IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.37475 of 2003
and
W.M.P.45503 of 2003

M/s. V.K.S. Transports,
Rep. by its Proprietor
V.K.Ravikumar,
Room No.18, IIIrd Floor,
Kumbhat Commercial Complex,
699-700, Periyar E.V.R.Road,
Aminjikarai,
Chennai. ... Petitioner

Vs.

1. Tamil Nadu Civil Supplies Corporation Limited,
   Rep. by its Chairman and Managing Director,
   No.42, Thambusamy Road, Kilpauk, Chennai-10.

2. The Regional Manager,
   Tamil Nadu Civil Supplies Corporation Limited,
   Dindigul Region,
   Dindigul. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order of the Second Respondent in Roc.A7/5294/03 dated 19.11.2003 and quash the same consequently direct the respondents to forthwith pay a sum of Rs. 2,18,187/-towards security deposit and arrears of bill to the petitioner.

For Petitioner : Mr.G.Arul Murugan

For Respondents : Mr.C.Selvaraj

O R D E R

The Petitioner has come forward with above Writ Petition praying for issuance of Writ Certiorarified Mandamus, to call for the records pertaining to the order of the Second Respondent in Roc.A7/5294/03 dated 19.11.2003 and quash the same and consequently direct the respondents to forthwith pay a sum of Rs.2,18,187/- towards security deposit and arrears of bill to the petitioner.

2. The Petitioner is a proprietary concern, doing transport of essential commodities from the godown of the Food Corporation of India, in plain region and hill region and the petitioner was awarded transport contract for a period of 01.07.2002 to 30.06.2003. As the essential commodities have got to be levied and that the petitioner will have to transport goods in plain and hill areas and that on account of not only the load, but also the same fuel in the hill areas, the petitioner was permitted to claim double rate for transportation in the hill area and single rate for plain path. According to the learned counsel for the petitioner, the petitioner has transported the goods from Dindigul to Kodaikanal which is about 97 kilometers and for the first 47 kilometers, the petitioner would be entitled to claim single rate for the plain area and for the remaining 50 kilometers, the petitioner would be entitled to claim double rate for transportation of the goods. According to the petitioner, the contract period is already over the and petitioner has transported the goods for the period in question in the said area. According to the petitioner, the amount is calculated at a sum of Rs. 4,86,843/- which is due to the petitioner and it was excessively paid. The respondents, without giving an opportunity of being heard, based on the audit objection, has with-held the security deposit and the amount payable to the petitioner and the respondents have also demanded that the petitioner shall pay a sum of Rs.2,68,656/-. The petitioner submitted that there is no excess payment, which is barred by the norms and guidelines. The amount has been paid and the impugned order is liable to be interfered with and the amount which is laying in the deposit with the respondents, will have to be returned to the petitioner.

3. Per Contra, the Learned counsel for the respondents-Tamil Nadu Civil Supplies Corporation Limited contended that the Writ Petition itself is not maintainable on account of non-joinder of necessary party, namely the audit authority, on whose instructions, the impugned order has been passed. Apart from that, it is true that the petitioner was permitted the avail the benefit of double rate for hill area movement of commodities and that for the plain surface travel, petitioner would be entitled to single rate. However, while calculating the amount in the slab, the amount has been wrongly taken under the slab 81 to 100 kilometers and that the entire kilometers, namely 97 kilometers had been calculated and the double rate of amount has been paid to the petitioner, which is not the claim. Even going by the contention of the petitioner, the petitioner would be entitled for double rate only for the hill area movement and not for

movement in the plain surface. It is further submitted by the learned counsel for respondents-Corporation that as there was erroneous payment made to the petitioner, the security deposit amount of Rs.2,18,187/- had been withheld, apart from that fact that the remaining amount of Rs.2,68,656/- has got to be paid by the petitioner to the respondents-Corporation.

4. Heard both sides and perused the materials available on the record.

5. It is vehemently contended on behalf of the petitioner, by referring to paragraphs 5 and 6 of the impugned order, and also contended that the single plain pathway was calculated for 46 kilometers and double pathway rate has been calculated for the remaining 51 kilometers in the hill area. The above said paragraphs 5 and 6 of the impugned order read as follows:

> "5. The explanation of the T.C. was examined carefully with connected records. A perusal of the connected records revealed that the Transport Charges for the movement of stocks from Dindigul to Kodaikanal were paid to them by adopting the following calculation.
>
> PLAIN PATH :I-46 KMS : Single plain path rate for 46 kms calculated as per slab of 41-60 kms.
>
> HILL PATH :I-51 KMS:Double the plain path rate of 51 kms calculated as per slab of 41-60 kms.
>
> As pointed out by the A.G. Audit party, transport charges for the movement of stocks from Dindigul to Kodaikanal (G) has to be settled as per calculation detailed below.
>
> 1) First KM of loading point to 97 kms of Kodaikanal (G))
> (both plain path + hill path) - A
> 2) Beginning of the Plain path upto and end of plain path)-
> (1 to 46 Kms) B
> 3) Distance for Hill path 47 KMs to 97 kms. A-B=C
> 4) Transport charges for 'C' will be C x 2
> 5) Transport charges to Kodaikanal B+2xC
>
> It may be seen from the above that the transport charges have to be worked out at double the rate for hills path as per the mode of calculation as above.
>
> 6) Hence due to adoption of incorrect calculation of Transport charges the excess transport charges paid to the transport contractor is as follows:

SL NO	YEAR	TYPE OF CONTRACT	QUANTITY MOVED	TC PAID 0306 39	TC PAYABLE 0161.17	EXCESS T.C.PAID
1	2002-03	FCT TNT	3352 478 740	1027152/-	5.40,309/-	4,86,843/-

The details of amount availabl with TNCSC Ltd. Dindigul in the name of M/s V.K.S. Transports, Chennai is as follows:

1.	Security Deposit	-Rs. 1,50,000.00
2.	Pending Bill A7/3672/03	-Rs. 23,904.00
3.	Pending Bill A7/3919/03	-Rs. 10,000.00
4.	Pending Bill A7/3919/03	-Rs. 34,283.00
		-Rs. 2,18,187.00

Excess T.C. Paid	- Rs. 4,86,843.00
Amount available in the T.C. Account	- Rs. 2,18,187.00
Balance amount to be recovered from the T.C	- Rs. 2,68,656.00

6. A reading of the above said paragraphs 5 and 6 makes it clear that higher rate of amount has been taken for the purpose of calculating the double rate, i.e. entire 97 kilometers had been taken and calculation has been made as if the petitioner is entitled to double rate for the plain path rate for 97 kilometers and not for 51 kilometers.

7. I find that there is no error on the part of the respondents- Corporation in demanding the refund of amount, when erroneous payment has been made to the petitioner. As the calculation made requires details, as submitted by the petitioner, this Court though finds much force in the contention of the learned counsel for the respondents-Corporation, directs the respondents-Corporation to calculate the amount payable to the petitioner for the plain path and hill path as per the mode of calculation mentioned in paragraph 5 of the impugned order and arrive at a figure appropriately and if the amount has been paid correctly, the security deposit shall be refunded to the petitioner forthwith together with interest @ 6% p.a. from the date of contract till the date of the impugned order. In case excess amount is paid to the petitioner, the respondents-Civil Supplies Corporation is entitled to demand the excess amount as per the calculation formula mentioned in paragraph 5 of the impugned order and the respondents shall refund the amount after adjusting the security deposit amount lying with them. If any excess payment is made to the petitioner, it shall be refunded by the petitioner together with interest @ 6% p.a. from the date of the contract till the date of the impugned order.

8. With the above observations and directions, this Writ Petition is disposed of. No costs. W.P.M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ggi

To:

1. The Chairman and Managing Director,
   Tamil Nadu Civil Supplies Corporation Limited,
   No.42, Thambusamy Road,
   Kilpauk, Chennai-10.

2. The Regional Manager,
   Tamil Nadu Civil Supplies Corporation Limited,
   Dindigul Region,
   Dindigul.

+1cc to Mr.G.Arul Murugan, Advocate, S.R.No.53794
+1cc to Mr.C.Selvaraj, Advocate, S.R.No.54489

W.P.No.37475 of 2003

RSK(CO)
CA(31/08/2017)