**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**201**

**CWP-4231-2000 (O&M)
Date of decision: 04.03.2024**

Balraj Singh and others

...Petitioners

VERSUS

State of Punjab and others

...Respondents

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

Present :- Mr. R.S. Bains, Senior Advocate with
Mr. Anmoldeep Singh, Advocate for the petitioners.

Mr. Saurav Verma, Addl. A.G., Punjab.

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**VINOD S. BHARDWAJ, J. (Oral)**

1. The present petition has been filed for issuance of directions to the respondents to release the amount of incentive and subsidy which has already been sanctioned by the respondents, to the petitioner.

2. At the very outset, learned State counsel submits that the prayer for grant of capital subsidy with respect to all the petitioners except for petitioner No.7-Ajmer Singh son of Jaggar Singh, resident of Village Aspal Khurd, Tehsil Barnala, District Sangrur, has been rendered infructuous since such capital incentive subsidy has already been released to them. It has been informed that the subsidy could not be released in favour of petitioner No.7 solely for the reason that the project in question had been sanctioned in favour of partnership firm and that the petitioner has furnished his individual account for transfer of said money and the partnership firm does not exist

any further.

3. It is further the case of the respondent-State, as per the affidavit dated 22.11.2023 submitted by the Director, Industries and Commerce, Punjab, is that the above said subsidy could not be released despite the same being sanctioned in favour of M/s Aspal Poultry Farm, which was a partnership firm, is because the joint account of the firm had already been closed. Hence, the benefits in question could not be released in favour of the petitioner in his individual capacity. Further reference is made to the fact that when the turn of the petitioners herein for disbursement of capital subsidy came, on availability of fund, the said units were found closed and the subsidy in question could not be disbursed. The above said issue came up for consideration before this Court in **CWP-19007-2002** titled as '**M/s Balak Gases Oxygen Gas Plant and Ors. Vs. State of Punjab and Ors.**', and that the objection of the State as regards the plant being closed was dealt with and over-ruled therein. The benefits had thereafter been released in favour of the units that had been closed as per the report received from the General Manager at that point of time i.e. the petitioners other than petitioner No.7-Ajmer Singh who applied for release of the capital subsidy in his individual name instead of the partnership firm. The subsidy thus could not be released to him in his individual capacity.

4. Learned counsel for the petitioners contends that the respondents had sanctioned the release of subsidy in favour of the petitioners (partnership firm) in the year 1997 and that despite a lapse of nearly 27 years, the subsidy in favour of the petitioner has not been released. He submits that the petitioners are alter-ego of the partnership and have the

same status. Each petitioner can act completely on behalf of the firm and the subsidy could not be denied for unsustainable reasons.

5. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents available on record.

6. A partnership is governed by the provisions of The Partnership Act, 1932. The rights of the partnership are determined by the statute, as per which, the partner has all rights and authority to act as an agent of the firm and to open the bank account on behalf of the firm in his own name and acquire moveable/immovable property on behalf of the firm. Sections 13, 14 and 19 of The Partnership Act, 1932 vest the aforesaid rights in each partner. The said Clauses are extracted as under:-

"***"Section13***

***MUTUAL RIGHT AND LIABILITIES.***

***Subject to contract between the partners –***

***(a) a partner is not entitled to receive remuneration for taking part in the conduct of the business;***

***(b) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm;***

***(c) where a partner is entitled to interest on the capital subscribed by him, such interest shall be payable only out of profits;***

***(d) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at***

***the rate of six per cent. per annum;***

***(e) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him***

***(i) in the ordinary and proper conduct of the business; and***

***(ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and***

***(f) a partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.***

***Section14***

*THE PROPERTY OF THE FIRM.*

***Subject to contract between the partners, the property of the firm includes all property and rights and interest in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.***

***Unless the contrary intention appears, property and rights and interest in property acquired with money belonging to the firm are deemed to have been acquired for the firm.***

***<u>Section19</u>***

***IMPLIED AUTHORITY OF PARTNER AS AGENT OF THE FIRM.***

***(1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his "implied authority".***

***(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to –***

***(a) submit a dispute relating to the business of the firm to arbitration,***

***(b) open a banking account on behalf of the firm in his own name,***

***(c) compromise or relinquish any claim or portion of a claim by the firm,***

***(d) withdraw a suit or proceeding filed on behalf of the firm,***

***(e) admit any liability in a suit or proceeding against the firm,***

***(f) acquire immovable property on behalf of the firm,***

***(g) transfer immovable property belonging to the firm, or***

***(h) enter into partnership on behalf of the firm.".***

7. It is thus evident that respondent-State could not have disregarded the status of a partner to act for and on behalf of the partnership firm, in its personal capacity. It would not be for the respondent-State to question the subsistence of any right in a partner or to demand that the partnership firm ought to continue to exist at the time of disbursement of the subsidy. The respondent-State could have easily obtained an indemnity/undertaking from the respective partner that in the event of any claim being lodged by the other partners for release of the said subsidy in his favour, it shall be indemnified and would not be held responsible for having released the share in favour of the partner, who had approached, and who had demonstrated sufficient circumstances to establish that the partnership firm has been dissolved and the rights and title have been vested in the said partner who is raising the claim. In any other peculiar circumstance, it could have sought for an undertaking to that effect. It should not have withheld the entire amount and ought to have released the same instead of claiming capitalization under the changed scenario especially when there no existence of any claim by the other partners or the other partners not showing interest in claiming such release of subsidy despite lapse of 27 years.

8. It has also been pointed out that an affidavit had already been filed by the other partners in the present case to the effect that they have no objection to the release of the capital subsidy in favour of petitioner No.7.

9. Under the given circumstances, I fail to agree with the objection still being raised and insisted by the respondent about the non-existence of the partnership firm and/or non-existence of the joint account in the name of

the partnership firm before release of the capital subsidy. Such an objection is nothing more than a bureaucratic red-tapeism.

10. It being undisputed that no other partner has preferred any claim for release of capital subsidy, it is apparently established that the other partners have no subsisting interest and by their conduct have further conferred such authority/right in petitioner No.7 to raise a stake for the said amount.

11. For the above reasons, the instant writ petition is **allowed**. The respondents are directed to release the sanctioned capital subsidy to petitioner No.7 within a period of two months of receipt of certified copy of this order along with interest @ 6% per annum from the date of institution of the present writ petition till its actual disbursement.

**(VINOD S. BHARDWAJ)**
**JUDGE**

**04.03.2024**
*Mangal Singh*

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