

RESERVED

Court No. - 3

Case :- WRIT - C No. - 4889 of 2024

Petitioner :- M/S Shiv Shanker Transport And 4 Others

Respondent :- State Of Up And 5 Others

Counsel for Petitioner :- Sanjeev Singh, Vishwa Nath Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Anjani Kumar Mishra,J.

Hon'ble Jayant Banerji,J.

1. Heard Shri Sanjeev Singh, learned counsel for the petitioner and learned Standing Counsel.
2. Challenge in the writ petition to the order dated 06.01.2024, passed by the Regional Food Controller, Gorakhpur Region, Gorakhpur, the third respondent, whereby the contract awarded to the petitioner for transportation and handling has been cancelled. The security money deposited by the petitioner has been forfeited and the petitioners' firm has been black-listed for the period of 05 years.
3. The petitioner no. 1 is a firm which is a Handling/Transportation Contractor, Stage-I, which was engaged by the respondents by means of an agreement dated 01.09.2018 for transporting essential commodities and food-grains from the F.C.I. godown at Arjunha to Ramkola and Nebua Nauragia in District Kushinagar. It is stated that the contract was entered into between the petitioner no. 1- firm and the respondents for the year 2018-19, which extended up till 30.6.2020 in view of the Covid-19 pandemic. Previously, there were three godowns in Ramkola in the regular use of the Civil Supply Department which included a godown known as Ramraj Chaubey Godown (Smt. Vandana Shukla daughter of Ramraj Chaubey was authorised to realise the rent and utilise the godown by means of a power of attorney dated 6.11.2017).

4. Pursuant to a proposal, the godown of Smt. Geeta Devi having capacity of storing around 14,000 quintals/ bags of foodgrains/sugar, which godown also was situated on the main road, was approved for storage in place of the above referred three godowns which three godowns were at different places and their combined storage capacities were less than that of godown of Smt. Geeta Devi. Thereafter, the aforesaid godown of Smt. Geeta Devi was being used by the respondents for storage of the foodgrains/sugar with effect from 4.4.2019.

5. It appears that on 6.4.2020 an information was received that two of the trucks bearing nos. UP70C9870 and UP50AT1578 from FCI storage depot Arjunha, District Kushinagar were found standing away from the main road of Ramkola and in front of the house of the petitioner no. 4 for the purpose of black marketing of food-grains. Accordingly, an FIR was lodged under the provisions of Section 3/7 of the Essential Commodities Act against the petitioners.

6. The two truck drivers informed during questioning that petitioner no. 4, Brahmachari Chaubey, the husband of petitioner no. 2, Smt. Gamlawati Devi, who is a partner of the petitioner no. 1, had directed them to park the two trucks in front of his house situated before Ramkola Bazar and that he would later tell the drivers where the two trucks would go. During the enquiry, the Marketing Inspector was questioned and his statement was recorded in which he stated that under the Public Distribution System and other projects, the storage of food-grains and their distribution was being done in and from the sole godown situated at Ramkola-Kasya Marg, the owner of which is Smt. Geeta Devi. He stated that he was informed that four trucks of wheat (other than the two aforesaid trucks) from the FCI Godown at Arjunha were received at the sole godown. He further stated that the Dispatch Officer at the FCI godown had informed him that six trucks of wheat were sent to his centre. The aforesaid four trucks were standing at his godown and two trucks had not come to the godown which had been

seized during the enquiry. Accordingly, by means of letters/orders dated 17.4.2020 and 19.4.2020, the contract in favour of the petitioner was suspended with immediate effect and a show cause notice was issued to the petitioner no. 1 as to why an order of blacklisting be not passed against it. Since, no response was received from firm within 10 days, the contract was cancelled and the security amount was confiscated. Further the petitioner-firm was blacklisted for a period of 10 years by means of the order dated 2.5.2020.

7. Challenging that order dated 2.5.2020, the petitioner filed a writ petition bearing Writ-C No. 9398 of 2020 which was allowed in part and the impugned order cancelling the contract and blacklisting the petitioner was quashed leaving it open to the respondents to pass a fresh order after taking into consideration the reply filed by the petitioners to the show cause notice. However, the suspension orders were not interfered with. Thereafter, an order dated 30.7.2020 was passed by the respondents cancelling the contract of the petitioner and forfeiting the security money and blacklisting the petitioner-firm for 10 years. This order was challenged in Writ-C No. 33411 of 2021. By a judgment dated 11.2.2022, the petition was allowed to the extent indicated in the judgment and the matter was remitted back to the concerned respondent for passing a fresh order after taking into account the explanation of the petitioners.

8. By an order dated 9.3.2022, the Regional Food Controller passed a detailed order cancelling the contract, forfeiting the security amount and blacklisting the petitioner for a period of five years from the date of lodging of an FIR on 17.4.2020. Against the aforesaid order dated 9.3.2022, the petitioner filed a statutory appeal before the Commissioner, which came to be decided by the appellate authority by means of an order dated 9.6.2023. The appeal of the petitioners was allowed and the order of the Regional Food Controller, Gorakhpur dated 9.3.2022 was set aside and the Regional Food

Controller was directed to reconsider the matter in accordance with law.

9. While passing the appellate order dated 9.6.2023, it was observed by the appellate authority that the godown of Smt. Geeta Devi bearing godown ID- 105900301/New Godown was not fed in the online portal from 4.4.2019 and the godown of Smt. Vandana Shukla (Godown ID- 200139502/Old) after being vacated on 3.4.2019, was not deleted from the then portal because of which, from 4.4.2019 to March, 2022, 132 consignments were created on Ramkola godown ID- 200139502, for which lapse the District Food Marketing Officer was being proceeded against departmentally.

The order further noted that as per the report of the Regional Food Controller, as per the GPS tracking report furnished by the software company and as per the Government orders/ rules, it was reflected that the Dispatch Incharge had created a consignment to godown ID- 200139502 of Smt. Vandana Shukla for sending to the centre- Ramkola, and that the petitioner no. 1 had taken the truck by the mapped route chart to that godown which does not reflect any loss/or black marketing of food-grains.

10. Pursuant to the aforesaid remand order, the aforesaid impugned order dated 6.1.2024 was passed by the Regional Food Controller, Gorakhpur Division, an English translation of which, is as follows:

"Officer of Divisional Food Controller, Gorakhpur Division, Gorakhpur

Letter No. 23 / San. Kha. Ni. / Svi. Anu. / Gamalavati Devi / Pratyavedan/ Dated
06th January, 2024

Smt. Gamalavati Devi,
Partner- M/s Shivshankar Transport,
Village- Lakshmipur, Post – Nebua Raiganj,
District- Kushinagar.

Through – District Food Marketing Inspector, Kushinagar.

Through Letter No. 484 / San.Kha.Ni./Svi. Kaksha/ Pratyavedan/ Dated 09.03.2022 of this office, after duly considering your reply dated 16.02.2022, it was found to be groundless and lacking merit and in view of the same, the contract of M/s Shivshankar Transport, Handling/ Transportation Contractor

Stage-1, Kendra Ramkola and Nebaua Naurangia, Kushinagar has been temporarily cancelled and the deposited security amount has been forfeited, along with that the said firm has been marked as black listed for 05 years from the date of registering of FIR i.e. 17.04.2020 and has been debarred from all types of work.

1. Against the said order, a representation was submitted by you before Commissioner, Food & Civil Supplies Department, U.P., Jawahar Bhavan Lucknow and a writ petition WRIT (C) 23386 / 2022 before the Hon'ble High Court was filed for timely disposal wherein the Hon'ble High Court passed the following judgement order on 18.08.2022:

"Accordingly, respondent no. 2 is directed to decide the appeal, expeditiously, preferably within six weeks from the date of production of a true attested copy of the instant order along with photostat copy of the memo of appeal.

It is clarified that we have not expressed any opinion regarding maintainability of the observation made in the instant order."

In compliance of the above mentioned order of the Hon'ble High Court, Allahabad, the petitioner made available his appeal dated 29.08.2022 along with a certified copy of order dated 18.08.2022 of the Hon'ble High Court to the Office of Commissioner, Food and Civil Supplies Department, U.P., Jawahar Bhavan Lucknow. In the order of which, admitting the appeal submitted by you and quashing the office order dated 09.03.2022 vide office of food commissioner order no. 2994/Aa.Vi.Sha./Hand.Pari/Ma. Shivshankar Trans./2022 Date 09 June, 2023, as per the policy of handling and transportation, in the cases of contractors, divisional food controller, being a competent authority, has been directed to take further proceeding accordingly reconsidering in pursuance of records and evidences in the cases.

2. In pursuance of the aforesaid, reconsidering in time bound of the case, for taking further proceeding, you were directed by office letter 1025/San.Kha.Ni./Swi.Anu./Gamlavati Devi/ Court Case/ Dated 23.06.2023 in relation to the case in question to immediately provide reply along with entire evidence and records to this office. In pursuance of the above, your reply/evidence dated 27.06.2023 was forwarded to this office by the office letter 349/Ji.Kha.Vi.A./Gamlavati/23-24 dated 22.07.2023 of District Food Marketing Officer, Kushinagar.

3. Considering the evidences and the points mentioned in your reply, certain points being not explicit, again vide office letter 1872/San.Kha.Ni./Swi.Anu./Gamlavati Devi Court Case/ Date 25.09.2023, why six trucks laden with wheat sent from main Godown to Ramkola Centre on 16.04.2020, out of which four trucks at the godown of Smt. Geeta Devi at operational storage place and two trucks from Padrauna to Ramkola road before Ramkola Market, Ramkola Singha Marg which is just before railway crossing on going north from main road means at the 80 metre Ramkola Singha Marg from main road were parked., why all the six were not sent to the same destination" has been directed to be explained. In pursuance of the above, you have made available your reply in this office on 09.10.2023 and on 13.10.2023.

4. From the perusal of the representation/evidence submitted by you, it appears that you have no connection with the case of leaving the godown. With the intention of deliberately misleading and hiding your offence, you are presenting a confusing scenario by linking different cases with each other.

5. You are repeatedly submitting the fact that the godown of Smt. Vandana Shukla D/o Shri Ramraj Chaubey (Godown ID 200139502) was under departmental tenancy at that time, which was fed online on the departmental

portal. (While the Center In-charge Ramkola has been informed vide his office letter no. 331 dated 25-06-2020 that food grains/sacks/dead stock is not stored in the said godown since 04-04-2019 and the incident is of 16-04-2020), due to which you had parked two vehicles loaded with food grains at the said place, whereas on aforesaid date 06 trucks loaded with food grains were sent from the main godown (FCI Depot Arjunha), out of which 04 trucks were delivered to the godown of Smt. Geeta Devi (which has been taken on departmental tenancy since 04-04-2019) as per the statement of Center In-charge Ramkola. It is clear from this that you are deliberately distorting the facts and creating a misleading situation.

6. You are not submitting evidence of the fact that on 16/04/2020, when six trucks loaded with food grains were sent to Ramkola center, then why and on by whose orders the trucks were sent to different godowns i.e. why 02 trucks were sent to the godown of Mrs. Vandana Shukla and 04 trucks were sent to the godown of Mrs. Geeta Devi.

7. It is worth mentioning here that the physical verification of the foodgrains received at the godown of Center Ramkola was done by the Sub-Divisional Magistrate, Kaptanganj, after which the foodgrains were issued to the fair price vendors. After 04-04-2019, all the foodgrains were stored in the only godown of Smt. Geeta Devi located in Ramkola and every month the foodgrains were issued to the fair price vendors only after getting it verified by the Sub-Divisional Magistrate, Kaptanganj. On the information received from the informer on 16-04-2020, an investigation was conducted headed by the Sub-Divisional Magistrate, Kaptanganj himself, who used to verify the food grains of Center Ramkola at the godown of Smt. Geeta Devi every month. In the investigation, it was found that 06 trucks of food grains were sent from P.E.G. Arjunha (Bha. kha. Ni. Depot) to Ramkola, out of which 04 trucks were sent to the godown of Smt. Geeta Devi and 02 trucks were parked near the house of Brahmachari Choubey. After investigation, an FIR was lodged by the Center In-charge.

8. According to the investigation report, the drivers Shri. Rampyare Tripathi S/o Shri. Bhagwati Tripathi and Shri Parshuram S/o Shri. Chikhuri Kharwar of both trucks in question, bearing nos. UP70C9870 and UP50AT1578, told the investigating officers that Shri Brahmchari Chaube H/o Gamlavati Devi and partner of Transport Contractor M. Shivshankar Transport, told that "Get them parked in front of my house & before Ramkola Bazar then I would tell where the vehicles have to be taken"

By not producing the satisfactory explanation on the points raised by the undersigned and by deliberately repeating the same fact that "Godown of Smt. Vandana Shukla was on online map", Smt. Gamalavati Devi, partner of M/s Shivshankar Transport is trying to hide the original fact that "why were the six trucks laden with grains were sent to different locations when they were actually sent for the same centre?" Apart from the above, from the statements of the truck drivers, Marketing Inspector, and from the inquiry conducted under the leadership of Sub Divisional Magistrate, Kaptanganj (who used to physically verify the godown each month), it is evident that the aforesaid two trucks (UP70C9870 and UP50AT1578) carrying wheat meant for public distribution system were sent to Ramkola center from FCI Depot, Arjunha (main godown) but on the instructions of Shri Brahmachari Chaubey, husband of Smt. Gamalavati Devi, partner of M/s Shivshankar Transport deputed as handling/transport contractor (stage-1) for Ramkola center, the said grain laden trucks instead of being taken to the destined godown at Ramkola center, were diverted from the main road before the Ramkola Bazar and taken to Ramkola-Singaha road, just before the railway crossing in the north of the main road i.e. 80 meter from the main road and were parked in front of his house which lies on

the Ramkola-Singaha road. This holds the fact that the above act was committed by them with the intention to sell the wheat meant for public distribution system in the black market, however, they were caught on the information of the informant. This way, by instructing the truck driver to park these two trucks, which were also destined to reach the same godown where the other four trucks were sent, in front of his house, Shri Brahmachari, husband of the listed contractor, tried to blackmarket the wheat in collusion with the truck drivers. The said act committed by you is against the public interest. Non reaching of food grains being made available by the Government to the wanting poor class in the circumstances of lock-down due to epidemic like Corona would have the strong possibility of shattering the public order. The said act, illegally buying-selling and storing/hoarding the food grains meant for public distribution system, committed by the partners of M/s Shivshankar Transport namely Smt. Suryamukhi Devi, Smt. Gamalavati Devi and her husband Shri Brahmachari Chaubey and both the truck drivers is a violation of Public Distribution System (Control) Order 2001 and is covered under section 3/4 of the Essential Commodities Act, 1955 in view of which it is justified that they aforesaid delinquent be registered u/s 3/4 of the Essential Commodities Act, 1955 and other relevant sections. During the raid, wheat grains recovered from the said two trucks caught on the route different than the route of transportation, were handed over in the custody of Shri Shivmuni, Marketing Inspector with the direction to keep them as it is in his custody (which is presently safely stored in the godown of Gita Devi) which would be disposed later by the competent officer/court. The said two trucks were handed over in the custody of the SHO, PS- Ramkola.

Therefore, in compliance with the Order dated 05.12.2023 of the Hon'ble High Court Allahabad, after thorough consideration of your representation/testimony, your representations dated 27.06.23, 09.10.23 and 13.10.23 are found to be devoid of facts and lacking in merit. Therefore, by permanently canceling the contract awarded to M/s Shivshankar Transport, handling/transport contractor (stage-1), the amount deposited as security in the department is forfeited, along with it the said firm is blacklisted for five years from the date of registration of FIR, 17.04.2020 and is debarred from all other works. In accordance with the Order of the Hon'ble High Court, the representation of the applicant is hereby disposed of.

(Anuj Malik)
IAS
Divisional Food Controller
Gorakhpur Division, Gorakhpur."

11. The submission of learned counsel for the petitioner is that the two trucks in question were loaded with wheat. The challan issued mentions a godown as its destination which ceased to be a Godown. A new godown situated at a short distance from the former godown was not reflected in the challan as the data base had not been updated, which is admitted to the respondents. It is stated that the trucks were found parked in front of house of one Brahmachari Chaubey who along with his wife and two other individuals are partners of M/s Shiv Shankar Transport, the petitioner no. 1, the individual partners being

petitioners nos. 2 to 5 in the petition. It has also been vehemently argued that the impugned order has been passed for extraneous reasons as no food-grains loaded on these two trucks were found to be missing and that the entire consignment was intact. He has also stated that earlier by the order dated 09.06.2023, an appeal filed by the petitioner has been allowed wherein findings were returned which could not have been glossed over by the third respondent. The findings of the appellate authority were on the basis of material on record and the GPS tracking report that the consignment had been forwarded from Ramkola to the godown of Smt. Vandana Shukla, Godown ID 200139502 and that two vehicles in question which were taken into custody were on the mapped route. In the matter there was no loss of foodgrains nor any black-marketing was detected.

12. Learned Standing Counsel, in rebuttal, has submitted that the entire consignment transported by the petitioner consisted of wheat loaded on six trucks, for which a single challan had been issued. Four of the trucks were duly received at their destination which was godown ID 105900301. However, two of the six trucks were found parked in front of the house of the Brahmachari Chaubey, one of the partners of the petitioner no. 1, which were not on the route to the godown ID 105900301 where the wheat was meant to be delivered.

13. He has next submitted that the statement of drivers of these two trucks is against the petitioners. He has, however, admitted that the new godown where the wheat was to be unloaded was not uploaded on the portal. The challan did not mention the correct destination but it mentioned a godown which had ceased to be a godown for storage of food-grains of the public distribution system. Learned Standing Counsel admits that the consignment in these two trucks was found to be intact and no foodgrain was missing therefrom. It is lastly submitted that the petitioner has an alternative remedy of filing an appeal which remedy has not been availed.

14. In rejoinder, learned counsel for the petitioner has reiterated his submissions made earlier. He has also submitted that the alternative remedy is not a bar inasmuch as the impugned order has been passed without recording any specific finding as regards the explanation offered by the petitioners and is therefore, in the teeth of the order of remand passed by the High Court. The impugned order merely states that the explanation offered by the petitioners is unsatisfactory.

15. We have considered the submissions made learned counsel for the parties and perused the record, including the impugned order.

16. We find that the Commissioner, Department of Food and Supply, had returned a finding in its appellate order of 9.6.2023 in favour of the petitioner that the two vehicles in question had not deviated from their mapped route as per the GPS tracking report and that since the consignment was intact, there was no black-marketing involved.

17. However, the fact remains that from 4.4.2019, the foodgrain/sugar from the FCI godown Arjunha was being transported to and being stored at Smt. Geeta Devi's godown ID No. 105900301 on the main Ramkola-Kasya Marg. Admittedly, all six trucks were dispatched from the FCI godown on 16.4.2020 which were to reach the godown with the consignment of wheat. Four of those trucks admittedly reached godown ID No. 105900301, but the statement of the two drivers of the aforesaid two trucks clearly reflects that it was the petitioner no. 4, who had asked them to park the two trucks in front of his house (that was about 80 yard from the main road) and that the petitioner no. 4 had stated that he would tell them later what is to be done. Thus, the statements made by the two truck drivers would have a crucial bearing with regard to the aspect of diversion of the two trucks in question. The respondents have stated that the godown of Smt. Vandana Shukla (ID No. 200139502) was not removed from the portal of the respondents but the trucks that were being dispatched from the FCI godown at Arjunha were being sent to Ramkola for

being offloaded at the godown ID No. 105900301 of Smt. Geeta Devi. This, coupled with the fact that of all the six trucks dispatched on 16.4.2020, only two of them found their way to the house of the petitioner no. 4, does give rise to a factual controversy which has been determined by the Regional Food Controller, Gorakhpur Division, Gorakhpur in the impugned order of 6.1.2024.

18. It is pertinent to mention here that neither in the instant petition nor in the memo of appeal or representations filed by the petitioners, that form part of the record of this petition have the petitioners denied the fact that the two truck drivers of the two trucks in question did not give the statement that they parked the truck at another place on the instruction of the petitioner no. 4. Therefore, the statements of the aforesaid two truck drivers stands uncontroverted.

19. It is pertinent to mention here that in the appellate order dated 9.6.2023 passed by the Commissioner on which heavy reliance is being placed by the petitioners though records that since the godown ID 200139502 was not deleted from the then portal even after being vacated on 9.3.2019, 132 consignments were created on the Ramkola godown ID No. 200139502, however, there is no finding that any of the 132 consignments that were created for Ramkola godown ID No. 200139502 had actually reached godown ID No. 200139502 and were offloaded in that godown. The contention that there was no loss of foodgrains and no black marketing was detected, is of little consequence when a case of ‘diversion’ of two trucks have been found to have been proved by the Regional Food Controller in its order of 6.1.2024.

20. Reference may be had to sub-clause (4) of Clause 6 of the Public Distribution System (Control) Order, 2001, which reads as follows:-

- “6. Distribution.
- (1).....
- (2).....

(3).....

(4) The authority or person, who is engaged in the distribution and handling of essential commodities under the Public Distribution system, shall not wilfully indulge in substitution or adulteration or diversion or theft of stocks from central godowns to fair price shop premises or at the premises of the fair price shop.

Explanation.

For the purpose of this clause;

(i) "diversion" means unauthorized movement or delivery of essential commodities released from central godowns but not reaching the intended beneficiaries under the Public Distribution System.

(ii).....

21. A similar provision is to be found in Clause 11 of the Targeted Public Distribution System (Control) Order, 2015.

22. In view of the aforesaid, the findings of the Regional Food Controller in the impugned order of 6.1.2024 are not liable to be interfered with inasmuch as the same are based on facts recorded by it. We find the impugned order of 6.1.2024 of the Regional Food Controller to be valid. The findings are based also on consideration of the statements made by the truck drivers of the two trucks in question. Accordingly, this writ petition lacks merit and is, therefore, **dismissed.**

Order Date :- 16.4.2025

Aditya Tripathi/A.V. Singh