

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 3144 of 2020

Shri. Mahesh S/o Omprakash Holani,
Aged about 48 years,
Occupation : Business,
R/o : Baheti Complex,
Hingoli Road Bafna,
Nanded – 431605

... Petitioner

... Versus ...

(1) State of Maharashtra
Through its Secretary for
Food & Civil Supplies,
Mantralaya, Fort, Mumbai.

(2) Collector Bhandara,
District - Bhandara.

(3) District Supply Officer,
Bhandara, District – Bhandara.

... Respondents

Mr. A. B. Patil, Advocate for the petitioner
Mr. N. R. Rode, AGP for the respondents

CORAM : MANISH PITALE, J.
DATED : 8-9-2022

ORAL JUDGMENT

Heard learned counsel for the petitioner and the learned
Assistant Government Pleader for the respondents.

2. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

3. By this writ petition, the petitioner has challenged the order dated 29-9-2020, passed by the respondent no. 2, Collector, Bhandara, whereby recovery of amount of Rs. 65,12,844/- is directed against the petitioner.

4. The facts in brief leading to filing the present writ petition are that the petitioner, who is involved in the business of transportation, was awarded a contract for transporting food grains and essential commodities in October, 2015, for a period of three years. As per the said contract, the petitioner was expected to transport food grains and essential commodities, according to the directions of the respondents, from the base depot of Food Corporation of India (FCI) to various Government godowns situated in the District of Bhandara. According to the respondent no. 2, on the basis of complaint received that the petitioner had acted in a manner that had resulted in avoidable and excessive burden on the State exchequer, an enquiry was conducted and it was found that loss was indeed caused to the State exchequer because the petitioner had transported food grains and essential commodities from the base depot of FCI to Government godowns in the District of Bhandara that were not the nearest godowns and instead the godowns

were located in far flung places. On the basis of the enquiry and report prepared in that context, by the impugned order, it was held that amount to the extent mentioned above was recoverable from the petitioner.

5. The petitioner filed the present writ petition wherein, this Court found *prima facie* substance in the contentions raised on behalf of the petitioner and while issuing notice, granted interim relief of stay to the impugned order passed by respondent no. 2.

6. Upon service of notice, respondents filed their reply affidavit and the petitioner filed an affidavit in rejoinder. The petition is taken up for final disposal today.

7. Mr. Amol Patil, learned counsel appearing for the petitioner submitted that a perusal of the documents on record would show the manner in which the food grains and essential commodities were transported by the petitioner, in terms of instructions given by the respondents themselves and in terms of established procedure. By inviting attention to copies of delivery orders and transport passes that illustrate the procedure adopted by the respondents themselves for such transportation of food grains and essential commodities, it was contended that the petitioner had undertaken the exercise of

transportation from the base depot of FCI to various government godowns located in the District of Bhandara, strictly in terms of instructions given by the respondents – authorities and it was not even alleged that the petitioner had deliberately violated instructions in order to illegally gain financial benefits and in the process, caused financial loss to the State exchequer. It was further submitted that the impugned order referred to report prepared pursuant to an enquiry alleged to have been instituted on the basis of complaint received against the petitioner. It was emphatically submitted that neither was any notice issued to the petitioner while conducting the enquiry, nor was a copy of the report furnished to the petitioner before issuing the impugned order directing recovery of substantial amount from the petitioner.

8. It was further submitted that in the impugned order, it was alleged that the petitioner had violated the procedure contemplated under Government Resolution dated 26-11-2012, but perusal of said document would show that no such conclusion could be arrived at, even if the allegations levelled against the petitioner were to be taken into consideration. It was further submitted that the petitioner was able to secure an abridged version of enquiry report, the contents of which demonstrated that the conclusions rendered against the

petitioner were based on conjectures and surmises. On this basis, it is submitted that the writ petition deserved to be allowed.

9. Mr. Rode, learned Assistant Government Pleader appearing on behalf of the respondents submitted that the entire report was not available before this Court and if found necessary, arrangements could be made to produce a copy of said report. The learned Assistant Government Pleader was not able to demonstrate from the reply affidavit on record as to whether any notice was issued to the petitioner before conducting the enquiry and as to whether copy of the report was furnished to the petitioner.

10. Having heard the learned counsel for the petitioner and learned Assistant Government Pleader for the respondents, in the backdrop of the material placed on record, it is found that while serious allegations appear to have been made against the petitioner, neither was the petitioner put to notice when the aforesaid enquiry was conducted against him by the Collector nor was there anything to indicate that copy of the report was furnished to the petitioner. Perusal of the abridged version of the enquiry report available with the petitioner and placed along with the writ petition shows that adverse findings were rendered against the petitioner.

11. The aforesaid admitted circumstances show gross violation of principles of natural justice and on that ground alone, the impugned order, which is admittedly a product of the aforesaid enquiry and its findings deserve to be set aside. But, to satisfy its conscience, this Court has considered the documents on record to examine as to whether it can be concluded in any manner that the petitioner had acted with the purpose of defrauding the State exchequer or that there was violation of relevant Government Resolution and instructions issued by the respondents.

12. Perusal of the documents placed on record to demonstrate the procedure adopted by the respondents in the context of transportation of food grains and essential commodities shows that the food grains were to be collected from the base depot of FCI and they were to be transported to various Government godowns in the District of Bhandara, as per the contract executed between the petitioner and the concerned authority. A perusal of the copy of delivery order and the transport passes shows that a transporter like the petitioner was necessarily required to pick up the food grains and essential commodities from the base depot of FCI and to transport the same to the Government godowns as instructed by the respondents.

13. The petitioner, as the transporter, was necessarily required to transport the food grains and essential commodities in terms of the instructions given by the respondent authorities in that regard, as manifested by the delivery order and the transport pass.

14. There is not even an allegation against the petitioner that he transported the food grains from the base depot of FCI to Government godowns, in violation of instructions given by respondent no. 3. The material also shows that the allegations about violation of the procedure specified in Government Resolution dated 26-11-2012 is also not supported by the material on record. Clause (9)(i) of the said Government Resolution relied upon in the impugned order also does not indicate as to how any wrong doing can be attributed to the petitioner in the facts and circumstances of the present case. In fact in clause (9)(ii) of the Government Resolution, it is specified that if the FCI is unable to arrange for food grains to be transported from the base depot to the nearby Government godown, the additional expense for transportation would be the liability of the FCI itself.

15. The contents of the abridged version of the enquiry report shows that an exercise was carried out to ascertain as to what would have been the cost of transportation of the food grains and essential commodities from the base depot to FCI to the nearest Government

godown, as compared to the Government Godown to which the petitioner had in fact transported the food grains and essential commodities. It appears that a comparative chart was prepared during the course of the enquiry concerning a period of two months and on that basis, the alleged loss caused to the State exchequer was extrapolated for the period of three years of the contract.

16. It is found that apart from the fact that the very basis of making such comparisons was misplaced, the extent of alleged loss caused to the State exchequer was clearly in the realm of conjectures and surmises. The impugned order is, therefore, based on allegations that are not supported by the material on record and the figure of Rs. 65,12,844/- determined for recovery against the petitioner is found to be clearly based on an imaginary exercise with no support from the documents on record.

17. Thus, it is found that not only was there flagrant violation of principles of natural justice on the part of respondent no. 2 while passing the impugned order inasmuch as neither any notice was issued to the petitioner while conducting enquiry nor copy of the enquiry report was furnished to the petitioner, even on the merits of the matter, the findings rendered against the petitioner are found to be wholly

unsustainable. In fact, the entire exercise is found to be arbitrary and hence, clearly violative of Article 14 of the Constitution of India.

18. In view of the above, it is found that the impugned order is unsustainable. Accordingly, the writ petition is allowed in terms of prayer clause (a) which reads as follows :

(a) Quash and set aside the order dated 29.09.2020 passed by Respondent No. 2 Collector Bhandara, annexed hereto at Annexure No. 1.

19. Rule is made absolute in aforesaid terms.

JUDGE

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