

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1674 of 2016**

Devnath Singh Rajput, S/o. Late Shri Kapil Dev Singh, Aged About 49 Years,
Kalindi Kunj, Near Kabir Chowk, Raigarh, Tahsil & District Raigarh,
Chhattisgarh.

---- **Petitioner**

Versus

1. State Of Chhattisgarh, Through The Secretary, Co-Operative Society, Mahanadi Bhawan, Mantralaya, Raipur, Tahsil & District Raipur, Chhattisgarh.
2. The Chhattisgarh Co-Operative Marketing Federation, Through The Managing Director, Civil Lines, Raipur, Tahsil & District Raipur, Chhattisgarh
3. The District Marketing Officer, Chhattisgarh State Co-Operative Marketing Federation, Raigarh, Tahsil & District Raigarh, Chhattisgarh

---- **Respondents**

For Petitioner	:	Mr. Abhishek Chandrawanshi, Advocate
For State/ Respondent No.1.	:	Mr. Sudeep Verma, Dy. G.A.
For Respondent No.2 & 3	:	Mr. Vidya Bhushan Soni, Advocate on behalf of R.S.Baghel, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board**

24.07.2019

Heard

1. The present petition has been filed for the following reliefs :

“10.1. That, this Hon'ble Court may be kind enough in issuing a writ in the nature of mandamus, certiorari or likewise any other appropriate writ, commanding and directing the respondents to produce all the records related with the case of the petitioner and other transporters to whom the payments were made at the higher rate than the rate prescribed and sanctions by the respondents No.2 & 3.

10.2. That, this Hon'ble Court may be kind enough in issuing a writ in the nature of mandamus, certiorari or likewise any other appropriate writ, commanding and directing the respondents No.2 & 3 to make payment of the petitioner for actual rate and the distance which was prescribed and settled by the respondents No.2 & 3 for such distance.

10.3. That, this Hon'ble Court may be kind enough in issuing a writ in the nature of mandamus, certiorari or likewise any other appropriate writ, commanding and directing the respondents to take back the alteration in the bill, distance and the rate of payment charges of the transportation in the bills of the petitioner and they may also be kind directed to make payment with uniform rate and guidelines as settled by the respondents No.2 & 3.

10.4. That, cost of the petition may kindly be awarded to the petitioner.

10.5. Any other relief, which the Hon'ble Court deems fit and proper looking to the facts and circumstances of the case, may also be issued in favour of the petitioner.”

2. It is contended on behalf of the petitioner that the petitioner entered into an agreement for transportation of paddy on behalf of the Chhattisgarh Cooperative Marketing Federation to different Warehouses wherein the rate of transportation as against distance was specified. It is stated the rate prescribed that from 0 to 100 km it was 5.75 per km whereas from 0 to 200 km it was fixed as 0.60 paise per km and so on. Learned counsel for the petitioner further contends that the said fixation of the rate was with the understanding that if the distance crosses more than 100 km it would be rounded off to 100 km so that the rate of 5.75 would be applicable. He further submits that the petitioner on such assurance and understanding took up the work of transportation of paddy. It is stated when the bills were submitted, though it was for 100 km as a round off from Keshkal to Hawaipatti, it was increased to 107 km whereby instead of 5.75 the rate of 0.60 paise per km charges was made payable. It is stated that it was in gross violation to the right of petitioner since in respect of other transporters, the distance when they have traveled more than 100 km it was rounded off 100 km so as to make payment at the rate of Rs. 5.75. Therefore, he submits that there is gross violation of Article 14 of the Constitution of India as to one transporter different rates were payable and for the petitioner

different rate was given. He referred to the document of one Raigarh Food & Hotel Business Pvt. Ltd. and submits that in their case the distance traveled was reduced from 150 and round off to 100 km so that 5.75 per km rate was applicable. As such for the work done, the travel distance of the petitioner should also be rounded off to the extent of 100 km which makes the payment of 5.75 per km.

3. Learned counsel for the respondent No.2 & 3 would submit that according to the agreement dated 26.09.2013 all the dispute if arises out of such agreement has to be referred to the Managing Director, Chhattisgarh State Cooperative Marketing Federation Raipur and his decision would be final, therefore, it contains arbitration clause, as such, the petition is not maintainable.
4. Heard learned counsel appearing for the parties and perused the documents.
5. Along with the petition, the agreement is on record, which shows that from travel to 0 to 200 km the rate of 0.60 paise per km would be applicable whereas from 0 to 100 km rate of 5.75 per km was prescribed. The submission of the petitioner that the understanding was in between the petitioner and the respondents that in case the travel distance is more than 100 km, it would be rounded off to 100 so that the rate of 5.75 would be applicable cannot be appreciated, as it is a matter of evidence, which primarily depends on interse agreement between the parties.
6. With respect to the bill of the petitioner which is filed along with the petition shows that it was for Keshkal to Hawaipatti wherein the bill submitted was shows that it was a distance of 100 km and rate of 5.75 was billed whereas it was made to 107 km and 0.60 paise per km rate was made applicable. It is also a matter of evidence that from Keshkal to Hawaipatti what is the distance. If it is more than 100 km, then the distance which was shown as 107 km may be correct which is also a matter to be established and proved

by evidence. So far as the statement of the petitioner that more than 100 km should have been rounded off to 100 km there is nothing on record except such oral submission made by the petitioner. This Court cannot rewrite the terms of agreement which purports that from traveling 0 to 200 km 0.60 paise per km would be applicable. Therefore, apart from it what was the terms for payment of bill, what were other terms it can only be proved by way of evidence since nothing is admitted by the respondent. Furthermore, the agreement also contains an arbitration clause wherein Clause 16 of the agreement shows that in case of any dispute which arises out of the agreement, the dispute has to be referred to the Managing Director, Chhattisgarh State Cooperative Marketing Federation Raipur. So the nature of averments made in this petition certainly is about the dispute which arises out of the agreement.

7. With respect to other bill, which has been relied on by the petitioner that of Raigarh Food & Hotel Business, the said respondent is not before the Court. Therefore, no inference can be drawn on the submission of the petitioner and in the facts of this case, no relief can be granted under Article 226 of the Constitution of India. The petitioner may have an alternative appropriate remedy available to him under the general law.
8. In view of the above, the petition is dismissed.

Sd/-
Goutam Bhaduri
Judge