



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 6946 OF 2024

(M/s Star Enterprises, Thr. its sole Proprietor Mohammad Salim S/o
Mohammad Kasam

Vs.

The State of Maharashtra, Thr. its Principal Secretary, Department of
Food, Civil Supplies & Consumer Protection & Ors.)

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. A.A. Naik, Senior Advocate a/b Mr. A.S. Manohar, Advocate for the
Petitioner.
Mr. N.R. Patil, AGP for the Respondents/State.

**CORAM: AVINASH G. GHAROTE AND
ABHAY J. MANTRI, JJ.**

DATED : 11th FEBRUARY, 2025

Heard Mr. Naik, learned Senior Counsel for the
Petitioner and Mr. Patil, learned AGP for the
Respondents/State.

2. The Petitioner was awarded a contract for
transportation of food grains under the agreement dated
04.01.2022 (page 69), which duration, according to the
learned Senior Counsel for the Petitioner, stands extended till
05.03.2025. The commercial terms, are contained in clause V
of the aforesaid agreement, which is in consonance with the
Government Resolution (for short “GR”) dated 15.01.2021
(clause 4 page 37).

3. It is contended, that contrary to the commercial terms having been already agreed upon, the Respondent Nos.4 and 5, by exercising clause 4.7 of the GR dated 15.01.2021, has prescribed a formula in its communication dated 02.08.2022 (page 100), which is not in consonance with clause 4.6 of the GR dated 15.01.2021, on account of which, the subsequent GRs dated 10.10.2022, 06.11.2023, 30.11.2023 and 15.10.2024 which fixed the rates for transportation *vis-a-vis* the Petitioner, cannot be sustained.

4. Mr. Patil, learned AGP for the Respondents/State, fairly does not dispute the proposition, that commercial terms agreed in the contract, need to be adhered to and cannot be subsequently changed, unless the contingency for change, is demonstrated to have come into existence.

5. A perusal of clause 4.6 of the GR dated 15.01.2021, indicates that the rates and distances, as contemplated by clause 4, could only be changed in emergency circumstances, where the transportation was required to be done from the different place, if the material for transportation is not available at the base depot and is required to be transported from a different depot to the second stage transportation point. There is no material to indicate, that such a contingency has arisen as there is nothing in this regard, indicated in the impugned communication dated 02.08.2022 (page 100).

6. The reply dated 13.12.2024 by the State, in para 7 does not dispute that clause 4.6 of the GR dated 15.01.2021

would be the governing clause. That being the position, the change in the mode of calculating the amount due and payable, contrary to what is contained in agreement dated 04.01.2022 and contrary to clause 4.6 of the GR dated 15.01.2021 (page 37) would not be permissible, as in a realm of contract, the commercial terms cannot be varied once the agreement has been entered into and acted upon.

7. Clause 4.7 of the GR dated 15.01.2021 merely grants finality to the decision of the State, which could only be exercised, in case the contingency as contemplated by clause 4.6, is demonstrated to have been in existence which is not the situation.

8. We therefore find, that the change in formula, as has been done, by the communication dated 02.08.2022 (page 100), cannot be sustained *vis-a-vis* the present Petitioner in light of clause 4.6 of the GR dated 15.01.2021 and the agreement dated 04.01.2022, as any commercial calculations cannot be contrary thereto.

9. Though the learned AGP for the Respondents/State, relied upon clause 20 of the GR dated 15.01.2021, it is a trite position of law, that a remedy of appeal, cannot be created by a GR. Similarly, though reliance is placed upon clause XIV (page 80) of the agreement, which refers to arbitration, what we find in the instant matter, is the enforcement of the GR dated 15.01.2021 and its clauses, on account of which, the said remedy would not be available to the Petitioner.

10. In view of the above, we hold that the communication dated 02.08.2022 would not be applicable to the Petitioner, as a result of which, the GRs dated 10.10.2022, 06.11.2023, 30.11.2023 and 15.10.2024, would not be binding upon the Petitioner, to the extent they are contrary to clause 4.6 of the GR dated 15.01.2021.

11. The Petition is accordingly **disposed** of in the above terms. No costs.

12. Pending application/s, if any, shall stand disposed of accordingly.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)