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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.26325 of 2014
Date of decision:06.01.2016

Gursewak Singh ...Petitioner

Versus

Food Corporation of India and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Ashish Aggarwal, Senior Advocate, with
Mr. Bhupinder Ghai, Advocate, for the petitioner.

Mr. K.K.Gupta, Advocate,
for the respondents.

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Rakesh Kumar Jain, J.

The Food Corporation of India (hereinafter referred to as the "FCI") floated tender inquiry dated 27.06.2011 for appointment of Transport Contractor at Budhlada along with other surrounding storage points, which were 20 in all at and near the Budhlada Centre, for transportation of foodgrains from those storage points to Railway Head, Budhlada. It was provided in the brief description of work that the tenderer must get themselves fully acquainted with the size and location of godowns vis a vis loading/unloading points before submission of tender and rates quoted by them for loading into/unloading from trucks/wagons and once a tender is submitted by a party, he shall be deemed to have fully acquainted himself with the size and location of godowns vis a vis loading/unloading points and he shall not be entitled to any compensation arising out of any

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discrepancy points in the size and location of godowns/group of godowns found later on. The contractor was also to undertake the work connected with stocks available in Punjab Government/State agency managed godowns in accordance with instruction of the SRM or an officer acting on his behalf and the terms and conditions of the arrangements and remuneration for service rendered in this regard was to be in accordance with the provision of this tender. In case of the rates are quoted in a manner other than mentioned above, the tenders were liable to be ignored and the tenderer were not to incorporate any conditions in the tenders as conditional tenders were likely to be ignored. In Clause XV (Remuneration) of the MTF, a note was also provided that *"the rates are fixed on point to point basis without indicating the route and in no circumstances, the request for change of route or alternate will be considered and this decision will not have any bearing on any other case relating to similar nature"*. In Clause XII of the MTF, a Set off was provided, which read as under:-

> "XII. A. Set off: Any sum of money due to and payable to the contractors (including security deposit returnable to them) under this contract may be appropriated by the Corporation and set off against any claim of the corporation for the payment of any sum of money arising out of or under any other contract made by the contractors with the Corporation."

The distance of each of the storage point to the Railway Head is measured and schedule of rate, also known as Basic Rate, was determined for each storage point on the basis of shortest motorable distance and such basic rates were mentioned in the NIT but still the tenderers were required to quote any rate in terms of the percentage Above the Schedule of Rates considering the ground realities and the facts and circumstances, categorically in the light of the fact that no future request for change of route or alternative route was to be considered.

The petitioner quoted 261% ASOR (Above Schedule of Rate) having an increase of 68.69% over the outgoing rate of the previous contract but since his rate was the lowest, therefore, the contract was awarded to him for a period of two years w.e.f. 20.09.2011 to 19.09.2013. After the award of the contract, the petitioner transported the specials till January 2012 through the aforesaid route but, thereafter, he started making representation that due to the construction of fly-over on the Railway Phatak, he had to undertake a longer route and had to incur more expenses on transportation. On the basis of that information, the payments were made but the Regional Office of the FCI constituted a Committee of three Managers for investigating the issue in which the Committee noticed that the movement of the trucks through a service lane adjoining the fly- over under construction is going on and even the petitioner was using the same, but the petitioner had claimed lacs of rupees on the pretext of transportation through a longer route by mis-representation of facts, therefore, the petitioner was served with a show cause notice dated 30.01.2013 and after his reply dated 06.02.2013, the Competent Authority passed the order dated 01.07.2013, to which a corrigendum was issued on 13.08.2014 whereby the recovery of ₹39,51,231/- has been effected as per the set-off Clause XI(b) and (e), according to the undertaking given by the petitioner, from the outstanding payments payable to the petitioner by the FCI.

Aggrieved against this action of the FCI, the petitioner has filed the present petition alleging their action to be arbitrary and unreasonable.

It is argued by learned counsel for the petitioner that the effect of construction of the railway over-bridge was noticed by the respondents as far back as on 05.08.2011 and the request was also made for insertion of new clause regarding re-fixation of rates due to change of route during the currency of the contract or during/after floating of tender enquiry. It is also submitted that because of the longer route, there was no liquidation of stock from the SPWC, Budhlada and has refereed to the report dated 27.01.2012.

On the other hand, counsel for the respondents has submitted that after the appointment of the petitioner as TC of Budhlada Centre by Regional Office (PB), Chandigarh on 20.09.2011 for the period of two years w.e.f. 20.09.2011 to 19.09.2013, he transported the specials upto January 2012 but, thereafter, started making representations that due to construction of the fly-over on the Railway Phatak, he had to undertake a longer route, whereas according to the respondents, he has been using the sideway of the over-bridge and has claimed lacs of rupees on the pretext of longer route by misrepresentation. It is also submitted that it had been made known to the petitioner in the MTF itself that the rate has been fixed on point to point basis without indicating the route and in no circumstances, the request for change of route or alternate will be considered. Moreover, the petitioner

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had quoted 261% ASOR, which was having an increase of 68.69% over and above the outgoing rates of the previous contract, therefore, he was not entitled to claim damages from the FCI on the pretext of transportation through a longer route which was termed as misrepresentation. It is also submitted this question of facts cannot be decided in the writ petition and the remedy available to the petitioner is of the civil suit.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that there is no error in the impugned order because it was specifically made clear in Clause XV of the MTF that the rates are fixed on point to point basis without indicating the route, which cannot be changed in any circumstance. Moreover, the petitioner was given liberty to quote any rate in terms of any route above the scheduled rates after considering the ground realities and the facts and circumstances especially when no future request was to be considered by the FCI and in the light thereof, the petitioner had quoted 261% ASOR, having an increase of 68.69% over and above the outgoing rate of the previous contract and cannot just rely upon any correspondence of the lower staff of the FCI, being himself bound by the terms and conditions of the contract.

Thus, keeping in view the totality of the facts and circumstances, I do not find any merit in the present writ petition and hence, the same is hereby dismissed.

January 06, 2016 **(Rakesh Kumar Jain)**
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