

22.03.2022
SL No. 138
Court No. 24
(P.M)

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

WPA 21020 of 2021

**Biswajit Saha & Ors.
Vs
The State of West Bengal & Ors.**

Mr. Pratip Kumar Chatterjee
... for the petitioners.

Mr. Sirsanya Bandopadhyay,
Mr. Subhendu Sengupta
... for the State.

Report in the form of affidavit filed by the respondent Nos. 8 and 9 and the exception thereto filed by the petitioners in Court today are taken on record.

The petitioners were working as Carrying cum Distribution Agents for supply of Mid-Day Meal food grains to different schools under different blocks within the District of Murshidabad. They claim that they are performing their duties since 1994.

A tender was floated by the respondent authorities and the petitioners were the lowest bidders. They agreed to work at the rate of Rs. 75/- per quintal which was prevailing at that point of time. The petitioners were selected as Carrying cum Distribution Agent of Mid-Day Meal and paid Rs. 75/- per quintal as transportation assistance charges.

During the pendency of the contract there was a revision of norms of Central Assistance for Transportation Assistance under National Programme of Mid-Day Meal in Schools (NP-MDMS).

The Joint Secretary, Government of India, Ministry of Human Resource Development, Department of School Education and Literacy by a communication dated 14th March, 2019 requested the State Government to communicate PDS rate of transportation prevalent in the State at the earliest with full details supported by evidence.

The said communication mentions that the States and the Union Territories have been requesting the Department at various forums for enhancement of the transportation charges of PDS articles. The request was carefully examined. It was decided by the Central Government to revise the existing norms of Transportation Assistance at per PDS rates in the respective State and the Union Territories subject to a maximum amount of Rs. 150/- per quintal. The new rate was to be effective from 1st April, 2019.

The Principal Secretary, School Education Department, Office of the Project Director, Cooked Mid-Day Meal Programme by an order dated 14th July, 2020 published that in view of the revision of Transportation Assistance under Mid-Day Meal Scheme by the Ministry of Human Resource

Development, Government of India by order dated 14th March, 2019 to a maximum amount of Rs. 150/- per quintal with insistence on strict adherence to the prevalent norms of Transportation Assistance under Public Distribution System in Food and Supplies Department, Government of West Bengal, for payment of Transportation Assistance to the lifters cum transporters engaged in lifting and transporting MDM food grains/rice, the Nodal Officers in the District and Kolkata area may follow the PDS rate of Food and Supplies Department, Government of West Bengal dated 22nd January, 2019 on the basis of distance covered within maximum limit of Rs. 150/- only per quintal.

The petitioners approached this Court by filing a writ petition being WPA 12574 of 2021 (Muktilal Das & Ors. Vs. The State of West Bengal & Ors.) praying for a direction upon the respondent authority to implement the revised norms of central assistance for Transportation Assistance and to pay transportation assistance charge @ Rs. 150/- per quintal as per the order of the State Government.

The said writ petition was disposed of on 16th August, 2021 granting liberty to the petitioners to apply before the concerned authority praying for implementation of the aforesaid norms for enhancement of the transportation charges.

Pursuant to the leave granted, the petitioners filed representation before the District Magistrate, Murshidabad. The joint representation of the petitioners was taken into consideration and an order was passed on 6th September, 2021 rejecting the prayer of the petitioners for enhancement of the transportation charges.

The petitioners challenged the same by filing another writ petition being WPA 15710 of 2021 (Biswajit Saha & Ors. – Vs – The State of West Bengal & Ors.) The said writ petition stood disposed of on 1st October, 2021 on the ground that no reason was assigned for rejecting the prayer of the petitioners for enhancement of the transportation charges.

Thereafter the respondent authority furnished the detailed reasons for rejection to the petitioners. The same is under challenge in the present writ petition.

The impugned order dated 29th November, 2021 mentions that the petitioners were selected as Carrying cum Distribution Agents of Mid-Day Meal Scheme in Murshidabad District via tender process whereupon they were the lowest bidders and consequently their tender rates for transportation of Mid-Day Meal articles were accepted and they were engaged for the period 1st January, 2019 to 31st December, 2019. Extension of contract was made

upon obtaining their explicit written consent to continue work on the same rate and on the same terms and conditions as laid down in the earlier contract.

The petitioners contend that as the rate of transportation has been enhanced by the Central Government duly followed by the State Government, they are entitled to the enhanced rate.

It has further been submitted that undertaking that was obtained from the petitioners prior to execution of the contract was upon undue influence and coercion.

The petitioners rely upon the undertaking/self-declaration that was filed before the District Magistrate, Murshidabad prior to extension of their contract on 28th January, 2020. According to the petitioners they never gave any undertaking that they would continue to work at the earlier rate. The petitioners pray that they may be paid transportation charges at the enhanced rate.

The prayer of the petitioners has been opposed by the respondents.

It has been categorically submitted that the contract of the petitioners stood extended upon declaration given by them that they would continue to work at the same rate, terms and conditions prevailing in the year 2019. Copy of the undertakings given by

the petitioners have been annexed to the report that has been filed by the respondents. In the body of the said undertaking there is a note of the Block Development Officer forwarding the same to the District Magistrate, Mid-Day Meal Section for perusal and necessary action.

It is only upon declaration that was given by the petitioners, that extension of contract was made. It has been specifically submitted that the petitioners are not entitled to receive the enhanced Transportation Charges.

Upon hearing the submissions made on behalf of both the parties and on perusal of the materials that are on record it appears that the petitioners were successful in a public bid. They were the lowest bidders. Contract was initially executed for the period January, 2019 to December, 2019. Enhancement of the rate of Transportation Assistance was from 1st April, 2019. The contract of the petitioners stood extended till August, 2021 on the basis of the declaration submitted by them that they would continue to work on the same rate and same terms and conditions.

As long as the contract of the petitioners was valid and subsisting, they never raised any claim or issue before the respondent authority praying for enhancement of their transportation charges. On the

contrary, they agreed to continue with the contract on the same rate that was prevailing in the year 2019. After the authority took a decision to discontinue their contract, the petitioners approached this Court by filing the first writ petition praying for retrospective implementation of the transportation charges revised by the Central Government Order dated 14th March, 2019 approved by the order of the State Government dated 14th March, 2020.

The declaration of the petitioners annexed with the report filed by the respondents clearly mentions that the petitioners agreed to work on the same rate that was applicable in the year 2019. In fact, the declarations that have been annexed in the writ petition also speak of working on the same terms and conditions.

The conduct of the petitioners implies that even though they were aware of the enhancement of transportation charges, they agreed to work as per the earlier rate. The petitioners appear to have waived their right to accept higher rate which was applicable from 1st April, 2019. As the contract of the petitioners stood extended upon the declaration filed by them, the petitioners cannot be permitted to turn around and claim higher rates after their contract expired in August, 2021. The first representation made by the petitioners praying for enhancing the transportation

charges was on 18th August, 2021, i.e immediately prior to expiry of their contract.

The stand of the petitioners in the present facts and circumstances of the case cannot be accepted. The prayer of the petitioners for enhancement of the transportation charges appears to have been rightly rejected by the respondent authorities. There is no reason to interfere with the impugned order.

Writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)