

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2719 of 2019

- Manoj Jain S/o Late Roop Chand Jain Aged About 50 Years Proprietor-Gurudev Traders, Resident of High School Road, Balod, District Balod Chhattisgarh

---- Petitioner

Versus

- Food Corporation of India, A Statutory Corporation Having Inter Alia Amongst other offices, a Regional office At Vidhan Sabha Road, Pandri, Raipur, Through Its General Manager, FCI, Raipur, Chhattisgarh

---- Respondent

WPC No. 4029 of 2019

- Manoj Jain, S/o. Late Roop Chand Jain, Aged About 50 Years, Proprietor-Gurudev Traders, Resident of High School Road, Balod, District Balod Chhattisgarh

---- Petitioner

Versus

- Food Corporation of India A Statutory Corporation having Inter Alia Amongst Other offices, A Regional office At Vidhan Sabha Road Pandri, Raipur, Through Its General Manager, FCI Raipur Chhattisgarh

-----Respondent

For Petitioners	: Shri BP Sharma, Shri ML Sakat and Shri Raza Ali, Advocates
For Respondents	: Shri BP Gupta and Shri RS Patel, Advocates

**Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board**

Per Parth Prateem Sahu, J.

25.11.2019

1. The petitioners have filed these Writ Petitions challenging the online tender notifications dated 16.07.2019 and 19.10.2019 in question for the contract of transportation of food grains between RH-H&T SWC Jagtara Balod to RH-Balod.

2. In the 1st case, the tender notification dated 16.07.209 was made to challenge on the ground that the petitioner has already awarded a tender for period commencing from 16.11.2018 to 15.11.2020. But during the pendency of currency of the contract, a fresh notification has been issued on 16.07.2019 which is prejudicial to the interest of the petitioner.

3. In the 2nd case, submission of petitioner is that he was awarded a contract for transportation from RH-H&T SWC Jagtara Balod to RH-Balod which is valid for two years from 30.10.2018 but before completion of the period of contract, a new online tender notification for same work is notified on 16.07.2019 and 19.10.2019 which is prejudicial to the interest of the petitioner.

4. Per contra, learned counsel appearing for the respondents submit that new tender notifications have been issued because, now the distance from which transportation of food grains is to be done, is increased. He submits that after execution of earlier contract, local administration has stopped entry of heavy vehicles in Balod City and therefore, distance of route from which now the food grains are to be transported, is increased. As per earlier contract, route distance was 10 km but now, with change of route, it is enhanced to 14.5 to 15 km. It is the increase in distance and change of route made the respondent to float new tender notification.

5. Learned counsel appearing for the respondent further submits that increase in distance may increase the cost of transportation and for the said route, best offers are to be called which is in the interest of the respondent. They also submitted that if the petitioners are aggrieved with

new tender notification saying that for the same work new tender is floated, the petitioners if ready to transport food grains from the new route, but at the agreed rate he may say so.

6. Looking to the facts and circumstances of the case, on the earlier date of hearing we asked learned counsel for the petitioners to seek instructions if they are ready to continue with the work with increased distance, on the old rate only.

7. In view of the aforementioned observation, learned counsel for the petitioners on instructions, today submitted that petitioners are ready to execute the work though with the new distance but at old rate as per the existing contract (ie old rate agreed by the petitioners). On the aforementioned submission made by learned counsel for the petitioner learned counsel for the respondent submitted that if the petitioners are ready to transport goods from new route having distance of 14.5 km to 15 km at old rates only, then the respondents do not have any objection.

8. Learned counsel for the petitioners submitted that the respondent is already paying the difference of rate as per the ratio applied by them and they are executing their work accordingly. This submission is opposed by learned counsel for the respondent and stated that this was made only as a temporary arrangement till execution of new contract. This arrangement is made only to meet out the emergent need and it cannot be continued for long. The petitioner has already made his statement that he is ready to execute his existing contract at old rate but goods to be transported from

new route and therefore, he cannot be permitted to raise the argument of difference of rate.

9. In view of above statement given by learned counsel for the petitioners that they are ready to continue with transportation of food grains from new route ie with distance of 14.5 km to 15 km under the old rate as mentioned in existing contract, the very purpose or cause of issuance of new NIT (ie NIT dated 16.08.2019 and 19.10.2019) does not subsist.

10. Keeping in mind the interest of respondent, the Writ Petitions are disposed off with a direction that the respondent will permit the petitioners to transport goods as per the existing contract in favour of petitioners and with same rate but for the new route with distance of 14.5 km to 15 km and the respondents will not proceed further with the NIT dated 16.08.2019 and 19.10,.2019 any further.

11. It is made clear that earlier payment made to the petitioners by taking into consideration the difference of distance till date may not be recovered from the petitioners and old rates as per contract agreement will be paid to the petitioners from the date of passing of this order till the end of the contract period.

12. For the foregoing observation and direction, both the Writ Petitions are disposed off.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge