

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.10074 of 2018 (O&M)

Date of Decision: 22.05.2018

Prem Chand

... Petitioner

Versus

Food Corporation of India and another

... Respondents

**CORAM:-HON'BLE MR. JUSTICE AJAY KUMAR MITTAL, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA**

Present:- Mr. Gurminder Singh, Sr. Advocate with

Mr. R.S.Bara, Advocate,
for the petitioner.

Mr. J.S.Puri, Advocate,
for the respondents.

TEJINDER SINGH DHINDSA, J.

Petitioner was awarded contract for handling and transportation of food grains from Khanauri Mandi to rail-head Uchana by the Food Corporation of India (in short 'the Corporation') for a period of 02 years i.e. from 14.06.2016 to 13.06.2018.

The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of writ of certiorari for quashing of the Notice dated 28.03.2018 (Annexure P-6) in terms of which the contract in favour of the petitioner stands terminated.

Learned Senior Counsel appearing for the petitioner would submit that the contract in question was awarded to the petitioner in pursuance to the tender inquiry floated by the

Corporation on 08.02.2016 and the bid of the petitioner having been found to be most competitive. It is vehemently contended that contract between the petitioner and the Corporation was a concluded contract for a specific period of time i.e. up to 13.06.2018 and the same could not have been terminated by the Corporation unilaterally. Action of the Corporation is alleged to be arbitrary and unreasonable as in the impugned Notice dated 28.03.2018, the Corporation has itself stated that termination of the contract is ***“not the outcome of any mala fide/poor performance on the part of the contractor”***.

Further urged that even though the Communication dated 28.03.2018 (Annexure P-6) has been captioned as a ***“Notice”*** but it is essentially an order terminating the contract.

Notice of motion having been issued in the writ petition, reply on behalf of the Corporation has been filed and placed on record. Termination of the contract is sought to be justified by citing changed circumstances. It is submitted that at the time of awarding the contract to the petitioner, the nearest rail-head from Khanauri Mandi was Uchana and as such food grains had to be moved over a distance varying from 42.9 kms to 46.7 kms. During the subsistence of the contract with the petitioner, the Government of India issued an exemption Notification under Section 31 of the Contract Labour (Regulation and Abolition) Act, 1970 and consequently, the prohibition of contract labour at Narwana rail-head stood lifted. The exemption Notification is dated 06.07.2016 and stands appended as Annexure R-2 along with the written

statement. Counsel submits that Narwana rail-head was closer to Khanauri Mandi in terms of distance as opposed to Uchana rail-head and under such circumstances, a fresh tender process was initiated vide tender inquiry dated 20.12.2017 in which the petitioner also participated. Petitioner was L-2 and one M/s Shree Bala Ji Transport Corporation was L-1 and, accordingly, contract was awarded to M/s Shree Bala Ji Transport Corporation for handling and transportation of food grains from Khanauri Mandi to Narwana being the nearest rail-head.

Learned counsel for the Corporation submits that a decision for entering into a fresh contract was based on the sole consideration that it would save substantial amount and the Corporation being a Public Sector Undertaking the same would translate into a lesser burden upon the National Exchequer.

Counsel for the parties have been heard at length and pleadings on record have been perused.

The scope of judicial review in contractual matters was examined by the ***Apex Court in Sterling Computers Limited Vs. M & N Publications Limited AIR 1996 SC 51*** and it was held that while exercising the powers of judicial review in respect of the contracts entered into on behalf of the State, the Courts can certainly examine whether the decision making process was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution of India.

Against such settled proposition of law and in the light of the peculiar facts and circumstances noticed hereinabove, we

are inclined to permit the petitioner to execute the work of handling and transportation of food grains from Khanauri Mandi to rail-head Narwana up to 13.06.2018 i.e. the time frame which was stipulated in the concluded contract entered into between the petitioner and the Corporation.

While taking such view, the following reasons have weighed with us:

- i) The admitted position of fact is that the petitioner had participated in a tender process initiated vide tender inquiry floated on 08.02.2016. Petitioner was found to be eligible as per terms and conditions contained in the NIT and his bid was found to be the most competitive. Accordingly, contract for handling and transportation of food grains from Khanauri Mandi to the nearest rail-head had been awarded to him for 02 years i.e. from 14.06.2016 to 13.06.2018. While passing the impugned Notice dated 28.03.2018 (Annexure P-6) which essentially has the effect of termination of the contract, it is not the case of the Corporation that the petitioner has violated any term and condition of the contract. Rather the Corporation itself has stated in the impugned Notice dated 28.03.2018 that termination of the contract is ***not the outcome of any malafide or poor performance on the part of the contractor.***
- ii) The Corporation while issuing the impugned Notice dated 28.03.2018 (Annexure P-6) has completely overlooked the aspect that as a consequence to the contract awarded to the

petitioner for a period of 02 years i.e. up to 13.06.2018 he had altered his position inasmuch as apart from having furnished his bank guarantee for ₹25,45,000/-, the petitioner had made necessary arrangements for providing labour and transport till 13.06.2018. A unilateral termination by the Corporation during the subsistence of a valid and concluded contract and without there being any violation of the terms and conditions of the contract at the hands of the contractor would be seen by this Court as unreasonable and unjust.

- iii) The decision of terminating the contract is sought to be justified by the Corporation by citing changed circumstances i.e. an exemption Notification having been issued by the Government of India on 06.07.2016 and whereby prohibition of contract labour at Narwana rail-head stood lifted. Narwana rail-head is stated to be shorter in terms of distance to Khanauri Mandi as compared to Uchana rail-head. Strangely, a fresh tender process was initiated vide tender inquiry only on 20.12.2017 i.e. after a period of almost one and a half year from the date of issuance of the exemption Notification. Contract in favour of L-1 bidder, namely, Shree Bala Ji Transport Corporation, is stated to have been awarded w.e.f. 28.04.2018. Even though the change of circumstances cited by the Corporation cannot be treated as irrelevant, yet the Corporation chose to continue with the contract entered into with the petitioner for a period of more than 18 months after the issuance of the exemption Notification by the

Government of India. Under such circumstances, Corporation ought to have permitted the petitioner to continue with the work of handling and transportation of food grains till the conclusion of the contract period i.e. 13.06.2018.

iv) We are in agreement with the submission raised by Mr. J.S.Puri learned counsel appearing for the Corporation that in contractual matters public interest would be paramount and the decision to float a fresh tender inquiry was with the objective to lessen burden on the National Exchequer. Such aspect, however, is taken care of in the light of an undertaking furnished by Senior counsel representing the petitioner that in the eventuality of being permitted to continue with the work of handling and transportation of food grains even on the new route i.e. from Khanauri Mandi to Narwana rail-head, the petitioner would be willing to do so at the lower rate(s) quoted by L-1 i.e. M/s Shree Bala Ji Transport Corporation .

v) We have also been apprised by Mr. Puri that even though M/s Shree Bala Ji Transport Corporation has been awarded the contract of handling and transportation of food grains from Khanauri Mandi to Narwana rail-head in the month of April, 2018 but no work has been commenced by him till date. Even an affidavit dated 22.05.2018 to such effect of the Abhishek Sinha, Assistant General Manager (Contract), Food Corporation of India, Regional Office, Punjab, Sector 31,

Chandigarh has been filed and placed on record.

In view of the above, the present petition is allowed. Impugned Notice dated 28.03.2018 (Annexure P-6) is set aside. Directions are issued to permit the petitioner to execute the work of handling and transportation of food grains on the altered route i.e. Khanauri Mandi to Narwana rail-head up to 13.06.2018. Such work would, however, be undertaken by the petitioner at the rate(s) quoted by M/s Shree Bala Ji Transport Corporation and who has been awarded the contract in pursuance to fresh tender inquiry dated 20.12.2017. The contract awarded in favour of M/s Shree Bala Ji Transport Corporation would for the time being be held in abeyance and would commence w.e.f.14.06.2018.

Petition stands allowed in the aforesaid terms.

Pending applications, if any, shall stand disposed of.

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

22.05.2018

vandana

Whether speaking/reasoned
Whether Reportable

Yes
Yes