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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2824 of 2019**

- M/s Parminder Singh, A Proprietorship Firm, Through Its Sole Proprietor
Namely Parminder Singh, S/o Dilip Singh Aged About 38 Years R/o Santrabadi,
Near Old Gurudwara Durg, District Durg, Chhattisgarh.

---- Petitioner

Versus

1. Food Corporation of India, Through its General Manager (Region) Regional
Office, Vidhan Sabha Road, Pandari, Raipur, District Raipur, Chhattisgarh.
2. General Manager (Region) Regional Office Vidhan Sabha Road, Pandari,
Raipur, District Raipur, Chhattisgarh.
3. Divisional Manager F.C.I. District Office, Durg, District Durg, Chhattisgarh.

---- Respondents

For Petitioner : Shri Manoj Paranjpe, Advocate.

For Respondents/FCI : Shri B. P. Gupta, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Justice Parth Prateem Sahu, Judge****Judgment on Board****P. R. Ramachandra Menon, Chief Justice****20.08.2019**

1. Annexure P/1 order dated 09.08.2019 passed by the Food Corporation of India
(for short 'the FCI'), Respondent herein, is under challenge in this writ petition.
Prayers are in the following terms:

“1] That, this Hon'ble Court may kindly be pleased to writ/writs, order/orders, direction/directions, quashing the impugned order/notice dated 09.08.2019 (Annex. P/1) issued by the General Manager (Region) F.C.I. and the respondents may kindly be directed not to recover the amount from the bills of the other running contracts and they may further be directed not to recover any amount in respect of the contracts completed in the year 2013 (February 2011 to March, 2013) and completed in the year 2015 (April, 2013 of April, 2015)

2] That, this Hon'ble Court may kindly be pleased to grant any other relief(s), which is deemed fit and proper in the aforesaid facts and circumstances of the case.”

2. We heard Shri Manoj Paranjpe, learned counsel representing the Petitioner as well as Shri B.P. Gupta, learned Standing counsel representing the Respondent-Corporation.
3. The factual matrix of the case reveals that the Petitioner had participated in a tender, notified by the Respondent-Corporation, in connection with transportation of food grains from FCI Godown, Durg to Rail Head, Durg, and came to be awarded it accordingly on 31.01.2011 for a period of two years i.e. from 01.02.2011 to 31.03.2013. It is stated that the Petitioner had discharged the duties and performed the work to the satisfaction of the Respondent. There was a subsequent tender for a period of two years from 01.05.2013 to 30.04.2015, wherein also the Petitioner came to be successful and the same was awarded to him. The grievance of the Petitioner is that, Annexure P/1 came as a bolt from the blue, directing the writ petitioner to satisfy a sum of Rs. 2,90,77,587/- stating that there was some 'excess payment' in connection with the amount already given to him and simultaneously asking him to file 'reply' within five days from the date of issuance of the said letter.
4. The learned counsel for the Petitioner points out that, though Annexure P/1 has been styled as a 'notice', it in fact, is an 'order' and hence, the same is liable to be interdicted by this Court.
5. The learned counsel representing the Respondent-Corporation submits that

Annexure P/1 is only a notice and not an order and that the Petitioner has been given time to file reply, as evident from the last paragraph. But, the nature of the proceedings can be discerned from the penultimate paragraph, which is to the following effect:

“Hence it is directed to deposit Rs. 2,90,77,587.00 (Two crore ninety lakhs seventy seven thousand five hundred eighty seven rupees only) in FCI Regional Office Raipur SBI A/c. No. 10470298142 having IFSC Code SBIN0003314 within 5 (five) days positively from the date of issuing of this letter under intimation to this office. Further it is to clarify that in case of non-compliance of aforesaid directions, it is directed to explain why not recovery be made from the pending bills, available SD/BG of M/S Parminder Singh as per terms and condition of MTF.”

6. After hearing both the sides, we do not have any doubt with regard to the fact that some decision has already been taken by the authority concerned, fixing the liability, stating that the distance earlier intended to be covered was only 1 KM, whereas the payment has been effected in respect of 1.5 Kms. It is accordingly that the same is sought to be rectified by slapping the proceedings upon the petitioner.
7. Be that as it may, the factual dispute need not be looked into or decided by this Court, insofar as the learned counsel for the Respondent-Corporation submits that the idea and understanding of the Respondent was to proceed with further steps only after getting the reply of the Petitioner. But since the opportunity given to file reply can only lead to a post-decisional hearing, we hold that the observation, declaration, and the finding given in the penultimate paragraph of Annexure P/1, directing the Petitioner to deposit Rs.2,90,77,587/- is not liable to be sustained. Accordingly, the same stands set aside. The Respondent is set at liberty to issue a fresh notice to the Petitioner referring to the facts and figures and requiring the Petitioner to submit reply on the said aspects. On receipt of the notice as above, it shall be for the Petitioner to submit reply and based on the reply, the matter shall be finalised by the Competent Authority in

accordance with the actual facts, figures and also the relevant provisions of law, untrammelled by the observations or findings, if at all any, in the proceedings forming part of the records. Writ petition stands disposed off.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Hem