WAIKHOM TONEN MEITEI Digitally signed by WAIKHOM TONEN MEITEI Date: 2020.08.21 13:01:45 +05'30'

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

W.P.C No. 326 of 2020

M/S S.A Ngamo Agency having its head Office at Senapati, Tahamzam, P.O. & PS Senapati, Pin No.795106, Manipur through its authorized Representation namely, Shri Kh. Romen Singh aged about 56 years old s/o Kh. Brajabidhu Singh, a permanent resident of Khagempalli Panthak, Thangjam Bon, PO & PS Imphal, Imphal 795001, IMphal West District, Manipur.

... Petitioner

- Versus -

1. The Food Corporation of India through the Chairman and Managing Director, Having its office at 16-20, Barakhamba Lane, New Delhi, -110001, India.
2. The Executive Director (zone), Food Corporation of India. Zonal Officer (NE), Ulubari, Guwahati-7.
3. The General Manager (Region), Food Corporation of India, Regional Office Nagaland & Manipur Region, House No.105, bank Colony Dimapur, Nagaland-797112.
4. The Area Manager, FCI District Office, Yaiskul Police Lane, PO & PS IMpahl-795001.

... Respondents

B E F O R E
HON'BLE MR. JUSTICE MV MURALIDARAN

For the petitioner :: Mr H.S Paonam, Sr. Adv.
For the respondents. :: H. Tarunkumar, Adv.
Date of hearing and
Reserved for order. :: 21.07.2020.
Date of judgment &
Order. :: 21.08.2020.

JUDGMENT & ORDER
(CAV)

[1] The petitioner- M/s S.A Ngamo Agency, carrying on trade of transporting goods/good grains from railheads in reveral North Eastern States through the National Highways, has filed the present writ petition with the following prayer:

> *"(i) issue Rule in nisi and call for records.*
>
> *(ii) issue a writ in the nature of mandamus or an appropriate direction or order to the respondent FCI for providing reasonable allocation of rice from the month of July, 2020 onwards without any discrimination in terms of contract work for transportation of rice from CWC/Dimapur to FSD/Sangaiprou.*
>
> *(iii) issue an appropriate direction for considering the case of the petitioner for regular reasonable allocation of rice quota in the spirit of Freedom of Trade and Commerce."*

The petitioner has also prayed an interim direction to consider their case for including the Dimapur-Sangaiprou Section in the Road

Movement Programme for the month of July, 2020 onwards for redressing the grievances of the petitioner.

[2] The case of the petitioner is that they have been appointed as regular Road Transport Contractor from FSD/CWC Dimapur to FSD Sangaiprou for a period of two years vide office order dated 25.04.2019. FSD Sangaiprou is in Manipur, wherein the petitioner unload the rice loaded from CWC/FSD Dimapur. From the date of award of contract the petitioner has been allotted 2500 MTs till May, however, for the month of June, 2019, the allocation of rice has been reduced to 1000 MTs and hence, on 04.06.2019, the petitioner submitted a representation for reviewing the monthly proposed Inter-Regional Road Movement Programme for June, 2019 for transportation of rice in respect of FDS/CWC Dimapur to FSD Sangaiprou. Based on the request of the petitioner, the allocation of rice has been increased to 3500 MTs for the month of July, 2019 and the same would be evident from the letter dated 01.07.2019 of FCI.

[3] Further case of the petitioner is that the allocation for the month of August, 2019 has been reduced to 1000 MTs and there was no allocation for the month of September, 2019. Since such an act of reduction and non-allocation affected the petitioner's

Freedom of Trade and Commerce, on 30.09.2019, they have submitted another representation for allocation in the monthly proposed Inter-Regional Road Movement Programme of rice in respect of FSD Dimapur to FSD Sangaiprou. Similarly, there was no allocation for the month of October, 2019. Being aggrieved by the non-allocation of rice for transportation along the Dimapur-Sangaiprou Sector, the petitioner has filed W.P.(C) No.876 of 2019 and by an order dated 22.10.2019, this Court granted an interim order for consideration of the proportionate allocation of rice for transportation. Pursuant to the interim order of this Court, the FCI allotted the rice as under:

Month	**Quota of rice (MT)**
November, 2019	5000
December, 2019	5000
January, 2020	6000
February, 2020	8000
March, 2020	5000
April, 2020	6000
May, 2020	12,000
June, 2020	11,000
July, 2020	0

[4] According to the petitioner, there has been proportionate allocation of rice from November, 2019 till June, 2020, however, all of a sudden, the allocation of rice for the

aforesaid Sector has been reduced to Zero for July, 2020 for the reason best known to FCI and hence, the petitioner has filed the instant writ petition.

[5] The Fourth respondent filed affidavit-in-opposition stating that the contract has been awarded to the petitioner at the rate of 3533 per MT for the entire distance by RO, Nagaland on 25.4.2019 and the work value of the contract is Rs. 12,01,98,313/-. However, the petitioner has moved 57873 MTs from Dimapur to FSD Sangaiprou during the period from May, 2019 to June, 2020 and they have executed the work the value of Rs. 20, 44,65,309/- which is more than the assured value of contract. Therefore, the allegation of the petitioner that they have not been provided for reasonable allocation of rice for transportation for the route from Dimapur to FSD Sangaiprou is totally false. Hence, the violation of right of trade and commerce complained of by the petitioner does not arise.

[6] It is stated that the transportation of food grains to FCI depots of Manipur Region are based on least cost basis and the requirement at the destination depot. Due to frequent blockage of Jiribam-Imphal highway by natural and man-made calamities and quantity of food grains which can be transported from this route is

insufficient to meet the requirement in the state of Manipur, the transportation of food grains from Dimapur and other neighbouring FCI Regions to depots of Manipur as additional route has been made.

[7] It is further stated that as per clause XX(b) of MTF of the terms and conditions of the tender document, the petitioner has no right to file the present petition. Further, the movement program is allotted to the road transport contractor on the basis of the requirement at the receiving end and on least cost basis. The petitioner has no locus standi to raise allegations against the respondents and there is no question of discrimination and/or deprivation of the fundamental rights of the petitioner regarding the allocation of movement programme, as the Road movement programme are made under strict evaluation and considering the requirement of stocks and cost incurred in movement of stock at the cost of public exchequer. Hence, prayed for dismissal of the writ petition.

[8] The learned counsel for the petitioner submitted that the non-allocation of the work/quota of rice for transportation to the Sector in question would cause irreparable loss in the commercial venture, thereby the petitioner's fundamental right of Freedom of

Trade and Commerce was affected. He would submit that reducing the allocation of work/quota of rice for transportation or non-allocating the quota of rice is an arbitrary exercise of power warranting interference by this Court.

[9] The learned counsel further submitted that there is over-allocation to others and therefore, it is a clear case of discrimination against the petitioner, which is also evident from Road Movement Programme for July, 2020 published vide letter dated 26.06.2020 in respect of the distribution of work. The learned counsel submitted that since the petitioner has been appointed as Regular Road Transport Contractor and has been allotted maximum quota of rice for transportation from November, 2019 till June, 2020, the sudden non-allocation of work has caused irreparable loss to them. It is submitted that since the petitioner has no other alternative remedy available, they approached this Court by filing the present writ petition.

[10] Per contra, the learned counsel for the respondents contended that first of all the petitioner has no locus standi to file the instant writ petition, as the petitioner has got an alternative remedy before the Redressal Committee and that filing of the writ

petition without exhausting the alternative remedy is not maintainable.

[11] As far as the non-allocation of rice for transportation, the learned counsel contends that the contract has been awarded to the petitioner at the rate of Rs. 3533/- per MT and the value of the work is Rs. 12,01,98,313/-, however, the petitioner moved 57873 MTs from Dimapur to FSD Sangaiprou during the period from May, 2019 to June, 2020 and in fact, the petitioner has executed the work to the tune of Rs. 20,44,65,309/-, which is more than the assured value of the contract.

[12] The learned counsel further submitted that normally, the monthly inter-Regional Road Movement Program is decided by FCI Zonal Office (NE), Guwahati primarily based on the requirement at the destination Depot and when the requirement is increased at the at the destination depots to meet PDS, the depots were fed with different Road Transport Contractors from different Regions. Hence, the question of wilful denial of the proposed movement programmes at FCI Zonal Office does not arise.

[13] This Court considered the submission made by both the learned counsel and also perused the materials available on record.

[14] There is no dispute that as per the letter dated 25.4. 2019, the Food Corporation of India, Dimapur, Nagaland, appointed the petitioner M/s S.A. Ngamo Agency as Transport Contractor for transportation of food grains from FSD/CWC Dimapur to FSD Sangaiprou for a period of two years with effect from the date of their joining the work at the rate of Rs.3,533/- per MT for the entire distance. Further, the appointment as Transport Contractor is pursuant to the tender acceptance of the petitioner by the FCI.

[15] Now the grievance of the petitioner is that there was proportionate allocation of rice from November, 2019 till June, 2020 and all of a sudden, the allocation of rice for FSD Dimapur to FSD Sangaiprou Sector was reduced to zero for July, 2020 and also the non-allocation of work/quota of rice for transportation to the Sector of the petitioner would cause irreparable loss in the commercial venture of the petitioner, thereby deprived of the petitioner's basic fundamental right of Freedom of Trade and Commerce. The further grievance of the petitioner is that there was over-allocation to others and such an act of the respondent authorities for not allocating the

quota of rice is an arbitrary exercise of power and the same should be interfered with by this Court.

[16] On the other hand, the respondents contends that the total work value of the contract in respect of the petitioner is Rs.12,01,98,313/- and that the petitioner so far moved 57873 MTs from Dimapur to FSD Sangaiprou during the period from May, 2019 to June, 2020 and that the petitioner executed the work value of Rs.20,44,65,409/-, which is more than the assured value of the contact. Admittedly, this aspect, cannot be decided in this writ petition, as the same would require oral and documentary evidence.

[17] At this juncture, it is to be mentioned that the contract awarded to the petitioner is governed by the terms and conditions of the contract as set out in the Invitation/General Information to the Tenderer. The General Information to Tenderers, inter alia, contains the volume of work, deposit of earnest money etc. Further, in the terms and conditions governing contracts for transportation of food grains from Depots/Mandis/ Railheads, contains a dispute resolution clause, which reads as under:

> " *XX. Law Governing the Contract & Dispute resolution:*

(a) The Contract will be governed by the Laws of India for the time being in force.

(b) In case of any disputes arising out of and touching upon the contract, the same will be first referred to the Dispute/Grievance Redressal Committee constituted and functioning at the Zonal Office of the Corporation, with a view to settle the disputes. If any disputes remain thereafter, the same will be settled in the Court of Law having competent jurisdiction."

[18] Thus, it appears that there is a Redressal Committee constituted and functioning at the Zonal Office of the Food Corporation of India to settle the disputes between the parties. In the instant case, the petitioner is complaining of non-allocation and/or reduction in quota of rice.

[19] Admittedly, the petitioner has not filed any documents to show that they have approached the Redressal Committee to redress their grievance. In this regard, the law is settled that in respect of contractual transactions of Government, the High Court ought not to have entertained the writ petition when the contract provides for alternate remedy by way of in-house remedy for settlement of disputes. Thus, when efficacious alternative remedy is

available for the petitioner, the petitioner cannot invoke Article 226 of Constitution of India.

[20] In the e-Tender forwarding letter, the petitioner has categorically stated that they have examined and understood all the terms and conditions as contained in the Tender document, invitation of tender, General Information to Tenderer and its annexure and appendices and agree to abide by them. Since the petitioner disputing the lesser allocation to them and over allocation to others, the said aspect cannot be decided by this Court under Article 226 of the Constitution of India and the petitioner ought to have approached the Dispute Grievance Redressal Committee to redress their dispute.

[21] It is reiterated that once the petitioner accepted the terms and conditions of the tender and signed the tender documents, he should abide by the same.

[22] The petitioner contends that in the affidavit-in-opposition the respondents have not raised the maintainability of the writ petition before this Court and since the petitioner is not seeking enforcement of any of the clauses and only sought direction to the respondents for providing reasonable allocation of

rice from the month of July, 2020 for transportation from CWC/Dimapur to FSD Sangaiprou, the writ petition under Article 226 of the Constitution of India is very well maintainable before this Court.

[23] The allocation of quota of rice in the case of the petitioner is purely within the domain of the respondent authorities and this Court cannot direct the respondent authorities to allocate more or less number of MTs. It is specific case of the respondents that the work value of the contract is Rs.12.01 crores and the petitioner has moved so far 57873 MTs from Dimapur to FSD Sangaiprou during the period May, 2019 to June, 2020 to the tune of Rs.20.44 crores, which is more than the assured value of contract. When that being the plea of the respondents, the allegation of the petitioner that the respondent authorities have not provided reasonable allocation of rice for transportation for the route from Dimapur to FSD Sangairprou, cannot be decided in this writ petition. Further, the said aspect has involved oral and documentary evidences and the same cannot be gone into the instant writ petition.

[24] For the foregoing discussions, this Court is of the view that there is no violation of Article 14 of the Constitution of India as

complained of by the petitioner and the writ petition is liable to be dismissed on the ground that without exhausting the efficacious alternate remedy, the petitioner has approached this Court.

[25] Accordingly, the writ petition is dismissed. No costs.

JUDGE

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