HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
WP(C) No.247 of 2022

Smti. Namita Paul

.....Petitioner

V_E_R_S_U_S

Food Corporation of India & 3 Others

.....Respondents

For Petitioner(s)	:	Mr. Raju Datta, Advocate. Mr. K. Pandey, Advocate.
For Respondent(s)	:	Mr. A. Bhowmik, Advocate.

HON'BLE MR. JUSTICE T. AMARNATH GOUD
_O_ R_ D_ E_ R_

02/05/2023

Heard Mr. R. Datta, learned counsel and Mr. K. Pandey, learned counsel appearing for petitioner and Mr. A. Bhowmik, learned counsel appearing for the respondents.

[2] This petition has been filed under Article-226 of the Constitution of India for quashing the letter dated 29.10.2020 issued by the respondent No.2 whereby the respondents refused to refund the security deposit amounting to Rs.1,10,000/- to the petitioner and further to refund the security deposit amounting to Rs.1,10,000/- along with interest at the rate of 12% per annum w.e.f. 25.02.2009 till the date of payment in respect of loading/unloading and handling contract at FSD Dharmanagar, Tripura on the basis of agreement executed by the petitioner under appointment letter dated 31.08.2006 issued by the respondent No.2.

[3] The facts in brief of the present case are that the petitioner is a transport contractor. A sum of Rs.1,10,000/- as security deposit against transportation contract satisfactorily executed by the petitioner has not been refunded by the respondents in spite of clearances by all concerned.

[4] Hence, the present petition has been filed by the petitioner before this Court for redress.

[5] Learned counsel appearing for the petitioner has submitted that the security deposit will be refunded to the contractors on due and satisfactory performance of the services and on completion of all obligations by the contractors under the terms of the contract and on submission of a no demand certificate, subject to such deduction from the security as many be necessary for making up of the corporation claims against the contractor.

[6] In response to the letters sent by the petitioner, the respondent No.2 issued a letter dated 29.10.2020 and in the said letter the respondents tried to project the losses suffered by the corporation in a contract awarded to the petitioner and that matter was *sub jusice* as a case was pending before the Court. In response to the aforesaid letter, the petitioner issued a reply and specifically denied the contention of the respondents and stated that there is no connection between the contract awarded vide appointment letter dated 29.04.2009 with the present contract or other similar contracts.

[7] The petitioner also stated that the said civil suits were already decided by this Court and the Court decided the said case against the FCI respondents. The Court observed that FCI did not suffer any losses due to any fault of the petitioner. As a result, the petitioner has submitted that there is no breach of contract in the present case and no loss was suffered by FCI in the present contract. Moreover, FCI already issued a no demand certificate and in the said certificate it was specifically submitted that no loss is suffered by the FCI in the present contract, no demurrage was incurred due to negligence of the contractor and contractor has not been responsible for any loss or damage to articles.

[8] As a result, the respondents cannot withhold the security deposit of the petitioner without any justifiable ground and without any authority of law. Moreover, the ground for withholding of present security deposit was never raised by the respondents in any Court of law drawing pendency of other cases and the amount of security deposit was never disputed by the respondents

rather they admitted the said amount or security deposit. The respondents are duty bound to refund the security deposit to the petitioner along with interest.

[9] Mr. A. Bhowmik, learned counsel appearing for the respondents has submitted that refund of security deposit is subject to other clauses of the contract. In the present case the security deposit of the petitioner has been forfeited /set off under Clause-XII (b) and XII (e) of the Contract Agreement. The respondent corporation has issued a no demand certificate is totally false, baseless and fabricated aiming to mislead this Court for gaining illegally. It is further submitted that there is no clauses or provisions in the present tender agreement that no demand certificate is to be issued by the respondent corporation. It is also stated that the respondents corporation never issued any no demand certificate to the petitioner. No demand certificate is submitted by the contractors themselves. Thus, the claim of the petitioner must not be granted.

[10] The petitioner is trying to make out a false case on the basis of no demand certificate submitted by herself. Further, non-existence of any liability in a particular contract does not give any immunity to any contractor from recovery of liabilities pertaining to other contracts from the instant security deposit to make good the losses incurred at his/her hands. Thus, the security deposit had to be set off and appropriated against the losses sustained by the corporation in accordance with Clause-X(c) XII (b) and XII (e) undertaking furnished by the petitioner in Appendix-V under a valid agreement executed between the petitioner and the respondents corporation.

[11] The petitioner tried and made an all out attempt to hide her own written commitment under Clause-XII (b) and Clause-XII (e) in which the petitioner has agreed that any sum of money due and payable to the contractors may be appropriated and set off against any claim of the corporation for the payment of any sum of money arising under this or under any other contract made by the contractor with the corporation. Thus, under this clause, the

petitioner has allowed and agreed in principle for setting off or adjustment of the security deposit with the losses sustained by the corporation relating to the contract in issue or any other contracts executed by her with the corporation.

[12] Further, it is reiterated herein that the submission of the petitioner that no demand certificate has been issued by the respondent corporation is false, baseless and without any substance, as no such demand certificate has ever been issued by the respondent corporation. Thus the submission of the petitioner on this score is to mislead this Court for her illegal gain and to misuse the public money in particular. However, M.S. No.27 of 2010 filed by the petitioner was dismissed by the learned Civil Judge on merit. Against the said judgment and decree dated 11.05.2016 passed by the learned Civil Judge Senior Division, Court No.1, West Tripura, Agartala the petitioner had preferred appeal before this Court which was registered as RFA. No.14 of 2016. Vide judgment and decree dated 26.02.2021, the said appeal filed by the petitioner was allowed as FCI failed to prove the actual loss suffered by FCI by adducing documentary evidence.

[13] Moreover, the petitioner is relying upon judgments and decrees passed by the Civil Courts in writ proceedings which is not permissible under the law. In fact, the findings of the learned Civil Court vide judgment and decree dated 11.05.2016 passed in MS.No.27 of 2010 and M.S. (CC) 14 of 2011 as merged with the judgment and decree dated 26.02.2021 passed in RFA. No.14 of 2016 passed by this Court is against the petitioner.

[14] In view of above discussion, the present petition stands disposed of directing the petitioner to represent the matter before the respondents along with all relevant documents in support the claim of the petitioner more particularly, any judgment of the High Court or any other Court and on receipt of the representation, the respondents shall consider the same in accordance with law within a period of three months from the date of receipt of the copy of such representation.

[15] It has been contended by the learned counsel appearing for the petitioner that a sum of Rs.1,10,000/- which is given towards the security deposit has been withheld on the ground of loss sustained by the respondents for performing another contract by the petitioner but, for the said contract, the respondents cannot withhold the security deposit pertaining to some other contracts. This issue has been by the principle laid down by the High Court stating that in the event if any loss has been caused to any organization for any reason committed by the contractor, the said loss needs to be recovered in accordance with law but, not withholding the security deposit. In view of above, without expressing any opinion, the present writ petition stands disposed of directing the respondents to re-consider the same in the light of above. Consequently, the impugned order stands set aside. Accordingly, the present petition stands disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUDGE

A. Ghosh

HIGH COURT OF TRIPURA
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