

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No. 12014/2009

% Judgment reserved on: 19th December, 2012
Judgment delivered on: 1st April, 2013

DARSHAN SINGH & ORS. Petitioners
Through: Ms. Amita Gupta & Ms. Tanvi
Kapoor, Advocates.

Versus

FOOD CORPORATION OF INDIA Respondent
Through: Mr. Sukumar Pattjoshi,
Advocate.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant petition, the petitioners are seeking direction to respondent to revise the piece rate for non-siding godowns as the workers are performing two operations, i.e., the stocks are first loaded into trucks and thereafter the bags are re-loaded from trucks into the wagons at the Railway Station and pay the same to the Direct Payment Systems (DPS) workers at Dhuri Centre, Punjab.

2. Learned counsel appearing on behalf of the petitioners has submitted that a Memorandum of Settlement was signed between FCI Management Headquarters and representatives of FCI Workers Union on 01.11.1994 and as per agreed clause in the said Memorandum, the

wages of DPS workers were fixed and subsequently revised by FCI, after a gap of every two years. The minimum guaranteed wage w.e.f. 01.01.2006 for handling labour was Rs.136/- and for ancillary labour was Rs.114/- for piece rate for basic operation per 100 bags (more than 65 kg bag) were fixed. The basic operation means unloading food grain bags from wagons/trucks or any other vehicle and direct loading on truck or any transport vehicle/into wagons.

3. She further submitted that vide Circular No.4/2004 dated 18.03.2004 the respondent increased the earning of food handling gangs under DPS on the basis of Above-Schedule of Rates (ASOR) percentage @ Rs.219/- per 100 bags, each weighing more than 65 kilograms. The existing ASOR percentage for DPS was protected, wherever it was higher than ASOR percentage @ Rs.219/- per 100 bags. The revised rates w.e.f. 01.01.2004 were implemented at Food Storage Depot but the same were not implemented at Buffer Complex Depot. The handling labourers had sent a notice dated 30.01.2006 to the respondents to extend the benefit of Circular No.4/2004 dated 18.03.2004 to Buffer Complex, Dhuri but the respondent had not extended the benefit of the aforesaid Circular to Buffer Complex, Dhuri till date, though the benefit of this Circular had been extended to two other Buffer Complexes at Patiala and Moga. It is pertinent to mention here that there are only three Buffer Complexes of FCI in Punjab. Copy of Circular No.4 of 2004 dated 18.03.2004 is enclosed herewith as Annexure P-1.

4. She submitted that Lal Jhanda FCI Workers Palledar Union vide its communication dated 21.08.2002, addressed to the Assistant Manager, Buffer Complex, FCI, Dhuri and stated that for breaking the stack, loading the trucks, unloading from trucks and unloading into the wagons, they will claim the items being paid for Buffer Complex.

5. Learned counsel submitted that vide communication dated 27.03.2008 of FCI, District Office, Sangrur, stated that action be taken as per Headquarters circular and revised ASOR w.e.f. 01.01.2008 in Depots under DPS and intimate the financial implication due to the above revisions issued with reference to Headquarters letter No.3/2008 dated 26.03.2008 regarding revision of piece rate for calculating ASOR % and the minimum guaranteed daily wage w.e.f. 01.01.2008 in respect of DPS workers working in Depots.

6. On the other hand, learned counsel appearing on behalf of the respondent FCI has submitted that the present writ petition is an abuse of judicial process as no part of cause of action has arisen within the territorial jurisdiction of this Court as each and every communication issued or received within the region of Punjab except the legal notice issued by the Advocate of the petitioners from Delhi, addressed to the Managing Director, FCI whose seat is at Delhi. However, there is no response from Delhi office to the said legal notice and as such this petition is liable to be rejected on this ground alone.

7. It is further submitted, the petitioners have concealed the material facts from this Court that they entered into a contract and agreed to the conditions by undertaking dated 21.08.2002 and the

present petition has been filed by 11 petitioners, who are claiming relief for about 161 labourers though without impleading 150 of other alleged labourers as a party to the petition, therefore, it is not maintainable. The grievance of the present petitioners is against and in contravention of the undertaking dated 21.08.2002 given by the workers Union to the respondent, which was signed by the petitioner No. 1 in the capacity of the President of FCI Workers Union.

8. Learned counsel further submitted that the respondent has implemented the DPS in Dhuri division in compliance to Ishwari Prasad Committee report which was formed by the Supreme Court of India. The minimum guarantee wages were also introduced in case of no work and when there is work, the payment of the work done was to be made after adjusting the minimum guarantee wages whichever is higher.

9. It is further submitted that the petitioners have deliberately not mentioned about the important event which took place on 21.08.2002 that the Lal Jhanda FCI Workers Palledar Union had agreed and submitted that they will claim the same amount both for siding godowns plinths and for loading from the Buffer Complex. A copy of the said undertaking is annexed to this petition as Annexure R-1.

10. Learned counsel further submitted that there is 40000 MT capacity siding and 21690 MT non-siding within Buffer Complex Dhuri. Since the introduction of DPS during 1997, the stocks were being loaded at FCI siding by workers even from non-siding godowns, which continued upto the year 2002. During the said period, the

workers requested that the stock of non-siding godowns/plinth be loaded at rail head into the wagons and they shall claim only on operation under para-1(5) of schedule of rates as being paid for siding godwon from non-siding godown as undertaking given in writing on 21.08.2002 and till then they are loading the specials at rail head line No.8 and claiming only one operation under part 1(5). The DPS workers had demanded the operation under part-I 1(b) w.e.f. 01.01.2008, which was not considered by the FCI in view of their undertaking.

11. It is submitted that the payments are directly governed by the schedule of rates read with the undertaking dated 21.08.2002. The percentage of schedule of rates is being paid regularly as revised from time to time but schedule of rates has no bearing with the demand for payment of double operations.

12. In rejoinder, learned counsel for the petitioner, on the issue of jurisdiction, has submitted that the Circular No.4/2004 dated 18.03.2004 was issued from Delhi Office, wherein the subject matter was of revision of the piece rate of calculating ASOR percentage and the minimum guarantee daily wage w.e.f. 01.01.2004 in respect of DPS Workers working in the division, therefore, this Court has jurisdiction to adjudicate the instant petition.

13. After hearing ld. Counsel for the parties, it is emerged that the petitioner No.1, being the President of the Association, had signed an undertaking on 21.08.2002 whereby agreed to claim the same amount

both for siding godowns, plinths and for loading from the Buffer Complex.

14. However, the petitioners are seeking implementation of Circular No.04/2004 dated 18.03.2004 issued by Food Corporation of India Head Quarters, 16-20, Barakhamba Lane, New Delhi. The petitioners are working at Dhuri Centre, Punjab and performing two operations, i.e., the stocks are first loaded into trucks and thereafter the bags are re-loaded from trucks into the wagons at the Railway Station.

15. Vide the aforementioned Circular No.04/2004 dated 18.03.2004, the respondent increased the earning of food handling gangs under DPS on the basis of Above-Schedule of Rates (ASOR) percentage @ Rs.219/- per 100 bags, each weighing more than 65 kilograms. The existing ASOR percentage for DPS was protected, wherever it was higher than ASOR percentage @ Rs.219/- per 100 bags. The revised rates w.e.f. 01.01.2004 were implemented at Food Storage Depot but the same were not implemented at Buffer Complex Depot Dhuri.

16. It is pertinent to mention here that there are three Buffer Complexes in Punjab, i.e., at Patiala, Moga and Dhuri. However, the benefit of the abovementioned circular had been extended to Buffer Complexes at Patiala and Moga but not at Dhuri, i.e., the work place of the petitioners. Thus, the petitioners have been discriminated by not extending the benefit of the aforementioned circular to them. The respondent increased the wages of food handling gangs on the basis of ASOR percentage @ Rs.219/- per 100 bags were implemented at Food Storage Depot but the same have not been implemented at Buffer

Complex Depots, where, there is a separate Rail head. The price rate for calculating the ASOR percentage was revised to Rs.271 per 100 bags for pieces operations and accordingly piece rate for double operations was also to be increased.

17. There is a siding for 4000 MTs and non-siding of 269 MTs and stocks are loaded at rail head after loading the same from Buffer Complexes into trucks and petitioners are being paid for loading the bags into the wagons at rail heads.

18. Whereas the DPS workers at Patiala Complex are being paid @ 646 ASOR percentage in the year 2006 and @ 525.71 ASOR percentage for two type of rail heads but the petitioners are being denied the payment for loading the bags into the wagons.

19. Petitioners are working as labours and belong to lower strata of the society. Their earnings are less but responsibilities are in plenty. Their voice does not reach to the system which hardly care for their welfare. This segment of the society is voiceless and sourceless. Therefore, they face discrimination at every step.

20. Vide the instant petition, the petitioners are seeking implementation of Circular No.04/2004 dated 18.03.2004 issued from the Head Quarters of Food Corporation of India which is situated at 16-20, Barakhamba Lane, New Delhi, therefore, this Court has territorial jurisdiction to adjudicate upon the same. Moreover, the present petition being under Art 226 of the Constitution was filed way

back in the year 2009, therefore, after four years the petitioners cannot be denied their legitimate rights on the basis of territorial jurisdiction.

21. In view of the above, I am of the considered opinion that the petitioners are entitled to wages at the rates applicable to Buffer Complexes at Patiala and Moga. Accordingly, the respondent Food Corporation of India is directed to take necessary steps to implement the aforementioned Circular No.4/2004 dated 18.03.2004 qua the petitioners also.

22. The order passed by this Court shall be complied with within two months from the receipt of this judgment.

23. In view of the above, the instant petition is allowed with no order as to costs.

SURESH KAIT, J.

APRIL 01, 2013

Sb/RS/jg