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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 1706/2005, C.M. No. 1328/2005 (Stay Application)

B.PURBANCHAL ROAD SERVICES (P).Ltd.

..... Petitioner

Through : Nemo.

versus

FOOD CORPORATION OF INDIA & ORS.

..... Respondents

Through : Nemo.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

S. RAVINDRA BHAT , J (OPEN COURT)

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1. None appeared on behalf of the parties.
2. The previous order sheet discloses that several adjournments were granted; this is clear from the orders dated 04.08.2006, 09.11.2006, 24.08.2007, 22.11.2007 and 15.05.2008. In the circumstances, the Court has considered the pleadings.
3. The petitioner claims the following reliefs:

“(a) Issue of a Writ of Mandamus or any other Writ, order or direction in the nature of a writ, commanding the respondents to determine/consider the case of the petitioner for enhancement of 10% freight charges and release the same as has been done in certain other regions of the respondent corporation.

(b) Issue a writ order or direction in the nature of Certiorari calling for the records pertaining to Order No. S&C/15/RTC/Audit Para/04-05/1495 dated 27-7-2004 (Annexure P-16) and quash the same as illegal, null and void.

(c) Issue a Writ or direction or order in the nature of a Prohibition thereby restraining the Respondents from making any recovery from the petitioner in respect of the impugned contract.

(d) Issue a writ order or direction in the nature of a Mandamus directing the Respondents to refund the Security deposit amounting to Rs.6,60,559/- arbitrarily forfeited and Rs.84,300/- arbitrarily withheld from admitted bills, with interest from the date of completion of the contract at a rate this Hon'ble court may deem fit and proper.

(e) Issue any other writ or direction as this Hon'ble Court may deem fit and proper in the circumstance of the case and

(f) Award cost of the petition. ”

4. The petitioner contends to issuance of a tender notice on 21.01.1999 by the third respondent, i.e. Senior Regional Manager, FCI, for transportation of food grains for two years from centres in Haryana, Delhi and Himachal Pradesh region; the tender notice disclosed various details such as Security Deposit to be furnished, Earnest Money deposit etc. The petitioner has enclosed copies of the tender documents and certain clauses of the offer. It is submitted that the second respondent, after negotiations accepted the petitioner's offer, on certain rates for different routes, on 03.06.1999. This was followed by the award of contract, by the second respondent ex Palwal/Hathin/Gurgaon/Hodal to Delhi on certain specific terms and conditions for a period of two years commencing from 21.06.1999. The contract was on the basis of a model tender form. It is claimed that the Respondent No.2 issued fax messages, received by the petitioner on 25.10.1999, allowing 10% increase in freight rates due to increase in fuel prices, to the road transport contractors of Jammu and Kashmir Region of the Respondent No.1. It was submitted that the petitioner became aware in February 2000 of the orders issued by three Public Sector

Undertakings (PSUs) granting similar enhancement in freight charges to their contractors on account of increase in fuel prices.

5. The petitioner refers to issuance of clarificatory communication by the third respondent, stating that the discrepancy arose out of a printing mistake and advising field officers to decide pending cases of the transport contractors by imposing the penalty at the rate of Rs.100/- per day subject to maximum of Rs.1000/- per day. The petitioner claims to have issued a notice for seeking increase in freight charges in line with the other PSUs. When these issues were pending, the contract was successfully completed, according to the petitioner, on 20.06.2001. It relies upon a certificate in this regard issued by the respondents. The petitioner relies upon the order dated 21.08.2003 in W.P. 20907/2003 *M/s. Swarna & Co. v. Senior Regional Manager, FCI*, directing refund of Security deposit, which was arbitrarily withheld.

6. It was averred that the respondents refused to refund the security deposit amounting to Rs.6,60,559/- and also arbitrarily forfeited Rs.84,300/- from the admitted bills on account of the alleged penalty. Thus, on the one hand, the reliefs of increase in freight charges and on the other hand, disbursement of the security deposit are sought.

7. The respondent, FCI contends in its return that this Court does not possess jurisdiction since the contract had to be and was performed in Haryana. It is further contended that the issue of increase in freight rates, is not applicable in the facts of this case. According to the respondents, the FCIs policy of increasing the freight charges was confined to the state of Jammu and Kashmir (J&K) because the state Food and Supplies Department had allowed 10% increase in the existing approved rates. The intention of the FCI, it is submitted in that particular case was to speed up transport of foodgrains before blockage of roads in the J&K State. The FCI adverts

to a letter dated 25.10.1999 and states that the increase was only a one-time measure and could not be used as a precedent in any other case. The FCI refutes all allegations and also states that the petitioner is not entitled for increase of rates. It is claimed that the transportation of goods from one Centre in Haryana to Delhi in any event did not entitle for such freight increase as these local centres are very near Delhi as compared with far flung regions of India.

8. The FCI contends having referred the petitioner's representation dated 03.05.2000 to a committee of senior officers, which was duly examined and the petitioner was intimated about the rejection of the request by letter dated 16.10.2004, a copy of the said letter has been also produced as Annexure R-I. It is submitted that the request for waiving of penalty could not be acceded to. The FCI mentions that the petitioner was also awarded transportation contract Ex. Hodal Palwal to FSD Koli Kalan and it voluntarily submitted an undertaking dated 13.08.2001 alongwith an affidavit stating that if there was any audit recovery from the company, the same could be deducted from the security deposit lying with the District Office Gurgaon against the other contract. It is, therefore, submitted that the respondents acted within their rights in withholding the amounts as they did upon being satisfied that the contractual terms had not been fulfilled.

9. The respondents, however, aver to the existence of arbitration clause and state that in case the petitioner is aggrieved in the performance of the contract or in regard to the payment disbursed, it is open to it to seek recourse to arbitration.

10. The above discussion would show that the petitioner's grievance pertains to amounts being withheld allegedly on an unjustified basis. The petitioner was awarded a contract for a two year term. Concededly, that ended in 2001. The dispute regarding full rates apparently existed and the decision of FCI was communicated during the subsistence of the contract. It is nobody's

case that 10% hike in fuel rates rates was a matter factored into the contract. It was a policy decision taken after the contract was entered into. The petitioner has not been able to point out as to how such policy decisions would be made applicable to pending contracts, when it specifically dealt with one region and that too as a one-time measure. Therefore, the respondents' response pertaining to enhancement in fuel cost by analogical extension of application of other PSUs policies or even the policy in relation to J&K state cannot be termed as unreasonable.

11. As far as the petitioner's contractual disputes with regard to the withheld amount is concerned, the FCI has, no doubt, given an explanation. The petitioner apparently had not raised a dispute at the relevant time and perhaps was inspired to approach the Court after the judgment of the Madras High Court. In any event, the disputes are purely of commercial nature where the question as to whether the amounts withheld were in accordance with law have to be determined with regard to the materials adduced by the parties. The petitioner had not disputed the arbitration clause alleged by the respondents; it is in the following terms:

"ICA ARBITRATION CLAUSE"

All disputes and differences whatever arising between the parties out of or relating between the parties out of or relating to the construction meaning and operation in effect of this agreement or the breach thereof shall be settled by arbitration in accordance with the rules of arbitration of the Indian council of arbitration and the award made in pursuance thereof shall be binding on the parties. The award will be speaking order."

12. The fact that the FCI is a public agency does not ipso facto oblige this Court to entertain and try a dispute which an individual or a company may have with it in respect of contractual obligations or matters which do not fall within public law domain. In the circumstances, the writ petition is not maintainable. It is however open to the petitioner to seek its remedy and invoke

the arbitration clause referred to above, but in accordance with law.

13. The writ petition and the accompanying application are dismissed but subject to above observations.

S. RAVINDRA BHAT,J

MARCH 27, 2009
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