

2024.PHHC.167597



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

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CWP-20975-2022

Date of Decision: 10.12.2024

M/S GOYAL AGRICULTURE WORKS

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

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

Present: Mr. Lalit Singla and Ms. Varsha Sharma,
Advocates for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

Prayer in the present petition is for directing the respondents No.2 to 4 to ensure that no interference is caused by respondent No.5 i.e. the Guru Nanak Truck Union, Khanauri, District Sangrur and its associates in the movement/transportation of the goods by the petitioner in his own vehicles and further for restraining them from pressurizing the petitioner to get its vehicles/trucks registered with them or in the alternative to hire their vehicles for its business purposes. A further prayer has also been made that respondents No.1 to 4 be directed to take action on the application submitted by the petitioner to respondents No.3 and 4 i.e. the Senior Superintendent of Police, Sangrur and the Station House Office, Police Station Khanauri, District Sangrur.

The petitioner, who is a sole proprietorship firm and registered with the Government Authorities, has approached this Court claiming that the firm is engaged in sale/purchase of trucks and also deals in the spare parts thereof and

dismantled products etc. It is stated that the principal place of business of the petitioner is Khanauri Mandi, District Sangrur. He submits that the petitioner also sells and purchases the aforesaid products to and from other places both within and outside the State of Punjab and for the said purpose, the petitioner has two truck bearing No.PB-13BP-3464 and PB-13BF-3164. The said trucks have valid permits from the Competent Authority for transportation of goods all over India. It is further submitted that the respondent No.5- the Truck Union and its associates are obstructing the persons who are using their own vehicles for transportation of goods for their own business purposes without getting the same registered with respondent No.5-the Truck Union. Of late, the representatives of respondent No.5-the Truck Union, Khanauri started threatening the petitioner as well as its employees and resorted to violence on various occasions. They deflated the tyres, gave beatings to the drivers deployed on the trucks and took away the vehicle loaded with goods/material to the premises of respondent No.5-the Truck Union so as to pressurize the petitioner to submit to the ambitions of respondent No.5-the Truck Union. The said trucks were released only after payment of heavy fines imposed by them, even though the respondent No.5-the Truck Union has no authority in law to collect any such fine and the same would in any case be an illegal recovery from the petitioner. He further contends that various unknown persons approached the business premises of the petitioner in August 2022 in order to pressurize him to join the respondent No.5-the Truck Union failing which they would not allow the petitioner to use his own vehicles ferrying his goods to any place within and outside the State of Punjab. When the petitioner refused to submit himself to the said illegal dictate and conveyed the same to the office bearers of respondent No.5-the Truck Union alongwith

unknown associates (whom the petitioner claims to identify by him in case brought before him), they heightened the pressure against the petitioner and threatened him with dire consequences. Subsequently, on 10.09.2022, when the workers of the petitioner-firm were loading the good/material in the vehicles, the associates of the respondent No.5-the Truck Union came to the spot and misbehaved and abused the drivers and workers. Intimation of the said incident was sent to the SHO of Police Station Khanauri on his mobile number 8054545122, but no action was taken. The petitioner also furnished the video clips of the incident that were downloaded from the security cameras of the neighbor and the photographs of the incident of 10.09.2022 were also taken and sent to police officials showing a large gathering in front of the premises of the petitioner and the threats being openly extended by the respondent No.5-the Truck Union alongwith their member associate to create fear in the minds of local business community. The petitioner also submitted a compliant on account of the inaction by the SHO, Police Station Khanauri to the Senior Superintendent of Police with regard to the incident of 10.09.2022 through his counsel. It is contended that under similar circumstances, one CWP No.11138 of 2011 titled as Dharam Pal Aggarwal Versus State of Punjab and others had been filed, which was disposed of by this Court vide order 08.12.2011 by passing the following order:

*“*** The writ petitions are for issuing of directions to the official respondents, who are the police to provide security and make appropriate arrangements to enable the petitioners to carry on the business free of obstruction from respondents No.3 to 5, who being the members of the Truck Operators' Union are harassing the petitioners for not registering with their Union and causing obstructions to their business. The State has filed reply stating that*

if there is any specific complaint given of specific harassment of persons belonging to the Union, they would take appropriate action. The reply has also filed for respondents No.3 to 5, who are the members of the Union contending that the Union has never interfered in working or plying of trucks of non- members including the petitioners, and the allegations made against respondents No.3 to 5 are false. They will particularly join issues on the petitioners' contention and state that they have not deflated the tyres or stopped the petitioners from plying trucks and contend that such allegations against them are false.

2. *The affirmation of respondents No.3 to 5 is specifically noted to bind them at all future events and the petitioners will have justifiable cause of action for appropriate complaint to the police if there has been a breach of what is stated before this Court through the written statement.*

3. *Having regard to the specific stand taken by the State, they will afford the appropriate protection to the petitioners in case of any untoward incident. The petitions are closed leaving with the liberty to the respective parties to approach the police authorities for action in accordance with law, if there is any obstruction by one against the other in respect of the lawful activities.*

4. *Both the writ petitions are disposed of."*

Learned counsel for the petitioner further argued that after the filing of the writ petition and notice having been issued, the respondent No.5 has chosen not enter appearance and was ordered to be proceeded against *ex-parte* vide order dated 10.09.2024. He submits that even on 19.05.2023, the premises of the petitioner was surrounded by the operators of respondent No.5-the Truck Union, qua which videography was also done by the petitioner and the same had been supplied to the police authorities which was eventually followed by a videography of a subsequent event as well, but despite the matter being reported

alongwith the material evidence like photographs as well as videos, the State Government seems to have turned a blind eye to the hardships being faced by the independent businessmen who are compelled by the unauthorized truck union to engage its services and in the event of the businessmen not abiding by such illegal dictate, they are being threatened and their properties are being damaged.

A short reply by way of an affidavit of Manoj Gors, Deputy Superintendent of Police, Sub-Division Moonak, District Sangrur has been filed, wherein it is stated that in case the contention of the petitioner is to be accepted, it would require round-the-clock surveillance, which is practically not possible as no preventive action can be taken against unknown persons by the police. It is further averred that no cognizable offence is disclosed to have been committed by anyone, thus no action is required to be taken on the application submitted by the petitioner and besides, there is no violation of the fundamental rights of the petitioner. Thus, the petition is not maintainable. It is further averred in the said reply that the petitioner never approached the local police of Police Station Khanauri with regard to commission of any cognizable offence nor any complaint was ever submitted by him alleging commission of any offence committed by any of the office bearers of respondent No.5-the Truck Union, hence, all the allegations levelled against the respondent No.5-the Truck Union are baseless and the writ petition deserves to be dismissed. It is further stated that as per the inquiry conducted by them, it is optional for a person to seek membership of the truck union and that it was found that the incident of 09.09.2024 was between the truck union and pick-up operators without any connivance of any office bearers of respondent No.5-the Truck Union and the same had already been amicably settled. Further, with respect to the incident of

10.09.2022, it is averred that no details of the persons who are alleged to have approached the petitioner had been furnished and as such, the petitioner having failed to provide the material particulars, the investigation could not be conducted. It is thus averred that during the course of inquiry conducted, the allegations pertaining to the complaint submitted by the petitioner were found to be baseless and the complaint has been closed.

The petitioner had also placed on record the additional documents including Annexure P-11 reflecting the office bearers of respondent No.5-the Truck Union threatening the petitioner for using his own vehicles alongwith the representation submitted by him on 11.08.2023 to the Director General of Police, Head Quarter giving details of the incident and furnishing the details of the vehicles in which the assailants/ accused persons had come to threaten him.

The State Counsel was directed to seek instructions as regarding the additional documents that have been appended by the petitioner alongwith his application. Despite the State Counsel having sought time since 05.12.2023 to seek instructions in the said regard and the matter having been adjourned on two occasions and lapse of nearly one year, State Counsel states that no instructions are forthcoming with respect to the said annexures/documents. Learned State Counsel vehemently reiterates that there is no infringement of any right that has been vested in the petitioner and as such the present writ petition deserves to be dismissed.

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.

During the course of dealing with the diverse matters in the present Roster, this Court has come across numerous writ petitions wherein the business operators had been seeking protection against highhanded approach of various unauthorized associations/unions, which obstruct a lawful trader from carrying on his business. On multiple occasions, the State Government has been filing affidavits assuring that such action would not be repeated and/or that the issue has already been resolved and the matter does not survive any further.

The present case is one of such circumstances. So much so, the fact that a similar order had earlier been passed in August 2011 shows that the problem is not of recent origin but has always been subsisting in the State of Punjab, which further depicts lack of active will on the part the police in inquiring such menace and to effectively put a check on the anti-social elements from extending any threat intimidating a lawful operator carrying on his trading business, under the garb of an association that has got no sanctity or force in the eyes of law.

Surprisingly, the Deputy Superintendent of Police has filed an affidavit contending that the matter has been thoroughly inquired into and the petitioner has not furnished any material or evidence on the basis whereof any cognizance offence is made out, however, what is seemingly lacking in the approach of the response filed by the respondent-State is that the videos and photographs of the incident had already been furnished to the police authorities. It is not expected of a person to be inquiring about the details of every person who thronged the place and intimidated a person, especially when the video recording as well as the photographs of the incident as a proof of the occurrence has been furnished by him. The job thereafter lay with the respondent-

Investigating Agency to identify the person(s) who have committed an offence. In any case, once the act of intimidation, decamping with the property and unlawful seizure thereof were duly reflected from the videos, photographs and the allegations levelled thereunder, various cognizable offences including offences under Sections 327, 341, 506, 380 and 452 of the IPC were duly made out *ex-facie*. All the said offences are cognizable offences but the Deputy Superintendent of Police, has very conveniently chosen to make a reference that no cognizable offence was made out. I find that such a response filed by the Deputy Superintendent of Police is severely lacking in understanding of law and the criminal/penal laws of the country. It seems that an attempt is made by the Deputy Superintendent of Police to mislead this Court and to cover their lack of initiative and their inability to tackle a problem that stares them in their face.

Moreover, the State cannot claim a sovereign immunity when it fails to provide security to its citizens and in such circumstances, it is bound to compensate the citizens for the lapse/omissions committed by it.

The Hon'ble Supreme Court in the case of "***Nilabati Behera Vs. State of Orissa***" reported as (1993) 2 SCC 746, while dealing with state's plea of sovereign immunity has observed the following:

*"14. In this context, it is sufficient to say that the decision of this Court in **Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh** [AIR 1965 SC 1039] upholding the State's plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional scheme, and is no defence to the constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for*

*contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of this Court in **Rudul Sah v. State of Bihar & Another [(1983) 4 SCC 141]** and others in that line relate to award of compensation for contravention of fundamental rights, in the constitutional remedy under Articles 32 and 226 of the Constitution."*

This court in the matter of “**GSPL India Gasnet Limited & Another v. State of Punjab & Others**” reported as 2024 SCC OnLine P&H 11602 has held that:

"28. The lack of adequate and proper action on the part of the police cannot be exempted or insulated under a sovereign immunity. The law has evolved much further and the State has been cast with a duty to protect its citizens and to maintain law and order. Failure by the State authorities to fulfil the said duty, resulting in a consequential harm to individuals and leading to potential claims, gives rise to an actionable cause. A liability can be fastened on the State where it is evident that there was a failure to act reasonably in maintaining law and order. The over blown fear of breach of peace, which is based more on apprehensions and lack of grit and determination and lack of leadership in law enforcement rather than objective input cannot be accepted as an excuse to sacrifice the rule of law."

Under the given circumstances, this Court does not accept the reply filed by the Deputy Superintendent of Police to be a correct representation of the actual facts. Accordingly, costs of Rs.1,00,000/- is imposed upon the Deputy Superintendent of Police for having filed an affidavit which is *per se* wrong and incorrect to his knowledge and is based on gross misappreciation of facts and seems to be a deliberate attempt to mislead this Court. Instead of carrying out

what the law required him to do, he chose an easy way out so as to incarcerate an individual on account of his lack of resources and ability to identify an assailant. The same is an abdication of a duty cast upon him to maintain law and order. The SHO of Police Station Khanauri as well as the Senior Superintendent of Police, Sangrur have also failed to take appropriate action in this regard. Accordingly, costs of Rs.100,000/- each is imposed on the then SHO, P.S. Khanauri as well as the then Senior Superintendent of Police, Sangrur also. Let half of the costs imposed as above be deposited with the Poor Patients Welfare Fund, PGIMER, Chandigarh and balance be paid to the petitioner within a period of one month of receipt of certified copy of this order. It is further made clear that in the event the appropriate steps/measures are not taken by the Senior Superintendent of Police, Sangrur and the attending SHO of Police Station Khanauri, they shall be liable to pay compensation to the petitioner for the loss suffered by him, if any. An additional cost of Rs.50,000/- for each such incident shall also be levied upon them, which shall be recovered from their own pockets, to be deposited with Poor Patients Welfare Fund, PGIMER, Chandigarh.

Petition stands disposed of accordingly.

Let a compliance report be filed before this Court within a period of six weeks of the receipt of certified copy of this order.

DECEMBER 10, 2024.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No