

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

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**CWP-36583-2019
Date of Decision: 13.09.2023**

BUDH PARKASH AND ORS

... Petitioners

VERSUS

STATE OF PUNJAB AND ORS

... Respondents

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

Present: Mr. Ranjeet Kumar Jaswal, Advocate
for the petitioners.

Ms. Anju Sharma Kaushik, DAG, Punjab
for respondents No.1, 2, 4 and 5.

Mr. S.G.P.S. Bal, Advocate,
for respondent No.3.

VINOD S. BHARDWAJ, J. (ORAL)

Prayer in the present writ petition is for issuing directions to the respondents to release the due and admissible amount along with interest, to the petitioners-depot holders, which was deposited by them for purchase of APL wheat vide separate receipts attached as Annexure P-1 in view of the recommendations made by the respondent-Authorities on 19.08.2019 (Annexure P-7) to the District Controller, Food and Civil Supply and Consumer Affairs, Patiala, since the criminal case, on the pretext whereof the abovesaid amount was withheld, had already been decided on 18.04.2019 in their favour and the said criminal case was found to be false.

Briefly summarized, the facts giving rise to the present case are that the petitioners, who were depot holders in District Patiala, have been

running said depots for many years for distribution of essential commodities (ration items) to the BPL and APL category people at fair price. Detail of the licence numbers has been mentioned in paragraph No. 2 of the petition.

In the year 2012, the petitioners had deposited a sum of Rs.5,18,645/- in the account of respondent No 2 -PUNGRAIN for purchase of APL wheat grains for distribution in the village(s) allotted to them. Receipt(s) qua deposit were also submitted to the official of the PUNGRAIN i.e. the then inspector on 16.11.2012 under due acknowledgement. Later on, it transpired that an FIR No.284 dated 16.11.2012 was registered against one Vijay Kumar Mittal under Section 7 of the Essential Commodities Act, 1955 at Police Station City Rajpura, District Patiala and the wheat grains, for which the petitioners had already deposited the amount were seized by the police Authorities.

The said FIR had been registered on the allegation that co-accused Vijay Kumar Mittal used to sell the wheat grains, meant for publication distribution, in open market without any authorization, instead of supplying the same to the people as per the rules. Pursuant to the registration of the aforesaid case, the licences of the petitioners were also suspended vide orders dated 22.11.2012 as well as 23.11.2012. The petitioners espoused their grievances by preferring representation before the higher authorities against suspension of their depot licences pleading that they were not involved in any such criminal activities and had not been accused of having illegally sold or misappropriated the wheat and/or any other items in the open market, that were meant to be supplied to APL or BPL people and that their licences be restored. However, the needful was not done. The respondents thereafter auctioned the said APL wheat grain recovered from accused Vijay Kumar Mittal in violation of the policy of the State Government of Punjab under which such wheat could not

have been sold. The amount so recovered from the sale of wheat grains was deposited by the State Government in its Treasury vide Challan Receipt dated 17.12.2012.

The criminal trial continued against co-accused Vijay Kumar Mittal and eventually after a lapse of nearly six years, he was found innocent and was acquitted of all the charges vide judgment of acquittal dated 18.04.2019 passed by the Judicial Magistrate Ist Class, Rajpura. The relevant extract of the said judgment is reproduced as under:

“31. From the entire testimonies that have come on record, it appears that the accused Vijay Kumar has been wrongfully implicated in the present case, as not an iota of evidence has come on record against him. And to think that the accused Vijay Kumar had to face the ignominy of trial of this case for the last more than 6 years without any basis is testament to the fact that the police officials are least concerned with their duties and are happy to help unscrupulous people in their illegal endeavours. Still, I would refrain from passing any comment on the Investigating Officer of the case. I would like to take out one moment and request something from Ld. Additional Public Prosecutor. The Public Prosecutors are the officers of the court. Their job, along with that of the Courts, is to ensure that no guilty person escapes the hand of law and no innocent person is harassed unnecessarily. The Courts have to deal with a number of cases and a huge pendency of cases means that they cannot deeply look into each and every matter at every moment. The Public Prosecutors, on the other hand, can study the entire case of the police and give their honest opinion about it to the Court. The Public Prosecutors can request the Courts to go through a case to see whether a case is made out or not. It is not the job of the Public Prosecutors to blindly start prosecuting each and every case that has been admitted in the Court. An honest and diligent Public Prosecutor is an important asset of the Court and the Court cannot function to its optimum

potential without the help of all of its officers. After all, the goal is similar-to uphold and maintain the dignity of law and keep up people's faith in the justice delivery system of the country. I sincerely hope the Public Prosecutors would take my observations in a healthy manner and all of us would work to improve and better the justice delivery system of our country.

32. In view of the aforesaid discussion, I acquit the accused Vijay Kumar of all the charges framed against him. His bail bonds and surety bonds stand discharged File be consigned to the Judicial Record Room, Rajpura.”

It has also been submitted that some of the petitioners/depot holders were also examined as witnesses in the said prosecution case alongwith others, wherein they have got their statements recorded categorically to the effect that Inspector Bikramjit Singh had taken their signatures on receiving slip No.26 dated 16.11.2012 and promised the delivery after two hours as he had to attend some meeting in Patiala. It is averred that the said judgment has already attained finality. The petitioners submitted a fresh representation thereafter to the respondents-Authorities for releasing the amount deposited by them for release of wheat as neither the wheat was supplied to them nor their monies returned. The judgment of trial Court was also appended alongwith the same.

Upon consideration of the said representation, in light of the subsequent developments, the respondent No.5- Food and Supply Officer, vide letter 19.08.2019 recommended for refund of the amount deposited by the petitioners-depot holders. However, notwithstanding the same, the amount was not refunded. Resultantly, the present petition has been filed.

Reply by way of affidavit of Gurpreet Singh, District Controller, Food, Civil Supplies and Consumer Affairs, Patiala had been filed on behalf of the respondents No.1, 2, 4 and 5, wherein the aforesaid factual matrix was not

disputed. It was, however, averred that the averments of the petitioners about having handed over cash payments to the Inspector seem to be false and baseless and there is no documentary proof of cash payment purportedly made by the petitioners to the officials of the respondents, which had been deposited in the account of PUNGRAIN for the release of APL wheat grains.

A separate reply has also been filed on behalf of respondent No.3, PUNGRAIN, wherein the abovesaid factual matrix has not been disputed. The State, however, observed that claim for refund was delayed.

Learned counsel for the petitioner contends that the respondents have chosen not to respond to the counter foils/receipts issued with respect to the deposit of amount in the account of District Manager, PUNGRAIN and further, the communication sent by the officials of the respondents bearing Memo No.FSA/2019/507 dated 19.08.2019 specifically incorporates that the petitioners/depot holders are entitled to refund of their amounts. The aforesaid deposit slips as well as the communication sent by the office of the respondent- Department of Food and Supplies, Rajpura to the District Controller, Food, Civil Supplies and Consumer Affairs, Patiala has not been denied. The details of the amount received are duly mentioned in the said communication. Hence there is no occasion for the respondents to contradict or to dispute the liability towards the petitioners especially when the wheat against the aforesaid deposit has not been released in favour of the petitioners-depot holders and the sale proceeds were deposited in Government Treasury.

Counsel for the respondents could not satisfactorily respond to the same and does not dispute the veracity and legality of the said communication which was generated by the officials of the respondents themselves.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

Taking into consideration the communication sent by the respondents to the District Controller, Food, Civil Supplies and Consumer Affairs, Patiala as well as the undisputed bank receipts attached by the petitioners alongwith the present petition as Annexure P-1 (Colly.), the contention of the petitioners about having deposited the amount, as referred to in the letter dated 19.08.2019 (Annexure P-7) with the PUNGRAIN cannot be disbelieved outrightly. At the same time, the respondent-State cannot be permitted to retain the sums to which it is not entitled in law. Being a welfare State, it cannot add to the difficulties of the persons who were made to believe that decision for payment of their money shall be taken after decision of the criminal case and to thereafter plead delay.

It is, thus deemed appropriate and in the fitness of things at this stage to dispose of the present writ petition with a direction to the respondent-District Controller, Food, Civil Supplies and Consumer Affairs, Patiala to consider the claim of the petitioners alongwith the requisite documents furnished by them to establish the amount deposited by them. A reasoned and speaking order, on the said claim, shall be passed by District Controller, Food, Civil Supplies and Consumer Affairs, Patiala within a period of four months from the date of appearance of the petitioners alongwith all requisite documents and after granting an opportunity of hearing to the respective parties. In the event of the respondent-District Controller, Food, Civil Supplies and Consumer Affairs, Patiala coming to a conclusion that the aforesaid amount is payable to the petitioners, he shall direct the concerned Authority to release the same

within a period of one month thereafter alongwith interest @ 6% per annum from the date of filing of the present petition till expiry of one month from the date of passing of order by the District Controller, Food, Civil Supplies and Consumer Affairs, Patiala.

It is further directed that the said amount shall carry future interest @ 9% per annum, in the event such payment is not released within a period of one month as ordered above till its disbursement.

Disposed of accordingly.

SEPTEMBER 13, 2023
rajender

(VINOD S. BHARDWAJ)
JUDGE

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