

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) NO.79 OF 2010

Smt. Namita Paul,
wife of Sri Swapan Kumar Paul,
resident of B.K. Road, Agartala,
P.O. Agartala, P.S. East Agartala,
District : West Tripura.

..... Petitioner

- Vs -

- 1. Food Corporation of India,
represented by its Managing Director,
having its Head Office at 16-20,
Barkhamba Lane, New Delhi-110001
- 2. The General Manager,
Food Corporation of India,
North East Frontier Region,
Midland, Shillong-03
- 3. The Area Manager,
Food Corporation of India,
Colonel Chowmuhani,
P.S. West Agartala, District : West Tripura.

.....Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. A.K. Bhowmik, Sr. Advocate
Mr. R. Dutta, Advocate

For the respondents : None

Date of hearing : 25.02.2015

Date of judgment & order : 27.02.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER

By means of this writ petition, the petitioner who is a transport contractor, has challenged the action of the respondents deducting a sum of ₹32,47,763 as the railway demurrage charges from the bill of the petitioner for transportation, loading and unloading, handling of food-grains, sugar and allied materials in terms of the Tender Notice dated 08.08.2008 (Annexure-1 to the writ petition). The petitioner has asserted that in terms of the agreement under No.Cont.9/NEFT/TC/CHNG-AGT/2008, dated 17.11.2008 (Annexure-2 to the writ petition), the petitioner was awarded the work for transporting the food-grains, sugar and allied materials from the railway siding Changsari/CWC Godown, Amingoan/RH, FSD, Guwahati to Godown complex, Agartala. The petitioner had maintained a sum of ₹27,00,000 as the security deposit, which is 50% of the estimated transportation charge of ₹54,00,000.

2. The petitioner on executing a substantial part of the transportation work, raised the bill, but a sum of ₹32,47,763 was deducted from his bill arbitrarily. Hence, this writ petition.

3. Mr. A.K. Bhowmik, learned senior counsel appearing for the petitioner, has submitted that the clause 12(a) of the agreement, entered between the petitioner and the respondents, for execution of the transportation work provided for the liability

of the contractor in case of delay in unloading the wagon and consequential demurrage. The said clause is reproduced hereunder for making reference.

"12(a) The contractors shall be liable for all costs, damages, demurrages, wharfages, forfeiture of wagon, registration fees, charges and expenses suffered or incurred by the Corporation due to the contractor negligence and un-workman like performance of any services under this contract or breach of any terms thereof or their failure to carry out the work with a view to avoid incurrence of demurrage, etc. and for all damages or losses occasioned to the Corporation due to any act whether negligent or otherwise of the contractors themselves or their employees. The decision of the General Manager regarding such failure of the contractors and their liability for the losses, etc. suffered by Corporation shall be final and binding on the contractors."

4. In the course of the transportation there occurs delay in clearing the goods from the railway wagons for various intervening reasons, not necessarily for any action of the transporting contractor. But the respondent No.3, while making payment of the transportation bills, started deducting the demurrage charges from the bills of the petitioner. The petitioner had no occasion to make his say on determination of the demurrage. The respondents had deducted a sum of ₹32,47,763, according to the petitioner, without any authority of law. Further, he apprehends that such deduction would continue unabated. The previous practice having regard to clause 12(a) of the agreement

was that, a committee is set up by the respondents for making due enquiry into the reasons of the delay and the liability for such delay. Proportionately the demurrage charge used to be saddled. But, when the respondents adopted the similar practice, one Bulbul Enterprise had challenged such action by filing a writ petition before the Gauhati High Court, being W.P.(C) No.27/2000. In **Bulbul Enterprise Vs. Food Corporation of India & Ors.**, reported in **(2000) 2 GLR 537**, it has been held that :

11. It would appear from the above that non-arbitrariness is an essential concomitant of the rule of law and that all actions of every public functionary, in whatever sphere, must be guided by reason. It is clear from the above that exercise of a power must be for public good instead of being an abuse of the same, and the exercise of powers of a State instrumentality emanating from the terms of the contract cannot be placed beyond the purview of judicial scrutiny. This being the law in force as on today, the arbitrary action of the respondents herein contrary to the terms to the contract cannot be allowed to continue. Since such a direction is possible in the instant case without delving deep into disputed matters, the contention of Shri Deb that this Court should not exercise its powers under Article 226 in the instant case has to be rejected.

12. In the result, the writ petition is allowed. The respondents are directed to act in strict compliance with the provisions of the terms of contract and not to deduct any amount on account of demurrage without undergoing an exercise as provided under Clause XII of the contract. [Emphasis supplied]

The said decision has been complied by the ONGC Ltd.

5. Mr. Bhowmik, learned senior counsel, has emphatically submitted that the present case is wholly covered by the said decision of the Gauhati High Court in **Bulbul Enterprise Vs. Food Corporation of India & Ors.**

6. The respondents, by filing a reply, have admitted the factual position. They have also stated that the amount has been deducted on monthly basis from the bills of the petitioner as per prevailing system and on the basis of the certificate of the Depot Officer. However, they have not denied the fact that the petitioner was never afforded with any opportunity to have his say.

7. Thus this court is in agreement with the submission made by Mr. Bhowmik, learned senior counsel that the procedure that has been followed by the respondent is entirely arbitrary and betrays the principles of natural justice. Hence the action of the respondents is held unsustainable as arbitrary and for abuse of power. The respondents are therefore directed to determine the liability of the petitioner on account of the railway demurrage etc. following a procedure, which is transparent and conforming to the principles of natural justice or by way of conciliation or following any other due process of law. Such exercise, if not completed within a period of 6(six) months from today, the entire deducted amount as recovered from the transportation bills of the

petitioner as the railway demurrage etc., shall be refunded to the petitioner within a period of 3(three) months thereafter. In the event of failure of making such payment in terms of this direction, it shall carry interest @ 6% per annum till such payment is made to the petitioner.

8. Having held so, this petition is allowed to the extent as indicated above.

There shall be no order as to costs.

JUDGE

ROY