



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Reserved On :15.10.2024
CWP-3731-2021(O&M)
Date of decision: 07.11.2024**

M/s Sandeep Transport Company ...Petitioner

VERSUS

Food Corporation of India and another ...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Anurag Chopra, Advocate for the petitioner.

Mr. K.K. Gupta, Advocate for the respondents.

VINOD S. BHARDWAJ, J.

1. Prayer in the present petition is for directing the respondents to release the security and bank guarantee deposited by the petitioner in lieu of being appointed as the Handling and Transport Contractor (hereinafter referred to as 'HTC') for center Barara in pursuance to the letter dated 17.11.2016 and to return the remaining payment for the work undertaken by the petitioner on day to day basis, which is alleged to have been illegally and arbitrarily withheld despite the rate quoted by the petitioner being lower than the regular tender rate. A further prayer for release of outstanding payment for the period from 04.12.2018 to 18.04.2019 has also been made.

Facts:

2. The facts as per the averments contained in the instant writ petition are to the effect that the petitioner was allotted the HTC pursuant to the tender inquiry dated 30.09.2016 for center Barara at the basic rate



of 28% above the schedule of rates (ASOR). The contract for a period of two years commencing from 18.11.2016 to 17.11.2018 was allotted to the petitioner. It is contended that on account of failure on the part of the respondent-Food Corporation of India (FCI) in finalizing the next tender contractor, the General Manager directed the Area Manager of FCI, District Office, Karnal to seek consent of the outgoing contractor (petitioner herein) to carry out the work on day to day basis to avoid dislocation of the work and for ensuring smooth movement of food-grains at the outgoing rate or the next tender inquiry rate whichever is less vide letter dated 09.12.2018. The petitioner claims that it furnished its consent to carry out the said work at the “new” regular tender rate of HTC Barara or the outgoing rate whichever is less. It is submitted that the petitioner carried on the adhoc/day to day work w.e.f. 04.12.2018 to 18.04.2019 for which the approval was granted to the petitioner and he submitted his consent for the same on monthly basis as well. It is contended that the respondent-FCI thereafter granted an Adhoc/day-to-day basis tender to one Mr. Lovepreet Singh. It is submitted that the rate quoted in such adhoc tender was @ 7% ASOR while the regular tender inquiry process was initiated by the respondents on 10.02.2020. The regular HTC appointed by the FCI as per letter dated 01.05.2020 was at the basic rate of 53% ASOR. The petitioner claimed that he is entitled to payment at the basic rate of 28% ASOR while the respondents insisted the payment of dues @ 7% ASOR as quoted by the adhoc contractor Mr. Lovepreet Singh.



3. Aggrieved by withholding of the payment @28% ASOR and instead to accord payment @7% ASOR, the petitioner approached this Court claiming that the communication pertained to the next regular tender inquiry rate or the rate as quoted by the outgoing contractor, whichever is lower and as against the same, the respondents are approving the payment at the rate finalized in the adhoc tender inquiry and not in the regular tender inquiry.

4. Pursuant to the noticed issued by this Court, written statement was filed by the respondents wherein while acknowledging the allotment of the contract of handling and transport of food-grains of Barara Center to the petitioner vide letter of allotment dated 17.11.2016 for a period of 02 years, it was submitted that so far as release of security deposits etc. is concerned, the same can be undertaken only after the petitioner submits 'no dues certificate' from the assigned authority including the compliance certificate/confirmation of deposit of EPF by way of an affidavit. It was averred that since the requisite documents have not been submitted by the petitioner as per the terms & conditions of the MTF/Contract, the security deposit could not be released. It was also averred that as per the policy instructions issued by the respondents on 28.10.2013, the work was to be get executed from the outgoing contractor at the rate offered by him or the next tender inquiry rate whichever is less. The said policy is extracted as under:-

“No. S&C/21(34)/Policy/Day to Day/Cont/2012Dated: 8.10.2013

***The Area Manager
Food Corporation of India
Distt Office, Amritsar/Bhatinda/Chandigarh
Faridkot/Ferozepur/Gurdaspur/Hoshiarpur/Jalandhar/***



Kapurthala/Ludhiana/Moga/Patiala/Sangrur

Sub: Intimation regarding undertaking of RTC/TC/HTC work on day to day basis and Adhoc/LTE.

Sir,

The case for carrying out work on day to day basis has been re-examined in detail & has been approved by the Competent Authority, that in order to avoid the dislocation of work due to non placement of regular contractor in time, the work on day to day basis shall be carried out after seeking consent from the outgoing contractor at outgoing rate or next tender enquiry rate whichever rate is less, under same terms & conditions of MTF. The B G. in such cases be got extended for the period of further 3 months. In any case day to day work be no allowed to carry out for more than 3 months from the date of expiry of contract. Prior approval in such cases be sought in case it is to be carried out for more than 3 months.

The day to day work is not allowed in the centers where outgoing (expire contract is LTE/Adhoc contracts.

Yours faithfully

Sd/-

***Asstt Gent Manager (Cont.)
For General Manager (Region)”.***

5. The policy does not incorporate the word “regular” before the tender inquiry rate. He contends that the said incorporation has been mischievously undertaken by the petitioner itself. It is thus contended that when the respondents initiated the next tender inquiry for the interregnum period, the contractor Mr. Lovepreet Singh offered rate @7% ASOR.



Accordingly, as the payment was to be made at the outgoing rate or the rate quoted in the next tender inquiry whichever is lower, hence, the rate at par with the rate quoted by the next contractor has been approved.

6. Specific attention is also drawn to the averment contained in reply filed by the respondents to para Nos.5 and 6, which reads thus:-

“5. That the contents of para no. 5 of the writ petition are wrong and hence denied to the extent that the petitioner was to be paid for the adhoc/day-to-day work at the existing rate or the rate which would be quoted by a Regular HTC. In fact, the instructions as well as the initial letter (Annexure P-2) clearly provides that the rate for such period would be the outgoing rate or the rate of next Tender Enquiry as is clear on perusal of the their own consent letters sent in vernacular. But in the translation and in the writ petition, the word "regular" has been added. Accordingly the payment was released 7% ASOR which was L-1 in the next Tender Enquiry.

6. That the contents of para no. 6 of the writ petition are misleading and hence denied. Such subsequent communication does not create any right specifically when in the instructions (Annexure R-1) as well as in the letter issued at the initial stage i.e. Annexure P-2 clearly provides that the payment would be made at the existing rate or the rate in the next Tender Enquiry which ever would less as is clear on perusal of the their own consent letters sent in



vernacular. But in the translation and in the writ petition, the word "regular" has been added. The outgoing rate was @28% ASOR and the rate of L-1 in the next Tender Enquiry was @7% ASOR, therefore, the petitioner was rightly paid @7% ASOR."

7. It is thus the specific stand of the respondents that in the acceptance submitted by the petitioner, the word "regular" had not been mentioned and it was only "the next inquiry" that was mentioned, however, in the documents that have been appended by the petitioner as a translated copy, he has carried out a wrong translation by mentioning "regular". He draws the attention to the documents appended as Annexures P-4, P-7, P-8 as well as P-9, where in the acceptance letter it has been specifically mentioned as "... ***I further undertake that if next regular tender rate for the said center is less than what is quoted by me I will be ready to return the payment made in excess to me.***"

8. It is also stated that notwithstanding that not only an incorrect translation was made by the petitioner but it was also verified as a "true copy" by the Advocate instead of a true translation so as to mislead this Court.

9. Notwithstanding the said reply was filed by the respondent-FCI in July-2023, no rejoinder/replication was filed denying or controverting the specific assertion made by the respondent-FCI.

10. No judgment or statutory provision was also cited by any of the party during the course of proceedings.



11. I have heard the learned counsel for the respective parties and have gone through the documents appended with the present writ petition with their able assistance.

12. Learned counsel for the respective parties have emphatically argued that the *inter se* communication appended as Annexure P-3 dated 09.01.2019 shows that the same specifically mentioned about the new rates that will be finalised after new regular tender of HTC Barara or the outgoing rate, whichever is less and as such new regular tender rates being @53% ASOR, he was entitled to be paid at the outgoing rate and that the approval to make payment @7% ASOR is contrary to their own communication. He has made much reliance on the communication sent by the office the General Manager to the Area Manager of the FCI, District Office, Karnal with a copy to the petitioner.

13. On the other hand, learned counsel for the respondents has reiterated his contentions noticed above but submitted that the policy decision taken by the respondents specifically mentioned about the “next tender inquiry rate” and did not mention “next regular tender inquiry rate” and as such any communication which is contrary to the specific policy decision of the FCI would be contrary and not enforceable. He further submits that the petitioner being a regular transport contractor of the respondents was fully aware of the condition of the “next tender inquiry” and not a “regular tender inquiry” and the same was duly reflected in the letters submitted by him giving his consent to carry out HTC operations. He submits that the petitioner deliberately appended wrong translation by mentioning them to be the true copy instead of true translation. He also



submitted the vernaculars of the said documents appended by the petitioner, hence, there was no reference to any regular tender inquiry and the undertaking was only in reference to the new HTC rate. Also, a perusal of the acceptance letters of the petitioner in Hindi as submitted by the counsel for the respondent, nowhere does the word regular occurs. The same is being replicated below:

“निवेदन यह है की मेरा एचटीसी बराडा केंद्र का ठेका दिनांक 17.11.18 को समाप्त हो गया है। इस समय इस केंद्र पर कोई एचटीसी नहीं है। मैं इस केंद्र पर एचटीसी का कार्य अपने इसी रेट (28% ASOR) पर अगले एचटीसी के आने तक करने को तैयार हूँ और मैं ये भी जिम्मेवारी लेता हूँ की अगर नये एचटीसी का रेट मेरे रेट से कम आता है तो मैं जो भी अतिरिक्त राशि होगी वो वापिस देने को तैयार हूँ। अतः मेरा आपसे निवेदन है की कृपा आप मुझे कार्य करने की अनुमति दे।

धन्यवाद।

(emphasis supplied)

Nivedan yeh h ki mera HTC Barara kinder ka theka dinak 17.11.18 ko samapat ho gaya h. Is samay is kendar per koi HTC nahi h. Mein is kendar per HTC kakarya apne isi rate (28% ASOR) per agle HTC ke aane tak karne ko teyar hun aur mein ye bhi jimmewari leta hun ki agar naye HTC rate mere rate se kam aata h tou mein jo bhi atirikat rashi hogi wapis dene ko teyar hun. Ateh: mera apse nivedan h ki kripa aap mujhe karya karne ki anumati den.

Dhanyawad”.



14. A specific query was raised to the learned counsel for the petitioner as whether the tender inquiry dated 13.09.2016 pursuant whereto the petitioner was allotted the contract mention the word “regular tender inquiry” or not. It was fairly conceded by the counsel that the said tender inquiry did not mention the word “regular” and was only a tender inquiry. He, however, contends that in the specific tender inquiry whereby the contract was awarded to Sh. Lovepreet Singh, an adhoc HTC contractor was sought to be appointed and, therefore, any other HTC contractor has to be deemed as a regular tender inquiry. The arguments advanced by the learned counsel for the petitioner are tested from twin perspectives firstly as to what would be the significance of use of the phrase “next tender inquiry” or “regular tender inquiry”.

15. Learned counsel for the parties have not disputed that the tender inquiry floated by the respondent-FCI for HTC are tenure contracts. The expression “regular” as is being sought to be pressed by the learned counsel for the petitioner is as a borrowed expression from the Service Law. “Regular” in matter of contracts has to be perceived from the initiation of appointment of a contractor under an approved process of law.

16. The expression “regular” in matters relating to Government contracts/tenders generally refers to a standard or a routine bidding process where the suppliers/contractors submit their proposals to provide goods or service. It thus is an allotment which does not reflect a direct procurement, without participation of others, may be on any account. The primary requirement for a regular tender is that there must be an open



bidding process i.e. a process which offers equality of opportunity to participate subject to universally applied eligibility conditions. The process thus should show a competitive pricing and a uniform evaluation and assessment criteria. The next essential requirement is that there has to be transparency and fairness in decision making process, in a standardized manner. Hence, where such requirements are met, a process of tender inviting bids can be said to be a regular tender inquiry.

17. Hence, the concept of regular tender inquiry has to be seen and understood from the prism of the process through which the contractors are normally and regularly appointed and not from the nomenclature used in the tender inquiry. Hence, the understanding of the word “regular” in a tender inquiry process, as against an irregular appointment of HTC contractor, is when the appointment of a contractor, is in deviation from the approved mode. The moment the procedure, as approved, is followed, it has to be deemed in law to be a regular tender inquiry process. The term of the contract thus would not disqualify a contract from being a regular contract.

18. Before proceeding further, it is also pertinent to extract the intimation to work on day to day basis dated 09.01.2019, which reads thus:-

“With reference to your office letter as referred above on cited subject, it is apprised that the case of extension of outgoing contract for further one month for carrying out the work on day to day basis has been examined in detail in consultation with regional finance division & it has been



approved by the competent authority, that in order to avoid the dislocation of work due to court case on regular tender enquiry for HTC Barara filed in Hon'ble Punjab and Haryana High Court and for the smooth movement of food grains the work on day to day basis in respect of HTC Barara shall be carried out after seeking consent from the outgoing contractor at the outgoing rate or rates which will be finalized after new regular tender of HTC Barara whichever is less, under same terms & conditions of MTF.

However, the work on day-to-day basis is extended for further one month w.e.f. 04.01.19 to 03.02.19 or till the decision of the Hon'ble High Court whichever is earlier. Furthermore, the bank guarantee of concerned contractor has to be extended for the period of 6 months.

(emphasis supplied)".

19. At this stage it would also be appropriate to refer to the policy decision taken by the respondent FCI, to cater to such a situation vide letter dated 28.10.2013, already extracted in para No.4 of this order.

20. It is evident from a perusal of the above that the expression "regular" is not prefixed to the "next tender inquiry" in the same, but the same is statedly mentioned in the letter dated 09.01.2019 (Annexure P-3) sent to the petitioner. The said incorporation in the communication sent by the FCI to the petitioner in the letter dated 09.01.2019 specifying or creating terms contrary to the policy decision dated 28.10.2013 would be



clearly an act of fraud causing financial loss of public funds. This Court would not give eminence to the communication in conflict with the policy decision, when no separate emphasis is granted to the same. A policy decision is the parameter for bringing about uniformity, fairness and transparency in Government decision making and an aberration from the policy has to satisfy judicial conscience about the circumstances under which a deviation is made.

21. No such circumstances are however reflected from the record or stated in the petition.

22. Additionally when the consent sent by the petitioner and attached as Annexure P-4 to P-9 are seen, he has inserted the word “regular” in the translation which did not exist in the vernacular. Hence, even at the time of filing of the petition, the petitioner was aware of the true nature of the agreement amongst the parties and was thus induced to add an expression in the translation which did not exist in the original. It is indicative as a contemporaneous evidence to the intent of the contracting parties as well.

23. There are certain basic principles evolved by courts of law for deciphering the true and correct meaning of expressions in a contract. In **Bihar State Electricity Board, Patna v. Green Rubber Industries** reported as **(1990) 1 SCC 731**, the Hon’ble Supreme Court observed that, *“Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavoring to collect the intention of the parties, even though the immediate object of enquiry is the meaning of an isolated clause.”*



24. In **Union of India v. Raman Iron Foundry** reported as **(1974) 2 SCC 231**, the Apex Court held that contractual terms cannot be interpreted in isolation, following strict etymological rules or be guided by popular connotation of terms, at variance with the contractual context. It observed:

“8. It is true that the words “any claim for the payment of a sum of money” occurring in the opening part of Clause 18 are words of great amplitude, wide enough to cover even a claim for damages, but it is a well settled rule of interpretation applicable alike to instruments as to statutes that the meaning of ordinary words is to be found not so much in strict etymological propriety of language nor even in popular use as in the subject or occasion on which they are used and the object which is intended to be attained. The context and collocation of a particular expression may show that it was not intended to be used in the sense which it ordinarily bears. Language is at best an imperfect medium of expression and a variety of meanings may often lie in a word or expression. The exact colour and shape of the meaning of any word or expression should not be ascertained by reading it in isolation, but it should be read structurally and in its context, for its meaning may vary with its contractual setting. We must, therefore, read the words ‘any claim for the payment of a sum of money’ occurring in the opening part of Clause 18 not in isolation but in the context of the whole



clause, for the intention of the parties is to be gathered not from one part of the clause or the other but from the clause taken as a whole. It is in the light of this principle of interpretation that we must determine whether the words ‘any claim for the payment of a sum of money’ refer only to a claim for a sum due and payable which is admitted or in case of dispute, established in a Court of law or by arbitration or they also include a claim for damages which is disputed by the contractor.”

(emphasis supplied)”.

25. In **Provash Chandra Dalui v. Biswanath Banerjee** reported as **1989 Supp (1) SCC 487**, noting that the intention of the parties must be discerned from the context of the contract, Hon’ble Supreme Court observed:

“10. ‘Ex praecedentibus et consequentibus optima fit interpretatio.’ The best interpretation is made from the context. Every contract is to be construed with reference to its object and the whole of its terms. The whole context must be considered to ascertain the intention of the parties. It is an accepted principle of construction that the sense and meaning of the parties in any particular part of instrument may be collected ‘ex antecedentibus et consequentibus;’ every part of it may be brought into action



in order to collect from the whole one uniform and consistent sense, if that is possible.

...

In construing a contract the court must look at the words used in the contract unless they are such that one may suspect that they do not convey the intention correctly. If the words are clear, there is very little the court can do about it. In the construction of a written instrument it is legitimate in order to ascertain the true meaning of the words used and if that be doubtful it is legitimate to have regard to the circumstances surrounding their creation and the subject matter to which it was designed and intended they should apply.”

(emphasis supplied)”

26. In **BESCOM v. E.S. Solar Power Pvt. Ltd.** reported as **(2021) 6 SCC 718**, Hon’ble Supreme Court held that in case of two possible interpretations of a contractual term, the court must accord primacy to the one that is consistent with the underlying purpose of the contract. It noted:

“17. ... In seeking to construe a clause in a contract, there is no scope for adopting either a liberal or a narrow approach, whatever that may mean. The exercise which has to be undertaken is to determine what the words used mean. It can happen that in doing so one is driven to the conclusion that clause is ambiguous, and that it has two possible meanings. In those circumstances, the court has to prefer one above the other in accordance with the settled principles. If one



meaning is more in accord with what the court considers to be the underlined purpose and intent of the contract, or part of it, than the other, then the court will choose the former or rather than the latter...”

(emphasis supplied)”

27. The interpretation of contracts focuses on uncovering the true and intended meaning of the parties involved. The words and phrases used in the contract serve as the primary means to determine this intent. In interpreting these terms, courts consider them within the framework of other contractual provisions and the overall context of the contract. These intrinsic elements guide the interpretation process. Generally, courts avoid referring to external materials to deduce the parties' intentions. However, exceptions exist, notably in cases of latent ambiguity. Latent ambiguity arises when, although the contract's language appears clear, its application to a specific context reveals the potential for multiple interpretations. Extrinsic evidence may then be necessary to resolve such ambiguity. This position is well-explained in the following passage of Halsbury's:

“Latent ambiguity : When the instrument appears on its face to be free from ambiguity but, upon the endeavour being made to apply it to persons or things indicated, it appears that the words are equally applicable to two or more persons, or two or more things, either without any inaccuracy or with a common inaccuracy...”

28. Extrinsic evidence, in cases of latent ambiguity, is admissible both to ascertain where necessary, the meaning of the words used, and to identify the objects to which they are to be applied.



29. Having examined the claim from the above said angle, the aspect which gains significance is the letter(s) submitted by the petitioner himself specifically referring to the ‘next tender’ and not a “regular” tender. Hence, the understanding between the parties was clear and there was no scope for any ambiguity. Shockingly, the petitioner chose to append a wrong translation with the petition filed before this Court and also to certify the same as a true copy notwithstanding that it was known to him to be a translation and an incorrect one. The petitioner also did not file any rejoinder or replication controverting the specific stand of the respondent-FCI in this regard. This shows that a malicious attempt has been made by the petitioner to mislead this Court into seeking a price more than what he was entitled to by making an assertion known to him to be false. I find that such an attempt needs to be sternly dealt with.

30. The present petition is thus **dismissed** at this stage for the above said reasons imposing a cost of Rs.50,000/- on the petitioner to be deposited with the High Court Legal Services Committee for filing a petition on the strength of wrongly and mischievously translated documents and by wrong verification thereof so as to mislead this Court.

31. The dismissal of the present writ petition shall however not stand as a bar on the right of the petitioner to seek refund of his earnest money/security deposit subject to him fulfilling the terms and conditions of the contract and furnishing the no dues certificate(s) as necessitated.

(VINOD S. BHARDWAJ)
JUDGE

07.11.2024
Mangal Singh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No