IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

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CWP-35003-2019 (O&M).
Date of Decision: 20.09.2023.

NACHHATTAR SINGH BRAR

.. Petitioner

Versus

THE STATE OF PUNJAB AND OTHERS

... Respondents

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

Present: Mr. Karanvir Singh Khehar, Advocate, for the petitioner.

Mr. Rohit Bansal, Sr. D.A.G. Punjab, assisted by Inspector Surender Kumar, Vigilance Bureau, Mohali. .

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the letter bearing No.529 dated 12.05.2016 (Annexure P-5) sent from the office of Director, Vigilance Bureau Punjab to the office of Director, Finance Department, Punjab, for seeking audit of the record regarding vehicle registration/transfers that had been procured from the office of District Transport Officer, Faridkot in relation to case FIR No.01/2015, registered under Sections 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 read with Section 13 (1) (b) and 13 (2) of the Prevention of Corruption Act, 1988 against the then District Transport Officer, Faridkot, i.e. the petitioner herein.

Briefly summarized, the facts of the present case are that the petitioner was posted as District Transport Officer, Faridkot and that the case detailed above was registered at Police Station, Vigilance Bureau

Bathinda. The investigation of the same was conducted and a final report under Section 173 Code of Criminal Procedure, 1973, was submitted by the respondent Vigilance Bureau on 09.03.2017. A direct financial loss to the tune of Rs.7,57,03,611/- on account of fee/taxes receivable in the Government Exchequer was reported. The petitioner along with other officials, then posted in the office of District Transport Officer, Faridkot was found directly responsible for causing the loss of Rs.7.57 Crores approximately to the pubic exchequer.

The office of Accountant General (Audit) Punjab had conducted the local audit and prepared the inspection report under the heads 0041 Taxes on motor vehicles and 2041-Contingency for the year 2013-14 and 2014-15, in respect of the office of the District Transport Officer, Faridkot and no illegality, irregularity or discrepancy was found in the records of the office of District Transport Officer, officers/officials of Faridkot for the above said financial years. However, notwithstanding the same and during the course of investigation of the said case, the Deputy Superintendent of Police, Vigilance Bureau, Faridkot prayed for special audit of the record of the office of the District Transport Officer, Faridkot. The Deputy Controller (Finance and Accounts) Internal Audit, Finance Department, sought complete proposal pointing all the financial irregularities noticed, vide his letter dated 16.03.2015. It is alleged that the Director, Vigilance Bureau, Punjab thereafter submitted letter No.529 dated 12.05.2016 to the Director, Finance Department, Punjab, requesting for deputing Mr. Arun Nagpal, Assistant Controller, Finance and Accounts, Punjab, for conducting a pre-audit in the matter in connection with the investigation of the above said case.

The submissions advanced before this Court is that the above said request submitted by the Vigilance Department to the respondent authorities is in conflict with the instructions issued by the Additional Director, Internal Audit Office (Revenue), Punjab, vide Memo No.11(2)/G4/Receipt Instructions/IAO/A (R) 645 dated 28.01.2009. The request of pre-audit being in conflict with the above instructions, hence, the letter Annexure P-5 sent by the Director, Vigilance Bureau, Punjab to the respondent authorities is illegal and deserves to be quashed.

Reply by way of affidavit of Iqbal Singh Bhullar, PPS, Deputy Superintendent of Police, Vigilance Bureau, EOW, Punjab dated 19.02.2020 has been submitted before this Court wherein it has been averred that specific allegations had been leveled in the above said FIR registered at Police Station Vigilance Bureau, Bathinda, against the petitioner who was the then District Transport Officer, Faridkot along with his co-accused for embezzling huge amount and causing loss to the public exchequer. During investigation of the case, it was found that open bid of 138 Fancy numbers of PB-04-T series was conducted by the petitioner who was then posted as District Transport Officer, Faridkot on 16.01.2014. Instead of allotting the Fancy numbers to the successful bidders, who gave the highest bid and had participated in the auction, the petitioner allotted the said numbers to other persons who did not even participate in the auction process and that too on a very low price. The financial loss thus caused was ascertained at around Rs.32,62,900/- and that there was a direct breach of the guidelines/instructions issued by the Transport Department for allotting the Fancy numbers. It was further stated by the respondent Vigilance Bureau that around 19000 vehicles had been transferred by the petitioner within the State and outside the State during his tenure as the District Transport Officer, Faridkot and at the time of transfer of the registration of the above vehicles, the taxes/fee leveled by the Government as per the depreciated value of the vehicle had not been collected by the petitioner. Even the ownership of the vehicles had been transferred without obtaining NOC, Form No.28 and HPA (Hypothecation Agency), Form No.35 as per the Motor Vehicles Act which are shown even presently in the name of original owners. It was during the course of the above said investigation that a request was sent to the Deputy Superintendent of Police, Vigilance Bureau, Fardikot on 16.03.2015 from Director Controller (Finance and Account) Internal Audit Wing, Finance Department, Faridkot, that in order to enquire the financial irregularities, the complete proposal be sent. After receiving the said request, a letter was sent on 18.03.2015 to the Deputy Controller, Finance and Audit, Internal Wing giving information regarding 72 registers taken into police custody and also copy of the FIR enclosed along with the said letter. Thereupon, the Deputy Controller, Finance and Audit, Internal Wing, wrote a letter to the Additional Director, Internal Audit Wing for giving information regarding the same. A special report was hence submitted by the office of the Audit Department as per which the loss was accounted at Rs.7,57,03,611/- regarding transfer of vehicles and Rs.32,62,900/- regarding allotment of Fancy numbers. It has further been averred that the petitioner had earlier filed a similar petition bearing Crl.

Revision No.2977 of 2019 before the High Court wherein the reply was submitted by the respondent Department. The said criminal revision is still pending.

Separate reply on behalf of respondent No.2 had been filed by way of affidavit of Mohammad Tayyab, Director, Treasuries and Accounts, Department of Finance, Punjab, who has denied the tenability of the prayer made by the petitioner to the effect that the audit could not be conducted. It is further averred that the audit has been conducted after obtaining approval of the competent Authority and on receipt of request from the Vigilance Bureau. It was stated that being the controlling Authority of State Account Services (S.A.S.) Personnel, the Administrative Wing (Treasuries and Accounts) of the respondent Department assigned additional charge/duties to the Assistant Controller (Finance and Accounts) vide office letter dated 22.07.2016, with endorsement to the Section Officer who was already posted in the Vigilance Department and a direction to assist the said Assistant Controller (Finance and Account) for evaluation of the financial loss. The audit was conducted on the request of the Director, Vigilance Bureau, Punjab and the financial loss as referred to above was noticed and reported by the S.A.S. Officers to the Vigilance Bureau.

While responding to the objection of the petitioner about the special audit being conducted without the competent Authority, it is submitted that the audit was conducted on the request of the Director, Vigilance Bureau and after obtaining approval from the then Director, Treasuries and Accounts, Department of Finance, Punjab, and that there is no illegality or procedural illegality in the sanction so granted.

No replication/rejoinder to the written statement filed on behalf of the respondents has been filed by the petitioner.

Learned counsel appearing for the petitioner has vehemently argued that the instructions (Annexure P-6) dated 28.01.2009 prohibit conducting of any special audit but it can be done only after obtaining approval from the Principal Secretary, Finance. He contends that the respondents have thus committed a breach in seeking special audit/pre-audit of the accounts without following the procedure and sanctions as stipulated in the above said instructions. He further contends that the audit of the accounts for the Financial Year 2013-14 and 2014-15 had been duly conducted and no financial irregularities were noticed by the respondents. It is thus argued that the special audit stands vitiated. He further submits that the respondents even specified the names of the officers through whom they wanted the special audit to be conducted and that the same was an illegality practiced by the respondents.

Responding to the above said contentions, counsel for the respondent State has argued that the contention is misplaced inasmuch as the request of the Vigilance Bureau was duly forwarded for obtaining sanction from the competent authority. Further, there is no prohibition contained in any of the circulars as per which a request for conducting the special audit through any officer has been prohibited. Even otherwise, perusal of the reply filed by respondent No.2 specifically shows that the Assistant Controller, Finance and Audit, who conducted such special audit on the request of the Vigilance Bureau had been duly handed over the additional charge and the officer of the Audit Department posted in office of the District Transport Officer, Faridkot, had been directed to assist the Assistant Controller, in special audit of the accounts of the office of District Transport Officer, Faridkot. It is thus averred that the procedure had also been complied. The instructions (Annexure P-6) dated 28.01.2009 are not applicable with respect to the request made by the State Vigilance Bureau in the process of investigation of a criminal case registered by them.

It is further argued that the petitioner has chosen not to raise any challenge to the order whereby the permission/sanction had been granted by the competent Authority for conducting the special audit and as such, in the absence of any such challenge, the initial request for seeking conduct of special audit cannot be held to be bad.

Learned counsel for the respondent contends that the sanction had been obtained after a month of the first report and has also submitted that as per Annexure P-6 i.e. the office order dated 30.07.2010, the levels of obtaining approval for conducting special audit had been provided.

I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents appended along with the present petition.

The grievance of the petitioner hinges along the request made by the Department of Vigilance Bureau for seeking a special audit of the accounts of the office of the District Transport Officer, Faridkot and that the process for conducting such special audit has not been followed as a result whereof, the special audit report deserves to be set aside.

Reliance has been placed by the learned counsel for the petitioner to substantiate his arguments on the Instructions dated 28.01.2009 (Annexure P-6). The same reads thus:-

"Government of Punjab
Finance Department
Office of Additional Director, Internal Audit Office (Revenue) SCO No.3029-30 Sector 22-D, Chandigarh.

To

All District Deputy Controller (Finance & Accounts)
Internal Audit Office (R) Finance Department, in Punjab. State.
No.11(2)/G4/Receipt Instructions/IAO/A (R) 645 Dated: 28.1.09.

Sub: Regarding Pre-Audit/Special Audit by the District Deputy Controller at their own level.

2. This department had earlier issued instructions vide this office Endst. No. IX (38) Vol.III/IAO/(R) 92/5150-61 dated 8.7.1992 that on the request of any District authority, no special audit be conducted by any District Deputy Controller.

It has come to notice that even after the issuance of aforesaid instructions, all Deputy Controller (F&A) Internal Audit Office (R), on application of any department, start conducting special audit at their own level. This is total violation of the aforesaid instructions. This has been taken seriously by the worthy Principal Secretary Finance. Therefore, you are issued instructions that pre-audit/special audit of any department be conducted only after approval of the Principal Secretary (Finance). In case, in future if any District Deputy Controller (Finance & Accounts) is found violating these instructions, then strong disciplinary action will be taken against him.

Sd/-
Addl. Secretary Finance cum Director
Treasury & Accounts Branch,
Finance Department, Punjab, Chandigarh."

It is evident from a perusal of the aforesaid instructions dated 28.01.2009 (Annexure P-6) that the said instructions had been issued by the office of the Additional Director, Audit, to the District Deputy Controller not to entertain the request of pre-audit/special audit at their own level. The same is in continuation of the instructions issued earlier on 08.07.1992 pertaining to the request made by any District Authority. It was averred that the Deputy Controller had been conducting special audit on the request of the Administrative Departments in Districts which as such was in violation of the instructions. Hence, it was instructed that a pre-audit/special audit be conducted only after seeking approval of the Principal Secretary (Finance). The above said instructions were not issued in relation to the conduct of investigation of criminal cases either by the State Police and/or by the Vigilance Bureau where such audit is required. It is undispued that a criminal case was under investigation for the commission of various offences including for offences under the Prevention of Corruption Act, 1988 reflecting large scale financial irregularities which required special and the same duly established the charge. Further, the reply of the respondents to the effect that the matter had been put up before the competent Authority and that appropriate sanctions/approval had been obtained from the appropriate authority for conducting the special audit further demolishes the case of the petitioner. The challenge in the present writ petition is only to the request that had been moved on behalf of Vigilance Bureau for conducting the special audit and the order whereby the permission for a special audit had been granted, is not a subject matter of challenge. There is no prohibition in law for an Investigating Agency to collect evidence and/or reports from the competent Authority for proving its case. Since the case being investigated by the Vigilance Bureau, Punjab was in relation to the financial embezzlement by the office of the District Transport Officer, Faridkot while carrying out the auction of fancy numbers and/or transfer/registration of the vehicle, the financial audit of the accounts so received and the assessment of the loss caused to the State Exchequer was thus required to be ascertained.

There can be no illegality noticed in the above said request made by the Director, Vigilance Bureau, Punjab, to the respondent authorities and even otherwise, once the sanction has been granted by the competent Authority, all other allegations or averment pale into insignificance. It is further not in dispute that final report in the case has already been filed and charges already stand framed and out of total 69 witnesses cited by the Vigilance Bureau, 49 witnesses have already been examined.

Taking into consideration, the totality of the facts noticed above, the import and intent of the instructions and its impact on any request by an Investigating Agency during the course of investigation, for conduct of special audit for proving its case coupled with the stage of the trial, I feel that there is no legal impediment in forwarding such a request by the competent Authority in furtherance of criminal investigation and that such a request cannot be akin to a request made by District Authority for seeking pre-audit/special audit. The instructions (Annexure P-6) are rather confined to a limited extent i.e. the request by the District Authority. The Department of Vigilance Bureau does not act as a District Authority while conducting an investigation of a case and is rather an Investigating Agency in a criminal case. The above said circular thus does not impose any prohibition against the conduct of any special audit on the request of Investigating Agency for proving their case.

The present petition is accordingly dismissed.

September 20, 2023 **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No