

CWP No.24570 of 2014

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.24570 of 2014
Date of decision: 24.05.2016

Arvind Kumar

....Petitioner

Versus

Food Corporation of India and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?
- 2) To be referred to the Reporters or not ?
- 3) Whether the judgment should be reported in the Digest ?

Present: - Mr. Kamal Gupta, Advocate, for the petitioner.
Mr. Rajesh Garg, Sr. Advocate, with
Mr. Sundeep Kumar, Advocate, for the respondents.

PARAMJEET SINGH DHALIWAL, J.

Instant writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of *certiorari* for quashing the notice dated 20.08.2014 (Annexure P-15) issued by respondent No.3 – Area Manager, Food Corporation of India, District Office, Banasar Baag, Sangrur and letter dated 22.11.2014 (Annexure P-22) issued by respondent No.4 – Manager (D), Food Corporation of India, Food Storage Depot, Tapa, District Barnala.

The case of the petitioner is that in pursuance of the tender floated by respondent No.2 for appointment of Handling and Transport Contractor at Tapa Centre, petitioner was awarded contract for carrying out loading of foodgrains at Tapa Rail Head, from various godowns of Tapa centre for two years vide telegram dated 09.07.2013 (Annexure P-2). Petitioner submitted

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joining report dated 03.08.2013 (Annexure P-4) to respondent No.4. Vide notice dated 19.03.2014 (Annexure P-5) respondent No.4 directed the petitioner to transport the rice stock from Soma godowns to Railhead Tapa. Aggrieved against the notice dated 19.03.2014, petitioner moved representation dated 19.03.2014 (Annexure P-6) to respondent No.4 expressing his inability to transport the rice stocks from the said Soma godown on the ground that the Soma godown did not fall under the purview of the MTF. After exchange of various communications between the petitioner and respondents, notice dated 20.08.2014 (Annexure P-15) was issued to the petitioner by respondent No.3 whereby petitioner has been directed to transport stocks from Soma godowns for loading into wagons at Railhead Tapa, failing which clause XIX(c) would be invoked and work would be done at the risk and cost of the petitioner. Thereafter, letter dated 22.11.2014 (Annexure P-22) has been issued to the petitioner by respondent No.4 to make adequate arrangement of trucks and labour for loading of balance specials for the month of November, 2014 from Soma godown at Tapa Railhad. Hence, this writ petition.

I have heard learned counsel for the parties and perused the record.

Identical issue as involved in the present petition has already been dealt with by a Single Bench of this Court in CWP No.18243 of 2014 wherein it has been held as under:

“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

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*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/-."*

The matter in hand is squarely covered by the judgment of this Court in CWP No.18243 of 2014. Resultantly, the instant petition is allowed in same terms with costs of ₹ 10,000/-.

(Paramjeet Singh Dhaliwal)
Judge

May 24, 2016
R.S.