

GAHC010254042022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/1614/2023

FOOD CORPORATION OF INDIA AND 4 ORS.
REP. BY CHAIRMAN-CUM-MANAGING DIRECTOR, FOOD CORPORATION
OF INDIA, HAVING ITS HEAD OFFICE AT 16-20 BARAKHAMBA LANE, NEW
DELHI- 110111.

2: THE CHAIRMAN-CUM-MANAGING DIRECTOR
FOOD CORPORATION OF INDIA
HAVING ITS HEAD OFFICE AT BARAKHAMBA LANE
NEW DELHI- 110111.

3: THE EXECUTIVE DIRECTOR (NE)
F.C.I
ZONAL OFFICE
G.L. PUBLICATION BUILDING
GS ROAD
GHY.- 781007.

4: THE GENERAL MANAGER(R)
F.C.I.
REGIONAL OFFICE ASSAM REGION
PALTAN BAZAR
GHY.- 781008.

5: AREA MANAGER
F.C.I.
O/O THE AREA MANAGER
(DIBRUGARH)
DIBRUGARH
PIN CODE- 786001

VERSUS

SURESH KUMAR AGRWAL
PROPRIETOR, M/S. RAMAWATAR TRADING AND TRANSPORTING

CONTRACTOR, CINEMA ROAD, CHABUA- 786184.

Advocate for the Petitioner : MR. P K ROY

Advocate for the Respondent : MR. C CHOWDHURY

Linked Case :

FOOD CORPORATION OF INDIA AND 4 ORS.

VERSUS

SURESH KUMAR AGRWAL E

Advocate for : MR. P K ROY
Advocate for : appearing for SURESH KUMAR AGRWAL E

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 14.06.2024

(M.K.Kalita, J)

1) Heard Mr. P. K. Roy, learned Senior counsel assisted by Mr. S. K. Chakraborty, learned counsel, appearing for the applicants. Also heard Mr. C. Chowdhury, learned Senior counsel assisted by Ms. J. S. Das, learned counsel, appearing for the sole respondent.

2) This Interlocutory Application has been registered on filing of an application by the applicants, praying for condonation of delay of 341 days in preferring the connected writ appeal against the judgment and order dated

26.09.2019 passed by a learned Single Judge of this Court in WP(C) No. 4882/2019, which was filed by the writ petitioner Sri Suresh Kumar Agarwal (Respondent herein). The applicants of the instant Interlocutory Application were the respondents in said WP (C) No. 4882/2019.

3) The applicant No.1, namely, the Food Corporation of India (hereinafter referred to as FCI) is the respondent No.1 in the writ petition, which is an organization created under Food Corporation Act, 1964, having its Head Office at 16-20 Barakhamba Lane, New Delhi 110001 and run by Government of India as well as State Governments and functions under the Department of Food and Public Distribution, Ministry of Consumer Affairs, Government of India. The other applicants (i.e. Applicant Nos. 2 to 5) are the Officers of the FCI. The respondent, Sri Suresh Kumar Agarwal, is the Proprietor of M/S. Ramawatar Trading and Transporting, Contractor, Cinema Road, Chabua.

4) The respondent herein had filed the Writ Petition (C) No. 4882/2019 against the present applicants impugning their decision to unilaterally reduce the distance of transportation from 7 kilometers to 5.2 kilometers by altering the conditions of NIeT (*Notice inviting electronic tender*) at the time of processing the bills raised by the respondent/writ petitioner.

5) On 30.10.2017, the applicants herein, by floating a NIeT, had invited bids for awarding the contract "Handling and Transport Contract Ex- Rly Siding, Tinsukia to FSD Laipuli via weighbridge including Handling works at FSD Laipuli (distance 7 kms.)." The estimated value of the contract was Rs.4,88,00,000.00

(Rupees four crores, eighty-eight lakh only). In response to the aforesaid NIeT, the respondent/writ petitioner had submitted his bid and had eventually emerged as the successful bidder. Accordingly, by letter of appointment dated 17.01.2018, the contract for "Handling and Transport" was awarded to the respondent for a period of 2 years w.e.f. 22.03.2018. A contract agreement was thereafter, entered into by and between the parties on 22-01-2018 paving the way for execution of the work. In the letter dated 17.01.2018, it was mentioned that the contract is awarded at the quoted rate of 74% ASOR (above schedule of rates) and the distance indicated was 7 kms. The respondent had executed the work as per the terms of the contract agreement and submitted bills. However, when the bills were under process, objection was raised by the accounts department of the Food Corporation of India (FCI) opining that the distance covered by each loaded truck through the shortest route would be 5.2 kms and not 7 kms. As such, by letters dated 19.05.2018, 09.01.2019 and 10.01.2019 the decision of the applicants to alter the distance to 5.2 km was communicated to the respondent.

6) Aggrieved thereby, the respondent had filed WP(C) No. 4882/2019. According to the respondent, the actual distance covered by the trucks included two trips to the private weighbridge, viz. Ramudyog Weigh-bridge. Since there was no state run weighbridge in the vicinity of the siding of New Tinsukia station, the empty trucks had to be sent to the weigh bridge for measuring the "tare weight" (un-laden weight) and thereafter, again the loaded trucks had to be sent for measuring the weight so as to work out the actual load carried by the trucks. Since the un-laden and laden weight of the trucks were recorded in the said weigh-bridge as per the instruction and with their knowledge of the

respondents and in view of the fact that the actual distance traversed by the trucks was as per the reflection made in the NIeT, according to the respondent, the applicants could not have excluded the said distance while calculating the amount payable by altering the conditions of the contract agreement.

7) Though, the present applicants/respondents strongly contested the writ petition filed by the respondent/writ petitioner, however, by the impugned judgment, the learned Single Judge had allowed the writ petition and directed the present applicants to process the bill of the respondent/writ petitioner and clear the outstanding dues within a period of 60 days from the date of receipt of the certified copy of the impugned order.

8) The judgment which has been impugned in the connected writ appeal was passed by the learned Single Judge on 26.09.2019 and the connected writ appeal was filed on 07.12.2022. In the application for condonation of delay filed by the applicants, the delay was calculated to be of 601 days, however, the Registry of this Court had calculated the delay to be of 341 days. In computing the period of delay, the period between 15.03.2020 to 28.02.2022 was excluded in terms of the orders passed by the Apex Court of India in the case of “***In re: Cognizance for Extension of Limitation***” (Miscellaneous Application No. 21/2022 in Suo Motu Writ Petition No. 03/2020).

9) However, during the course of the hearing when an objection was raised that the applicants have not sufficiently explained the delay for the period after the COVID-19 pandemic period, a prayer was made by the applicants for filing an additional affidavit and by order dated 10.11.2023, the applicants were

allowed to file an additional affidavit for explaining the said delay. Accordingly, on 30.11.2023, the applicants filed an additional affidavit along with copies of extracts of relevant office notes explaining the delay in preferring the connected writ appeal.

10) Mr. P.K. Roy, learned Senior Counsel for the applicants has submitted that, as in the impugned order, a time frame was given by the learned Single Judge to clear the outstanding dues of the respondent/writ petitioner, the applicants took a decision to comply with the directions of the Court and accordingly, they made the payment of the outstanding dues to the respondent/writ petitioner.

11) It is further submitted by the learned Senior Counsel for the applicants that after the COVID-19 period was over, a periodical audit was made by the Comptroller and Auditor General (CAG) and the said audit team raised certain objections in respect of transportation contract (Handling and Transport Contract Ex-Rly Siding, Tinsukia to FSD Laipuli via weighbridge including Handling works at FSD Laipuli). Following such audit objection, the FCI District Office, Dibrugarh had written a letter to FCI Regional Office on 29.03.2022 pointing out about the CAG audit objections in respect of excess payment of the transportation charges to the contractor. In the said letter dated 29.03.2022, the FCI District Office has also referred to the impugned judgment of the learned Single Judge, wherein the direction of fixing the distance to 7 kms was mentioned and a query was raised as to whether No Demand Certificate (NDC) in respect of the contract may be forwarded to the FCI Regional Office without dropping the audit objection.

12) Thereafter, a detailed note was put up by the Contract Division of FCI on 26.02.2022. The matter was thereafter, referred to the Finance Division of FCI and after detailed examination from the financial angle, the matter was endorsed to the competent authority on 19.07.2022. Ultimately, after obtaining legal opinion from the learned counsel, the competent authority found that there are good assailable grounds for preferring an appeal before the Division Bench of the High Court against the impugned judgment passed by learned Single Judge, as the decision of learned Single Judge, according to the competent authority, has a great bearing to the terms of NIeT contained in Model Tender Form (MTF) which FCI follows throughout the country.

13) The learned Senior Counsel for the applicants has submitted that as the applicants first decided to comply with the impugned judgment of the learned Single Judge and thereafter, examined the matter at regional level of FCI and had to seek some clarification from FCI, District Office which took some time and in the meanwhile, due to outbreak of corona virus pandemic, the officials of the Operative Divisions had to devote more time in ensuring food supplies and therefore, could not devote much time to take final decision as regards the question of preferring an appeal against the impugned judgment.

14) It is also submitted by the learned Senior Counsel for the applicants that only after audit objections were raised by CAG, the matter was again looked into and opinions of the advocates were obtained and finally a decision was taken to prefer an appeal before the Division Bench and in getting administrative clearance, the delay was caused which was unintentional and unavoidable.

15) The learned Senior Counsel for the applicants has submitted that as the question raised in the appeal has a great bearing in relation to the terms of NIT contained in the model tender from which the FCI follows throughout the country, it is in the public interest that the delay in preferring the connected writ appeal is condoned. It is also submitted by the learned Senior Counsel for the applicants that to advance substantial justice where no gross negligence or deliberate inaction or lack of bona fide is imputable to the applicants in liberal construction is to be given to the phrase "*Good Cause Shown*" and delay in preferring the connected writ appeal may be condoned.

16) On the other hand, the learned Senior Counsel for the respondent has submitted that the applicants have not properly explained the delay in preferring the writ appeal, more particularly for the period after the COVID-19 was over and the impact of same was not there.

17) The learned Senior Counsel for the respondent has submitted that the applicants are required to properly and sufficiently explain each day's delay to the satisfaction of the Court in order to get delay condoned, however, they have miserably failed to do so.

18) Learned Senior Counsel for the respondent has also submitted that the distance for transport contract from Ex-Rly Siding, New Tinsukia to FSD Laipuli via weighbridge was specifically mentioned in the appointment letter dated 17.02.2018 issued by the FCI as 7 kms and the learned Single Judge by the impugned judgment has correctly decided that the contract agreement would

hold the field and would remain binding upon the parties for all the intents and purpose and no terms and condition of the contract can be changed, modified and/alterd unilaterally.

19) The learned Senior Counsel for the respondent has also submitted that the applicants have already complied with the directions of the learned Single Judge and have cleared the bills of the respondent. It is also submitted that before releasing the payment, the concerned authorities of the applicants have also issued two numbers of No Demand Certificate (NDC) in respect of M/S. Ramawatar Trading with regard to refund of security money amounting to Rs. 25,60,000/- to the respondent and under such circumstances, the applicants may not be allowed to again raise the issue belatedly without properly explaining the delay in preferring the connected writ appeal.

20) The Rule 2 of the Chapter 8 of Gauhati High Court Rules relating to appeal under Clause 15 of Latest Patent provide as follows:

“2. Every appeal to High Court under Clause 15 of Letters Patent shall be presented to the Registrar or such officer as the Registrar may appoint within 30 days from the date of judgment appealed from, unless the Court in its discretion, on good cause shown, shall grant further time.”

Thus, from the above provision it appears that the limitation period for filing an intra-court appeal from the judgment of the Single Bench of this Court is 30

days from the date of the impugned judgment, unless the Court in its discretion on good cause shown grants further time.

21) In the instant case the impugned judgment was delivered on 26.09.2019 and though, the connected writ appeal was filed on 5th of June 2023, the Registry of this Court has computed the period of delay in filing the connected writ appeal as 341 days.

22) In their additional affidavit filed by the applicants, the main cause of the delay which the applicants have tried to project is the time consumed during administrative process in various official levels of the Food Corporation of India for taking a decision regarding preferring an appeal against the impugned judgment.

23) It also appears that it is only after the receipt of letter dated 29.03.2022 from the FCI District Office, Dibrugarh wherein the question of audit objection raised in CAG Audit Report in respect of excess payment of transportation charges made to the contractor was brought to the notice of the competent authority, the matter was taken up at various administrative levels of the FCI and ultimately a decision was taken regarding preferring an appeal against the impugned judgement.

24) It appears from the copies of the extract of relevant office notes annexed by the applicants along with the additional affidavit filed by them, that after receipt of the aforesaid letter dated 29.03.2022 from the FCI District Office, Dibrugarh, a detailed note was put up by the Contract Division of the FCI on

20.06.2022 and thereafter, the relevant file was moved at the level of various administrative authorities of the FCI, including obtaining the legal opinion from the concerned counsel in that regard. It was observed by the authorities of the FCI that if the decision of the learned Single Judge is treated as a precedent for any future contract, it would have great bearing in terms of the NIeT contained in the model tender form, which the FCI follows throughout the country and therefore a decision to prefer an appeal against the impugned judgement was taken.

25) We have seen in the foregoing paragraphs that under Rule 2 of Chapter 8 of the Gauhati High Court Rules, it has been provided that the Court in its discretion "on good cause shown" shall grant further time for preferring the appeal against the impugned judgment. It is pertinent to note herein that though the Rule 2 of the Gauhati High Court Rules uses the phrase "good cause", whereas, under Section 5 of the Limitation Act, 1963 the phrase "sufficient cause" has been used. However, it has been observed by the Apex Court in catena of its judgments that every "good cause" is a sufficient cause and the only difference between "good cause" and "sufficient cause" is that the requirement of a "good cause" is complied with on a lesser degree of proof than that of a "sufficient cause".

26) We have to also take into consideration that in the instant case, the applicant No. 1 is a government corporation and it may not be treated at par with any other private litigant. As in the case of applicant No.1 the decision to present and prosecute appeals are not individual but are institutional decision, which necessarily involves taking administrative decisions at various levels,

some amount of leniency may be shown to the applicants.

27) In the instant case, the applicants have attributed the delay in preferring the connected writ appeal to the administrative processes involved within the corporation for taking a decision to prefer an appeal, which appears to be a bona fide explanation.

28) In the case of ***State of U.P. Vs. Harish Chandra & CO.*** reported in ***(1996) 9 SCC 309***, the Apex Court has observed as follows:

“7. So far as the question of delay is concerned the learned counsel for the respondents placed reliance on the decision of this Court in the case of CWT v. Amateur Riders Club [1994 Supp (2) SCC 603] and urged that the ground taken for condonation is due to the delay in processing the matter through official channel and cannot be held to be a good ground for condonation. It is undoubtedly true that the applicant seeking for condonation of delay is duty-bound to explain the reasons for the delay but as has been held by this Court in several cases, the very manner in which the bureaucratic process moves, if the case deserves merit the court should consider the question of condonation from that perspective. That apart the respondents themselves approached the High Court in the year 1990 making a grievance that they had not been appointed even though they are included in the select list of 1987 and the 1987 list itself expired under the Rules on 4-4-1988. In

this view of the matter and in view of the merits of the case we are of the opinion that sufficient cause has been shown for condoning the delay and accordingly we have condoned the delay."

29) In the instant case, the applicants are apprehensive that the impugned judgment would have a great bearing in relation to the terms of NIeT contained in the Model Tender Form (MTF) which the FCI follows throughout the country. As for the aforesaid reasons, even after complying with the directions of the Court in the impugned judgment, the applicant have preferred the connected appeal and as there seems to be no lack of bona fide on the part of the applicants in preferring the connected appeal, it may not be justified to take a too technical view of the facts in the applicants failing to explain each day of delay in preferring the connected appeal. The observations of the Hon'ble Supreme Court, cited in the foregoing paragraph of this judgment that "*the very manner in which the bureaucratic process moves, if the case deserves merit the court should consider the question of condonation from that perspective*" seems to be applicable in this case and certain amount of latitude may be given in the instant case having regard to the facts and circumstances of this case and also considering the fact that the applicant No. 1 is a government corporation.

30) For the reasons stated above, the delay in preferring the connected writ appeal by the applicants is hereby condoned and this Interlocutory Application is accordingly, allowed.

31) Registry of this Court shall register the connected writ appeal and list the same for admission after a week.

JUDGE

JUDGE

Comparing Assistant