
(2016) 07 P&H CK 0230
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 4059 of 2016

Sukhdev Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 08-07-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g)

Citation : (2016) AIR(Punjab) 195

Hon'ble Judges : Mr. S.J. Vazifdar, ACJ Mr. Arun Palli, J.

Bench : Single Bench

Advocate : Mr. Jasdev Singh Mehndiratta, Advocate, for the Petitioner; Mr. Rajinder Goyal, Addl. AG, Punjab, for the Respondents Nos. 1 and 2; Mr. Tejeshwar Singh, Advocate, for the Respondent No. 3

Final Decision : Allowed

Judgement

Arun Palli J.—A writ in the nature of certiorari is prayed for, to quash the order, dated 04.01.2016 (Annexure P29), vide which the District Managing Committee has blacklisted the petitioner for a period of three years, and his security deposits have since been forfeited.

2. A brief narration of facts that have led the parties to the current stage shall be expedient.

3. On 18.03.2015, the department of Food and Civil Supplies issued a policy for transportation, labour and cartage of food grains. Vide publication in the newspapers, tenders were invited in terms of the said policy. The petitioner, who purports to be eligible, submitted a tender for allotment of labour and cartage work. For, his bids were found to be the lowest, he was assigned the work of 15 Grain Markets (Mandis/Centres). In terms of the policy, dated 18.03.2015, if the food grains are to be carried to a distance of less than 8 kilometers, the job is to be executed by the tenderer itself. Whereas, if the distance exceeds 8 kilometers, then tenders for transportation of foodgrains are invited. But, paddy

pertaining to all the 15 mandis, for which the work was assigned to the petitioner, was to be carried to a distance of less than 8 kilometers.

4. The case set out in the petition is; for the tender was allotted to the petitioner, local truck unions and other anti-social elements threatened the petitioner to transfer the work to them, else they not let him execute the work. It is alleged that these truck unions were being openly supported by persons owing allegiance to political party in power in the State of Punjab. In support of these assertions, the petitioner has even appended two news items published in the newspapers, dated 04.10.2015 (Annexure P5) and 07.10.2015 (Annexure P6), respectively. Petitioner alleged to have made all arrangements for transportation of the food grains, but the official respondents did not even issue the work order to the petitioner. Petitioner purports to have made representations/complaints to the concerned authorities, but to no avail. Faced with this, petitioner preferred Civil Writ Petition No.21873 of 2015, before this court, and sought a direction to the official respondents to allow him to carry out the works, and also for providing adequate security for its smooth execution. The said writ petition was disposed of by this court, vide order dated 13.10.2015 (Annexure P14), for learned counsel for the official respondents assured the court that the copies of the work order shall be supplied to the petitioner during the course of the day. And, petitioner shall also be accorded all the facilities to execute the contract provided he produces at least 100 trucks on 15.10.2015 at 10:00 am for inspection before the authorities at Dhanaula Mandi. Consequently, the District Controller (respondent No.4), vide letter dated 14.10.2015 (Annexure P15), required the petitioner to bring 100 trucks on 15.10.2015. However, as a result of an incident of desecration of Shri Guru Granth Sahib by certain miscreants on 12.10.2015, there was a widespread protest and public unrest in the State of Punjab, resultantly, petitioner could not ply his trucks to the designated site for inspection on 15.10.2015. However, respondent No.4, vide letter dated 15.10.2015 (Annexure P17), required the petitioner to produce the trucks on 16.10.2015 at 10:00 am, and thereafter on 18.10.2015. But, as the situation remained tense, vide letter dated 16.10.2015 (Annexure P18), petitioner again requested respondent No.4 to co-operate, for he produce the trucks once normalcy is restored. But, the official respondents, vide order dated 20.10.2015 (Annexure P23), blacklisted the petitioner for a period of 3 years and ordered forfeiture of his security amount, for the authorities were of the view that petitioner had indeed no arrangements to provide trucks nor the capacity to execute the work. Soon thereafter, a fresh notice inviting tender (NIT), dated 21.10.2015 (Annexure P24) was issued, and the work, that was allotted to the petitioner, was assigned to a truck union. Once again, the petitioner approached this court vide, Civil Writ Petition No.23604 of 2015, and assailed the order dated 20.10.2015 (Annexure P23), and also prayed for a writ of mandamus directing the respondents to allow him to carry out the work.

5. This court, vide order, dated 05.12.2015 (Annexure P26), set aside the order vide which the petitioner was blacklisted, for the authorities had even failed to

provide an opportunity of hearing to the petitioner before passing the said order. As regards the grievance; that the authorities had wrongly awarded the work to the private respondents, it was observed; for the work involved transportation of food grains, the same could not be held up for any reason including on account of the difficulty faced by the petitioner. The conclusion arrived at reads thus:

"9. Admittedly, the petitioner has not been afforded an opportunity of being heard before passing the order of blacklisting. There are several other important aspects which require consideration. A decision whether or not to blacklist the petitioner can only be taken thereafter. At least, as far as the initial inability to produce the trucks is concerned, prima-facie the petitioner was prevented from doing so for no fault of his own, but in view of the disturbances in the State of Punjab.

10. In these circumstances, the impugned order is set aside to the extent that it blacklists the petitioner and forfeits the security deposit. As we intend directing the official respondents to afford the petitioner a hearing before taking any action regarding the blacklisting and forfeiture, we do not intend passing an order directing the official respondents to return the security deposit at this stage, although the order is quashed.

11. In these circumstances, the petition is disposed of by quashing the impugned action forfeiting the security deposit and blacklisting the petitioner with liberty, however, to the official respondents to initiate proceedings for blacklisting. If no proceedings are initiated for forfeiture within four weeks from today, the respondents shall refund the security forthwith thereafter. If proceedings for forfeiture are initiated within four weeks from today, the security shall abide by the order and the result of the challenge thereto, if any.

Sd/- (S.J. Vazifdar)

Acting Chief Justice

Sd/- (Tejinder Singh Dhindsa) Judge"

6. Pursuant to the order rendered by the Division Bench, dated 05.12.2015 (Annexure P26), and to afford an opportunity of hearing to the petitioner, the authorities, vide letter dated 11.12.2015 (Annexure P27), required the petitioner to appear before the District Controller on 15.12.2015. Petitioner submitted a detailed reply to the said notice on 15.12.2015 (Annexure P28). However, the District Managing Committee, vide its order dated 04.01.2016 (Annexure P29), reiterated its earlier decision, for the petitioner was blacklisted for a period of 3 years and his security amount was forfeited. That is how, as indicated above, the petitioner is before this court.

7. Learned counsel for the petitioner submits that the official respondents have blacklisted the petitioner, and allotted the work to Truck Union Dhanaula, in a most arbitrary manner, owing to a political pressure. He submits that, despite all arrangements, it was just not possible for the petitioner to ply his trucks to a

specified site for inspection, because of the serious disturbances in the State of Punjab, during that period.

8. As opposite to this, learned counsel for the respondents submits that despite repeated opportunities afforded to the petitioner, he failed to produce the requisite trucks on the specified date and time, and even thereafter. He submits that during the same period, the other transporters plied their vehicles in the area and, thus, the justification being rendered by the petitioner is wholly misconceived.

9. We have heard learned counsel for the parties and perused the records.

10. The short but a significant question that was required to be determined by the authorities was; Whether the petitioner indeed had a definite arrangement of requisite numbers of trucks for transportation of food grains and, if yes, was it owing to the law and order problem prevalent in the State, at that time, he was unable to get the trucks to the designated site for inspection?

11. Conceitedly, the petitioner has been working with the department as a contractor since 1982. He was never blacklisted by the department on the ground that he failed to provide the vehicles for transportation of the food grains. Much before the authorities had even passed the order of blacklisting, dated 04.01.2016 (Annexure P29), vide letter dated 19.10.2015 (Annexure P22), petitioner furnished a list of 100 trucks with their registration numbers to the authorities, which showed the arrangements or the agreements he had already entered into with the truck owners to execute the work. So much so, despite public unrest and protests, he was willing to get the trucks for inspection, and rather requested the authorities to provide security, to avoid any untoward incident. Even, in his reply dated 15.12.2015 (Annexure P28), submitted to the authorities, during the course of personal hearing, he maintained "I am submitting list of 100 trucks with their registration certificates, which was submitted by me in the Hon''ble High Court. I shall furnish affidavits of owners of these trucks in the Hon''ble High Court. A CD showing the turbulence and cuttings of different newspapers are attached herewith. Thus it is apparent that you have taken the action of blacklisting me and forfeiting my security under political pressure."

12. Despite that being so, the authorities could still require the petitioner to furnish any other material to satisfy itself. But it did not choose to do so, possibly because, the respondents were convinced that the petitioner indeed had the requisite arrangements to execute the work. That is how, even the District Managing Committee did not even advert to this aspect, while passing the order of blacklisting. Thus, the conclusion arrived at by the authorities, that the petitioner could not produce the requisite number of trucks, is wholly erroneous.

13. It is a matter of common knowledge that as a consequence of incident of the desecration of Shri Guru Granth Sahib by certain miscreants in village Ghawaddi, on 12.10.2015, there was a widespread protest and public unrest in the state of

Punjab. Violence erupted in various parts of the State, two persons were killed in police firing and resultantly, the highways were blocked across the State. As a result, the petitioner could not get his trucks for inspection on a specified date i.e. 15.10.2015. And, vide letter dated 15.10.2015 (Annexure P16), he expressed his inability to the authorities and beseeches co-operation, particularly when on 14.10.2015, incidents of rioting were reported at various places, and a Bandh was declared in Punjab for 15.10.2015. Significantly, the authorities, vide its letter dated 15.10.2015 (Annexure P17), acknowledged that there indeed was a call for Band, but still required the petitioner to produce the trucks the next day i.e. 16.10.2015. Again, petitioner, vide letter dated 16.10.2015 (Annexure P18), explained to the authorities that at number of places, traffic was disrupted and roads had been blocked by felling trees. Thus, till the protests were continuing, it was not safe to get the trucks to Dhanaula Grain market. Still, authorities asked the petitioner to produce the trucks on 17.10.2015, and then on 18.10.2015. Ex-facie, the authorities were fully conscious of the protest and the disturbances in the State and yet required the petitioner to produce the trucks on 16th, 17th and then on 18th, and eventually passed the order blacklisting the petitioner, dated 20.10.2015 (Annexure P23). There is hardly any justification, least plausible, for the undue haste exhibited by the respondents to resort to such a measure. Records show that the situation in the State was so grim, that the Government had to deploy paramilitary forces in Amritsar, Ludhiana and Jalandhar.

14. We are not inclined to examine the malafides that have been alleged by the petitioner, for neither the persons against whom he has alleged malafides have been arrayed as party nor any such prayer was made even during the course of hearing.

15. That arguments that has been advanced by the learned counsel for the respondents; that other transporters were able to ply their vehicles and, therefore, the plea being set up by the petitioner was misconceived, also lacks conviction. For, it was indeed possible that certain vehicles that were being plied were within the area where the inspection was to be carried out, whereas the trucks arranged by the petitioner had to be brought from or through disturbed areas. No credible material was brought on record to show that there was a peaceful and free movement of traffic in and around Dhanaula mandi during the relevant period.

16. In conspectus of the position, as sketched out above, we are constrained to set aside the order, dated 04.01.2016 (Annexure P29), being wholly unjust and arbitrary. Accordingly, the writ petition is allowed, and as a consequence, the order dated 04.01.2016 (Annexure P29) is set aside. There shall be no order as to costs.