IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.18243 of 2014
Date of decision:20.02.2015

M/s Dashmesh Goods Carrier (Regd.), Bazakhana Road, Barnala, through its Partner Angrez Singh son of Shri Mohinder Singh.
... Petitioner

versus

Food Corporation of India, 16-20, Barakhamba Lane, New Delhi, through its Chairman-cum-Managing Director, and others.
.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. A.B.S. Sidhu, Advocate,
for the petitioner.

Mr. Rajesh Garg, Senior Advocate,
with Ms.Nimrata Shergill, Advocate,
for the respondents-FCI.

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1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. *(Oral)*

1. The petitioner is aggrieved at the notice issued by the first respondent obligating the petitioner to undertake transportation of grains also from godowns additionally constructed after the initial contract entered into by the respondents with the petitioner was with reference to 56 godowns only. The contract was for transportation of grains commencing from 01.03.2014 for a period of 2 years at

stipulated rates mentioned in the schedule. It appears that the respondent has added 5 more godowns and had opened tenders from public who may be willing to undertake contract for shifting of grains by transportation for the additional godowns but being not able to secure contracts on viable terms, has issued the impugned notice casting the obligation on the petitioner to transport stocks from the additional storage capacities to the Rail head, Barnala. The respondent was relying on a term in the contract originally entered into with the petitioner allowing for increase or decrease of the godowns. The relevant clause on which the reliance is made is reproduced to examine whether this clause could allow for the respondents to obligate the petitioner to undertake to transport stocks from the additional godowns added by the respondents, as follows:-

> " .... the Corporation shall have the exclusive right to appoint one or more contractors at any time at the time of award of the contract or during its tenure or for any or all the services, and to divide the work as between such contractors in any manner that the Corporation may decide, and no claim shall lie against the Corporation, by reason of such division of work. Further note in the aforesaid clause reads as under:-

Note:-

Notwithstanding the numbers and storage capacity of the existing godowns and those expected to be constructed/acquired during the contract period, the description of which is given in the tender, the Corporation may, during the currency of the contract, takeover/acquire/construct more godowns for storage, as and when necessary. Alternatively, it may also be necessary for the Corporation to give up or release one or more godowns out of those, the description of which is given in the tender or out of those which are later constructed/acquired later during the pendency of the contract. In such an event the contract shall not be rendered void and the contractor shall not be entitled to make any claim whatsoever against the Corporation for compensation, revision of rates or otherwise due to increase/decrease in the number of godowns or the storage capacity of the godowns."

2. The first portion in clause (xiv) allows for the Corporation to appoint one or more contractors at any time when the contract was awarded or during his tenure and also to divide the work as between such contractors in any manner that the Corporation might decide. To illustrate, this would make possible

for the Corporation to split the auction assigned to various persons, who have been awarded contract and apportion to each a particular number of actions for transportation. The 'Note' which is the appendage does not seem to explain what is set out in clause (xiv) but may operate even independently on its own. This Note allows for the Corporation to construct or acquire additional godowns and it also allows for reduction of the number of godowns. The addition or reduction, the Note would explain will not render the contract void. It makes possible the continuance of a contract on the existing rates even for additional godowns or godowns which are reduced in number and a contractor cannot claim compensation or revision of rates in the event of such increase or decrease. I will see this clause as only enabling the Corporation to plead in an action for a damage for the loss that may be occasioned to a contractor that such a claim for compensation is contracted out by the parties. This can by no stretch of imagination allow the Corporation, after constructing additional godown or acquiring additional godowns to insist that the additional godowns must also be taken as part of the original contract and the petitioner shall accept the transportation for additional godowns at the rates which the respondent may stipulate.

3. Any contract is an agreement between parties that operates on consensus ad idem. The consensus must relate to every stipulation. The stipulation of a contract at particular rate that allows

for an increase or decrease must again require an acceptance of such an additional burden. If the petitioner chooses not to take transportation facilities for the additional godowns, he shall so be let off. If only he undertakes the additional burden of transportation, he will lose his right to claim compensation for any loss that he may suffer or any plea of un-viability of the additional burden on the existing rates. It cannot compel a party to secure to himself a detriment which he does not want to go through. I will see no obligation on the part of the petitioner as could be enforced by the term of the tender condition which we have extracted above.

4. Any action by the respondent in awarding contract to a third party for the additional godown can only be a matter between the Corporation and the third party/subsequent contractor and no damage or loss could be claimed against the petitioner for the contract that it has chosen to enter into with the third party. The petitioner is entitled to run through the term of contract as it existed at the rates and shall also be entitled to be paid the amounts without any deduction for the additional facilities which the Corporation has created.

5. The learned senior counsel for the respondents would mount a further argument that the contract is non-statutory and, therefore, a writ remedy is not possible. It has been stated times without number that an intervention through a writ petition under

Article 226, even in contractual matters against State or its instrumentality is a self-imposed rule of restriction and there is nothing inherently wrong about court exercising jurisdiction where it finds the action of the State or its instrumentality to be arbitrary or capricious or legally untenable. I would find all the three characterizations as attributable to the respondents and relieve the petitioner of the obligation sought to be cast through the impugned letter. The impugned letter is quashed and the writ petition is allowed with costs of ₹10,000/-.

(K.KANNAN)
JUDGE

20.02.2015
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