

2024:PHHC:105146



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

205-1

CWP-11213-2015

BABITA KHAIR

... Petitioner

VERSUS

STATE OF HARYANA AND ORS

... Respondents

A N D

205-2

CWP-79-2017 (O&M)
Date of Decision: 13.08.2024

SANTOSH AND ANR

... Petitioners

VERSUS

STATE OF HARYANA AND ORS

... Respondents

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

Present: Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Sukesh Kumar Jindal, Advocate
for the petitioner(s).

Mr. Suneel Ranga, DAG, Haryana.

Mr. Vivek Chauhan, Advocate for respondents
No.3, 5 and 8-HAFED in both cases.

Mr. K.K. Gupta, Advocate for respondents
No.4, 6 and 7 in both cases.



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Ms. Garima Kuthiala, Advocate
for respondent No.9 in CWP-79-2017 and
for respondent No.10 in CWP-11213-2015.

VINOD S. BHARDWAJ, J. (ORAL)

CM-7830-CWP-2017 in CWP-79-2017

Allowed as prayed for subject to all just exceptions.

The rejoinder to the written statement filed on behalf of respondents No.4, 6 and 7 is ordered to be taken on record. Registry is directed to tag the same at appropriate place of the paper book and page mark the same.

MAIN CASES

Raising identical questions of law, both these writ petitions are being decided by a common judgment. For the facility of reference, the facts are extracted from CWP-11213 of 2015 titled as Babita Khair Versus State of Haryana and others.

Challenge in the abovesaid petition is to the order dated 13.10.2014 vide which respondent No.3- Haryana State Cooperative Supply and Marketing Federation (hereinafter referred to as 'HAFED'), whereby allotment dated 17.05.2011 and agreement dated 08.09.2011 of godown for 6670 metric tonne capacity under the PEG Scheme, 2008 (10 year guarantee) has been cancelled without complying with the principles of natural justice.

FACTS OF THE PETITION

Briefly summarized, the facts of the case are that the HAFED-respondent No.3 was declared as a Nodal Agency for construction of Food Grain Godowns in Haryana under the 10 year guarantee scheme. Sealed tenders were



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invited under a two bid system from the interested tenderers who owned land or held land on lease for a minimum period of 13 years with permission to construct godown or willing to acquire land by ownerships/lease within 90 days from acceptance of tenders for construction of godowns for FCI storage to be managed and supervised by HAFED for a guaranteed lease of ten years on build, own and operate/lease basis for storage of food grains at different districts in the State of Haryana.

Being a willing bidder, the petitioner got executed a lease deed in her favour for land measuring 27 kanals 14 marlas for a period of fifteen years, registered in the office of Joint Sub-Registrar, Matlauda, Panipat vide Registration No.1028 dated 16.09.2010 alongwith the permission from the land owner for construction of godown and office place, as per requirements of respondent No.3-HAFED, at the rate of Rs.15,000/- per acre per year. The petitioner thereafter submitted the bid, which was opened on 17.09.2010. The relevant documents including the drawings, layout, copy of aks-sijra and site plan were also submitted as required. The specifications in which the godown was to be constructed had been laid down in Schedule-I to the notice inviting tenders. It was averred that in case the construction specifications were not covered by the FCI and CWC, then relevant IS Code 607 of 1971 for construction of godown was to be followed. It is averred that a District Level Committee (hereinafter referred to as 'DLC') comprising of the Naib Tehsildar, Matlauda; Manager FCI; DFSC, Panipat and District Manager HAFED as members carried out physical inspection of the site. He contends that there was



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an underground gas pipeline passing at some distance from the land where the petitioner proposed to construct the godown and that the sign boards of the said gas pipeline were clearly visible. A report dated 09.11.2010 (Annexure P-6) was submitted by the DLC wherein they specifically approved that the land in question was suitable for construction of godowns. There were various siting parameters on which the DLC was to submit its report about suitability of land. On receipt of the recommendations of the DLC reporting about the suitability of the site, the petitioner was informed vide letter dated 17.05.2011 that the tender bid of the petitioner was accepted by HAFED. It was also communicated to the petitioner that her offer had been accepted at the rate of Rs.3.69/- per quintal per month without preservation for construction of 6670 metric tonne capacity godown under the PEG Scheme. The petitioner was directed to execute an agreement, as drafted by the respondents, and to submit the layout plan and drawings of the godown to be constructed.

On receipt of the letter of allotment from the respondent No.3-HAFED, the petitioner submitted a layout for approval by the respondents on 25.08.2011, which was duly approved and communication was sent to the petitioner on 07.09.2011. The agreement with regard to the said godown was also executed with the respondent No.3-HAFED on 17.06.2011. Hence an enforceable contract came into existence.

The petitioner thereafter requested the respondents to inspect and to approve the layout plan. A Committee was constituted by the respondents for inspection of the site of the godown to be constructed under the PEG Scheme,



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2008. The petitioner had also received the approved layout plan on 27.02.2012. The Area Manager, FCI wrote to the Executive Engineer, HAFED to inspect the site. The first inspection of site of the petitioner, at the layout stage, was carried out by the DLC on 07.03.2012 and submitted its report. Certain deficiencies and shortcomings were noticed by the DLC in its said report, in relation to the preparation of drainage plan and layout supports of the overall drainage plan as well as the submission of the work programme/time schedule. No other deficiency-defect was pointed out by the DLC comprising of officers of the respondent-FCI as well as HAFED and technical persons. On receipt of the observation report made by the DLC, the petitioner undertook construction as per the abovesaid tender and the approved layout plan after removal of the shortcomings. She also obtained 'Change of Land Use Certificate' from the State alongwith several other statutory approvals from different departments for facilitating construction of the proposed godowns. Compliance with the observations and suggestions recorded by the DLC on 07.03.2012 was also undertaken and construction reached at the plinth level.

The petitioner thereafter sent another letter to the officials of respondent No.3-HAFED for second inspection of construction of godown at the plinth/DPC level. The said inspection of the premises was also carried out on 10.05.2012 by the DLC but no defects of any nature pertaining to construction or the site, whatsoever were pointed out. The petitioner thus proceeded construction beyond the plinth level and to the next stage i.e. lintel/door level inspection. The petitioner requested the respondents to send a team for



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inspection of the site on 28.05.2012 which was undertaken on 18.07.2012. Again, no such defect, as became the basis of cancellation of the agreement, was pointed out even at the stage of third inspection. A subsequent fourth inspection was conducted on reaching the roof level, on the request sent by the petitioner on 16.08.2012 and thereafter a final inspection was requested for on 19.09.2012, however, despite the letters, the Committee did not conduct the final inspection. The DLC eventually conducted the fifth inspection of the site on 04.12.2012 and conveyed the below mentioned deficiencies:

“The construction of weigh-bridge, boundary wall was in progress and carpeting of road was pending. The boundary wall at two side of the godown is pending as owner has explained that gas pipeline is passing through it, so owner is advised to complete the boundary wall by re-aligning it and he should take all the precautions to safeguard the godowns from this pipeline and also requested to intimate for inspection of site only after completion of all the work at the site in all respects.”

(Emphasis Supplied)

It is contended that in the abovesaid 5th inspection report, the issue of the underground gas pipeline was raised by the respondents for the first time as hindering the construction of the boundary wall and not about any problem to the godown. The petitioner was directed to realign the boundary wall and to take all steps to safeguard the godowns from the gas pipeline and then to inform for inspection of the site. The abovesaid deficiencies/observations recorded in the inspection report dated 04.12.2012 were successfully removed by the petitioner and she again requested the officials of the respondents to conduct a final



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inspection of the godowns so that the same could be handed over to the respondents. The final inspection was accordingly conducted by the DLC on 02.02.2013. It was observed as under:

“It has been observed by the committee that party has completed the road work, weigh-bridge and the office block. It was also observed that there is gas pipeline passing through the boundary wall of the godown, so the party has not constructed the boundary wall in that part, instead the party has fenced that area to take care of the gas-pipeline. Though, the godown can be used to store food grains. Yet the decision regarding taking over on guarantee basis may be taken after taking this point into consideration. So the committee is of the opinion that Regional Office-I Panchkula, Food Corporation of India may take further course of action in this regard.”

(Emphasis Supplied)

The abovesaid Committee specifically observed that the godown can be used for storage and the existence of pipeline was no impediment to the same.. It was proposed that the Regional Office of FCI may take further decision in this regard. The Regional Office, Panchkula decided to place the matter before the State Level Committee (hereinafter referred to as ‘SLC’) vide its letter dated 24.04.2013. In compliance to its abovesaid decision, the matter was placed before the SLC in its meeting held on 10.06.2013 vide Agenda No.5, wherein it was decided as under:

“Managing Director, HAFED, informed that it was not clear whether the gas pipeline already existed or was subsequently laid. Accordingly, it was decided that the party may be heard in person by the Senior Officer Committee (consisting of DGF&S),MD,



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HAFED, GM, FCI and MD, HSWC) to ascertain the factual position and duly signed recommendations of this committee be placed before the SLC in its next meeting.”

The abovesaid decision of the SLC was communicated to the petitioner. A detailed representation was thereafter submitted by the petitioner about the entire process that had been followed and the regular inspections that were conducted by the DLC including the fact that the gas pipeline pillars and identification points were clearly visible in front of the godown site at all times but no such objection was raised by the DLC. Even in the lease deed and jamabandi attached by the petitioner, it was specifically stated that in that part of the area construction was prohibited. He further stated that the requirement of land for the godowns was 21 kanals whereas the petitioner had a land measuring 27 kanals 14 marlas, hence, even if the boundary wall of the godowns is constructed, still the petitioner would have more than half an acre of land in excess of the requirement as specified by the respondents. He further pointed out that the abovesaid action at the fag end and that too after the loan from the banks had already been utilized by the petitioner and she has invested to the tune of Rs.3 crores creates severe hardship to the petitioner.

A meeting of SLC was thereafter held on 30.10.2013 under the Chairmanship of Executive Director, Food Corporation of India. The relevant part of the observations made by the officers of the SLC is reproduced as under:

“4. It is further observed that in the inspection reports of the Committee consisting of Manager (Civil) Rohtak, Executive Engineer, HAFED, Hisar and Distt. Manager, HAFED, Panipat



that the Layout Stage and Plinth/DPC Level in the presence of bidder there is no mention of any pipe line passing over the site (Flag/A & B).

5. *For the first time the inspection team consisting of Manager (Civil), FCI, Karnal, Executive Engineer, HAFED, Panchkula and Distt. Manager, HAFED, Panipat during inspection of the godown on 4.12.2012 at completion level pointed out that gas pipe line is passing through the site and advised the bidder to complete the boundary wall by re-aligning it and he should take all the precautions to safeguard the godowns from this pipeline (Flag/C).*

6. *The Inspection Committee consisting of Area Manager, FCI, Karnal, Manager (Civil) FCI, Karnal, XEN, HAFED, Panchkula and District Manager, HAFED, Panipat at the time of final inspection of the godown on 2.2.2013 observed that the party has completed the road work, weighbridge and the office block. It was also observed that there is a gas pipeline passing through the boundary wall of the godown, so the party has not constructed the boundary wall in that part, instead the party has fenced that area to take care of the gas pipeline. It further observed that though the godowns can be used to store food grains, yet the decision regarding taking over on guarantee basis may be taken after taking this point into consideration. So the committee opined that Regional Office, Panchkula, Food Corporation of India, may take further course of action in this regard. (Flag/D)."*

(Emphasis Supplied)

Hence, even at that stage i.e. on 30.10.2013, the respondents observed that the godowns can be used for storing food grains, yet a decision regarding taking over, on guarantee basis was recommended to be taken after considering the abovesaid point. The HAFED called upon its District Manager,



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Panipat to submit a recommendation for taking over of the godown. The site was inspected yet again on 14.03.2014 but the report was sent on 02.07.2014. The relevant extract of the said report reads thus:

“1. The godown having its covered capacity 6670 MT pertaining to Smt. Babita W/o Taraspal vill. Nohra Distt (Panipat) is found complete in all respect i/c godown, weigh bridge, sentry Post office block and internal roads etc.

2. The Boundary wall front side (west) and south side a gas pipe line is passing through the permanent structure cannot be constructed the barbed wire fencing has been done. The land required for construction of 6670 MT godown as per FCI Norms is 2.70 Acres, where as the land offered for the said godown is 3 Acres and 14 Marla which is in excess side by 5 Kanal approximately. This gas pipe line has not effected the permanent structure like godown, weigh Bridge, Sentry post etc. The gas pipe line portion may be separated by providing a Boundary wall in Back of weigh Bridge and said land may be separated from the premises. The balance land is more than the required land as per PEG Norms.

3. By leaving the effected area of approximate $40 \times 38/2 = 760$ sqm. The PEG godown 6670 MT Constructed by Smt. Babita w/o Taraspal can be used without hindrance and sufficient. The party may be asked to shift the Boundary wall in Back of Weight Bridge by leaving the effected area of gas pipe line.

4. The Indian Oil Corporation also informed that there is no effects of said gas pipe line on FCI godown and unless the said gas pipe line may not be disturb /destroyed by any one. A certificate to this effect issued by Indian Oil Corporation to the investor is also enclosed.”

(Emphasis Supplied)



It is further averred that abovesaid report of the Committee was based on a certificate issued by the Indian Oil Corporation Ltd. (hereinafter referred to as 'IOCL') wherein it was certified that there is no danger to the adjoining environment and the gas pipeline will have no effect on the godowns in question unless the gas pipeline is tampered with or is physically damaged by someone. A meeting of the SLC was held thereafter on 08.08.2014 and the SLC, without looking into the detailed aspects including the availability of excess land with the petitioner, decided that the allotment of the capacity is faulty and should be cancelled following due process of law. The relevant part of the decision taken by the SLC is reproduced hereinafter below:

"XXX XXX XXX

As per Indian Standards Code No.607, the site for construction godowns for storage of food grains should be at a minimum distance of 150 meters from factories and other sources of fire such a work shop, hay-stacks, timber stores and petrol pumps. In this case the presence of gas pipeline in the godown premises violates this provision. SLC, therefore, decided that the allotment of this capacity is faulty and therefore it should be cancelled following due process of law."

As per the Indian Standards Code No.607, the site for construction of godown for storage of food grains is required to be at a minimum distance of 150 meters from factories and other sources of fire, such as workshops, hay-stacks, timber stores and petrol pumps. The said clause became the basis for the SLC to take a decision for cancellation of the allotment of godowns in favour of the petitioner.

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Aggrieved thereof, the present petitions have been filed.

REPLY BY THE RESPONDENTS

Reply on behalf of respondents No.3, 5 and 8 has been filed wherein, the abovesaid factual aspects are not disputed. The respondent No.3-HAFED has justified the decision taken by the SLC and the reason cited thereunder i.e. violation of Indian Standards Code No.607 of 1971 for construction of godowns. It is averred that as the godown is situated at a distance of less than 150 meters from the gas pipeline, hence, the site was not suitable since it did not fulfill the specifications prescribed under the Indian Standards Code No.607 of 1971.

A short reply was also filed by the Government of Haryana i.e. respondents No.1 and 2, wherein it was pleaded that they are not the contesting parties to the writ petition and respondent No.3-HAFED is the party which has a contesting interest in the present petition.

The matter came up for hearing on 10.07.2018 when the counsel for respondent No.3-HAFED was directed to seek instructions as to how the godowns already constructed by the petitioner could be saved. An affidavit of Nitin Singh, Addl. General Manager (WH), HAFED, Panchkula was filed, wherein it is stated that they had proposed to take action against the members of DLC but some of the members have already retired and a period of more than five years had already been lapsed, so no action could be taken against them. It was stated in the abovesaid affidavit that the way out to save the godowns



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constructed by the petitioner could be suggested by the Food Corporation of India only.

A separate reply had been filed by the Food Corporation of India through Ranjeet Kumar Jeengar, Divisional Manager, Food Corporation of India. None of the factual aspects noticed above were disputed and there is a reiteration of the violation of the Indian Standards Code No.607 of 1971. It was also averred in the said reply that during the inspection of godowns on 04.12.2012 by the DLC, the concealed fact regarding existence of gas pipeline emerged and that the same was duly communicated to the petitioner.

ARGUMENTS OF THE PETITIONER

Learned Sr. Counsel for the petitioner has raised the following arguments:-

- (i) That the petitioner has made no concealment of any nature whatsoever. All information, as was sought for under the DNIT, had been specifically furnished. The Tender Document did not ask for any specific detail with respect to the siting parameters and distance and as such, there was no reason or occasion for the petitioner to believe that any information, other than the information as asked for by the respondents in the Tender Document was required to be furnished.
- (ii) It is submitted that even before acceptance of technical bid and issuance of letter of allotment in favour of the petitioner, a field inspection was conducted by the DLC which consisted not only the



officials of respondent No.3-HAFED and FCI but also the Naib Tehsildar i.e. an official of the Revenue Department. The underground gas pipeline was always visible even on ocular inspection on account of the sign boards set up by the IOCL.

- (iii) That the respondents were in knowledge of the existence of the gas pipeline at all stages and the same is also noticed by them in the report of 04.12.2012. The respondents still found the land/site suitable for construction of the godowns and that the satisfaction with respect to the suitability of the land for construction of the godowns and for storage of food grains was also obtained by the DLC from the IOCL. A certificate was also issued by the IOCL that the gas pipeline would cause no danger to the storage facility being provided for in the said area.
- (iv) That the respondents have unilaterally taken recourse to cancellation of the letter of allotment in favour of the petitioner notwithstanding that the petitioner had borrowed huge sum of money and had invested an amount of more than Rs.3 crores under the guaranteed PEG Scheme. Hence, the petitioner has been allured to invest money, on the assurance given by the respondents, about the suitability of the land for construction of godowns. A specific reference is made to the photographs that have been appended as Annexure P-26 alongwith the present petition, which show that the sign boards set up by the IOCL with respect to the



existence of gas pipeline were clearly visible and it cannot be pleaded that the respondents were in any way not aware of the existence of the gas pipeline.

- (v) He further submits that the respondents have used the abovesaid godowns for a period of nine months and also paid rent for the same. There was no difficulty of any nature whatsoever in the usage of the said godown, but they unilaterally opted to vacate the said godown. He further contends that the abovesaid premises of the godowns were never used for any other purpose and the petitioner has not derived any gain therefrom, either monetary or otherwise. Had it not been the assurance given by the respondents, who did not point out any defect or non-suitability of the land despite five inspections having been conducted by them, the petitioner would not have invested her life savings and/or borrowed money from the bank for raising such construction.

ARGUMENTS OF THE RESPONDENTS

- (i) Learned counsel for the respondents i.e. FCI and HAFED have, on the other hand, reiterated their submissions and relied on Schedule-I of the DNIT which prescribed specifications for construction of conventional type godowns by private parties and it was mentioned therein that in case the specifications are not covered by the FCI and CWC, then relevant Indian Standards Code 607 from the latest gazette for construction for godowns has to be followed. They



submit that the godowns being at a distance of less than 150 meters from a fire source i.e. the underground gas pipeline, was hit by the above requirement rendering the site unsuitable for construction of godowns.

- (ii) It is also submitted by the counsel for the respondents that there is no specific assertion in the petition filed by the petitioner that the godowns in question were not used for any other purpose and had been kept vacant. Hence, the said contention cannot be *per se* accepted.
- (iii) Learned Counsel for the respondent-FCI further contends that in Clause 51(3) of the MTF Agreement, it was specifically averred that the same was a bilateral agreement between the HAFED and the tenderer and that the Government of India-FCI is nowhere involved or associated at any stage and as such, it cannot be held liable for any loss that may have been suffered by the petitioner.
- (iv) Learned counsel for the respondent-FCI further submits that no stock of FCI was ever stored in the abovesaid godowns and that the HAFED had stacked its own stock in the said godowns during the period of alleged nine months, as referred to by the counsel for the petitioners. Counsel for the FCI has also placed reliance on Section 9 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 to contend that the owner or occupier of the land, under which any pipeline had been laid, shall not do any



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act or permit any act to be done which will or is likely to cause any damage in any manner whatsoever to the pipeline.

No other argument has been raised nor has any judgment been cited by the either parties.

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.

CONSIDERATION

The factual aspects having remained uncontroverted, the issue which arises for adjudication by this Court is only as to whether the specifications as mentioned in Indian Standards Code 607 of 1971 and relied upon by the respondents were binding upon the petitioners, and if so, whether the petitioners can claim compensation on account of delayed communication of such an alleged lapse, since the petitioners have made huge investment after due inspection of site at all stages by the officials of the respondents.

The primary question which arises before this Court is as to whether a clause, which the respondents so heavily rely upon for specifying the siting parameters, could have been left vague and without being specified in Schedule-I attached to the DNIT. The specifications laying the construction parameters and the plinth and height levels etc. were duly provided in the Schedule-I for construction of conventional type godowns by private parties. Surprisingly, even though minor details were mentioned thereunder, however, there was no mention about the distances required to be maintained. Undeniably,



the first inspection of the premises in question was conducted by the respondents through DLC on 09.11.2010, in which Naib Tehsildar Matlauda, Panipat was also associated. They reported about the suitability of the site. The officials of the respondent-FCI, Department of Food and Civil Supplies as well as HAFED were also associated in the site inspection. The parameters on which they report was asked for by the respondents did not make any reference to the siting parameters of the Indian Standards Code 607 of 1971. The parameters on which the inspection report of land for construction of godowns under the PEG Scheme, submitted by the aforesaid Committee, and the specifications considered by the respondents in Schedule-I of the report are tabulated as under:

1.	Name of the Party	Smt. Babita wife of Taras Pal
2.	Name of the Centre	Panipat
3.	Capacity offered	6670 MT
4.	Details of Land	3.46 acres lease
5.	Distance of site from the Railway Rake Point	8.2 KM
6.	Whether proposed land is in flood prone area	No.
7.	Availability of proper Road up to the site for free movement of stock.	Yes.
8.	Is there High Tension Wire over the Site	No.
9.	Encumbrance (Bank hypothecation any attachment stay order and acquisition	No.
10.	Recommendation of the District Level Committee with regard to suitability of land on the proposed site on the basis of the above parameters with	Yes, The site is suitable for construction of godowns.



	reasons	
11.	Remarks, if any	---

1.	Godown Centre to Centre	125.55m X 21.80m
2.	Out side to Out side	126.01m X 22.26m
3.	Rail/Road side Varandah Width	1.83m min. on one side of the godown and other side of godown isolated platform of 0.9m wide to be provided in front of shutter only (size 2.44m X 0.9m
4.	Plinth Height	(i) For Road-fed – 0.80 m (ii) For rail-fed - 0.9 1m
5.	5,000 Mt godowns consisting 3 Compartments.	Each Compartment C/C length 41.85m and capacity 1,670 MT
6.	No. of Stacks in each Compartments	12 Nos.
7.	Size of Stacks	6.10m X 9.15m (20' X 30')
8.	Godown height at eve in respect of	Road-fed = 5.60m & Rail-fed = 6.35m
9.	Varandah Truss height on road side = 3.35m and on Rail fed side 3.95m above plinth.	
10.	No. of rolling shutters	12 Nos. of size 1.83m X 2.44m each
11.	Top Ventilators size 1.50m X 0.60m	54 Nos. in both long walls
12.	V8 Ventilators 0.39m X 0.80m (Bottom inside air entrant) and Expanded metal on outer walls 0.6m X 0.6m (Bottom out side air entrant).	
13.	R.C. Column to be provided at 4.65 c.c. in long wall & 4.36m c/c in GW & P.W.	
14.	Roof to be provided with ACC/CGI/Al, Zinc. coated sheet roofing materials over tubular roof trusses.	

It is evident from a perusal of the inspection report as well as the specifications proposed for construction of conventional type godowns that the inspection conducted by the officials of the respondents was largely in relation

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to the aspects other than the aspects mentioned in Schedule-I. While the inspection report was more in reference to the siting and giving details of the distance of the site from the Railway Station; availability of road after the site for free movement of the stock; and high tension wires etc. but even in the said inspecting report, the respondents have not sought for or asked for any detail about the siting parameters as specified under Indian Standards Code 607 of 1971 for construction of godowns. The construction parameters were prescribed in the Schedule as per DNIT. Hence, both were used in separate context.

The second inspection after the approval of the layout plan was also conducted by the officials of the respondents through the DLC and even in the same also, no such defect or requirement was either noticed or informed. Various letters were sent by the petitioner calling upon the respondents to conduct the inspection. A specific column about 'note on deficiencies/observations' required to be tendered was also prepared in the said inspection of 18.07.2012, but there was no note on deficiencies or observations about the existence of the said gas pipeline pointed out by the said Committee. Even in the subsequent inspection i.e. the third inspection at the DPC level, the alleged defect was neither noticed nor conveyed. They thus allowed the petitioner to continue with the construction, instead of taking necessary precautions (if the condition was so material) to highlight the defect. In the note of the inspection dated 04.12.2012, it was noticed by the said officials that a boundary wall at two sides of the godowns was pending due to the gas pipeline passing through it. The owner/petitioner was advised to complete the boundary wall by re-aligning it



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and to take all precaution to safeguard the godowns from the gas pipelines. Hence, the aspect of the existence of the said gas pipeline was even entered in their record by the officials of the respondents. In the subsequent inspection report i.e. the final inspection report of the godowns, the said Committee itself noticed that notwithstanding existence of the gas pipeline, the godowns could be used for storage of food grains, but forwarded the matter to the Regional Officer. The DLC thereafter submitted its elaborated report after considering the abovesaid objection and also obtained a report from the IOCL on 14.03.2014 that there as per the FCI norms the land required for construction of 6670 MTs capacity godowns was 2.70 acres and that the land offered by the petitioner was much more than that. The gas pipeline has not affected the permanent structure like the godowns, weigh-bridge, sentry posts etc. and that the gas pipeline portion may be separated by providing a boundary wall in the back of the weigh bridge and the said line may be separated from the premises. Even by doing so, the balance land would be more than the required land as per the FCI norms. The affected area to be thus left out was 760 sq. meters. The communication received from IOCL about the gas pipeline being absolutely safe and having no effect on the construction of the godowns or its usage was also referred to. The said documents are neither disputed nor objected to by any of the respondents. The impugned decision was thereafter taken by the SLC in its meeting held on 08.07.2014 to cancel the allotment after following due process of law. SLC also directed the Nodal Agency to initiate action against the members of DLC who did not point out the presence of gas pipeline in the premises.



The subsequent affidavit filed by the respondents about the action to be taken against the members of the DLC shows that no substantive action has been taken against any of the members of the DLC. On a specific query posed to the counsel for respondent No.3-HAFED, it has been informed that disciplinary proceedings were initiated against the officials, however, the proceedings were dropped against the officers vide different orders dated 14.07.2020 and 07.12.2020 as the charges could not be established.

The abovesaid stand of the respondent No.3-HAFED is mutually contradictory. Whilst they do not hold their DLC officers liable for any lapse having been committed by them and having come to a conclusion that there was no occasion to proceed any further against them, purportedly on account of the requirement of Indian Standards Code 607 of 1971 not being mandatory, yet, they proceeded to take action against the petitioner. The respondent No.3-HAFED has chosen not to place the said orders or the finding of the departmental inquiry against the concerned officers before this Court. That report itself would have been a valuable piece of clinching evidence to determine as to whether the requirement of siting was a specific issue as mandated under Schedule-I or it was a parameter as was required to be incorporated in the report to be obtained from the DLC or not. Even otherwise, on a comparative reading of the report submitted by the DLC as well as appended to Schedule-I of the DNIT shows that the specifications prescribed thereunder are the specifications in relation to the construction and are not the specifications in relation to the siting and determination of parameters thereof.



Besides, it is also not the case of the respondents that the FCI and/or the CWC have not prescribed any separate siting parameters of their own. No such details or averment have been made even in the impugned order directing cancellation of the allotment. The abovesaid clause could be attracted (if at all) in the event of absence of the any parameters having been prescribed by the FCI or the CWC. There can be no presumption that no such specifications had been determined. The use of expression “Specification” as provided under Schedule-I and the condition being read out has to be interpreted by placing reliance upon the rules of interpretation i.e. *ejusdem generis*. The interpretation of the specifications prescribed thereunder has to be read in continuity with the requirement specified thereunder. The siting parameters have not been prescribed in Schedule-I specifications. Accordingly, recourse to Indian Standards Code 607 of 1971, as a siting parameter, by taking aid of Schedule-I would be importing a clause in a schedule that was not meant to cater to the location/siting parameters. The location parameters seemingly were required to be ascertained by the DLC on 11 different parameters. The said parameters were infact the technical parameters for siting and suitability of the land and not the specifications as prescribed under Schedule-1. The transposition of specifications to be read as the siting parameters would be importing the said clauses into the clauses that were never made known to the parties and were never apprised. It was on account of such conduct of the respondents that the petitioners had been forced to invest their entire saving including borrowing money from the bank to raise the construction. The determination of the

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suitability by the respondents themselves led to an assurance being extended to the petitioners about the land satisfying all the parameters required by the respondents for construction of the godowns under the PEG Scheme. The petitioners thereafter altered their position on the basis of such an assurance and having been led to invest huge sum of money for raising such construction. They cannot now be left high and dry to fend for themselves even though such an investment would not have been made by them had it not been on account of the impressions and approvals granted by the respondents themselves.

It is further evident that the respondents have opted to drop charges against their officers/members of the DLC by finding them not liable for any lapse or having made any misreporting. Such a conduct on the part of the respondents, having washed off their hands by passing on the liability entirely on the petitioners, who are undisputedly not technical persons and may not be aware of the specifications, whereas the officers/member of the DLC would be the ones who would have been fully aware of the suitability and requirements of the situs, is highly unbecoming of a State Agency.

Still further, the decision taken by the SLC does not take into consideration the certificate issued by the Indian Oil Corporation Ltd. about the gas pipeline having no danger or posing no danger to the constructions of the godowns for storing the food grains. The recommendations of the Committees of the respondents itself at all times had been that the construction of godowns and any further activity has not been impaired on any account whatsoever due to existence of the gas pipeline.



There has to be fairness in the actions of the State. In the case of ***‘ABL International Ltd. & another Vs. Export Credit Guarantu Corporation of India Ltd. & others’*** reported as (2004) 3 SCC 553, it has been held by the Hon’ble Supreme Court that State or its instrumentalities have an obligation in law to act fairly, justly and reasonably. The relevant paragraph of the same is extracted as under:-

“23. It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India.”

Surprisingly, even though there are specific assertions made by the petitioners in different paragraphs of the petitions, like paragraph No.6 at page No.16, paragraph No.28 at page No.29, paragraph No.29 at page No.30 and paragraph No.31(a) at page No.31, wherein it has been specifically mentioned that the poles of yellow colour affixed by the IOCL mentioning and showing the route of the underground gas pipeline being clearly visible and were observed by the members of the DLC also at the time of inspections conducted by them, however, in reply to the abovesaid specific paragraphs, the respondents have chosen not to deny the said fact and have remained evasive by saying that the same are matter of record. Once the case set up by the respondents is that there was a concealment of existence of a gas pipeline, absence of denial of the fact about respondents having knowledge specifically pleaded by the petitioners to be visible even to a naked eye, the respondents cannot wash away the inference that flows from non-denial of the pleading.



The respondents having thus led the petitioners to invest on the land in the form of raising construction of godowns giving rise to legitimate expectations in the minds of the petitioners that the construction is being raised in accordance with the approved specification, cannot now be permitted to wriggle out from their lawful obligations. The unilateral decision of the respondents in cancelling the letter of allotment pursuant to an agreement that had been duly signed between the parties against an agreed rate cannot be held to be just, appropriate and lawful decision in the overall factual aspect of the case.

In the case of 'Sivanandan C.T. & others Vs. High Court of Kerala & others' reported as (2024) 3 SCC 799, the constitutional bench of the Hon'ble Supreme Court propounded that when public authorities fail to adhere to their representation without providing an adequate reasons to the citizens for this failure, it violates the trust reposed by citizens in the State. The relevant paragraph of the same are extracted as under:-

“18. The basis of the doctrine of legitimate expectation in public law is founded on the principles of fairness and non-arbitrariness in government dealings with individuals. It recognizes that a public authority's promise or past conduct will give rise to a legitimate expectation. The doctrine is premised on the notion that public authorities, while performing their public duties, ought to honor their promises or past practices. The legitimacy of an expectation can be inferred if it is rooted in law, custom, or established procedure (Salemi v. Mackellar), [1977] HCA 26.

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24. By the 1990s, the Indian courts incorporated the doctrine of legitimate expectation in the context of procedural fairness and non-arbitrariness under Article 14 of the Constitution. In *Food Corporation of India v. Kamdhenu Cattle Feed Industries* (1993) 1 SCC 71, this Court held that public authorities have a duty to use their powers for the purposes of public good. This duty raises a legitimate expectation on the part of the citizens to be treated in a fair and non-arbitrary manner in their interactions with the state and its instrumentalities. This Court held that a decision taken by an executive authority without considering the legitimate expectation of an affected person may amount to an abuse of power:

“7. [...] To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.”

The court held that whether the expectation of a claimant is legitimate or not is a question of fact which has to be decided after weighing the claimant's expectation against the larger public interest. Thus, while dealing with the claims of legitimate expectations, the Court has to necessarily balance the legitimate expectation of a claimant against the larger public interest.



25. *In Union of India v. Hindustan Development Corporation (1993) 3 SCC 499, this Court clarified the contours of the doctrine of legitimate expectation in the following terms:*

- (i) legitimate expectation arises based on a representation or past conduct of a public authority;*
- (ii) legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular or natural sequence;*
- (iii) legitimate expectation provides locus standi to a claimant for judicial review;*
- (iv) the doctrine is mostly confined to a right of a fair hearing before a decision and does not give scope to claim relief straightaway;*
- (v) the public authority should justify the denial of a person's legitimate expectation by resorting to overriding public interest; and*
- (vi) the Courts cannot interfere with the decision of an authority taken by way of policy or public interest unless such decision amounts to an abuse of power.*

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38. *The doctrine of legitimate expectation does not impede or hinder the power of the public authorities to lay down a policy or withdraw it. The public authority has the discretion to exercise the full range of choices available within its executive power. The public authority often has to take into consideration diverse factors, concerns, and interests before arriving at a particular policy decision. The courts are generally cautious in interfering with a bona fide decision of public authorities which denies a legitimate expectation provided such a decision is taken in the larger public interest. Thus, public interest serves as a limitation on the application of the doctrine of legitimate expectation. Courts have to*



determine whether the public interest is compelling and sufficient to outweigh the legitimate expectation of the claimant. While performing a balancing exercise, courts have to often grapple with the issues of burden and standard of proof required to dislodge the claim of legitimate expectation.

40. The principle of fairness in action requires that public authorities be held accountable for their representations, since the state has a profound impact on the lives of citizens. Good administration requires public authorities to act in a predicable manner and honor the promises made or practices established unless there is a good reason not to do so. In Nadarajah (supra), Laws LJ held that the public authority should objectively justify that there is an overriding public interest in denying a legitimate expectation. We are of the opinion that for a public authority to frustrate a claim of legitimate expectation, it must objectively demonstrate by placing relevant material before the court that its decision was in the public interest. This standard is consistent with the principles of good administration which require that state actions must be held to scrupulous standards to prevent misuse of public power and ensure fairness to citizens.”

Hence, I am of the view that the action of the respondents cannot be said to be fair or reasonable and it also cannot be held that there was a concealment by the petitioners.

The same thus leads to the next question as to the entitlement of the petitioner for compensation, if any, for the loss which is claimed by the petitioners to have been suffered.

On the said aspect, there would be certain areas of dispute inasmuch as except for the statements made at Bar by the learned Sr. Counsel for

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the petitioners about the godowns having not been used for any other beneficial purpose, there is no document or evidence available on the Court file to substantiate the said fact.

CONCLUSION

Under the given circumstances, it is deemed expedient to issue a direction to ascertain the said factual aspect.

The present writ petitions are accordingly allowed and disposed of with the direction that the Managing Director of respondent No.3-HAFED shall constitute a Committee comprising of (a) Secretary HAFED, (b) District Manager (as may be nominated by the Managing Director and (c) the Executive Engineer, HAFED. The abovesaid Committee shall determine the cost of the construction of the godowns as incurred by the petitioners alongwith other incidental expenses subject to the petitioners furnishing proof thereof, to the said Committee. The actual assessed cost of construction and expenses incurred for seeking necessary approval or the rent payable under the guarantee scheme, whichever is assessed lower, be disbursed by the respondent No.3-HAFED to the petitioners subject to the abovesaid Committee also conducting an inquiry as to whether the abovesaid godowns were utilized by the petitioners for any other use. In an eventuality of the abovesaid godowns being put to any other use for any specific period, the proportionate cost/revenue shall be reduced from the damages/cost as assessed by the abovesaid Committee.



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Let the aforesaid exercise be conducted by respondent No.3-HAFED within a period of six months of the receipt of certified copy of this order.

Ordered accordingly.

AUGUST 13, 2024
rajender

(VINOD S. BHARDWAJ)
JUDGE

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