



2024:DHC:7976-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **LPA 1023/2024, CM APPL. 60132/2024 & CM APPL. 60133/2024****ANIL KUMAR MAGGU**

.....Appellant

Through: Mr. Jeetender Gupta, Advocate.

versus

FOOD CORPORATION OF INDIA

.....Respondent

Through: Mr. Manoj, Standing Counsel with
Ms. Aparna Sinha, Advocate.

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Date of Decision: 14th October, 2024**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****MANMOHAN, CJ : (ORAL)**

1. Present appeal has been filed challenging the order dated 4th October, 2024 passed by the learned Single Judge in W.P. (C) 13958/2024, whereby the petition filed by the appellant herein was dismissed.

2. Learned counsel for the appellant states that the appellant was awarded the Handling & Transport Contracts ('Contract') for food grains and allied materials at Food Corporation depots/godowns etc. at FSD Shaktinagar for a period of two years that means 20th May, 2023 to 19th May, 2025 against GeM Bid No: GEM/2023/B/3131029 dated 14th February, 2023 *vide* respondent's award letter dated 18th May, 2023.



3. He states that the respondent issued a one month's Termination Notice dated 13th September, 2024 for the termination of contract at FSD Shaktinagar and the termination was to be effective w.e.f. 13th October, 2024 i.e. after thirty days from the date of the notice.

4. He states that the appellant *vide* email dated 18th September, 2024 submitted its response/representation to the termination letter dated 13th September, 2024 and requested for review and recall of the Termination Notice and alternatively to invoke clause "XVIII-Laws Governing the Contract & Dispute Resolution" of Terms and Conditions for dispute resolution by way of referring the issue of premature termination to the Dispute/Grievance Redressal Committee (GRC). However, no reply has been received from the Respondent.

5. He states that the appellant filed the subject writ petition challenging the termination notice dated 13th September, 2024 whereby *vide* the impugned order, the learned Single Judge dismissed the writ petition filed by the Appellant herein.

6. Learned counsel for the appellant submits that Clause VIII(ii) of the Terms and Conditions of the agreement is arbitrary and resorting to said clause without any compelling reason is against natural justice, public policy and public interest. He submits that the Respondent being an instrumentality of the State cannot act arbitrarily, and their actions must conform to the principles of reasonableness, rationality and non-arbitrariness.

7. In support of the submission, he relies upon the recent decision of the Supreme Court in ***Subhodh Kumar Singh Rathour vs. The Chief Executive Officer & Ors. (2024) 7 SCR 532***, wherein it has been held as under:



“127. The sanctity of contracts is a fundamental principle that underpins the stability and predictability of legal and commercial relationships. When public authorities enter into contracts, they create legitimate expectations that the State will honour its obligations. Arbitrary or unreasonable terminations undermine these expectations and erode the trust of private players from the public procurement processes and tenders. Once a contract is entered, there is a legitimate expectation, that the obligations arising from the contract will be honoured and that the rights arising from it will not be arbitrarily divested except for a breach or non-compliance of the terms agreed thereunder.....”

8. Having heard learned counsel for the appellant and having perused the paper book, this Court finds that the letter of award refers to the terms and conditions of the NIT which forms the basis of the contract between the parties. Clause VIII extracted in the impugned termination notice, grants the Respondent the right to terminate the contract with 30 days' notice for administrative reasons without any obligation to furnish reasons. This is the condition that the appellant willingly accepted while entering into the contract.

9. Contracts are built on the foundation of mutual consent, and the Court's role is not to rewrite contracts or invalidate Clauses unless they are shown to be unconscionable, illegal or violative of fundamental rights. The Court cannot strike down a clause merely because it operates unfavourably against one party in hindsight.

10. The judgment of the Supreme Court in **Subodh Kumar Singh Rathour** (supra) has no application to the facts of the present case as it does not deal with the 'termination simpliciter clause'. Moreover, the said judgment only states that there cannot be a termination in breach of the terms agreed upon between the parties. In the present case, the termination of the appellant is in accordance with the term mentioned in the agreement.



11. In fact, the Supreme Court in similar circumstances in ***Indian Oil Corporation vs. Amritsar Gas Service (1991) 1 SCC 533*** has held as under:

“The question now is of the relief which could be granted by the arbitrator on its finding that termination of the distributorship was not validly made under clause 27 of the agreement. No doubt, the notice of termination of distributorship dated March 11, 1983 specified the several acts of the distributor on which the termination was based and there were complaints to that effect made against the distributor which had the effect of prejudicing the reputation of the appellant-Corporation; and such acts would permit exercise of the right of termination of distributorship under clause 27. However, the arbitrator having held that clause 27 was not available to the appellant-Corporation, the question of grant of relief on that finding has to proceed on that basis. In such a situation, the agreement being revokable by either party in accordance with clause 28 by giving 30 days' notice, the only relief which could be granted was the award of compensation for the period of notice, that is, 30 days. The plaintiff-respondent 1 is, therefore, entitled to compensation being the loss of earnings for the notice period of 30 days instead of restoration of the distributorship. The award has, therefore, to be modified accordingly. The compensation for 30 days notice period from March 11, 1983 is to be calculated on the basis of earnings during that period disclosed from the records of the Indian Oil Corporation Ltd.”

12. Consequently, in our view, the learned Single Judge has rightly observed that if the appellant contends that the termination was carried out in an arbitrary manner, the remedy lies in seeking damages in a competent Civil Court rather than invoking the writ jurisdiction of this Court.

13. Moreover, by resorting to writ jurisdiction, the appellant cannot seek a larger relief that it cannot claim in ordinary civil jurisdiction.

14. Accordingly, the present appeal being bereft of merit is dismissed.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

OCTOBER 14, 2024/yrj