
(1999) 09 MP CK 0058

In the Madhya Pradesh High Court

Case No : First Appeal No. 164 of 1997

Gurubachan Singh

APPELLANT

Vs

Food Corporation of India

RESPONDENT

Date of Decision : 20-09-1999

Acts Referred:

Constitution of India, 1950 — Article 299

Citation : AIR 2000 MP 172 : (2000) 1 JLJ 98 : (2000) 2 MPLJ 54

Hon'ble Judges : Usha Shukla, J; D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : Ku. Chandana Mukherjee, for the Appellant; N.S. Kale, S.K. Rao and Greshm Jain, for the Respondent

Final Decision : Dismissed

Judgement

D.M. Dharmadhikari, J.

The judgment in this appeal shall also decide the connected appeal F.A. No. 165 of 1997 between the same parties and in which common questions of law and fact have been raised.

The appellant is a transport contractor and his tender submitted at 296% above the schedule of rates fixed by the respondent Food Corporation of India was accepted for work of transport of the goods of the corporation for the period between 15-5-87 to 14-5-89. In both the suits giving rise to these two appeals, the appellant's claim as transporter is that he has not been paid in full for the work in accordance with the agreed terms and conditions of the contract. In both the appeals the common question arises is about the interpretation of schedule of rates in long route transport work contained in Appendix V of the Tender Document which admittedly regulate the terms and conditions of the contract between the parties. The contractor first filed Civil Suit 14B-88 seeking a decree for the balance amount of his bill in accordance with his interpretation of the applicability of the schedule of rates. Civil Suit 14-B of 88 was filed during the

period of contract and Civil Suit 12B-96 was filed after the termination of the contract for payment of outstanding amounts of his bill. The two suits mentioned above respectively have given rise to F.A. No. 165/97 and F.A. No. 164/97.

Ms. Chandana Mukherjee, learned counsel appearing for the appellant contractor submits that in making payment for the work done of transportation, the respondent Corporation has not correctly applied the rates given in schedule in Appendix-V of the Tender Document. It is argued that on a dispute with regard to payment of his bill having been raised, the concerned Authority sought clarification and opinion from the District Manager of the Corporation. The District Manager vide letter dt. 25-8-97 conveyed the manner in which the rates given in the schedule in Appendix-V have to be applied and in doing so has virtually changed the manner of calculation of charges and on that basis offered payment less than originally agreed under Appendix-V of the tender document.

In order to appreciate the ground urged on behalf of the contractor for claiming higher amount under his bill submitted for the work of transport, it is necessary to reproduce the contents of Appendix V containing schedule of rates for long route transport work.

Schedule of Rates for Long Route Transport Work;

For distance falling in the range of :

Rate Per tonne per K. M.

(a)

1 to 25 K.M.

Rs. 0.30 ps (thirty paise) per K.M. subject to a maximum of 6.50 ps. (Rupees six & paise Fifty only) for distance falling in this slab.

(b)

26 to 50 K.M.

Rs. 0.25 ps. (twenty five paise) per K. M. subject to maximum of Rs. 10.20 (Rupees ten and paise twenty) for distance falling in this slab.

(c)

51 to 100 K.M.

Rs. 0.20 ps. (twenty paise] perK.M. subject to a maximum of Rs. 15.15 (Rupees fifteen and paise fifteen only) for distance falling in this slab.

(d)

101 to 150K.M.

Rs. 0.15 ps. (fifteen paise) per K. M. subject to a maximum of Rs. 18.20 (Rupees eighteen and paise twenty only) for distance falling in this slab.

(e)

151 to 200 K.M.

Rs. 0.12 ps. (twelve paise) per K.M. subject to a maximum of Rs. 20.10 (Rupees twenty and paise ten only) for distance falling in this slab.

(f)

201 and above

10 (ten paise) per K.M."

(underlining for inviting pointed attention and for emphasis)

On the basis of the above mentioned schedule of rates provided for range of distance mentioned in each column (a) to (f), rate per kilometer has been mentioned with maximum amount payable for each range.

Shri N. S. Kale, learned Sr. counsel appearing for F.C.I. while explaining the method of calculation of the bill submitted by a transport contractor, for payment in accordance with schedule submits that the different slabs according to the range of distance covered in each case would apply for the distance mentioned in each slab. If the distance covered is more than 201 K. M. only the rate mentioned in column (f) would apply and rate mentioned in earlier columns for distances mentioned therein cannot be made applicable. According to the Corporation the heading of the Appendix V containing the title is a clear indication to the transport contractor that the applicability or rate would depend upon the total distance covered. For the distance over 201 Kms covered all the Slabs from (a) to (f) cannot be made applicable.

On the other hand Ms. Chandana Mukherjee, learned counsel appearing for the Transport submits that the schedule of rates contained in Appendix-V has clearly made a representation to the intending tenderers that for the total distance covered for the ranges mentioned in column (a) to (e), the transporter would be paid at the rate mentioned in each of the column for the specified ranges, thus paying the contractor for the distance covered upto 200 kms. in accordance with the rates mentioned in columns (a) to (e). For the additional distance covered, the contractor would be paid at flat rate at 10 p.s. per kilometer as mentioned in column (f).

On behalf of the contractor it is submitted that the District Manager on clarification sought from the lower authorities explained the applicability of the slab or schedule of rates by indicating the method of preparation of his bill in his letter dt. 25-8-1997 as under :--

"For your ready reference the rate slab applicable is given below :--

1 to 25 K.Ms.

Rs. 0.30 ps. (thirty) per K.M. subject to a maximum of" 6. 50 Rs. (Rupees Six

and Raise Fifty only) for distance in this slab.

1 to 26 upto 50 Kms.

Rs. 0.25 ps. (twenty paise per K.M. subject to maximum of Rs. 10.20 (rupees ten and paise twenty) for distance falling in this slab.

1 to 51 upto 100 Kms.

Rs. 0.20 ps. (twenty paise) per K.M. subject to maximum of Rs. 15.15 (rupees fifteen and paise fifteen only) for distance falling in this slab.

1 to 101 upto 150 Kms.

Rs. 0.15 (fifteen paise) per K.M. subject to a maximum of Rs. 18.20 (rupees eighteen and paise twenty only for distance

falling in this slab.

1 to 151 upto 200 Kms.

Rs. 0.12 ps. (twenty paise) per K.M. subject to a maximum of Rs. 20.10 (rupees twenty & paise ten only) for distance falling in this slab.

1 to 201 and above

10 (ten paise) per K,M."

The contention advanced on behalf of the contractor is that the District Manager by explaining the applicability of different slabs in the schedule of rates in the manner shown above has materially varied the terms of the contract contained in the tender document. On behalf of the contractor a very strong reliance is placed on decision of learned Single Judge of this Court in F.A. 163/87 (Bhartiya Khadya Nigam and Ors. v. Gurumukh Singh) decided on 17-7-1998 in support of the claim for payment of bills of the contractor in accordance with the method shown on behalf of the Contractor. The learned Trial Judge by the very considered Judgment rejected the method of calculation suggested on behalf of the contractor and dismissed his claim for extra payment on that basis.

We have bestowed very careful consideration to the rival submissions made by the contending parties on the dispute of method of calculation of bill of the transporter in accordance with the schedule of rates.

The most vital feature of the schedule under consideration contained in Appendix V which is worth noticing is that in each slab or range of distance in columns (a) to (f) there is not only a different rate prescribed in descending order per kilometer-per tonne but for each slab of range there is a maximum payable amount prescribed. Learned counsel on behalf of the Corporation appears to be right in submitting that if the method of calculation suggested by the contractor is accepted that for the total distance covered all the slabs or ranges could be applied than the maximum prescribed for each slab would become redundant.

Learned counsel for the contractor in reply submits that no doubt each slab for a particular range of distance provides a rate and also a maximum rate payable for each range but according to her the Contractor has prepared the bill giving due effect to the maximum amount prescribed in each range of distance in slabs (a) to (e).

We find great force in the submission made on behalf of the Corporation that the method suggested and adopted by the contractor in preparing his bill by applying all the slabs to the distance covered by him which is more than 200 kms. does not give effect to the maximum prescribed rate for each of the ranges in each slab. The contractor in applying all the slabs for the ranges prescribed has in fact adopted a method of calculation whereby the maximum prescribed amount for each slab or range becomes meaningless.

In applying the rates given in the schedule in Appendix V the under-mentioned heading to the distances and the rates i.e. 1) For distance falling in the range of -- per tonne per K.M. :--

provides a clear indication that the different slabs or ranges have to be applied for the distance covered and falling in the particular range mentioned in columns (a) to (e). If the distance covered is more than 201 K.Ms. not falling within the ranges mentioned in columns (a) to (e) flat rate mentioned in column (f) alone would apply. Any other interpretation given to the schedule in Appendix V would render the different columns and ranges with the rate and maximum amount payable for each range would be rendered meaningless. An example will make the position clear. Suppose a transporter has covered a distance of 200 Kms. falling in the above range in column (f) then according to the transporter he should be paid as under:--

(a)

1 to 25 kms

Rs 650 as maximum prescribed

(b)

20 to 50 kms

Rs 1020 maximum prescribed

(c)

51 to 100 kms

Rs 1515 maximum prescribed

(d)

101 to 150 kms

Rs 1820 maximum prescribed

(e)

151 to 200 kms

Rs 2010 maximum prescribed

Total

Rs 70.15

Thus as shown above for distance of 200 kms. covered by him he would be entitled as claimed by him, to a total sum of Rs. 70.15 thereby the maximum prescribed amount of Rs. 20.10 for the range 151 to 200 Kms. in column (e) would be rendered meaningless.

The above example we have given to demonstrate that the calculation by application of schedule of rates as made by the contractor renders maximum prescribed in each slab redundant or meaningless.

The District Manager by his letter has not in any manner made any variation in the terms of the contract but has merely tried to explain the, correct method of application of the schedule of rates prescribed in Appendix V.

The decision of the learned Single Judge rendered in F.A. 163/87 decided on 17-7-1991 arising from contract of a transporter from Satna region is distinguishable from the discussion found therein and the terms and conditions of the contract to the contractor carrying on business in name and style Sharda Transport Agency. Along with the memo of appeal the present contractor has filed a copy of the contract granted in form of a letter dt. 7-7-1981 to Sharda Transport Agency. The rates prescribed for transport work in Satna Region contained only slabs based on distance covered per K.M. per tonne but for each slab or distance there was no maximum prescribed. Since in the contract awarded to the transport contractor in Satna region for the rates prescribed for each slabs or ranges there was no maximum prescribed for each range, the judgment rendered on that basis by the learned Single Judge is clearly distinguishable on the express terms and conditions of that contract.

In our considered opinion, therefore, the Trial Judge was perfectly justified in not accepting the method of calculation suggested by the contractor for claiming higher amount for the transport work in the two suits.

In the course of argument the learned counsel made a feeble attempt to question recovery of an amount sought to be made from the contractor towards the loss of food grains in transport beyond the permissible limit.

Learned counsel for the corporation points out that the alleged recovery towards losses of food grains in transport beyond the permissible limit have not been questioned in the memorandum of appeal. The above ground is being urged for the first time in the course of argument. Without laying any foundation for the same in the memorandum of appeal on Court fees the challenge to the said

recovery towards alleged excess losses of food grains in transport cannot be permitted to be made.

Consequent to the discussion aforesaid, we find no merit in both the appeals. They are accordingly dismissed but in the circumstances, we direct that the parties shall bear their own costs.