HON'BLE SRI JUSTICE M.S.K. JAISWAL

WRIT PETITION No.26921 of 2007

ORDER:

This writ petition is filed for a Mandamus, declaring the proceedings of the 2nd respondent dated 11.12.2006, as illegal, arbitrary and consequently, direct the respondents to pay the petitioner the following amounts:

(i) Rs.68,887/- which was deducted from the bill dated 02.11.1998 towards difference in weight;

(ii) Rs.1,26,360/- and Rs.1,64,411/- towards bills pending for transportation of boiled rice;

(iii) Rs.90,000/- which was deposited as Security Deposit; and

(iv) An amount to the extent of 5% which was deducted from the two bills, dated 02.11.1998 and 22.11.1998 towards the Security Deposit together with interest of 18% per annum from the date it is due till the date of actual payment.

2. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents.

3. The petitioner, pursuant to the tender notification, dated 09.04.1997, issued by the respondents for transportation of food grains/fertilizers/sugar etc., by road from the Food Corporation of India State Warehousing Corporation/Central Warehousing Corporation godowns or any other point within the jurisdiction of Food Corporation of India, Nalgonda to any godown/point within or outside the district within a radius of 200 kms, submitted his tender and he was awarded the contract for the period from 07.05.1997 to 07.05.1999, by order dated 27.09.1997. The petitioner has fulfilled the terms and conditions of the contract by furnishing security

deposit etc. For the period from 16.10.1998 to 31.10.1998 the petitioner had transported about 600 ton of boiled rice from central warehousing corporation, Suryapet to the Buffer Stock Centre, Khammam. The stock was first weighed at the Central Warehousing Corporation at Suryapet and sealed. Thereafter, the stock was weighed at the Buffer Stock Centre, Khammam and at Khamma, the stock was found less weighing, as the said weigh bridge was defective, and the same was brought to the notice of the respondents. But the respondents deducted the amount of Rs.68,867/- from the bill towards loss of weight. The respondents further deducted Rs.1,26,360/- and Rs.1,64,411/- and further the petitioner is entitled for refund of Rs.90,000/- towards 50% of the security deposit. Further, an amount of Rs.32,318/- was recovered from the bills at the rate of 5% against the balance of 50% security deposit, available in the books of District Office, Nalgonda.

4. According to the respondents, the lorry weigh bridge at Khammam was found defective on 24.10.1998, the transportation of goods was affected from 16.10.1998 to 23.10.1998 and hence, the contention of the petitioner that due to defect in the weighing machine, the less weight was found, cannot be considered.

5. Questioning the action of the respondents in deducting the amounts from the bills, the petitioner earlier filed W.P.No.17994 of 2002, and this Court, by order dated 12.10.2006, directed the respondents to consider the case of the petitioner on merits. But the respondents, by the impugned order, rejected the claim of the petitioner, and hence the petitioner filed the present writ petition.

6. The controversy lie in a narrow compass that is as to whether there is any justification for the respondent to withhold the payments due to the petitioner who was a transport contractor required to transport the food

grains etc., from the Central Warehousing Corporation, Suryapet to the Buffer Stock Centre, Khammam during the period 1998-1999. The admitted facts outweigh the contentious aspect. Admittedly, the petitioner was called upon to transport about 10,000 MTs of boiled rice from Suryapet to Khammam during the period from 16.10.1998 to 31.10.1998 and in between 16.10.1998 and 23.10.1998, there was a deficit in the stock transported by the contractor in between the loading point and unloading point. This as per the contract was liable to be recovered from the contractor. However, according to the petitioner, there was no deficit or shortfall in the quantity but there was defect in the Electronic Weighment Bridge at the unloading point viz., Khammam, due to which the deficiency was found. The fact that there was defect in the weighment bridge during the period relevant for our purpose is not in controversy. As a matter of fact, the respondents in their counter specifically averred that on the basis of representation made by the transporters, the Area Manager of the Corporation appointed a three men committee of Officers and in the presence of the representatives of the contractors, the weighment bridge was checked and it was found to be defective on 24.10.1998. Accordingly, the weighment on the said bridge was stopped till it was repaired in the first week of November, 1998. It is also on record that on 18.11.1998 also the Depot Manager (Mech.)of the Regional Office checked the Lorry Weigh Bridge at BSC, Khammam and found defective and advised the Assistant Manager (Depot) not to operate the Lorry Weigh Bridge as it is showing variation of 63 Kgs. The counter further refers to the fact that subsequently the Lorry Weigh Bridge was repaired and weighments were effected from 04.12.1998.

7. Previously, the petitioner approached this Court by filing W.P.No.17994 of 2002 for the self-same relief. This Court, by Judgment,

dated 11.10.2006, has directed the respondent/Corporation to treat the writ petition as representation filed by the petitioner and dispose of the same on its own merits, by taking the counter filed by them into consideration and other material made available before them. While disposing of the writ petition, this Court has also placed on record the action taken by the higher officials of the Corporation against the employees who are responsible for not attending to the repairs of the Weigh Bridge. This Court has extracted the letter of the Senior Regional Manager, Food Corporation of India, Regional Office, Hyderabad, dated 17.05.2000, in the said Order and observed that from the said letter it is seen that the weighment of stocks were conducted on Lorry Weigh Bridge at Khammam from 16.10.1998 to 23.10.1998 and it was found that the Lorry Weigh Bridge was defective, that the transaction of conducting weighment has been stopped and weighment was conducted on beam scales at the rate of 10% weighment from 27.10.1998 to 30.10.1998, that thereafter the lorries were diverted to private Lorry Weigh Bridge from 31.10.1998 to 03.11.1998, that after the repairs were attended to, the Weigh Bridge at Khammam was restored from 05.11.1998, and that action was also taken against the responsible Officers who were censured.

8. Significantly, the Corporation would contend that the defect was only on 24.10.1998 but not from 16.10.1998 and this contention is based on the fact that the Weighment Bridge was checked on 24.10.1998 and was found to be defective. This submission is devoid of substance for the reason that since there was complaint about the mal-functioning of the Weigh Bridge, it was checked on 24.10.1998 and it was confirmed to be defective and it cannot be said that only on 24.10.1998 the Weigh bridge was defective.

9. As a matter of fact, this Court previously in the Judgment, referred to above, has made the following observations in para 5:-

> "We are not concerned with the period beyond 31.10.1998. In this writ petition we are concerned only with the period from 16.10.1998 to 31.10.1998. Admittedly, even according to the letter dated 17.05.2000 addressed to the Senior Regional Manager, by the District Manager, Khammam, the weighbridge was defective atleast during the period from 16.10.1998 to 30.10.1998, which was detected only on 24.10.1998. When weighment was made on beam scale from 24.10.1998 till 30.10.1998 the same perfectly tallied with that of weighments made at loading point. Under these circumstances, the contention of the respondents at para 7 of the counter that bills were paid and it is confirmed that an amount of Rs.68,887/- has been deducted towards transit losses, prima facie seems to be not reasonable in view of the letter dated 17.05.2000 addressed by the District Manager, Food Corporation of India, Khammam, to the Senior Regional Manager, Food Corporation of India, Regional Office, Hyderabad, and also as per the averments in para 6 of the counter. In the peculiar circumstances of the case, I am of the opinion that the respondents have not properly considered the facts and arbitrarily deducted an amount of Rs.68,867/-."

10. In view of the above observations, the Corporation cannot be heard saying that they are entitled to withhold a sum of Rs.68,867/- on the ground that there was short supply during the period prior to 30.10.1998. Still, the respondents have dismissed the representation after the matter was remanded back to them. This Court has categorically expressed the opinion that withholding the said amount is arbitrary and not proper. That apart, even upon reappraisal of the matter, I am of the opinion that the respondents ought not to have withhold the amount of Rs.68,867/- on the ground that there was short supply during the period prior to 30.10.1998.

11. The petitioner in the writ petition seeks the relief of not only releasing the amount of Rs.68,867/- but also the further amounts of Rs.1,26,360/- and Rs.1,64,411/- towards the bills pending. However, this is

subsequent to the period when the Weighment Bridge was rectified and therefore the petitioner has to approach the concerned Officers of the respondents for verification of the records and claim the said amounts and if the petitioner is entitled to the same, the respondent/Corporation shall release the amounts.

12. The respondents have also withheld a sum of Rs.90,000/- and Rs.32,318/- which were towards the security deposit. There is absolutely no justification whatsoever for the Corporation to withhold the release of this amount to the petitioner. It may be recalled that for short supply, they are withholding the amounts from the bills and having done that, rightly or wrongly, they cannot withhold the security deposit which is quantified at about Rs.1,60,000/- since the amounts were kept in Fixed Deposits. Therefore, the respondents are directed to release the entire amount of security deposit furnished by the petitioner together with interest accrued thereon till date.

13. Learned Counsel appearing for the respondent has relied upon the following authorities in support of his contention that the writ petition is not maintainable.

14. In BAKSHI SECURITY & PERSONNEL SERVICES (P) LTD., v. DEVKISHAN COMPUTED (P) LTD.[1] it was held as under:-

> "Essential conditions of tender are required to be strictly complied with; there is no power to relax such conditions; R.1's bid was contrary to terms of tender; it was one of tender condition that salary paid to manpower should not be less than minimum wage and if salary quoted is less than minimum wage then such bid is liable to be rejected; as R.1 stuck to its original bid and it was much below revised minimum wage prescribed by Labour Department, R.1's bid contrary to terms of tender and hence liable to be rejected; other condition was prices quoted to be fixed and not open ended; price quote by R.1 was open ended; once tender conditions prescribe

[1] (2016) 8 SCC 446

strict compliance with conditions, it was not open for High Court to hold otherwise; and in absence of mala fides, allegation of R.1 that figure of Rs.2,91,00,000/- was tailor-made to suit a particular bidder was also rejected."

15. In STATE OF KERALA v. M.K.JOSE[2], the Supreme Court held as under:-

"It is to be reiterated that writ petition under Article 226 is not the proper proceedings for adjudication of such disputes relating to contractual disputes. It is settled law that when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not affect the jurisdiction of the Court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226.

It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter-affidavits, but that would hardly be a ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in a properly instituted civil suit rather than by a Court exercising prerogative of issuing writs.

The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination required oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against

[2] (2015) 9 SCC 433

whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons."

16. In SRI RAM BUILDERS v. STATE OF M.P.[3] the Supreme Court observed as under:-

"In the ultimate analysis, the whole controversy boils down to a breach of contract by M.P. RTC entered into with the appellant. The scope of judicial review is very limited in contractual matters even where one of the contracting parties is the State or an instrumentality of the State. The High Court, has rightly observed that the appellant can seek the appropriate relief by way of a civil suit. The High Court in exercise of its jurisdiction under Article 226 of the Constitution would not normally grant the relief of specific performance of a contract."

17. The above authorities have no direct application to the facts of the case in hand. In the instant case, the controversy is as to whether there is any justification for the Corporation to withhold the amounts which are legitimately due to the contractor. As a matter of fact, previously the writ petition was entertained and disposed of, as stated supra.

18. Learned Counsel appearing for the petitioner relies upon a decision of the Supreme Court reported in FOOD CORPORATION OF INDIA v. SEIL LTD.[4] which has a direct bearing on the facts of the present case. The Supreme Court held as under:-

"It is now no longer res integra that contractual disputes involving public law element are amenable to writ jurisdiction. When supply of sugar was made in terms of a statutory order as also on the directions issued by the Central Government and in the cases there did not exist any factual dispute, there is no reason as to why the writ petitions would not be maintainable.

In these cases, the Central Government not only scrutinised the bills but also verified the claims of the respondents. A direction was issued to make payment. The appellant FCI, which is "State" within the meaning

[3] (2014) 14 SCC 102
[4] (2008) 3 SCC 440

of Article 12 of the Constitution, withheld payment without any legal justification. The said appellant could not have withheld payment on the basis of the purported shortages in supply of sugar under the contracts made by the respondents many many years back, save and except under the terms of binding contract.

In regard to the supplies made by the respondents to the Central Government and/or its agencies wherewith the appellants had no concern, the appellants could not have denied payment on the pretext of shortage or quality of the sugar supplied, particularly, when the recipient did not raise such a question.

The other mode in which supplies were to be made have been laid down in the circular letters issued by the Central Government. The responsibility of the mill owner was to supply at the rail head. The fact that transportations of the commodity were made only by rail is not in dispute. If any shortage was found during transit, in terms of the policy decision of the Central Government, claims were to be raised by the appellant with the Railway Authorities."

19. Therefore, the writ petition is maintainable since it is not the dispute pertaining to performance of contract but the question is as to whether the action of the respondents which answers the description of the State under Article 12 of the Constitution is arbitrary, unjust and improper. On the facts of the case, it is held that the respondent/Corporation is not justified in withholding the amount of Rs.68,867/- and also the security deposit even though the period of contract expired as long back as in the year 2000. With regard to the other amounts, the petitioner/contractor is required to approach the respondent/Corporation with the claim which shall be considered by them in a just and reasonable manner.

20. In view of the above, the writ petition is disposed of with the following directions:-

a) The respondents are directed to refund a sum of Rs.68,867/- together with interest thereon at 12% per annum from the date it fell due till it is paid;

b) The respondents shall return the entire security deposit of Rs.90,000/- and Rs.32,318/-, which were kept in Fixed Deposit, together with accrued interest thereon to the petitioner;

c) The petitioner shall approach the respondent/Corporation with details of the claim with regard to Rs.1,26,360/- and Rs.1,64,411/- within a period of one month from the date of receipt of a copy of this Order, which the Corporation shall consider and dispose of the same in a reasonable and just manner within a period of one month from the date of such a representation is made.

d) No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

M.S.K.JAISWAL, J

Date: 7th November, 2017
Dsr/Smr