the petitioner did not make any effort to get the said status changed till 05.10.2020 either. Not just that, during this entire period and despite this discrepancy, the petitioner continued to apply for award of contract as a partnership firm. But on the strength of the documents which showed the petitioner to be a proprietorship firm. And it is only after several complaints were filed by respondent No.7, the petitioner took steps to seek alteration qua its status in the records of the EPF authorities. In the given

circumstances, we are of the considered opinion that no infirmity or illegality could be found in the conclusions arrived at by the respondent-authority in the impugned order dated 20.12.2021: . ***“The firm not only suppressed the material information but also supplied the false information in order to get the tender of Ahar Mandi because if the truth was disclosed on 15.04.2020 and 21.04.2020 then might not be considered for tender. So, to avoid such type of misleading deed by this firm as well as a message to other firms that the public money will not be grabbed by giving misleading information. So, in public interest this is not acceptable.”***

However, having said that we are of the considered opinion that respondent-authority, while black-listing of the petitioner firm, has not taken into consideration that the committee constituted by the Food Corporation of India had examined a similar complaint made by respondent No.7. The nature of the complaint of respondent No.7 has been crystallized by the Delhi High Court in paragraph-14 of its order dated 13.07.2021 passed in WP (Civil) No. 9371 of 2020:-

“14. The 2 issues flagged by the Committee were as under:-

“1. The contractor M/s RS Labour and Transport Contractor does not have a valid EPF registration Number and using the EPF Registration Number granted in the name of M/s RS Labour and Transport Contractor which is a proprietorship concern.

2. M/s Shiva Transport also alleges that M/s RS Labour and Transport Contractor has been blacklisted by the District Tender Committee, Panipat due to non-submission of security deposit and submitted the office order dated 22.09.2020 passed by the District Tender Committee, Panipat.”

The Committee in that case examined several documents that have been enlisted in paragraph-15 of the order passed by Delhi High Court. And in paragraph-17 of its order the Court has stated that the Committee came to the conclusion that the EPF registration No. GNRKT0022215000 is in the name of the bidder (M/s R.S.Labour and Transport Contractor), which is a partnership firm and on that basis rejected the claim of respondent No.7.

The respondent authority has not taken into consideration the effect and impact of the aforesaid facts and the report of the Committee, annexed as Annexure P-4, which takes into account the entire history of the process of registration of the petitioner firm by the EPF authorities and concluded:-

“Sh. Raj Singh, partner of M/s RS Labour and Transport Contractor stated that due to some technical issues the status of his firm on EPF website is reflecting as proprietorship firm. For supporting his claim, Sh. Raj Singh produced screenshot of Form 5A taken from the EPF website which is showing the PAN number of his partnership firm and also matching with the PAN number submitting while applying for the tender. Sh. Raj Singh also inform the Committee that he will take up the matter with the EPF Authority for correction of technical error and submit the necessary documents.”

From a perusal of the same, it is evident that the petitioner firm had admitted that its status was reflected as a proprietorship firm and therefore, it urged before the Committee that it would take up the matter with the EPF authorities for correction of this clerical error. The Delhi High Court after accepting the report dismissed the petition filed by respondent No.7 without recording any clear and specific finding regarding the fault of the petitioner or any *mens-rea* on its part.

In view of the aforesaid facts and circumstances, we are also of the considered opinion that the fault attributed to the petitioner firm by the respondent authorities is not baseless or unfounded. Consequently, the debarment of the petitioner firm from participating in the tender is also justified.

However, what needs to be noticed is that the petitioner has throughout claimed and stated that it was a partnership firm. The PAN number shown in the documents of registration with the EPF authorities was also of a partnership firm. The petitioner during this entire period continued to pay all the EPF dues as a partnership firm and never defaulted. That being so and the fact that the authorities themselves considered and proceeded the tender form and the documents submitted by the petitioner firm prior to 05.10.2020, the question as to whether the act of the petitioner warrants black-listing and if so for a period of three years, needs to be re-examined by the authorities, particularly in the light of the past history of the dispute as adumbrated in the preceding paragraphs.

In the circumstances, while the petition filed by the petitioner firm challenging the findings recorded by the respondent-authority regarding the status of the petitioner at the relevant point of time is dismissed, however, the matter is relegated to the authorities concerned for reconsidering its decision of debarring the petitioner as well as the period of three years for which the petitioner has been debarred.

At this stage, learned Additional Advocate General, Haryana fairly submits that the aforesaid aspect would be reconsidered by the authorities and a fresh order would be passed at the earliest preferably within a period of one week upon receipt of this order.

To this, learned counsel for the petitioner submits that without prejudice to his rights, the petitioner may also be granted a right of personal hearing before the authorities before any such order is passed.

In response, learned Additional Advocate General, Haryana submits that the authority concerned will do so and thereafter take a decision and communicate the same to the petitioner.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

30.03.2022
ravinder

Whetherspeaking/reasoned	√Yes/No
Whetherreportable	√Yes/No