

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No.24 of 2002****Reserved on 20.07.2021****Pronounced on 24.07.2021**

Arun Kumar Lath, S/o Ram Narayan Lath, aged about 48 years, Occupation Transport Business, Resident of Kharsiya, District Raigarh (CG)

---- Appellant/Plaintiff**Versus**

1. Food Corporation of India, through Regional Manager, Chetak Building, Maharana Pratap Nagar, Bhopal (MP)
2. District Manager, Food Corporation of India, Link Road, Bilaspur.
3. Assistant Manager, Food Corporation of India, Raigarh (CG)

---- Respondents/Defendants

For Appellant	:	Shri Sanjay Agrawal, Advocate.
For Respondents	:	Shri B.P.Gupta, Advocate

Hon'ble Shri Justice Sanjay S. Agrawal**C.A.V. Judgment/Order**

1. This appeal has been preferred by the Plaintiff under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) questioning the legality and propriety of the judgment and decree dated 04.10.2001 passed in Civil Suit No. 7-B/1999, whereby the claim has been dismissed. Parties to this appeal shall be referred hereinafter as per their description before the Court below.
2. Facts, which are essential to be stated for the adjudication of this appeal, are that the Plaintiff instituted a suit claiming recovery of Rs.1,77,137/- by submitting, inter alia, that he is a transporter and used to be involved in transportation of food-

grains from the Defendants' Depot, i.e., Food Corporation of India (hereinafter referred to as the FCI) to South Eastern Railway Goods shed at Kharsiya. According to the Plaintiff, he was authorized by the Defendants while accepting his tender for the transportation of food-grains from its Depot to Railway Goods Shed and payment has to be made as per the distance of it. It is pleaded in the plaint that as per the conditions No.4 & 5 (page 115) of Tender of Handling and Transport Operations, the distance will be reckoned as fixed by the Chief Engineer, P.W.D. or any Officer nominated by him or by Senior Regional Manager, Food Corporation of India or by any Officer acting on his behalf. Further contention of the Plaintiff is that previously the distance between these two points was 4.2 kilometers, but at the time of the expansion of the Railway Goods Shed, new approach road for loading and unloading facility of food-grains was constructed in the month of March, 1988 and owing to which, the distance was increased upto 4.4 kilometers. It is pleaded further that since the payment has not been made as per the said distance of 4.4 kilometers, therefore, he has been constrained to institute the suit in the instant nature for recovery of Rs.1,58,149/- withheld illegally on 17.08.1994 by the defendants, along with its interest of Rs.18,978/- calculated at the rate of Rs.6% per annum from the month of September, 1994 upto March, 1996 for the period of 19 months, total amounting to Rs.1,77,137/-.

3. While contesting the claim, it was pleaded by the Defendants

that on 03.02.1994, a committee, constituted by the Regional Office for the purpose of its measurements, visited the spot and has measured the distance between the central operational point of Railway Goods Shed to the Depot of F.C.I. and found the actual distance between these points as 4.08 km. The Plaintiff's suit claiming the alleged payment for the transportation of food-grains from the Defendants' Depot to Railway Goods Shed as per the said distance of 4.4 kms. is, therefore, liable to be dismissed.

4. In order to substantiate his claim, the Plaintiff has placed his reliance upon the measurement carried on 05.01.1992 (Ex.P.1) by some of the Officers of the alleged distance from F.C.I. Godown to Railway Goods Shed wherein the distance between these two points was found to be 4.4 km. as well as the measurement which was carried out by the committee on 07.09.1993 constituted by the District Manager, Raipur, whereby the distance between F.C.I. Depot Kharsiya to Railway Goods Shed was again found to be 4.4 kms. He placed his reliance further upon the distance certificate (Ex.P.8) dated 11.08.1994 furnished by the Sub-Divisional Officer, P.W.D. Kharsiya, wherein the distance between the said points was shown to be 4.30 kms.
5. In order to disprove the aforesaid facts, the Defendants have placed their reliance upon the report (Ex.D.1) which was furnished by the committee constituted by the Senior Regional Manager, F.C.I. Bhopal for the alleged purpose, i.e., for the

measurement of the distance from F.C.I. Depot to Railway Goods Shed, Kharsiya, wherein the total distance between these two points was found to be 4.08 kms.

6. The trial Court, after considering the evidence led by the parties, arrived at a conclusion that the Plaintiff has failed to establish the fact that the distance of F.C.I. Depot to Railway Goods Shed is 4.4 kms. and accordingly dismissed the claim. This is the order which has been impugned by way of this appeal.
7. Learned counsel appearing for the Appellant/Plaintiff, while placing his reliance upon the certificates/reports, marked as Ex.P.1, Ex.P.5 and Ex.P.8, contended that the actual distance from the F.C.I. Depot to Railway Goods Shed, Kharsiya was 4.4. kms. However, without considering this documentary evidence in its proper perspective, the Court below has committed an illegality in dismissing the Plaintiff's claim.
8. On the other hand, learned counsel appearing for the Respondents/Defendants, while placing his reliance upon the report (Ex.D.1) submitted by the committee duly constituted by the Senior Regional Manager, F.C.I., Bhopal, submits that since the distance between the alleged points was measured in presence of the Plaintiff, and therefore, no interference is required to be made in this appeal.
9. I have heard learned counsel appearing for the parties and perused the entire record carefully.

10. Based upon the aforesaid contention of the parties, the only question, which arises for determination in this appeal, is as to whether the distance from the operational point at the F.C.I. Depot to the operational point at Railway Goods Shed is 4.4 kms. entitling the Plaintiff for payment of transportation charges as such?
11. From perusal of the record, it appears that the Plaintiff being a transporter has transported the food-grains from the F.C.I. Depot to South Eastern Railway Goods Shed at Kharsiya and since the distance, as alleged by the Plaintiff, between the said operational points is 4.4 km, therefore, he is entitled for the payment of transportation charges as per the said distance. However, instead the Defendants have made the payment while taking into consideration the distance of 4.1 kms. and has withheld illegally a sum of Rs.1,58,149/- on 17.08.1994. In order to establish the alleged distance of 4.4 kms. between these two operational points, the Plaintiff placed his reliance mainly on three certificates/reports (Ex.P.1, Ex.P.5 and Ex.P.8).
12. According to the report (Ex.P.1), it appears that on the basis of the representation made by the Plaintiff on 01.08.1991, the measurement has been made as per the order of District Officer, Bilaspur on 05.01.1992 wherein the distance from F.C.I. Depot to Railway Goods Shed was found to be 4.4 kms. and likewise, similar was the distance found by the committee constituted by the District Manager, Raipur on 07.09.1993 vide its report (Ex.P.5).

13. In so far as the document (Ex.P.1) is concerned, it, however, appears that there is no reference of point of its measurement so as to uphold its validity, while a report (Ex.P.5) would suggest that the actual distance of 4.4 kms. as found by the said committee was, however, subject to its approval. But, there is no evidence placed on record so as to hold that the said actual distance was approved by the competent authority. It thus appears that it was an interim measurement, which has been done only at the request of the Plaintiff. It is, however, to be noted at this stage that according to conditions No. 4 & 5 of Tender for Handling and Transport Operations, as pleaded by the Plaintiff, the distance will be reckoned as fixed by the Chief Engineer, P.W.D. or any Officer nominated by him or by the Senior Regional Manager, F.C.I. or by any Officer acting on his behalf. However, none of the Senior Regional Managers were found to be present at the time when earlier measurements were done vide Ex.P.1 and Ex.P.5 as evidenced from paragraph 22 of the Plaintiff's testimony, who unequivocally stated that at the time of measurement on both the occasions, the Senior Regional Manager of F.C.I. was not present. In view thereof, no reliance could be placed upon these certificates/reports (Ex.P.1 and Ex.P.5). In so far as the distance certificate (Ex.P.8) issued by the Sub-Divisional Officer, P.W.D. Kharsiya is concerned, the same is, however, not acceptable as the author of it, namely, M.L.Uraon has not entered into the witness box in order to certify or prove the same and, one D. Ram (P.W.2), who was called upon for its

proof is, however, unable to state that whether he (M.L.Uraon) was authorized to issue such a certificate or not.

14. Now, in so far as the report (Ex.D.1) is concerned, it appears that a committee, which was constituted by the Senior Regional Manager of F.C.I., Bhopal for the purpose of measurement of distance from F.C.I. Depot to Railway Goods Shed, has visited the spot in presence of the Plaintiff on 03.02.1994 and vide its said report, the total distance between the central operating point in Railway Goods Shed to the F.C.I. Depot was found to be 4.08 kms.
15. In view of the aforesaid background, it cannot be held that the distance from operational point at the F.C.I. Depot to operational point at the Railway Goods Shed is 4.4 kms., as alleged by the Plaintiff.
16. Consequently, I do not find any substance in this appeal. The appeal is accordingly dismissed. No order as to costs.
17. A decree be drawn accordingly.

Sd/-
(Sanjay S. Agrawal)
Judge