
(2012) 09 DEL CK 0114

In the Delhi High Court

Case No : Regular First Appeal (OS) 11 of 2009

Prem Nath Motors Ltd

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 04-09-2012

Acts Referred:

Citation : (2012) 09 DEL CK 0114

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : A.B. Dial, Instructed By Ms. Ananya Datta Majumdar, for the Appellant;

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Pithily stated, the factual matrix leading to filing of the above captioned appeal is that on July 11, 1963 a contract was concluded between the appellant and the respondent when the appellant's offer as per Notice Inviting Tender was accepted by the respondent. As per the contract, the appellant was required to supply vehicles to the respondent at Alwar on hire basis for the purposes of training of military personnel for the period July 15, 1963 to March 31, 1964. It would be relevant to note the following Special Conditions of the Contract concluded between the parties:

SPECIAL CONDITIONS

4. The contractor shall provide the number and type of vehicles specified in the schedule at Appendix "A" attached, at 24 hours notice at the time and place given in the order issued in writing by the Officer operating the contract or his representative.

5. The contractor agrees that the Officer operating the contract or his representative may either increase or decrease the number of vehicles specified in the Appendix "A" subject to a minimum notice of 48 hours being given to the contractor. Such increase or decrease may be effected on any one day or days of

the month or during the entire month as the case may be. The increase/decrease shall not however exceed 10 per cent of the number specified against any one month and/or any one type of vehicle. If a decrease or increase of more than 10 per cent is, however desired by the officer operating the contract or his representative he shall give minimum of 30 days notice thereof in writing to the contractor.

6. When a particular number of vehicles are to be supplied by the contractor, it will not be open to the contractor to supply a lesser number of vehicles and stipulated that the vehicles supplied may be used for more than the normal employment of 8 hours a day specified in clause 10 of these special conditions, to make up the deficit in the number of vehicles supplied.

7. The contractor agrees that he shall not claim any compensation whatsoever or increase in the rates quoted by him and accepted by the Government, due to increase/decrease of vehicles as specified in special condition above.

8. The transport supplied/accepted should be of a type

included in Appendix "A" and the Schedule. If the contractor supplies transport of a type or capacity other than that which is ordered and such transport is accepted by the Officer operating the contract or his representative payment shall be made to the contractor for the actual transport supplied or for the transport which was ordered, whichever is less. Any transport supplied in excess of that ordered in writing by the officer operating the contract shall be at contractor's risk and expense. The contractor shall not be entitled to payment for more than the actual number of vehicles indented and supplied. Any dispute in regard to the vehicles supplied shall be decided by the officer operating the contract or his representative and his decision shall be final.

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10. Vehicles will normally be employed for a period of 8 hours during day or night or partly during day or night, as and when required. The period of 8 hours will be reckoned out of a day commencing from 6 AM to one day to 6 AM the following day. The time will be reckoned from the time the vehicle is handed over to the officer operating the contractor or his representative to that of returning the vehicle to the contractor, on termination of duty every day except in the case of vehicles rendered non-runners or defective the period would be reckoned upto the time they become defective/non-runners.

11. The contractor shall not object to his vehicles being employed beyond the period of 8 hours either during day or night or partly during day and night, as and when required. On such occasions payment will be made to the contractor on a pro-rata basis but at the same rates as admissible against normal period of hire of 8 hours.

xxxx

20. The contractor agrees that the number of vehicles as demanded from time to time will be garaged in the lines of ASC Centre, ALWAR from the time and date they are first made available. He shall not remove the vehicles except with the permission in writing of the officer operating the contract or his representative when they have to be replaced/repared/removed being surplus to requirements on termination of the contract. He agrees to carry out maintenance of vehicles in unit lines at his own cost.

xxxx

30. The contractor shall provide an adequate number of permanent licensed drivers at his expenses subject to a minimum of one for every five vehicles supplied, who are in sound health. The drivers will be required to report for duty at the unit lines. The drivers should be in possession of a valid permanent licence. Adequate number of watchmen and/or other representatives will be provided by the contractor. The contractor agrees that the representatives so provided will be responsible for the vehicles/all accessories/fittings thereto. The contractor will only employ such drivers and cleaners and other representatives who are liable and of respectable behavior.

xxxx

39. Government will not be responsible for making any payment to the driver or for arranging for their conveyance to and from residence or from their board and lodging. However when vehicles are on long training drives which necessitate absence from the unit lines for more than 8 hours, on request, food may be provided to the drivers by the Government for which a sum of Rupees One per main meal per driver will be recovered from the contractor."

(Emphasis Supplied)

2. It would also be relevant to note Appendix "A" annexed to the Special Conditions of Contract between the parties. It reads as under:-

Date/Month

Type of Vehicle

Horse Power

Approximate number required daily Minimum Maximum

15 to 31 July 1963

Cars

8 to 25 horse power

Trucks Lorries

Above 15 horse power

250 400

1 to 31 Aug 1963

Cars Trucks Lorries

8 to 25 horse power Above 15 horse power

300 400

1 to 30 Sep 1963

Cars Trucks Lorries

8 to 25 horse power Above 15 horse power

300 400

1 to 31 Oct 1963

Cars Trucks Lorries

8 to 25 horse power Above 15 horse power

300 400

1 to 31 Dec. 1963

Cars Trucks Lorries

8 to 25 horse power Above 15 horse power

300 400

Note:

1. Within the laid down minimum/maximum requirement of transport the contractor can be called upon to supply any number of vehicles by the contractor operating the officer.

2. The demand so placed will be 20% Cars, 30% Trucks (upto 1 Ton) and 50% lorries 3 Ton and above of the number demanded".

(Emphasis Supplied)

3. On November 21, 1963 a supplementary agreement was entered between the parties, the relevant portion whereof reads as under:

1. It is hereby agreed between the parties that Appendix "A" to the Contract No. 4606/1/ALWAR/63-64/ST3 dated 11th July 1963 between the Government and the contractor for the supply of hired transport vehicles (Mechanical Transport) at ALWAR be substituted by the Appendix "A" to this supplementary agreement indicating the revised approximate requirements of vehicles for the remaining period of the contract i.e. from 1st December 1963 to 31st March 1964.

2. It is further agreed that from 1st December 1963 to 31st March 1964 demand

and acceptance of vehicles will be regulated in accordance with the numbers indicated in Appendix "A" forming part of this supplementary agreement. If so required by the Government the contractor shall however be bound to provide the number and type of vehicles specified in the schedule at Appendix "A" on Sundays and gazette holidays also at 24 hours? notice as provided in clause 4 of special conditions. Provided further that if the Government require any lesser or larger number of vehicles of the types specified in the schedule at Appendix "A" on Sundays and gazetted holidays then the contractor shall provide the same on 48 hours? or 30 days? notice as the case may be as provided in clause 5 of the special conditions. Save as aforesaid all other conditions of the original contract will remain operative."

(Emphasis Supplied)

4. A dispute arose between the parties regarding payment of the bills raised By the Appellant.

5. The appellant had raised the bills for payment of hire charges for a raised by the appellant. few Sundays and holidays between the period July 15, 1963 to November 30, 1963, when neither any vehicle was demanded by the respondent nor supplied by the appellant, which bills were raised on the basis of vehicles demanded by the respondent a day preceding the said days i.e. Sundays and holidays. The respondent refused to make payment of said bills on the ground that no vehicles were demanded by the respondent nor were any supplied by the appellant on said days. Deducting the amount claimed under the said bills and admitting what was payable qua the rest, payments were released.

6. In addition to the above, the appellant had raised bills for vehicles which had admittedly been taken outside Alwar, as part of a convoy, and these bills covered the entire period when the vehicles were handed over to the respondent till the same were returned to the appellant i.e. the period during which the vehicles remained in the custody of the respondent. The respondent refused to make payment of said bills on the ground that as per the contract the respondent is required to make payment of hire charges for the period the vehicles were "used" by it and not for the period the vehicle remained in its custody.

7. When the parties failed to break the deadlock with respect to payment of the aforesaid bills, the appellant filed a suit on the original side of this Court seeking payment of the aforesaid bills.

8. In the plaint, the appellant contended that Appendix "A" to the Special Conditions of Contract read with clause 20 of the contract required it to supply certain number of vehicles "daily" to the respondent. It was highlighted by the appellant that notwithstanding the non-demand or the number of vehicles demanded by the respondent on a given day the appellant was required to have at its disposal certain number of vehicles for supplying the same to the respondent in terms of Appendix "A" to the Special Conditions of Contract and clause 20 of the contract. It was pleaded that in order to fulfill its obligation

under the contract the appellant used to hire vehicles from various quarters. The appellant claimed that the action of the respondent of not demanding any vehicles on some Sundays and holidays resulted in huge losses to the appellant which had spent considerable sum of money in arranging certain number of vehicles for supplying the same to the respondent and in that view of the matter the respondent is obliged to make payment of the bills raised by the appellant in respect of said Sundays and holidays.

9. In the written statement filed, the respondent denied the claim(s) made by the appellant in its plaint.

10. We need not note the testimonies of the witnesses examined by the parties for nothing turns thereon inasmuch as the present case relates to interpretation of the contract between the parties.

11. From the afore-noted factual matrix, it is apparent that 2 questions had arisen for determination in the suit: viz. (a) Whether the appellant is entitled to claim hire charges for Sundays and holidays when neither any vehicles were demanded by the respondent nor were supplied by the appellant; and (b) Whether the bills in respect of the vehicles which had gone in the areas outside Alwar as part of a convoy had to be raised for the period the vehicles remained in the custody of the respondent or for the period the vehicles were used by the respondent.

12. Vide impugned judgment and decree dated June 28, 2008, the learned Single Judge has dismissed the suit filed by the appellant. With respect to question (a) noted above, it has been held that the appellant is not entitled to claim hire charges for Sundays and holidays when neither any vehicles were demanded by the respondent nor were supplied by the appellant for the reasons:-(i) the appellant failed to show any clause in the contract between the parties which stipulated that even when no vehicle was demanded by the respondent on Sunday or holiday or any other day the respondent would be required to make payment of hire charges to the appellant in respect of said days; (ii) the appellant has not placed on record any evidence to show as to how it has raised the bills for Sundays and holidays on the basis of vehicles demanded by the respondent on a day prior to said days; (iii) the fact that none of the bills placed on record by the appellant are based on the minimum number of vehicles prescribed in appendix "A" but on the basis of number of vehicles demanded by the respondent on a given day is a clear pointer to the fact that the appellant was well aware of the fact that although it was required to keep ready the prescribed minimum number of vehicles at all times during the contract period, the payment of hire charges for a given day was to be determined on the basis of number of vehicles demanded by the respondent on said day; and (iv) the opening portions of the tender document implies that while it was onerous upon the appellant to keep ready the prescribed minimum number of vehicles at all times during the contract period, the payment of hire charges for a given day was to be determined on the basis of number of vehicles demanded by the

respondent on said day.

13. With respect to question (b) noted above, it has been held that:-(i) a reading of clause 11 of the Special Conditions of the Contract show that it is not the deployment of the vehicles supplied by the appellant outside Alwar, but the actual use thereof for more than 8 hours when taken on a convoy which is determinative of payment of hire charges to be made to the appellant; (ii) the appellant has not adduced any evidence to show as to how many number of hours the vehicles were actually used when they were taken on convoy; and (iii) in any case, the appellant is not entitled to receive any payment from the respondent for it had breached the contract between the parties by not providing drivers to the respondent as required under clause 30 of the Special Conditions of the Contract between the parties.

14. Aggrieved by the impugned judgment and decree dated June 28, 2009 the appellant has filed the above captioned appeal contending therein that the interpretation afforded by the learned Single Judge to the contract between the parties is faulty.

In Re: Question (a): Whether the appellant is entitled to claim hire charges for Sundays and holidays when neither any vehicles were demanded by the respondent nor were supplied by the appellant?

15. In order to answer aforesaid question, we need to carefully read the Special Conditions of the Contract and Appendix "A" attached to the Special Conditions of the Contract.

16. Note 1 to Appendix "A" to the Special Conditions of Contract prescribes that the respondent can demand any number of vehicles from the respondent within the range of minimum and maximum requirement of vehicles laid down in the Appendix for a given day.

17. Going further, we find clause 4 of the Special Conditions of the Contract which prescribes that the appellant would be required to supply the number of vehicles demanded by the respondent within a period of 24 hours of raising of said demand when the number of vehicles demanded by the respondent is within the range of minimum and maximum requirement of vehicles laid down in Appendix "A" for a given day.

18. Clause 5 prescribes that the demand of the respondent has to be within the range of minimum and maximum requirement of vehicles stipulated in Appendix "A" for a given day by giving a prior notice of minimum 48 hours to the appellant. Clause 7 prescribes that no compensation can be claimed by the appellant due to increase or decrease of range of minimum and maximum requirement of vehicles under clause 5.

19. We now come to the meat of the matter.

20. Clause 6 prescribes that when a particular number of vehicles are demanded

by the respondent for a given day, it would not be open for the appellant to supply lesser number of vehicles than the number demanded by the respondent. Reading clause 6 in conjunction with clause 4, the position which emerges is that when the number of vehicles demanded by the respondent is within the range of minimum and maximum requirement of vehicles prescribed in Appendix "A" for a given day, the appellant has to supply the demanded number of vehicles within a period of 24 hours of raising of the demand. However where the number of vehicles demanded by the respondent is outside the range of minimum and maximum requirement of vehicles specified in Appendix "A" for a given day a longer notice, than the period of 24 hours, is required to be given to the appellant for supply of said number of vehicles.

21. There is nothing in the contract which prohibits the respondent from demanding such number of vehicles from the appellant which is below the range of minimum and above the maximum requirement of vehicles laid down in Appendix "A" for a given day.

22. The question is: What happens when the respondent demands such number of vehicles from the appellant which is below the range of minimum and above the maximum requirement of vehicles stipulated in Appendix "A" for a given day. According to us, the question is squarely answered by clause 8 of the contract which prescribes that "the contractor shall not be entitled to payment for more than the actual number of vehicles indented and supplied."

23. In view of the clear wording of clause 8 of the contract that the contractor shall not be entitled to payment for more than actual number of vehicles indented and supplied and absence of any clause in the contract which prescribes that the respondent would be liable to make payment of hire charges to the appellant even for the days when no vehicle was demanded by the respondent or supplied by the appellant, the appellant cannot be held entitled for payment of hire charges for the days when no vehicle was demanded by the respondent or supplied by the appellant.

24. The matter can also be looked at from another angle.

25. As already noted hereinabove, the appellant had raised bills of hire charge for some Sundays and holidays for the period between July 15, 1963 to November 30, 1963. On November 21, 1963 a supplementary agreement was entered between the parties which prescribed that "the contractor shall be bound to provide the number and type of vehicles specified in the schedule at Appendix "A" on Sundays and gazetted holidays also at 24 hours" notice as provided in clause 4 of special conditions."

26. The very fact that the stipulation regarding the obligation of the appellant to supply vehicles on Sundays and gazetted holidays was included in the supplementary agreement dated November 21, 1963 entered between the parties makes it clear that the appellant was not obliged to supply vehicles to the respondent on Sundays and gazetted holidays under the original agreement

entered between the parties and thus there is no question of making payment of hire charges to the appellant for Sundays and holidays prior to the date of execution of supplementary agreement between the parties when no vehicles were demanded by the respondent and supplied by the appellant.

27. Looked at from any angle, the appellant is not entitled for the payment of hire charges for Sundays and holidays when no vehicles were demanded by the respondent and supplied by the appellant.

In Re: Question (b): Whether the bills in respect of the vehicles which had gone in the areas outside Alwar as part of a convoy had to be raised for the period the vehicles remained in the custody of the respondent or for the period the vehicles were used by the respondent.

28. The answer to the aforesaid question lies squarely in the clauses 10 and 11 of the Special Conditions of the Contract between the parties, which are again being reproduced herein under:

10. Vehicles will normally be employed for a period of 8 hours during day or night or partly during day or night, as and when required. The period of 8 hours will be reckoned out of a day commencing from 6 AM to one day to 6 AM the following day. The time will be reckoned from the time the vehicle is handed over to the officer operating the contractor or his representative to that of returning the vehicle to the contractor, on termination of duty every day except in the case of vehicles rendered non-runners or defective the period would be reckoned upto the time they becomes defective/non-runners.

11. The contractor shall not object to his vehicles being employed beyond the period of 8 hours either during day or night or partly during day and night, as and when required. On such occasions payment will be made to the contractor on a pro-rata basis but at the same rates as admissible against normal period of hire of 8 hours."

29. Clauses 10 and 11 of the Special Conditions of Contract makes it clear that the contract envisages that the custody of the vehicles was to be entrusted to the respondent for a period of 24 hours; the vehicles were to be normally employed/used by the respondent for a period of 8 hours and in case the vehicles were employed/used for more than a period of 8 hours the payment was to be made to the appellant on a pro-rata basis for said period. A conjunctive reading of clauses 10 and 11 of the Special Conditions of Contract leaves no room for doubt that the payment of hire charges was to be made to the appellant for the period the vehicles were used by the respondent and not for the period the vehicles remained in the custody of the respondent.

30. Presumably the intention appears to be that since the vehicles were to be used for training of drivers and a normal duty shift is 8 hours, with half-an-hour rest in between, notwithstanding the vehicle being with the respondent for a day i.e. 24 hours, the use of the vehicle, to train a driver when the convoys move out

of Alwar, was only for a duration of 8 hours. But if this duration of use exceeded 8 hours, pro-rata payment for the excess hours for which the vehicle was used had to be made.

31. In view of the above discussion, we find no infirmity with the conclusion(s) arrived at by the learned Single Judge. The impugned judgment and decree dated June 28, 2008 passed by the learned Single Judge is affirmed and the present appeal is accordingly dismissed. No costs.