

RESERVED ON : 13.09.2017

DELIVERED ON : 22.09.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2017

CORAM
THE HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.10809 of 2017 &
W.M.P.No.11749 of 2017

N.Kumaresan ... Petitioner
vs.

- 1 The Tamilnadu Warehousing Corporation
Rep. by its Managing Director
82, Anna Salai
Chennai-600 032
 - 2 The Tamil Nadu Warehousing Corporation
Rep. by its Warehouse Manager
Palayamkottai Warehouse
Palayamkottai
 - 3 The Food Corporation of India
Rep. by its General Manager
No.8 Mayor Sathiamoorthy Road
Chetpet, Chennai-600 031
 - 4 The Food Corporation of India
Rep. by its Area Manager
MG Complex, 3rd Mile
Tuticorin
- ... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus, directing the respondents herein to sanction the payment to the petitioner at the negotiated rate of + 180% ASOR as per the order Rc.4019/2015/G1, dated 5.2.2016 issued by the 1st respondent herein awarding the regular H & T contract for a period of 2 years (2015-17) to the petitioner herein.

For Petitioner : Mr.T.Balaji

For Respondents : Mr.S.T.S.Murthy, Addl. Advocate General
Assisted by Mr.S.N.Parthasarathy
Government Advocate - for R1 & R2

Mr.R.Vijayakumar - for R3 & R4

ORDER

The above Writ Petition has been filed by the petitioner to issue a Writ of Mandamus, directing the respondents to sanction the payment to him at the negotiated rate of + 180% ASOR as per the order dated 05.02.2016 issued by the 1st respondent awarding the regular H & T contract for a period of 2 years (2015-2017) to him.

2.1 The case of the petitioner is that he is a handling and transportation contractor carrying on the work of handling and transportation on food grains. The 1st respondent invited tender under two bid system to for appointment of loading/unloading. Handling and Transport Contractor at Tamil Nadu Warehousing Corporation Warehouses and railheads for a period of 2 years to carry out the work of loading/unloading of various commodities such as Food grains, fertilizers, sugar, cement and other notified commodities at the warehouses and clearing of rail wagons and transport to warehouses and vice versa together with such additional, ancillary and incidental duties, services operations for the warehouses shown in the said tender document. The petitioner participated in the tender and submitted his bid in respect of Palayamkottai Warehouse and after negotiations, rate of handling and transportation + 180% ASOR was accepted and fixed.

2.2 The 1st respondent by his proceedings dated 05.02.2016 ordered that the petitioner was awarded the regular H & T contract work at Palayamkottai Warehouse at the negotiated rate of + 180% ASOR for a period of two years with effect from 05.02.2016. The bills submitted by the petitioner from 11.02.2016 were periodically settled by the respondents.

2.3 Subsequently, the petitioner was requested to carry on the H & T work for Muthur Godown, which is also attached to the Palayamkottai Warehouse for storage of food grains at the rate of + 132% ASOR. Since the said arrangement was a short term time gap arrangement, the petitioner accepted the request of the respondents for the H & T of food grains for the Mutur Godown at the rate of + 132% ASOR.

2.4 According to the petitioner, the 4th respondent is now trying to take undue advantage of the same and insisting that he will clear the bills for the payment in respect of Palayamkottai warehouse at the rate of + 132% ASOR only despite the fact that the tender has been awarded to him at the rate of + 180% ASOR.

2.5 In these circumstances, the 1st respondent sent communications dated 09.01.2017 and 24.01.2017 calling upon the respondents 3 and 4 to settle the petitioner's bills of Palayamkottai Warehouse at the rate of + 180% ASOR. However, the respondents have not settled the bills. Hence, the

petitioner sent a letter dated 05.02.2017 to the respondents calling upon them to settle the bills.

2.6 The petitioner also made a representation to the respondents to sanction the payment to him at the negotiated rate of + 180% ASOR as per the order dated 05.02.2016 issued by the 1st respondent. Since the respondents have not sanctioned the payment, the petitioner has filed the writ petition.

3.1 The respondents 1 and 2 filed their counter wherein they have stated that pursuant to the petitioner's consent letter dated 14.11.2016, the H & T rate for attachment work at Muthur Godown was fixed at + 132% ASOR at the meeting of the State Level Committee on 15.11.2016 and the 1st respondent passed an order dated 17.11.2015 to this effect. Further, the respondents have stated that in the said meeting it was suggested that the contractor concerned may be further negotiated and the existing H & T rate of + 180% ASOR of Palayamkottai warehouse may be reduced to +132% ASOR. Accordingly, the 1st respondent, through his letter dated 17.11.2016, requested the petitioner to reduce the H & T rate to + 132% ASOR, for which, the petitioner was not willing. The 4th respondent, for the best reasons known to him refused to settle the H & T bills in respect of Palayamkottai Warehouse raised by the petitioner at the rate of + 180% ASOR.

3.2 The 2nd respondent, through his letter dated 23.12.2016, impressed upon the 4th respondent to settle the outstanding bills of the petitioner at the approved rate of + 180% ASOR and not to reduce the approved rates. However, the respondents 3 and 4 did not clear the petitioner's bill. Further, the respondents 1 and 2 have stated that they entered into a contract with the petitioner only on behalf of the respondents 3 and 4. Further, they have stated that the payment should be made by the 3rd respondent and in turn, the respondents 1 and 2 would pay the amount to the petitioner. The 1st respondent has taken all the steps to impress upon the respondents 3 and 4 to abide by the terms and conditions of the contract in respect of Palayamkottai Warehouse for the period of 2015-17.

4. The respondents 3 and 4 have filed their counter wherein they have stated that there is no contract between the petitioner and the respondents 3 and 4. The petitioner can claim the relief only as against the respondents 1 and 2 and not from the respondents 3 and 4. Since the 1st respondent and the petitioner have agreed to carry out the H & T work at Muthur Godown at the rate of + 132% ASOR and the same contractor has been charging at the rate of + 180% ASOR for carrying out the H & T work at Palayamkottai warehouse, a proposal was made to the 1st respondent to carry out the H & T work at the rate of + 132% ASOR for

transporting the stocks from Rail Head Tirunelveli to Palayamkottai Warehouse also. Therefore, the respondents 3 and 4 requested to reduce the rate to + 132% ASOR from + 180% ASOR. In these circumstances, the respondents 3 and 4 sought for dismissal of the writ petition.

5. Heard Mr.T.Balaji, learned counsel appearing for the petitioner, Mr.S.T.S.Murthy, learned Additional Advocate General appearing for the respondents 1 and 2 and Mr.R.Vijayakumar, learned counsel appearing for the respondents 3 and 4.

6. It is not in dispute that the petitioner was awarded the tender to carry out the work of handling and transportation on food grains in respect of Palayamkottai Warehouse at the rate of + 180% ASOR. The respondents 1 and 2 entered into the contract on behalf of the respondents 3 and 4. When the bills are raised by the petitioner, the respondents 3 and 4 paid the amount at the rate of + 180% ASOR. After making the payment for more than a year, the respondents 3 and 4 stopped clearing the bills raised by the petitioner stating that the agreed rate of + 180% ASOR should be reduced to + 132% ASOR. This + 132% ASOR was fixed in respect of Muthur Godown as a short term time gap arrangement i.e. for a period of three months. When the contract between the petitioner and the respondents 1 and 2 satisfies that the petitioner is entitled to payment at the rate of + 180% ASOR, the parties to the agreement are bound by the same.

7. The learned Additional Advocate General appearing for the respondents 1 and 2 submitted that the respondents 3 and 4 have been making payment at the rate of + 180% ASOR, but, all of sudden, they stopped clearing the bills raised by the petitioner at the rate of + 180% ASOR. When the petitioner has been paid at the rate of + 180% ASOR for a year, the respondents cannot suddenly turn around and say that the petitioner is entitled to a lesser amount than what was agreed in the contract. The parties to the contract cannot deviate from the terms of the contract. The respondents cannot insist the petitioner to reduce the rate to + 132% ASOR from + 180% ASOR citing the rate fixed in respect of another Godown, viz., Muthur Godown. When the contract is only in respect of Palayamkottai warehouse the rate fixed for Muthur Godown cannot be applied.

8. In these circumstances, the petitioner is entitled to payment at the rate of + 180% ASOR from the respondents 1 and 2, as per the order dated 05.02.2016, issued by the 1st respondent, for the entire contract period of two years. In turn, the respondents 3 and 4 are liable to clear the bills at the rate of + 180% ASOR and make the payment to the respondents 1 and 2. Since there is no contract between the petitioner and the respondents 3 and 4, no direction can be

given to the respondents 3 and 4 to make the payment.

9. Accordingly, I direct the respondents 1 and 2 to make the payment to the petitioner at the rate of + 180% ASOR as per the order dated 05.02.2016 issued by the 1st respondent. Since the respondents 3 and 4 have to made the payment at the rate of + 180% ASOR to the respondents 1 and 2, liberty is given to the respondents 1 and 2 to recover the difference amount from the respondents 3 and 4 in accordance with law.

With these observations, the writ petition is allowed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Rj

To

- 1 The Managing Director
Tamilnadu Warehousing Corporation
82, Anna Salai
Chennai-600 032
- 2 The Warehouse Manager
Tamil Nadu Warehousing Corporation
Palayamkottai Warehouse
Palayamkottai
- 3 The General Manager
Food Corporation of India
No.8 Mayor Sathiamoorthy Road
Chetpet, Chennai-600 031
- 4 The Area Manager
Food Corporation of India
MG Complex, 3rd Mile
Tuticorin

+1cc to Mr.A.Thiyagarajan, Advocate SR.No.66770(03/10/2017)
+1cc to Mr.T.Balaji, Advocate SR.No.69775(03/10/2017)

W.P.No.10809 of 2017 &
W.M.P.No.11749 of 2017

MR (CO)

<https://hcservices.accounts.gov.in/hcservices/>
GN(26/09/2017)