

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2307 of 2016**

Gaurav Jain S/o Shri Prakash Chand Jain, Aged About 36 Years
 Partner Raj Garaje Raipur, R/o Bhaisthan Raipur Police Staiton Azad
 Chauk Tahsil And Distirct Raipur Chhattisgarh ---- **Petitioner**

Versus

1. Food Corporation Of India Through The Executive Director Zonal
 Executive Director, Zonal Office West 3rd Floor Dattapada Road,
 Rajendra Nagar, Borivali, East Mumbai 400066
2. Food Corporation Of India, Through The General Manager, Regional
 Office Vidhan Sabha Road, Mowa Raipur Tahsil And District Raipur
 Chhattisgarh
3. Food Corporation Of India, Through The General Manager, S& C,
 Zonal Office West 3rd Floor, Dattapada Road, Rajendra Nagar, Borivali
 East Mumbai 400066 ---- **Respondents**

For Petitioner	:	Mr. S.C. Verma, Advocate
For Respondents	:	Mr. B.P.Gupta, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****02/05/2017**

With the consent of the parties, the matter is heard finally.

1. The petitioner is aggrieved by order dated 25.07.1016 by which, his claim for payment of transportation charges through the route from which food-grains were actually transported by the petitioner, was rejected.
2. The short submission of learned counsel for the petitioner is that an authentic communication from the Public Works Department on 09.07.2015 that the route Hasaod, Chhapora, Dabhra, was not suitable for movement of heavy vehicle between the period from 23.03.2013 to 30.04.2015, has not been taken into consideration and therefore, the decision is arbitrary. Learned counsel for the petitioner also emphasizes upon the fact that in fact, earlier the petitioner's bill was being cleared without raising any objection to petitioner's transporting

through route chosen by him and it was only at the last that recovery were made.

3. Learned counsel for the respondent submits that the decision had to be taken to recover only upon disclosure of the fact that route was not completely prohibited from traffic movement.
4. Learned counsel for the respondents/Food Corporation of India opposes and submit that the matter involves a contractual dispute between the parties and essentially involves enforcement of mere contractual obligation, therefore, the petition would not be maintainable and as it would require evidence to be led, the petitioner ought to have approached the Civil Court. The next submission is that in any case, the communication dated 28.01.2016 and 29.06.2016, of the Executive Engineer of PWD show that though the work of widening and reinforcement of road was in progress, it was actually not prohibited for any vehicular movement. Therefore, in any case, the petitioner cannot raise any grievance. He submits that all the aspects were taken into consideration and the petitioner's claim was rejected.
5. True it is that ordinarily, writ Court would not issue writ to enforce mere contractual rights between the parties and remedy is to approach civil Court for enforcement of contractual obligation. Nevertheless, as has been held by the Supreme Court in **ABL International Limited and another v. Export Credit Guarantee Corporation of India Limited and others, 2004 (3) SCC 553**, where one of the contracting party is a 'state', in appropriate cases, if the decision is arbitrary in nature, thereby violative of Article 14 of the Constitution of India, it would be a decision in public domain, though dealing with a contractual matter and the remedy of writ would be available. In that decision, the Supreme Court relied upon earlier decisions to hold that there was no bar as such to the writ Court to entertain petitions involving contractual dispute, but where dispute is of factual nature, requiring oral and documentary evidence, the writ Court may not be inclined to inquire into those disputed questions of facts and parties may be left to work out their remedy before the competent authority as may be available to them under the law.

6. Applying the aforesaid principle, if the impugned order is examined in the light of authentic documents/communications of the Public Works Department, I find that there are three important communications issued by the office of Executive Engineer, PWD Champa. The first document is dated 09.07.2015 (Annexure P/4) which communicated to the official of the respondents that the route in question was not suitable for movement of heavy vehicle between the period from 23.03.2013 to 30.04.2015 because the work of widening and strengthening was going on. This letter has been heavily relied upon by the petitioner.
7. The respondents have relied upon two other communication dated 28.01.2016 & 29.06.2016 filed by the respondents, which state that the traffic was not altogether stopped and no notification for prohibiting movement was issued.
8. After going through the impugned order, I find that the respondent official has not taken into consideration the effect of communication dated 09.07.2015 (Annexure P/4). The authority was inclined to take view against the petitioner without due consideration of this important document, resting his conclusion based on other communication that there was no prohibition of movement as such. The three letters referred to above, indicate three important aspects which constituted relevant material for decision making process. One was that the route was not suitable for movement of heavy vehicle; that it was not totally prohibited and the third, the road widening and strengthening was going on between the period from 23.03.2013 to 30.04.2015. While two aspects were taken into consideration, the effect and impact of letter dated 09.07.2015 was not taken into consideration. This amounts to omitting from consideration, a relevant material. This omission on the part of the respondent authority has resulted in arbitrariness in decision making process which is vulnerable in writ proceeding.
9. For reasons as stated above, I have to hold that the decision making process suffers from arbitrariness, procedural impropriety and material irregularity. The decision, therefore, cannot be sustained in law, being violative of Article 14 of the Constitution of India, the respondent undoubtedly being 'State' under Article 12 of the Constitution of India.

10. In the result, the impugned order is set aside and the respondent authority is directed to reconsider the entire aspect by taking into consideration all other communication made by the Executive Engineer of the PWD including communication dated 09.07.2015 and then decide in accordance with law within a reasonable period.

11. The petition is accordingly allowed.

Sd/-

(Manindra Mohan Shrivastava)

J U D G E

Rekha