

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

CRM-M-47928-2022 (O&M)

Date of decision: 20th December, 2024

Bharat Bhushan Sharma @ Ashu

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Bipan Ghai, Senior Advocate with
Mr. Nikhil Ghai, Advocate and
Mr. Amit Agnihotri, Advocate,
for the petitioner.

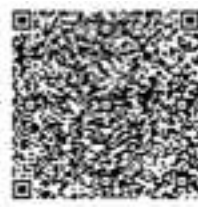
Mr. D.S. Brar, Sr. DAG, Punjab.

MAHABIR SINGH SINDHU. J.

Present petition has been filed under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C') for seeking quashing of FIR No. 18 dated 22.09.2022, registered under Sections 120-B, 409, 420, 467, 468 & 471 of the Indian Penal Code, 1860 (for short, "IPC") & Sections 7, 8, 12 & 13(2) of Prevention of Corruption Act, 1988, as amended vide Amendment Act, 2018 (for short "PC Act") at Police Station, Vigilance Bureau, District Jalandhar and all consequential proceedings arising therefrom, qua the petitioner.

2. BRIEF FACTS:

2.1 It transpires that one Gurpreet Singh son of Shri Swaran Singh, resident of House No.218, Street No.4, Durgapuri Vistar, Police Station,



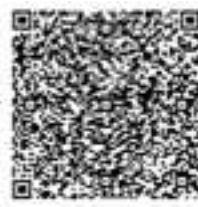
Nandnagri, Delhi-110093 (now residing at Guru Teg Bahadur Nagar, District Shaheed Bhagat Singh Nagar, Punjab) submitted written complaint dated 02.03.2022 to Chief Director, Vigilance Bureau, Punjab, which was forwarded to Deputy Superintendent of Police, Vigilance Bureau, Ludhiana, resulting into registration of FIR No. 11 dated 16.08.2022 against petitioner and other co-accused.

2.2 Another complaint was made by one Honey Kumar, President, R.S. Cooperative Labour & Construction Society, SBS Nagar resulting into registration of present FIR No. 18 dated 22.09.2022 against the petitioner as well as other co-accused.

2.3 Primarily, allegations in both the aforesaid FIRs are that petitioner being Minister of Food, Civil Supplies & Consumer Affairs, Government of Punjab made certain amendments while notifying “The Punjab Foodgrains Labour & Cartage Policy 2020-2021” (for short “the Policy for 2020-21”).

It is further alleged that in the Policy for previous year i.e. 2019-2020, there was no clause with regard to minimum turnover and every person was eligible to take part in the bidding process; however, in the year 2020-21, new sub-clause-G in clause 5 was inserted regarding “minimum turnover” from the cartage work of foodgrains of Govt. agencies in any one financial year out of previous 3 financial years i.e. from 2017-2018 to 2019-2020; hence the fresh participants were debarred being ineligible.

It is also alleged that due to amendment in the Policy for 2020-21, the capacity of cluster was increased and as a result thereof, the competition was decreased. In this manner, it is alleged that contracts were allotted to some 'favorites' of the petitioner and bids of other contractors were rejected. Again alleged that huge loss was caused to the public exchequer by the petitioner in



connivance with other co-accused while hatching criminal conspiracy, committing forgery, using forged documents as genuine and some of the government official(s) receiving kickbacks in return.

CONTENTIONS

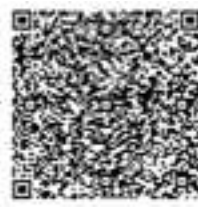
3. ON BEHALF OF THE PETITIONER

3.1 Learned Senior counsel for petitioner contends that present FIR is the second FIR on the same cause of action as earlier FIR No.11 dated 16.08.2022 has already been registered against petitioner at Police Station Vigilance Bureau, District Ludhiana and as such the present FIR is illegal and abuse of the process of law.

3.2 Further contends that both the aforesaid FIRs have been registered out of political vengeance on behalf of the ruling Government of Aam Aadmi Party in order to suppress the voice of petitioner, who is a former Minister of Food, Civil Supplies & Consumer Affairs of Punjab.

3.3 Also contends that Vigilance Bureau in derogation of mandatory provision of Section 17-A of PC Act, which bars them from conducting any inquiry, enquiry or investigation against any public servant where the actions under challenge are relatable to any recommendation made or decision taken by the said Public servant in discharge of his official functions of duties, without previous sanction, registered aforesaid FIRs.

3.4 Further contends that as per the Policy for 2020-21, there was a Tender Allotment Committee for each district in the State of Punjab, headed by District Controller consisting of 07 members, who were responsible for conducting the e-auction and giving the tenders. At that time, although petitioner was Minister of Food, Civil Supplies & Consumer Affairs, Government of Punjab, but he was not the member of any of the District Tender



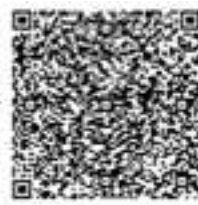
Allotment Committees and as such, no decision regarding the allotment of tender was taken by him. The approval for amendment in the Policy for 2020-21 was accorded by respective District Tender Allotment Committees and thereafter, the matter was sent to the Department of Finance, Government of Punjab for its concurrence. On receipt of the consent from the Finance Department, the case was forwarded to the Cabinet for its approval, which was duly granted and thereafter the amendment in the Policy for 2020-21 was carried out. Thus, it is wrong to allege that it is only the petitioner, who being a Minister, had amended the Policy for 2020-21.

3.5 Again contends that Policy for 2020-21 is applicable to all and sundry; thus it cannot be said that it has been framed to give benefit to a particular person and/or contractor.

3.6 Further vehemently contends that the Policy for 2020-21, which is alleged to have been amended by the petitioner to benefit certain contractor(s), was challenged before this Court in CWP No. 10707 of 2020 and CWP No. 10656 of 2020. However, the writ petitions were dismissed and the amendment was upheld by the then Division Bench(es) vide separate orders dated 28.07.2020 (P-20) & 27.07.2020.

3.7 Lastly contended that during the investigation of case FIR No.11 dated 16.08.2022, petitioner was nominated by Vigilance Bureau as additional accused in present FIR No.18 dated 22.09.2022 on the same set of allegations as in case FIR No. 11 dated 16.08.2022 and the same amounts to double jeopardy.

3.8 In support of his arguments, learned Senior counsel has placed reliance upon **T.T. Antony versus State of Kerala, (2001) 6 SCC 181,**



wherein it was held that second FIR for same cause of action is illegal, abuse of process of law and liable to be quashed.

4. ON BEHALF OF THE RESPONDENT

4.1 *Per Contra*, learned State counsel opposes the prayer of the petitioner(s) while submitting that petitioner-Bharat Bhushan Sharma @ Ashu, being the Minister of Food, Civil Supplies & Consumer Affairs, was solely responsible for amendment in the Policy for 2020-21. The amendment was made by the petitioner with an ulterior motive to extend benefit to the persons who were near and dear to him.

4.2 Further submits that District Tender Allotment Committee involved in the present corruption case registered at District Jalandhar is different from the one, which was involved in FIR No.11 dated 16.08.2022 registered at District Ludhiana.

4.3 Lastly submitted that apart from FIR No.11 dated 16.08.2022, complicity of petitioner and his co-accused is apparent in the present FIR No.18 dated 22.09.2022 as well.

5. Heard learned counsel for the parties and perused the paper book.

6. DISCUSSION AND OBSERVATIONS

6.1 Before proceeding further, the relevant clause of the Policy for 2020-21 is recapitulated as under:-

*“GOVERNMENT OF PUNJAB
DEPARTMENT OF FOOD, CIVIL SUPPLIES AND
CONSUMER AFFAIRS
ANAJ BHAVAN, SECTOR 39-C, CHANDIGARH

THE PUNJAB FOODGRAINS LABOUR & CARTAGE POLICY
2020-2021
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The Government of Punjab, through its Food Procuring Agencies and the Food Corporation of India procures food grains (mainly paddy and wheat) on behalf of the Government of India, from various purchase centers situated in the State of Punjab. The procured food grains are then stored at different plinths /Godowns owned/ hired by State Procurement Agencies. The Cartage of food grains from mandis to various storage points, including rice mills, situated up to 8 KM from such mandi(s) is got done from various contractors and the Labour operations in the godowns (including P.E.G) are got carried out from Labour & Construction Societies, Worker Management Committees and other labour contractors, on the basis of contracts awarded through competitive tenders. The Policy, for Labour and Cartage of foodgrains for the year 2020-21 shall be as under: -

1 to 4

5. Technical Qualifications:-

A to F

G. *In case of tenderer applying for cartage, either alone or along with labour, Tenderer must have minimum turn over from the cartage work of foodgrains of Govt agencies in any one financial year out of previous 3 financial years i.e., from 2017-18 to 2019-20 depending upon the capacity of cluster applied for:-*

<i>Sr. No.</i>	<i>Total arrival of wheat/paddy(whichever is higher) in Mandis in previous year falling under one cluster. (Only Mandi(s) from which cartage has to be done to be included to calculate capacity).</i>	<i>Minimum turnover required (In Rupees)</i>
<i>1.</i>	<i>Up to 5000 M.T.</i>	<i>10,00,000</i>
<i>2.</i>	<i>5001 M.T. to 10,000 M.T.</i>	<i>20,00,000</i>
<i>3.</i>	<i>10,001 M.T. to 20,000 M.T.</i>	<i>40,00,000</i>
<i>4.</i>	<i>20,001 M.T. to 30,000 M.T.</i>	<i>60,00,000</i>
<i>5.</i>	<i>30,001 M.T. to 40,000 M.T.</i>	<i>80,00,000</i>
<i>6.</i>	<i>40,001 M.T. to 50,000 M.T.</i>	<i>1,00,00,000</i>
<i>7.</i>	<i>50,001 M.T. to 75,000 M.T.</i>	<i>2,00,00,000</i>



8.	75,001 M.T. to 1,00,000 M.T.	3,00,00,000
9.	Above 1,00,000 M.T.	4,00,00,000

Note 1:- Copy of the audited balance sheet of the concerned financial year shall be uploaded with the Technical Bid as proof of turnover.”

Perusal of the Policy for 2020-21 reveals that aforesaid amendment had been made to facilitate everyone concerned and there was no intention to give benefit to any particular person.

6.2 It is worthwhile to mention here that above amendment in the Policy was challenged at the hands of certain unsuccessful bidders in CWP No. 10707 of 2020 and CWP No. 10656 of 2020, which came to be dismissed by the then Division Bench(es) vide orders dated 28.07.2020 (P-20) & 27.07.2020. For reference, the relevant paragraphs of the order dated 27.07.2020 passed in CWP-10656 of 2020, are extracted as under:-

- “1.

Petitioner claims to be prospective tenderer for the work of Cartage of foodgrains from respective mandis to storage points of Cluster Talwandi Bhai, Distt.Ferozepur, pursuant to the notice inviting E-Tender for labour and cartage works during 2020-21, published in various newspapers on 24.1.2020, supplemented by the Corrigendum Tender Notice dated 6.7.2020 (P-2) whereby the last date for submission of tender forms is 28.7.2020 and opening of technical bids is 29.7.2020.
2.

Grievance of the petitioner is directed towards Clause 5(G) of the Punjab Food Grains Labour and Cartage Policy,2020-21 (P-1) (for short Policy 2020-21) issued by the Department of Food and Civil Supplies and Consumer Affairs, whereby for the first time a condition has been provided requiring tenderer to have minimum turnover from the cartage work of foodgrains of any Governmental agency of one year out of three years from 2017-18 to 2019-20, thereby rendering the petitioner ineligible to apply on account of not having worked with the Government agency in the recent past inspite of having sufficient



experience in the previous years. Thus, the challenge in the present petition is to Clause 5(G) of Policy 2020-21.

3.

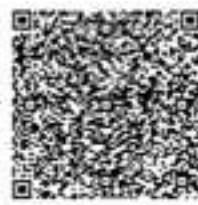
4. After hearing counsel for the petitioner at length, we are not persuaded to invoke our writ jurisdiction as we find no fault with the action of the respondents.

In order to examine the issue involved in this petition, it would be beneficial to reproduce the said Clause 5(G) of Policy 2020-21, which reads as under:-

Clause 5(G): In case of tenderer applying for cartage either alone or along with labour, Tenderer must have minimum turn over from the cartage work of foodgrains of Government agencies in any one financial year out of previous 3 financial years i.e. from 2017-18 to 2019-20 depending upon the capacity of cluster applied for:-

Sr. No.	Total arrival of wheat/paddy(whichever is higher) in Mandis in previous year falling under one cluster. (Only Mandi(s) from which cartage has to be done to be included to calculate capacity).	Minimum turnover required (In Rupees)
1.	Up to 5000 M.T.	10,00,000
2.	5001 M.T. to 10,000 M.T.	20,00,000
3.	10,001 M.T. to 20,000 M.T.	40,00,000
4.	20,001 M.T. to 30,000 M.T.	60,00,000
5.	30,001 M.T. to 40,000 M.T.	80,00,000
6.	40,001 M.T. to 50,000 M.T.	1,00,00,000
7.	50,001 M.T. to 75,000 M.T.	2,00,00,000
8.	75,001 M.T. to 1,00,000 M.T.	3,00,00,000
9.	Above 1,00,000 M.T.	4,00,00,000

It is apparent that for a tenderer to apply for allotment of contract for cartage alone or alongwith labour, he must have a



minimum turnover from the cartage work of foodgrains from any of the Government agency in the 3 financial years as per specified capacity of the cluster. It is also matter of record that the policy containing clause was notified on 30.3.2020. It is further apparent that Government to protect its interest in such like commercial transactions affecting public interest has tried to provide some leverage to the prospective contractors who have executed certain works of required magnitude in the recent past.

5.

6. *In the backdrop of aforesaid law on the subject, it cannot be denied that each contract and, in any event, each type of contract would require an elaborate exercise while fixing the terms and conditions of the notice inviting tenders. The party inviting tenders is free to adopt any reasonable method for the purpose of fixing the terms and conditions of the tenders. They may rely upon experts or consultants. They may rely upon in-house expertise or may seek the assistance of other consultants. The terms of the invitation to tender is in the realm of contract. The Government must have freedom of contract. In the present case if the Government has introduced this additional requirement of a tenderer having executed work of Government agency of minimum turnover in any one year in the previous three years towards the soundness, capacity and ability of a contractor to ensure the timely and successful execution of the work (especially in these challenging times of pandemic Covid-19), the action cannot be termed to be unreasonable, irrational or arbitrary, so as to persuade us to interfere in our writ jurisdiction, keeping in view the law settled by Hon'ble the Supreme Court.*

Dismissed.”

6.3 To the same effect are the observations made by another Division Bench of this Court in CWP-10707 of 2020 and for reference, the relevant paragraphs of the order dated 28.07.2020 (P-20), are recapitulated as under:-

“1. Feeling aggrieved by the order dated 17.07.2020 (Annexure P/6) whereby respondent No.2 rejected the representation of the petitioner seeking participation in the

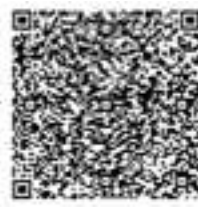


tender process initiated by respondent No.1 for labour and cartage of foodgrains, on the ground of his being inexperienced contractor, the petitioner has sought the indulgence of this Court for issuance of a writ in the nature of certiorari quashing the above-said order as well as Clause 5(ii)(G) of the Punjab Foodgrains Labour and Cartage Policy, 2020-21 (for short “PFLC Policy”) and has made a further prayer for issuance of a writ in the nature of mandamus directing the respondents to permit him to participate in the tender processes within the State of Punjab and to consider his bids.

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6. *However, we do not find the afore-discussed contentions to be tenable at all because a bare perusal of the impugned order (Annexure P/6) reveals that it has been specifically mentioned therein that “cartage” which was categorized as “unskilled work” till the previous year, i.e. 2019-20, has now been included in the category of the “skilled work” as per the decision taken by the Council of Ministers, Punjab on 02.03.2020. Even otherwise, undoubtedly, the foodgrains are perishable goods/items. It being so, the timely and proper handling of the same after its harvesting, i.e., loading, transportation, unloading and storage thereof, is of utmost importance to keep the same preserved for being distributed and utilized so as to achieve the object and the goal behind the enactment of the Food Corporation of India Act, 1964 (as amended from time to time) and this work certainly involves skill.*

7. *Undisputedly, framing/floating of a policy is exclusively within the domain of the Executive. The Authority/Agency*

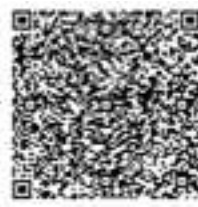


seeking any work to be got done through the tender process is supposed to be well within its rights to determine/stipulate the terms and conditions regarding the mode and manner of the execution of the said work. It is also well settled that the Courts should not sit over the decisions taken by the Executive/the Government as the Court of Appeal or the Reviewing Authority except in the eventualities where such decisions are mala-fide or arbitrary. When applied on the touch-stone of the above-said proposition, the impugned clause of PFLC Policy requiring a tenderer to have the experience in the cartage of foodgrains, the same being a categorized skilled work, for at least one year in the preceding three years, cannot be held to be malafide or arbitrary. Resultantly, the impugned order (Annexure P/6) which is also broadly based on the said clause, does not warrant any interference by this Court.

8. *As regards the last contention of learned counsel for the petitioner regarding the impugned clause being contrary to Annexure P/7 while claiming this document to be the MTF, it is worth-while to mention here that a plain reading thereof shows that it has been issued by the General Manager (Region), Food Corporation of India Regional Office, Haryana, Panchkula. Hence, the same cannot be taken to be the MTF meant to be followed throughout the country. Thus, Annexure P/7 is also of no avail to the petitioner to substantiate his claim in this petition.*

9. *As a sequel to the foregoing discussion, it follows that the present petition, being devoid of any merit, deserves dismissal. We order accordingly."*

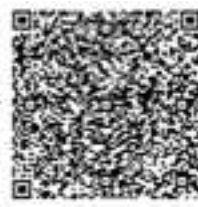
During the course of hearing, it was acknowledged by both sides that aforesaid orders passed by Division Bench(es) have attained finality as there was no further challenge to the same. Meaning thereby, the amendment of Clause 5(G) of the Policy for 2020-21, which has been made the sole basis for initiation of criminal prosecution, has already been judicially reviewed by the



Division Bench(es) of this Court and the same is duly upheld. Moreover, the Policy for 2020-21 was framed by the Government of Punjab and thus, it cannot be said that the decision to that effect was taken, solely by the petitioner-Bharat Bhushan Sharma @ Ashu.

6.4 Also noteworthy that perusal of both the FIRs i.e. FIR No.11 and FIR No.18 (*supra*) reveals that allegations in both the FIRs are verbatim the same and there was no occasion for the Vigilance Bureau, Jalandhar to register second FIR on the same cause of action. It amounts to double jeopardy and as such, the present FIR is liable to be quashed. Hon'ble the Supreme Court in **T.T. Antony's case** (*supra*) made the following observations in Para 27 of the judgment and for reference, the same is extracted herein below:-

"27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that subsection (8) of Section 173 CrPC empowers the police to make further investigation, obtain further evidence e (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang case it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon f filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of



the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 CrPC or under Articles 226/227 of the Constitution."

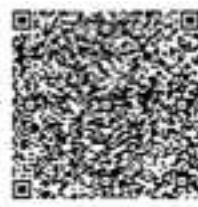
Perusal of the above extract reveals that second or successive FIR, not being a counter case, filed in connection with the same or connected cognizable offence, alleged to have been committed in the course of same transaction, is not maintainable and is a clear case of abuse of process of law.

6.5 Thus, there is no hesitation to observe that allegations leveled in the FIR do not disclose any cognizable offence and at best, complainant could have availed remedy of judicial review against the amended Policy for 2020-21; but certainly, there was no occasion to prosecute the petitioner on that count.

6.6 In view of the facts and circumstances discussed herein above, launching of prosecution by complainant-Honey Kumar (unsuccessful bidder) is nothing, but an example of giving a cloak of criminal offence to the contractual matter for Procurement and Transportation of foodgrains.

7. In such a scenario, the irresistible conclusion would be that criminal proceedings have been initiated against petitioner by the Vigilance Bureau at the instance of complainant, just to harass him and as such, it amounts to misuse of powers by the Bureau, for the reasons, which are unknown to law.

8. Even otherwise, vide order of even date (20.12.2024), this Court has quashed FIR No.11 dated 16.08.2022 and as such, the present FIR No. 18 dated 22.09.2022, being the successive FIR, registered at Police Station Vigilance Bureau, District Jalandhar, is also bound to meet the same fate.



9. Resultantly, it is a fit case to exercise the inherent powers under Section 482 Cr.P.C to prevent the abuse of process of law.

10. Consequently, this Court is left with no option, except to allow the present petition.

11. Ordered accordingly.

12. As a result, FIR No. 18 dated 22.09.2022, registered under Sections 120-B, 409, 420, 467, 468 & 471 of the IPC & Sections 7, 8, 12 & 13(2) of the PC Act at Police Station, Vigilance Bureau, District Jalandhar and all consequential proceedings arising therefrom, are quashed and set aside *qua* the petitioner.

Pending application(s), if any, shall also stand disposed off.

20th December, 2024
SN/Rajeev(rvs)

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No