

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No. 11187-2023 (O&M)

Date of Decision: 26.07.2023

Khurshid Ahmed

.....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. Mohammed Arshad, Advocate, for the petitioner.

Mr. Deepak Balyan, Addl. Advocate General, Haryana.

RAVI SHANKER JHA, CHIEF JUSTICE (oral)

The petitioner has filed this petition praying for the following reliefs:-

- i) *A writ in the nature of certiorari for quashing the impugned order dated 19.05.2023 (Annexure P-10) passed by respondent No.5, whereby the contract of the petitioner for 'Pashu Peth (Cattle fair) Teh Bazari for the year 2023-24 has been cancelled which is illegal, unjust, improper, as much as depicts non application as the petitioner has already deposited Rs. 10,00,000/- vide receipt (Annexure P-4), but since there is no proper facility of water, electricity and clearance at the spot as required under Section 4 of the Haryana Cattle Fair Act, 1970, therefore from the date of taking the contract, the petitioner has been approaching the respondents especially respondent No.5 for the purpose of availing the facility of water, electricity and clearance at the spot, but no fruitful result has yielded till date, rather the order (Annexure P-10) has been passed against the petitioner illegal, contrarily and in a revengeful manner;*
- ii) *Further to issue directions to the respondents to allow the petitioner to work/run Pashu Peth Tehbazari without any raising obstruction/hurdle as the petitioner through proper channel has been taken the contract and even deposited Rs. 10,00,000/- with the respondents as part of the contract money and further to issue directions to the*

respondents to deliver/allow the Buffaloes (material) to Pashu Peth Tehbazari in the same quantity as is being supplied to other slaughter houses i.e. respondents No. 6 to 11.”

2. It is submitted by learned counsel for the petitioner that the petitioner had participated in the tender proceedings initiated by the respondent-authorities for award of contract for organizing a Pashu Peth (cattle fair) *Tehbazari* for the year 2023-24. Pursuant thereto, the petitioner's bid for Rs. 2 Crores 82 lakhs was accepted and he also deposited a sum of Rs.10 lakhs as earnest/security money with the Municipal Committee on 06.04.2023. It is further submitted that since the necessary infrastructure and open space for holding Pashu Peth (cattle fair) at the site was not provided by the authorities, therefore, the petitioner filed a representation dated 07.04.2023 (Annexure P-5) before the respondent-authorities. It is stated that instead of looking into the grievance of the petitioner, the respondent-authorities issued notices to the petitioner on 20.04.2023 (Annexure P-6) and thereafter again on 04.05.2023 (Annexure P-7) requiring the petitioner to deposit 20% of the contract amount and the bank guarantee papers within a period of seven days with the authorities. It is stated that the petitioner filed a response to the notice on 10.05.2023 (Annexure P-8) asking them not to act upon the notice but the authorities have ignored the same.

3. It is submitted that thereafter the respondent-authorities issued another notice to the petitioner on 17.05.2023 (Annexure P-9) to the effect that though the petitioner had been awarded the contract for holding the cattle fair and was required to deposit the necessary amount and the documents, pursuant thereto, but he has failed to do so inspite of granting many opportunities. It is also mentioned in the above notice that

while the contractor-petitioner has not deposited the necessary required amount and the documents, he is also collecting weekly amount from Pashu Peth (cattle fair) Tehbazari, which has also not been deposited by him with the Municipal Committee. The authorities further mentioned in the impugned notice that in case the amount relating to 20% of the contract amount as well as the bank guarantee and also the weekly amount collected by him were not deposited by the petitioner with the concerned municipality, then the contract would be cancelled by confiscating the security amount and action in accordance with law, would be taken against him.

4. It is submitted that the authorities vide the impugned order dated 19.05.2023 (Annexure P-10) by taking action as per Condition No.12 of the bid, have cancelled the contract/Tehbazari on account of non-deposit of the necessary Tehbazari. The authorities have also ordered that if any activity is undertaken by the petitioner at the designated site, action as per law, would be taken against him. Being aggrieved by the impugned order (Annexure P-10), passed by the authorities, the petitioner has filed the present petition.

5. Learned counsel for the petitioner submits that the petitioner had been awarded this contract under the Provisions of the Haryana Cattle Fairs Act, 1970. He submits that as per provisions of the Act, the respondent-authorities were required to reserve the auction site and make sufficient environmental and sanitary arrangements at the site before handing it to the petitioner. It is stated that neither the authorities reserved the site nor provided the necessary facilities i.e. electricity, water and cleaning etc. He submits that in such circumstances, as the respondents have themselves failed to provide the reserved site along

with necessary infrastructural facilities, as mentioned in Sections 4 and 5 of the Haryana Cattle Fairs Act, the action taken by them is not in accordance with law and the petitioner cannot be penalized for not depositing the 20% of the contract amount as required under the contract. He submits that in such circumstances, as the authorities failed to perform their part of the contract, the impugned order passed by the authorities be quashed being contrary to the provisions of Haryana Cattle Fairs Act, 1970.

6. We have heard learned counsel for the petitioner. On being specifically asked, as to what were the conditions of the open bid, which have been referred to by the authorities in Public Notice (Annexure-P-3) at page 38 of the petition, the learned counsel for the petitioner submits that he has not filed them as he does not possess the same. When asked, as to where is the contract entered into between the parties which has been referred to in the notices and cancelled by the impugned order in terms of the clauses mentioned therein, learned counsel for the petitioner again reiterated that he has not filed the same and that there is no contract between the parties. In such circumstances, in the absence of these necessary documents being filed by the petitioner, the contentions of learned counsel for the petitioner to the effect that the respondents failed to perform their part of the contract, have not been factually established. We are of the opinion that the petition being incomplete on this count deserves no consideration.

7. Quite apart from the above, a bare perusal of the notices (Annexures P-6 and P-7) issued by the authorities make it clear that the authorities had issued the impugned notices to the petitioner clearly mentioning therein that the action was being taken against him on

account of violations of the terms of the animal husbandry contract entered into by the petitioner with the respondents which required deposit of 20% of the amount and the bank guarantee papers within seven days which have not been complied with by the petitioner. In the notice dated 17.05.2023 (Annexure P-9), the respondent authorities have further stated that in accordance with the contract, the petitioner was required to deposit 20 percent amount, the bank guarantee and the weekly amount collected by him with the Municipal Committee but he has failed to do so.

8. From a perusal of the documents filed by the petitioner, it is evident that the public notice issued while inviting bids itself clearly stated that the rules and the conditions of the contract are available for perusal in the office of the respondent-authorities. It is further evident from a perusal of the notice dated 20.04.2023 (Annexure P-6) that according to the conditions of the contract the petitioner was required to deposit 20 percent of the contract amount along with the bank guarantee papers within seven days but the petitioner failed to do so. The above notice clearly states that in case the petitioner fails to fulfill the conditions, action in accordance with law would be taken against him.

9. Subsequent notices dated 04.05.2023 (Annexure P-7) and 17.05.2023 (Annexure P-9) are on similar facts wherein the petitioner was warned that in case he does not fulfill the conditions mentioned, his security deposit would be forfeited and the contract would be cancelled.

10. It is pertinent to note that on 19.05.2023/21.05.2023 the petitioner has in fact admitted his liability to do so and has submitted an affidavit with the respondent-authorities, a copy whereof has been attached along with the petition as Annexure P-11, wherein the petitioner

has fairly conceded that he had carefully examined the terms and conditions and the rules governing the tender in question and agreed to the same. He further stated in the affidavit that he submitted his bid which has been duly accepted and that he is willing to deposit bank guarantee of Rs. 56,40,000/- with the respondent-Municipal Committee as well as the amount of weekly collection of the cattle fair. He further stated in the affidavit that in case he defaults in depositing the weekly fair amount two times, action for cancellation of the contract can be taken by the authorities and the authorities may award the contract to some other person and to recover any dues from him.

11. Evidently, inspite of furnishing such an affidavit (Annexure P-11) and being fully aware of his duty and liability to do so, the petitioner did not deposit the necessary 20% of the contract amount nor did he furnish the bank guarantee or make any deposit of the weekly collection with the Municipal Committee.

12. Though the petitioner has stated that he has filed an application dated 10.05.2023 (Annexure P-8) requesting the respondent-authorities not to proceed further pursuant to the show cause notice dated 04.05.2023 (Annexure P-7) and on that basis he has stated that he has responded to the notices, however, this assertion on the part of the petitioner appears to be false and factually incorrect as the original copy of the said application/reply has not been filed nor does it indicate that it was ever served or received by the respondent-authorities. This becomes further clear from the fact that this application dated 10.05.2023 (Annexure P-8) filed by the petitioner himself does not find any mention in the affidavit (Annexure P-11) or in the notices issued by the respondent-authorities. The fact that this application dated 10.05.2023

(Annexure P-8) filed by the petitioner appears to be fabricated is further established by comparing it with the original of the application dated 07.04.2023 (Annexure P-5) filed by him which is in Hindi and is duly signed by him and shown to be received by the respondent-authorities on the same date.

13. It is in these circumstances, that the authorities having been left with no option have proceeded further and passed the impugned order by cancelling the contract on 19.05.2023 and also forfeiting the security amount deposited by the petitioner.

14. From an analysis of the facts, it is evident that the authorities have taken the action against the petitioner by passing the impugned order (Annexure P-10) after affording adequate and due opportunity to rectify the defaults committed by the petitioner by clearly pointing out the violations of the terms and conditions of the contract committed by him. We are also of the considered opinion that the authorities have rightly passed the order in view of the admitted default on the part of the petitioner. Accordingly, we do not find any infirmity or illegality in the impugned order passed by the respondent-authorities and therefore, the petition filed by the petitioner stands dismissed.

There shall be no order as to costs.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

26.07.2023
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No