IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CWP-105-2024(O&M)**
Date of decision: 03.05.2024

M/s Bag Poly International Pvt. Ltd. … Petitioner

Versus

State of Punjab and others … Respondents

2. **CWP-709-2024(O&M)**

Dhanshree Agro Poly Products … Petitioner

Versus

State of Punjab and another … Respondents

3. **CWP-1221-2024(O&M)**

M/s Shalimar Plastic Industries … Petitioner

Versus

State of Punjab and others … Respondents

4. **CWP-598-2024(O&M)**

M/s Shivalik Agro Poly Products Ltd. … Petitioner

Versus

State of Punjab and others … Respondents

5. **CWP-607-2024(O&M)**

M/s Climax Synthetics Pvt. Ltd. … Petitioner

Versus

State of Punjab and others … Respondents

6. **CWP-963-2024(O&M)**

Arun Manufacturing Services Pvt. Ltd. … Petitioner

Versus

State of Punjab and others … Respondents

7. **CWP-1026-2024(O&M)**

Hitesh Khurana … Petitioner

Versus

State of Punjab and others … Respondents

8. **CWP-984-2024(O&M)**

Tarpaulins India Tarp Pvt. Ltd. … Petitioner

Versus

State of Punjab and others … Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mrs. Munisha Gandhi, Senior Advocate, with
Mr. Himanshu Arora, Advocate,
for the petitioner(s) in CWPs-105 & 607-2024.
Mr. Chetan Mittal, Senior Advocate, with
Mr. Kunal Mulwani and Mr. Ritvik Garg, Advocates,
for the petitioner(s) in CWP-598-2024.
Mr. Brajesh Kumar Kaundal, Advocate,
for the petitioner(s) in CWP-1221-2024.
Mr. Denesh Goyal, Advocate, and
Mr. Jugansh Goyal, Advocate,
for the petitioner(s) in CWP-709-2024.
Mr. Randeep Singh Rai, Senior Advocate, with
Mr. Jitender Chaudhary, Mr. Kulwinder Bhargav, Mr. Mandeep Kumar,
Mr. Jashandeep Singh Bains and Mr. Gurbir Sandhu, Advocates,
for the petitioner(s) in CWP-963, 984 & 1026-2024.
Mr. Shekhar Verma, Additional Advocate General, Punjab.
Mr. Sumit Jain, Advocate,
for the respondent(s)-PUNGRAIN (in all petitions).
Mr. Ranjit Singh Kalra, Advocate,
for the respondent(s)-PUNSUP (in all petitions).
Mr. Animesh Sharma, Advocate,
for the respondent(s)-MARKFED (in CWPs-105 & 1221-2024).
Ms. Deepali Puri, Advocate,
for respondent No.3-MARKFED (in CWP-607-2024).
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ARUN PALLI, J. (Oral)

For, there is a consensus between the learned counsel for the respective parties that the matter in issue in this bunch of 8 writ petitions is identical, these are being disposed of by a common order and judgment. However, the facts are being derived from CWP-105-2024 (**M/s Bag Poly International Pvt. Ltd. v. State of Punjab and others**).

Learned Senior counsel for the petitioner(s) submits that Punjab State Grains Procurement Corporation (PUNGRAIN), invited e-tenders for purchase of LDPE Black Polythene Tarpaulins for Kharif Marketing Season (KMS) 2023-24. Accordingly, ten bidders, including the petitioner(s), participated in the tendering process and submitted their bids. Per the tender conditions, they also deposited Rs.5,00,000/- as earnest money. All the bidders were technically compliant. Whereupon, their price bids were opened. For, M/s Shivalik Agro Poly Products had submitted a bid @ Rs.8050/- per tarpaulin, it was adjudged L-1. However, it expressed its inability to supply more than 13000 tarpaulins against the required tender quantity (65000 tarpaulins). Resultantly, the Tender Evaluation Committee re-negotiated the price with all the remaining bidders, requiring them to match the lowest bid. For all the bidders agreed to supply the merchandise at L-1's rates, they were issued the supply orders on December 1st, 2023 (P-3), as per their respective capacity.

And, the petitioner(s) initiated the manufacturing process. Being mindful of pre-despatch scrutiny and delivery schedule, even the formal inspections were carried out in presence of the Officials deputed by the authorities. Further, per the tender conditions, the petitioner(s) was required to deposit the security amount of Rs.36,22,500/- being 5% of the total investment (Rs.7,24,50,000/-) @ Rs.8050/- each for 9000 tarpaulins. Therefore, after adjusting the earnest money deposits of Rs.5,00,000/-, Rs.31,22,500/- were deposited by the petitioner(s) on December 4th, 2023. But, since some delay was caused to inspect the remaining material, and further supplies were stalled, the petitioner(s) inquired into the matter and learnt that certain complaints as regards cartelization between the bidders were being investigated by the State. Whereas, the minutes of meeting dated 14th December, 2023, the petitioner(s) was able to lay its hand upon, revealed that the said meeting was attended by the representatives of all State Procurement Agencies and it was recorded that there existed no evidence of cartelization. Further, the total contract value at L-1 rates was Rs.45 crores plus GST. Similarly, per the minutes of the meeting dated 23rd November, 2023, which pertained to the e-tender for LDPE Black Polythene Tarpaulins, it was observed that all the participants were technically compliant. The manufacturing units of all the respective bidders were inspected and verified by the different teams of Officers. And, due process was followed in the procurement of LDPE Black Polythene Tarpaulins. However, it is urged that subsequently the petitioner(s) received the impugned communication dated 23rd December, 2023, vide which e-tender bearing No.2023_FCSCA_108310_1, and the entire process that was carried out pursuant thereto, was declared null and void.

Records show that a coordinate Bench on January 18th, 2024, had issued notices to the respondents. But despite opportunity, no response has been furnished on behalf of the respondent-State. Though replies have been filed in some matters by the Procurement Agencies.

Learned Senior counsel for the petitioner(s) submits that *ex facie* the impugned order dated 23rd December, 2023, vide which the e-tender in question has been cancelled, is cryptic and perverse:

> **"This is in reference to supply orders issued vide this office letter no.DFS-STRG018/7/2023-STORAGE/ 540639/1471-1488 dated 01.12.2023 for supplying LDPE Black Polythene Tarpaulins for KMS 2023-24, against e-Tender no.2023_FCSCA_108310_1 dated 30.08.2023 floated by this office on the e-Procurement portal of Government of Punjab i.e. https://eproc.punjab.gov.in.**

> **2. In this regard, it is informed that as per the order of the State Government, the said e-Tender is hereby cancelled.”**

She asserts that post execution of the agreement between the parties, the petitioner(s) started executing the work as per the prescribed norms and conditions. Resultantly, the petitioner(s) acquired certain legally enforceable rights and interest against the respondents. Therefore, she submits that the authorities, under no conceivable law, could cancel the contract/e-tender unilaterally without affording any notice or even an opportunity to the petitioner(s). Even otherwise, she submits that the impugned order (**ibid**) is *per se* perverse, being bereft of any reason.

In response, Mr. Shekhar Verma, learned Additional Advocate General, Punjab submits that short reply on behalf of respondents No.1 & 2 is ready and can be filed in the registry. However, he fairly submits, for the order that is being assailed does not assign any reason, and is apparently non-speaking, the same is indefensible. Hence, he submits that competent authority would re-examine the matter in its entirety and pass orders afresh in accordance with law. In fact, he submits that post impugned order dated 23rd December, 2023, the matter was thoroughly probed by Mr. Gurkirat Kirpal Singh, Secretary, Food & Civil Supplies Department, Punjab. And the inquiry report dated February 23rd, 2024 was furnished to the Government, which has even been accepted on 23rd February, 2024 itself.

Therefore, he submits that petitioner(s) and the other stakeholders would be at liberty to file objections in response to the show cause notices, they would be served with, on the basis of inquiry report dated 23rd February,

2024. Further, before any fresh orders are passed, they would also be heard and a formal communication in this regard would be issued in advance.

He fairly points out that since vide interim orders dated January 11, 2024, passed in CWP Nos.963, 984 & 1026 of 2024, status quo with regard to the goods supplied by the petitioner(s) to the respondent-authorities was required to be maintained, the said order being operative to date, shall continue till the final orders are passed by the competent authority. Accordingly, it is urged that in the given circumstances, the impugned order dated December 23rd, 2023, be deemed to have been withdrawn/recalled.

That being so, learned counsel appearing for the respective parties submit that let these petitions be disposed of in terms of the statement made by learned Additional Advocate General, Punjab. However, they submit that the matters being time sensitive, the authorities be directed to pass the necessary orders within a specified time.

To which, learned Additional Advocate General, Punjab submits that the competent authority would pass the formal orders as expeditiously as possible, after affording notice and hearing to all concerned.

In the wake of the position sketched out above, and in terms of the statements made by learned counsel for the parties, the petitions are accordingly disposed of.

This Court is sanguine that the competent authority shall re-examine the matter in the right earnest, and pass a comprehensive order assigning reasons in support thereof.

However, it is made clear that this order shall not constitute any expression of opinion on the merits of the case of either party, for, as indicated above, the competent authority shall examine the concerns/grievances of the petitioner(s) and the other stakeholders, strictly in accordance with law.

(Arun Palli)
Judge

(Vikram Aggarwal)
Judge

03.05.2024
Rajan

Whether speaking / reasoned: YES/NO
Whether Reportable: YES/NO