

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

CWP No. 125 of 2018 (O&M)

Date of Decision: 16.01.2018

Satvinder Singh

.....Petitioner

Versus

Food Corporation of India and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE AVNEESH JHINGAN, JUDGE

Present: Mr. Anurag Chopra, Advocate for the petitioner.

Mr. Sumeet Goel, Advocate and
Ms. Varsha Gupta, Advocate for the respondents.

S.J. VAZIFDAR, CHIEF JUSTICE

The petitioner seeks a writ of mandamus restraining the respondents from inviting tenders in respect of a Handling and Transport Contract (HTC) in respect of the food grains from Panniwala Mota to Sirsa.

2. The petition is unsustainable and vital facts were withheld from Court compelling us to dismiss the petition with costs.

3. By an order dated 09.01.2018, we recorded that the petitioner's case is that a HTC contract was entered into between the petitioner and the respondents for the transportation of goods from Panniwala Mota to Kalanwali, and the contention on behalf of the petitioner that he had not been furnished any agreement in any form including by way of correspondence other than an internal letter of the respondents dated 24.08.2016, a copy whereof was forwarded to the petitioner. We recorded that the plain language of the letter itself indicated that there was an appointment letter issued by the Regional Office of the respondents. This is evident from the letter as it refers to an appointment letter, independent of the letter dated 24.08.2016 itself. Nevertheless we issued notice to the respondents to have these aspects clarified.

On 12.01.2018 Mr. Sumeet Goyal, the learned counsel appearing on behalf of the respondents stated that there was infact a contract signed between the parties. Mr. Goyal, tendered the contract. Upon taking instructions Mr. Chopra, the learned counsel appearing on behalf of the petitioner admitted that there was infact a contract signed by the petitioner.

This contract ought to have been produced or atleast referred to in the petition. It has admittedly neither been produced nor even referred to in the petition. The contract contains two important clauses which we will refer to shortly.

Faced with this, Mr. Chopra stated that a copy of the contract had not been furnished to the petitioner. Even if it was so, the petitioner should atleast have mentioned that there was such a contract. The clauses in the contract have a very important bearing on the matter.

4. As noted earlier, the petitioner's HTC contract with the respondents was for the transfer of goods from Panniwala Mota to Kalanwali. The petitioner is aggrieved by the respondents' decision to invite tenders for HTC contracts for the transportation of goods from Panniwala Mota to Sirsa. In absence of anything express or implied, the petitioner would not be entitled to restrain the respondents from entering into contracts for the transportation of the goods from Panniwala Mota to other destinations.

5. The contract, which is now produced by Mr. Goyal, goes much further. It even permits the respondents to enter into HTC contracts with other contractors for the same route for which the petitioner has been awarded the HTC contract Panniwala Mota to Kalanwali. Clause XIV (a) and (b) of the Contract read as under:

"(a)" Subject as hereinafter mentioned, the Corporation does not guarantee any definite volume of work or any particular pattern of service, at any time or throughout the period of the contract. The mere mention of any item of work in this contract does not by itself confirm a right on the contractor to demand that the work relating to all or any item thereof should necessarily or exclusively be entrusted to him.

(b) The Corporation have the exclusive right to appoint one or more contractors at any time viz at the time of award of the contract and/or during the tenure of contract for any or all the services and to divide the work as between such contractors in any manner that the Corporation may decide and no claim shall lie against the Corporation by reason of such division of work."

In view of these clauses, the petition is entirely unsustainable.

Firstly there is nothing in the contract that prevents the respondents from entering into an agreement for the transportation of goods from Panniwala Mota to any other destination. Secondly, the terms and conditions of the contract infact entitle the respondents to enter into contracts with other parties even for the same route viz from Panniwala Mota to Kalanwali. The petition is, therefore , liable to be dismissed.

6. Moreover the above clauses do not even guarantee the petitioner any particular volume of work. The petition is liable to be dismissed on this ground also.

7. The respondents have been unnecessarily dragged to Court without disclosing the entire facts. We are therefore inclined to pass an order of costs against the petitioner.

8. The petition is, therefore, dismissed with costs fixed at Rs.25,000/- which shall be paid by 31.03.2018.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

16.01.2018

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