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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6820/2018 & CM No. 25927/2018**

SHRI JAI PRAKASH AND ANR. Petitioners
Through: Mr B. K. Sood and Mr Harish Gaur,
Advocates.

versus

DELHI STATE CIVIL SUPPLIES CORPORATION
LTD. AND ANR. Respondents
Through: Mr Manoj, Standing Counsel with Ms
Aparna Sinha, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **04.07.2018**

1. The petitioners have filed the present petition under Article 226 of the Constitution of India, *inter alia*, impugning the memorandum / circular dated 18.05.2018, whereby the petitioners have been called upon to provide a new list of vehicles as per the “new Norms and Rules”. The petitioners also challenge the requirement of issuing the certificate as demanded by the respondents. Essentially, the petitioners are aggrieved by the respondents insisting that the vehicles used by the petitioners for transporting food articles within the National Capital Region be compliant with the mass emission norms – ‘Bharat Stage IV’.

2. Petitioner no.1 had entered into an agreement dated 24.08.2017 for transportation of Specified Food Articles (wheat and rice) from Ghevra, Group-A godown to Fair Price Shops (FPSs). Petitioner no.2 had also

entered into a similarly worded agreement dated 23.10.2017 with respondent no.1 for transportation of Specified Food Articles (wheat and rice) from Mayapuri Godowns, Group-B to the FPSs (both the agreements collectively referred to as 'the agreements'). In terms of the agreements, the petitioners were required to comply with several conditions including owning trucks not older than 10 years for transportation of the specified articles. The petitioners were also required to hold the necessary permit (license) for transportation of food items in the NCT of Delhi.

3. The petitioners claim that the respondents are now insisting on new norms which are beyond the terms of the agreements entered into between the petitioners and respondent no.1 and, therefore, the petitioners are not obliged to comply with the same.

4. In view of the above, the only question that needs to be addressed is whether the action of the respondents in insisting upon the petitioners to comply with the new norms and furnish the certificate is arbitrary/unreasonable and falls foul of Article 14 of the Constitution of India.

5. Respondent no.1 had invited offers for transportation of Specified Food Articles (SFAs) from various godowns of respondent no.2 to the doorsteps of FPS. The petitioners submitted their respective tenders for providing the services as desired by respondent no.1. The bids submitted by the petitioners were accepted and respondent no.1 awarded the contract for transportation of specified food articles from "*Ghevra, Group-A godown to the doorsteps of FPSs*", to petitioner no.1. Subsequently, petitioner no.1

and respondent no.1 entered into an agreement dated 24.08.2017, whereby petitioner no.1 agreed to provide the specified services. Similarly, petitioner no.2 and respondent no.1 also entered into an agreement dated 23.10.2017, whereby the petitioner no.2 agreed to provide the transportation services in specified food articles from “*Mayapuri godowns, Group-B to the doorsteps of FPSs*”. As stated above, both the agreements as referred above are similarly worded. The petitioners rely upon Clauses 9(c) and 13(c) of the agreements, which are set out below:-

“9(c) The tenderer shall own the trucks not older than ten years having the owning capacity of vehicles/trucks of 30 MT for all the groups (maximum four groups irrespective of allocation of each group. The maximum groups tenderers can apply are four. The contractor will attach copies of RC certified by Notary or Gazetted officer as a proof of ownership of trucks. All the contractors shall have necessary permission /license /permit for carrying transportation of food items in NCT of Delhi from Food, Safety & Standard Deptt. to ply within NCT of Delhi. In support of contractor mustering remaining transport fleet from other sources, he shall be required to furnish written consent with proof of ownership from owners of such trucks/vehicles at the time of executing the contract.

13(c) The contractor will ensure that all the trucks/vehicles deployed by him for transportation of SFAs are kept in property condition of fitness and also ensure that they do not emit excess fumes and so violate the pollution control norms. Every truck under contract with the Corporation should carry 'Pollution control' certificate. The Corporation will not be responsible for any action taken by the Directorate of Transport/Police or any other authorities for any violation of any of the laws and it shall be the sole responsibility of the contractor. A certified copy of the fitness certificate from the transport authority may also be furnished.”

6. The petitioners state that they comply with the aforementioned clauses and, therefore, cannot be called upon to comply with any other norms that may be fixed by the respondents.

7. Respondent no.1 has issued a Circular requiring the petitioners to comply with new Rules and Norms for trucks used for PDS lifting. On 18.05.2018, respondent no.1 issued a memorandum once again requesting for compliance with “*new norms and rules on priority basis*”. Respondent no.1 also called upon the concerned parties to furnish certificate as per the Rules.

8. The format of the aforesaid certificate is at the heart of the controversy raised in the present petition and is set out below:-

“Certificate

This is to certify that the trucks bearing the following numbers are being sent to FCI for lifting of food grains against the PDS allocation for the month of These trucks will lift the food grain stock during the current month.....

S. NO.	Truck no.	Laden Capacity	Approx. weight to be loaded (In Qtls.

It is further to certify that all the above mentioned trucks comply with the following Rules/Norms:-

- 1) Directions issued by the Hon’ble NGT vide orders dated 07-04-2015 in the matter of Vardhmaan Kaushik Vs UOI and others i.e. Petrol vehicles which are more than 15 years old and Diesel vehicles that are more than 10 years old shall not be Registered in NCR, Delhi i.e. all the above mentioned vehicles are having valid Delhi Registration Number.

- 2) Rule 90(7) of the Central Motor Vehicle Rules, 1989, regarding plying of vehicle within the state itself.
- 3) The Vehicle having National Permit and registered in Delhi (i.e. NCR) shall not pick up or set down goods between two points situated in the NCR unless they conform to the mass emission standards (Bharat stage IV).
- 4) Fitness Certificate valid up to..... (Date). (Copy Enclosed)
- 5) Pollution Certification valid up to (Date). (Copy Enclosed)
- 6) The Laden Capacity shown above shall not violate the directions of Hon'ble Supreme Court."

9. The petitioners are, essentially, aggrieved by Clause 3 of the aforesaid Certificate, which requires the vehicles used to comply with the mass emission standards referred to as "Bharat Stage IV".

10. The petitioners' claim that the agreements entered into between the petitioners and respondent no.1 do not require the petitioners to comply with Bharat Stage IV standards and, therefore, the respondents cannot insist upon the same.

11. The learned counsel appearing for the respondents had drawn the attention of this Court to Rule 90(7) of the Central Motor Vehicles Rules 1989, which is set out below:-

"90 Additional conditions for national permit. – The national permit issued under sub-section (12) of section 88 shall be subject to the following additional conditions, namely:-

xxxxx xxxxx xxxxx xxxxx

(7) The vehicle shall not pick up or set down goods between

two points situated in the same State other than the home State:

[PROVIDED that where such vehicle is registered in the National Capital Region, it shall not pick up or set down goods between two points situated in the National Capital Region unless it conforms to the mass emission standards].”

12. It is apparent from the plain language of the proviso to Rule 90(7) of the Central Motor Vehicles Rules, 1989 that a vehicle registered in the National Capital Region is required to conform to the mass emission standards (Bharat Stage IV) in order to be engaged in transportation of goods within the National Capital Region.

13. It is at once clear that the respondents are only insisting that the petitioners certify that they comply with the relevant statutory requirements. Thus, the action of the respondents in insisting that the petitioners furnish the requisite certificate cannot be faulted. This Court is unable to accept that any such demand is arbitrary or unreasonable. Plainly, the petitioners cannot be heard to state that the respondents must accept their services without insisting that the same be performed in accordance with law.

14. The petition is unmerited and is, accordingly, dismissed. The pending application is also disposed of. The parties are left to bear their own costs.

VIBHU BAKHRU, J

JULY 04, 2018
RK