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

214

CWP-16272-2019
Date of Decision: 06.08.2024

MOHINDER LAL

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

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

Present: Mr. Rajinder Sharma, Advocate
for the petitioner.

Mr. Aditya Sharda, DAG, Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 09.04.2019, passed by respondent No.2-Director, Food, Civil Supplies and Consumer Affairs, Punjab affirming the order dated 07.06.2018 passed by respondent No.3-Additional Director, Food, Civil Supplies and Consumer Affairs, Punjab, whereby a condition of producing the gate passes has been imposed upon the petitioner for approval of the payment for the work done.

Learned counsel for the petitioner contends that the Government of Punjab had issued a Policy for Labour and Cartage of Food Grains, 2018-2019 for procurement of food grains on behalf of the Government. Clause 8 of the said policy provided for a District Tender Committee with Deputy Commissioner as a Permanent Member-cum-Chairperson. The District Tender

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Committee invited tenders for transportation i.e. lifting the wheat from mandis to the storage points within 8 Km. radius for all the centres in District Gurdaspur. The petitioner submitted his bid for Batala Centre and was declared successful by the District Tender Committee. Thereafter, the Food Procuring Agency in the State of Punjab started purchasing wheat from the mandis w.e.f. 17.04.2018 and the same was being lifted promptly and without any delay by the petitioner. It is contended that the District Controller, Food, Civil Supplies and Consumer Affairs, vide order dated 26.04.2018, cancelled the tender allotted to the petitioner and allotted the same to the Commission Agents, whereas no action was taken against the other contractors in other 10 different mandis. The abovesaid order passed by the District Controller, Food, Civil Supplies and Consumer Affairs, Gurdaspur was challenged before the Director, Food, Civil Supplies and Consumer Affairs, who allowed the said appeal vide order dated 07.06.2018 and set aside the order of cancellation of the tender, but imposed a condition that the payments to the petitioner for the work done by him shall be made only on producing the gate passes and besides, 01% penalty of total value of contract was also imposed.

Aggrieved of the abovesaid conditions, the petitioner approached this Court by filing CWP No.31265 of 2018. The said writ petition was disposed of vide order dated 11.12.2018 with a direction to the Director-respondent No.2 to decide the application for modification of the order. Pursuant to the order passed by this Court, the Director, vide the order impugned herein dated 09.04.2019, modified the order to the extent of waiving of the penalty of 01% of the total value of the contract; but upheld the condition

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imposed for production of the gate passes for release of the payments with respect to the work done by the petitioner. The instant writ petition has now been filed challenging the retention of the condition mandating the petitioner to produce the gate passes before seeking release of payment, with respect to the bills raised by the petitioner to establish the works executed by him.

Reply by way of an affidavit of District Controller, Food, Civil Supplies and Consumer Affairs, Gurdaspur on behalf of respondent No.1 to 5 had been filed, wherein the maintainability of the present petition was challenged in view of Clause 14 of the tender agreement which prescribes for an arbitration in relation to any dispute. It was also averred in the said response that the petitioner does not have an automatic right to claim the entire payment as may be invoiced by him and that the Competent Authority is within its rights to verify the delivery of the material before a payment is released. It is averred that the impugned condition is absolutely reasonable and justified and has been imposed only to verify the bills submitted by the petitioner. It is further averred that the petitioner had also produced various gate passes at the time of hearing of the appeal and claimed payments. There is further no prejudice, which the petitioner may apprehend, to have been caused to him as a result of requirement to produce the gate pass as a proof of delivery of food grains/material at the point of storage unit.

No replication to the said written statement/reply has been filed by the petitioner even though the said reply had been filed in November 2019 and a period of nearly five years has elapsed since then.



Learned counsel for the petitioner has vehemently argued that the condition for production of gate pass as a condition precedent for releasing the payment could not have been imposed by the respondent-Authorities as there is no such power conferred upon the respondents for introduction of a new condition. He contends that in the subsequent paddy season, the payments were released without imposing any such condition. No other argument has been advanced nor has any case law been cited by the petitioner.

Responding to the above, the State Counsel contends that it would be entitled to seek verification and confirmation of a bill raised. The requirement for production of a gate pass as a proof of verification of the claim raised cannot be termed as introduction of any new condition. In any case, the burden was always upon the petitioner to prove delivery of the goods at the storage points and that the gate-pass is one essential document, which establishes the delivery of the stock at the respective storage point. There is no prejudice that may be caused to the petitioner and no right of the petitioner is violated merely because the respondents intend to verify the invoice submitted by the petitioner. He further submits that in the event of there being any dispute, there is an arbitration clause in the tender agreement.

I have heard the learned counsel for the respective parties and have also gone through the documents appended alongwith the present petition with their able assistance.

The grievance espoused in the present petition is restricted only to the extent of retention of the condition to produce the gate pass before a payment is to be made to the petitioner by the Competent Authority.



The counsel for the petitioner has contended that imposition of such a condition is impermissible under the tender agreement. I, however, find myself unable to agree with the contention advanced by learned counsel for the petitioner. The policy for grant of labour and cartage contracts to willing bidders mandates payment to the transporter/contractor on satisfactory execution of the work so allotted. It does not lie in the mouth of the contractor to dictate as to what form of methodology should be adopted by the respondents for verification of the bills submitted by the petitioner. Unless the claim of the petitioner is that the documents so asked for do not exist at all or are not necessary to prove delivery, he cannot contend that it is an introduction of a new condition in the tender document.

The obligation to ensure the satisfactory compliance and due delivery of the goods at the requisite storage point was on the transporter/contractor and also the obligation to establish such delivery to the satisfaction of the employer before claiming any payment rests upon him. It is not the case of the petitioner that no gate pass is actually issued with respect to the goods loaded or that the Gate Keeper/Store In-charge had not been counter-signing the receipt of the material on verification thereof. Infact, he himself produced those gate passes for processing various claims.

It cannot also be accepted that the petitioner would be prejudiced only on account of a verification of the bill being undertaken by the employer before the same is to be processed. The mere fact that in certain instances or in subsequent transportations/cartage contracts, such a condition was not insisted

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upon, cannot be taken as a ground to hold that the condition so imposed is invalid or is in conflict with law.

The petitioner has failed to point out as to how and under what circumstances, the verification of the bills by way of production of the gate passes is in conflict with any statutory provision or mandate of law and as to what right vests in the petitioner to contend that the bills submitted by him ought not to be verified by the respondent-Department before the payment is made against such bills. The requirement is not in the nature of any condition to the tender document which may add any additional financial liability but is only in the nature of a procedural documentation for release of bill. Such a requirement is only a procedural safeguard to ascertain despatch and delivery of stock for logistical management and fixing liability for loss of stock.

I am of the opinion that an employer would always be empowered to verify a bill or an invoice raised by a contractor in relation to a work claimed by him to have been undertaken, for its records to be maintained in the ordinary course of business. Gate pass is required to be issued/counter-signed by the Store Incharge, wherever the goods are either stored or taken out as a necessary document required to be maintained in ordinary course of business. The condition mandating the petitioner to produce such gate pass, as an admissible proof to establish the delivery of goods at requisite storage points, cannot be said to be arbitrary or illegal. The petition thus deserves to be dismissed.

Insofar as the issue of 'arbitration clause' as pointed by the learned State Counsel is concerned, any consideration or adjudication thereof is not even called for, since it is not the claim of the petitioner that any of his

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undisputed and admissible payments has been wrongly withheld by the respondents.

Dismissed.

AUGUST 06, 2024
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(VINOD S. BHARDWAJ)
JUDGE

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