2024:PHHC:022758

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

239 **CWP-20579-2021**
Date of Decision: 15.02.2024

M/S SANJEEV KUMAR HEM RAJ

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

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

Present: Mr. Gourav Jain, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. J.S. Ahlawat, Advocate
for respondents No.2 and 3

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VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 02.04.2021 (Annexure P-10) passed by the Managing Director, Haryana State Federation of Consumers' Co-operative Wholesale Stores Ltd. vide which the appeal dated 17.11.2020 (Annexure P-9) filed by the petitioner has been dismissed and the claim of the petitioner regarding his dues and outstanding amount of Rs.8,13,246/- alongwith interest has been rejected. A further prayer has been made that the respondents be directed to release the said payment, which is admissible to the petitioner.

Learned counsel for the petitioner contends that the petitioner is engaged in the transport business under the name and style of M/s Sanjeev Kumar Hem Raj Transporter, Jamalpur Road, Tohana, District Fatehabad. The respondent-Department had issued a tender under the Transportation Public Distribution Scheme (for short 'TPD Scheme') for appointment of a contractor for loading/unloading/handling/transportation etc. and for lifting, transporting and door step delivery of the food grains etc. for the year 2017-2018 commencing w.e.f. 01.04.2017 to 31.03.2018.

The petitioner submitted his bid and competed for the allotment of said tender. Vide communication dated 06.03.2017, the letter of allotment for the block of Tohana and Ratia was issued in favour of the petitioner. An agreement for the same was later executed between the petitioner and the respondent-Department, after negotiation of the rates. The negotiated rates fixed by the District Transport Committee for lifting the goods within District for the Block of Tohana was at the rate of Rs.22/- per quintal and for the Block Ratia was at the rate of Rs.21.75/- per quintal, within the District, for the year 2017-18. The said District Transport Committee also fixed the rate for lifting/transporting and doorstep delivery of the food grains etc. from outside the District as Rs.56.50/- per quintal for Fatehabad Centre, as Rs.63/- per quintal for Tohana Centre and Rs.62/- per quintal for Ratia Centre.

The respondent-Department, therafter, called the petitioner to their office for further negotiation of the rates, by referring to the letter No.1919 dated 08.06.2017 and letter No.4181 dated 27.11.2017 issued by the office of CONFED, Fatehabad and Panchkula respectively regarding the re-negotiation of the rate as Rs.48/- per quintal for lifting the stocks out of district. The petitioner gave his consent to the rate determined after the negotiation at Rs.48/- per quintal for the stocks to be lifted out of district. The abovesaid consent letter submitted by the petitioner was thereafter forwarded by the District Transport Committee to the Head Office on 10.01.2018 and vide letter No.BUS/1046 dated 13.05.2019, the Managing Director, Haryana State Federation of Consumers' Co-operative Wholesale Stores Ltd. accorded his approval and consent to the abovesaid transportation rates of food grains for the period of 01.04.2017 to 31.03.2018 under TPD Scheme for District Fatehabad.

Learned counsel for the petitioner contends that the petitioner completed the work to the complete satisfaction of the respondent-Authorities and submitted his bills against lifting the stocks from the godowns as identified by them.

The dispute in the present petition is now confined only to the lifting of the stock from the godown situated at Village Sulhera in District Jind.

It is argued that the claim of the petitioner for the abovesaid godown was declined on the ground that the same falls within the MLC limit of FCI, Tohana and as such, the rate of Rs.22/- per quintal, as applicable to the food stocks within the District, would be reimbursable to the petitioner instead of Rs.48/- per quintal. He submits that the abovesaid contention of the respondent-Department is misconceived since the classification done by the respondent-Department in the agreement executed between the parties and the understanding of the contracting parties at the time of entering into the agreement was for lifting of the stocks within and outside the respective districts. Commonly understood, a 'District' has to be a revenue unit as notified by the State Government. The demarcation not being based upon the MLCs of the respective FCI guidelines and the dividing unit being the 'District' for determination of the applicable rate, hence, the identification of a godown and/or the rate applicable for lifting of the stocks had to be carried out as per the said classification of District as understood. He further submits that it was the said understanding which led the respondent-Department to renegotiate the rates and the petitioner agreed to the rate at Rs.48/- per quintal. He contends that had it not been the understanding also of the respondents, there was no occasion for negotiating a rate by the District Transport Committee for lifting of the stocks beyond the District. The petitioner having acted on the said assurance and belief and where the fact remains undisputed as per the report submitted by the Tehsildar and Sarpanch of village Sulhera, Tehsil Narwana, District Jind to the effect that the Village fell in District Jind, the applicable rate has to be paid as per the rate fixed by the District Transport Committee for which approval had been granted by the respondent-Department on 13.05.2019. It is further argued that notwithstanding the agreement between the parties, the same Authority which had granted the approval at the rate of Rs.48/- per quintal has now declined the claim of the petitioner vide the impugned order dated 02.04.2021.

Written statement has been filed on behalf of the contesting respondents No.2 and 3. The learned State Counsel submits that the State has no contesting interest in the matter and thus does not intend to file reply.

Learned counsel for respondents No.2 and 3 reiterates the reasoning given in the impugned order and contends that the FCI godown from where the wheat was lifted is situated at a distance of 8-10 Kms from Tohana but in District Jind, at village Sulhera. The said godown is under the control of

Manager Depot, FCI, Tohana, Fatehabad and Quality Manager Depot, Tohana, Fatehabad. It is thus contended that since the said godown fall within the control of the Manager Depot, FCI, Tohana, hence, the petitioner cannot be granted the rate of transportation at par with '<u>outside the district</u>' since the said godown falls within the control of the Depot of Tohana. A further reliance is placed on Clause 27 (P) of the Rules mentioned in the tender for the year 2017-18 that in the event of any dispute between the contractor and the District Manager, the same shall be referred to the Managing Director, CONFED, whose decision shall be final, conclusive and binding on the parties and would not be called in question.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file as well as the impugned order with their able assistance.

The present case relates only to the extent as to whether the petition is entitled to the payment @ Rs.48/- per quintal by treating the FCI Godown situated at Village Sulhera, Tehsil Narwana, District Jind as "out of District" (for which the negotiated rate is to be paid) or that the same is to be treated as a godown within District Fatehabad being under the control of the Manager Depot, FCI, Tohana.

For the said purposes, the expression used in the agreement executed between the parties after subsequent negotiations becomes essential to be examined. A perusal of the Agreement (Annexure P-1) executed between the parties on 01.04.2017 shows that the said agreement was executed for transportation of food grains under TPD Scheme introduced by the State

Government in District Fatehabad for Tohana Centre. A separate agreement was also executed for Ratia, however, as the terms and conditions are identical, hence, the reference is made to the Agreement executed for Tohana Centre itself. The obligation of the petitioner herein was to carry food grains from the CONFED/Agency Godowns to the doorsteps of the Fair Price Shops in the Sub-Division and the rate negotiated for transportation at the rate of Rs.22/- per quintal was within district of Tohana Sub-Division. The relevant Clause IV thereof read thus:

> *"4. The Party No.1 shall be paid transportation charges @ Rs.22.00 per Qtl. Within District for Tohana Sub Division. All the taxes like TDS, Service Tax, local tax which shall be applicable will be deducted from the bill of the transporter."*

Further, details of the bills pertaining to wheat lifted from Sulhera have been appended as (Annexure P-4), dated 05.12.2017. A District Level Transportation Committee had been constituted on 06.07.2017 comprising of the Sub Divisional Magistrate, Fatehabad, DDPO, Fatehabad, District Manager-CONFED, Fatehabad and District Food & Supplies Controller, Fatehabad. The rates quoted before the said Committee for transportation of food grains from out of the District were at the rate of Rs.56.50/- per quintal for Fatehabad; Rs.63/- per quintal for Tohana and Rs.62/- per quintal for Ratia. The said rates were sent for approval to the Head Office, CONFED and vide letter dated 08.06.2017, the Head Office had written for re-negotiation regarding rates of transportation from out of the District on the ground that the rates as sent by the District Transport Committee were on the higher side. A separate letter bearing No.2280 dated 21.06.2017 had also been written for seeking permission of the

Contractor for transportation at the rate of Rs.48/- per quintal from out of District. The abovesaid rate was eventually accepted by the petitioner and his concurrence in this regard was sent to the Head Office. It is significant to point out here that the aforesaid constitution of the District Level Transport Committee in relation to negotiation and re-negotiation of rates was already in furtherance of the bills submitted by the petitioner for the stock lifted from the FCI Godown in Sulhera, District Jind. The said re-negotiated rates also received approval of the Head Officer. Reference in this regard can also be made to the letter dated 05.12.2017 sent by the petitioner to the Manager Depot of the FCI, Tohana alongwith a report of the Manager FCI/FSD Tohana to the effect that the Tehsildar and Sarpanch of village Sulhera have stated that the said village falls in District Jind. The representation of the petitioner as to whether the FCI godown at Sulhera would fall within the definition of “out of District” from Fatehabad or not was responded to by the respondent- Haryana State Federation of Consumers’ Co-operative Wholesale Stores Ltd. vide reference No.BUS/1212 dated 17.05.2019 wherein, it was conveyed that as per the reports received from the Revenue Officials, the PEG Godowns situated at Sulhera fall within the definition of "out of District from Fatehabad". The relevant extract of the said letter conveyed by the General Manager for Managing Director is extracted as under:

“The Haryana State Federation of Consumers’
Co-operative Wholesale Stores, Limited

Bays No.19-20, Sector2
Panchkula

Ref: No. Bus/1212

District, Food, Civil Supplies and Consumer Affairs Controller-cum-District Manager CONFED
Fatehabad.

Subject - Regarding transportation rates for year 2017-18.

Refer to the subject cited above.

M/s Sanjeev Kumar Hem Raj Transporter Tohana has submitted a representation before this office and the case has been examined.

It is found that the report submitted by Tehsildar Narwana, Sarpanch Sulhera the Godown (PEG) situated at Sulhera thus cames (sic) within the definition of out of district from Fatehabad as reported by revenue authority.

General Manager (B)
For Managing Directror."

It is also worthwhile to notice herein that vide letter dated 13.05.2019, respondent-Managing Director had also conveyed its approval to the rate of Rs.48/- per quintal for out of the district transportation of food grain for the year 2017-18. It is thus evident that the understanding between the parties at the time of execution of a contract was to the effect that for transportation of any food grains out of the revenue district, the rate of Rs.48/- per quintal shall be payable. The classification on the basis of the managerial control over a godown to be the basis for ascertaining the district of that godown was neither intended nor incorporated as an integral term of the agreement executed between the parties.

Consensus *ad idem* being the hallmark of a valid and enforceable contract, the understanding of the contract executed between the parties has to be seen from contemporaneous evidence and the correspondence exchanged. A perusal of the correspondence exchanged between the parties and their understanding clearly shows that the respondent-Authorities themselves treated the FCI Godown situated at Village Sulhera, District Jind to be an "out of district" godown for which the rates as ascertained and approved at the rate of Rs.48/- per quintal would be payable. Having taken such decision and the approval granted after acknowledging that the abovesaid godown is an "out of district" godown, it would not have been appropriate for the respondent-Department i.e. the same Authority to thereafter decline the claim by holding that notwithstanding the decision taken earlier, the petitioner would not be entitled to reimbursement at the approved rates.

Insofar as the objection with regard to the dispute being arbitrable is concerned, the said objection in my opinion is a sham defence taken by the respondent-Department firstly by creating a semblance dispute and secondly by not resorting to an expeditious and appropriate redressal thereof. As per the said clause, the Managing Director is the person who had to act as an Arbitrator. In the present case, the claim of the petitioner has itself been declined by the Managing Director. Thus, the Arbitral Authority, as per the agreement itself having authored the impugned order, the arbitration clause pales into insignificance and would be merely a technical objection. The said objection raised by the respondents No.2 and 3 is accordingly declined.

In the totality of the facts and circumstances noticed above, the present petition deserves to be allowed. Accordingly, the respondents No.2 and 3 are directed to release the invoice value alongwith interest @ 6% per annum from the date of filing of the present petition till its final disbursement. In the event the abovesaid amount is not disbursed within a period of three months of the receipt of certified copy of this order, the petitioner shall be entitled to interest @ 9% per annum.

Petition stands allowed accordingly.

(VINOD S. BHARDWAJ)
15.02.2024. **JUDGE**
rajender

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