

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

C.A.W.NO. 1799/2016 IN W.P.NO. 2078/2013.

1.Rice Millers Association, District Gondia and others.

-VERSUS-

1.Union of India and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

CORAM : B.P. DHARMADHIKARI &
KUM. INDIRA JAIN, JJ.

DATE : AUGUST 10, 2016.

This Civil Application has been taken out because of judgment of Hon'ble Supreme Court in Civil Appeal No.6621/2016. The Hon'ble Supreme Court has noted that need of Bank Guarantee felt by the appellant Food Corporation of India before it was a issue not pressed into service before this Court, hence, with liberty to press it, the Civil Appeal was disposed of.

2. Shri A.M. Gordey, learned Senior Counsel

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with Shri C.S. Samudra, learned Counsel for the applicants/respondent nos. 2 to 5 submits that as rates payable to petitioners for transportation work performed by them is still not determined, in likely event of rates being fixed on lower side than the rates prevailing in 2006-07, recovery may become necessary. To safeguard that interest and recovery, a Bank Guarantee is necessary.

3. Shri R.L. Khapre, learned Counsel appearing for the petitioners is strongly opposing the application. According to him rates for subsequent years cannot be on lower side. He contends that though the application has been moved, the said application does not point out any factor having bearing on rate determination which has diminished in value and therefore, the rate would come down. He submits that this Court has already on 27.04.2016 ordered an undertaking to be filed and that undertaking is duly submitted. The petitioners before this Court are in the business since last several years and for petty amount of difference, they are not likely to sell away their rice mills or vanish.

4. During hearing we find that the issue of

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rate determination is still under consideration of respondent no.1 Union of India, after respondent no.9 Tariff Corporation of India submitted its report to Union of India.

5. Ms. Chandurkar, learned Counsel appearing for respondent no.9 states that she has received instructions recently and Secretary of Tariff Commission of India is present before this Court to assist her. She states that Maharashtra is a non DCP State, and as such the Tariff Commission of India has not decided any transport rates for State of Maharashtra. Thus, recommendations with Union of India are not concerning State of Maharashtra. From records, she submits that in 2013 itself respondent no.1 Union of India has directed the Food Corporation of India to take care of interest of Union of India in this litigation, and therefore, Union of India has not appointed any independent Counsel to represent it. She submits that in this situation, the Tariff Commission of India has no role to play in the matter. She is seeking a short adjournment to submit necessary affidavit in this regard.

6. Shri Gordey, learned Senior Counsel in this

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regard submits that respondent nos. 2 to 5 have no knowledge of any such development and they have not been instructed to represent respondent no.1.

7. Mrs. Dangre, learned Government Pleader is present for respondent – State of Maharashtra.

8. According to learned Senior Counsel, even if it is presumed that respondent no.9 has not recommended any rates for State of Maharashtra, the transport report to be finalised, operates on uniform basis all over India. He contends that said rate thereafter is to be examined by the State Government and after State Government approves it, respondent nos. 2 to 5 make payment as per that rate.

9. We do not wish to go into this controversy at this stage. We find substance in the contention that factors having bearing on rate determination are not pointed out to this Court, and it is not the case of the applicants that as cost of any of those factors has been decreased, the rates of transport may come down.

10. However, looking to the fact that respondent nos. 2 to 5 are State within the meaning of Article 12 of the Constitution of India, and petitioners before this Court are private concerns/individuals, it

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will be in the interest of justice to protect interest of respondent nos. 2 to 5. We have therefore, heard respective Counsel to ascertain what would be the difference in rate if the State of Maharashtra ultimately accepts recommendations of Union of India and it becomes necessary to scale down the 2006-07 rates.

11. After hearing respective counsel, we find that the said variance may not be more than 25% of the amount billed by each petitioner. Hence, interest of justice can be met with by directing the petitioners to furnish Bank Guarantee to the extent of 25% of the billed amount to take care of the excess payment if any, ultimately found to be recovered by them. This requirement of furnishing Bank Guarantee is in addition to the undertaking as already ordered on 27.04.2016. The Bank Guarantee shall be furnished within a period of 15 days after the bill amounts are finalized by the respondent nos. 6, 7 and 8. After receipt of the Bank Guarantee, the respondent nos. 2 to 5 shall arrange to pay amount thereof at the earliest.

12. We therefore, accordingly partly allow this

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application. No costs.

13. List the Writ Petition for further
consideration on 26.08.2016.

JUDGE

JUDGE

Rgd.

CERTIFICATE

I certify that this judgment/order uploaded is a true and correct copy of original signed judgment/order.

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