

(2008) 06 DEL CK 0003
In the Delhi High Court
Case No : CS (OS) No. 149 of 1971

Prem Nath Motors Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 28-06-2008

Acts Referred:

Arbitration Act, 1940 — Section 37(3), 37(5)
Civil Procedure Code, 1908 (CPC) — Section 80
Evidence Act, 1872 — Section 92

Citation : (2008) 4 BC 311 : (2008) 155 DLT 341

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

**Advocate : A.B. Dial, Rajiv Nanda and Manish Chandra, for the Appellant;
Monika Garg, for the Respondent**

Judgement

G.S. Sistani, J.—The plaintiff has filed the present suit for recovery of Rs. 22,62,713.30.

2. The facts of the case are that on 11.7.1963 plaintiff and defendant entered into a contract bearing No. 4606/1/Alwar/63-64/ST3 at Delhi for supply by the plaintiff of vehicles to the defendants for training military personnel at Alwar from 15.7.1963 to 31.3.1964. The contract specified the type and minimum and maximum number of various types of vehicles to be supplied. In terms of the contract the plaintiff was to deposit a security deposit, which plaintiff deposited in the form of a Fixed Deposit Receipt of amount of Rs. 1,39,700/- in the name of the defendant, As per the plaintiff the special conditions stated the rate of hire charges of various types of vehicles for "duty for eight hours in a day or night or partly by day or night". The plaintiff relies on para 5 and 6 of the plaint, which is reproduced as under:

5. In Appendices A and C to the special conditions in the said contract the rates to be paid to the plaintiff for various types of vehicles for duty for 8 hours in a day or night or partly by day and night was specified and also the proportion in

which various types of vehicles could be demanded at any particular time as follows-

-----		Type of Vehicle
Rate for duty	Proportion in for 8 hours in which various a day or night types of vehicles or partly by could be day and night. demanded.	
-----		Cars Rs. 44/- 20%
Trucks up to one ton		Rs. 65/- 30%
Lorries	(3 tons and Rs. 78/-	50% above)

6. Amongst the other terms and conditions of the said contract material to the present disputes are Clauses 10, 11 and 14 of the special conditions in the said contract and the note on Appendix C thereof which are set out hereunder-

10. Vehicles will normally be employed for a period of 8 hours during day or at night or partly during day and night, as and when required. The period of 8 hours will be reckoned out of a day commencing from 6 a.m. of one day to 6 a.m. the following day. The time will be reckoned from the time the vehicle is handed over to the officer operating the contract 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.

14. Vehicles employed during the night will be paid for at the same rates as for the day.

Note:

Employment of each type of vehicle in excess of 8 hours in a day or night or partly by day and partly by night, is to be paid for at 1/8th of the above quoted rate for each hour in excess.

I/We agree to supply transport at the above, quoted rates.

3. After entering into the contract the plaintiff immediately arranged for sufficient numbers of different types of vehicles at Alwar for hiring to the defendant. Soon after commencement of the contract it was realized by the plaintiff that the vehicles being taken on hire by the defendant were much less than the stipulated minimum number as specified in Appendix A to the special conditions. plaintiff was also aggrieved by the fact that the defendant did not hire any vehicles on some Sundays and holidays, whereas the contract did not make any exception

for Sundays and holidays. On the contrary it was expressly stated in Appendix C that the minimum number of vehicles was for hiring "daily". The contract period was stipulated from 15.7.1963 to 31.3.1994. As per the plaintiff, on many Sundays and holidays the defendant hired the vehicles. The result was that plaintiff was forced to maintain a fleet of minimum number of vehicles of the requisite types at Alwar. whereas the defendant was utilizing a far lesser number of vehicles, giving rise to huge losses to the plaintiff, as such a large number vehicles could not be arranged without making payment of sufficient consideration to the owners of the vehicles. Moreover, large number of drivers were required to be stationed so as to commensurate with the number of vehicles.

4. The plaintiff protested against the underutilization of the vehicles. plaintiff wrote letters Ex. P-1 dated 18.7.1963. By Ex. P-5 dated 2.8.1963 the defendant acknowledged the plaintiffs letter of 29.7.1963 and stated that necessary action was being taken and that the plaintiff should expect further communication on the subject. plaintiff again reiterated its demand vide Ex. P-6.dated 3.8.1963, Finally by letter dated 31.8.1963 Ex. P-8 the defendant gave notice under Clause 5 of the contract reducing the number of vehicles for the month of October, 1963 to half the vehicles originally stipulated. By Ex. P-9 dated 6.9.1963 the defendant stated that points raised by the plaintiff in letter 29.7.1963 had been fully investigated. The defendant rejected all the points by stating that adequate notice was given to the plaintiff as per the contract for reducing/not utilizing the vehicles, whereas according to the plaintiff, except for notice dated 31.8.1963 (Ex. P-8), no such notice was given.

5. On the basis of pleadings of the parties the following issues were framed:

- (1) Whether plaint has been signed, verified and instituted by a duly authorized person?
- (2) Whether the suit, has been instituted within time?
- (3) Whether the contract between the parties upto 30th November, 1963; covered Sundays and holidays also, and if so, are the plaintiffs entitled to compensation on account of vehicles kept in readiness and available on such Sundays and holidays?
- (4) If the plaintiffs are entitled to any amount under the preceding issue, is the amount stated in para 15 of the plaint, that amount of what other amount is due?
- (5) Whether the plaintiffs are entitled to receive any payment in respect of vehicles taken for long convoys out of Alwar for more than 8 hours and, if so, at what rate?
- (6) Whether the plaintiffs are estopped from claiming the amounts claimed in respect of Sundays and holidays and for a period of more than 8 hours on the grounds mentioned in the written statement?

(7) Whether the plaintiffs are entitled to be refunded of all the securities held by the defendant?

(8) Are the defendants estopped from disputing the claim of the plaintiff?

(9) Are the plaintiffs entitled to any interest on the amount claimed, and so, at what rate?

6. In the present case, no evidence was led by the defendant. The plaintiff has filed affidavits by way of evidence of three witnesses, namely, R.S. Aggarwal (PW1), Surinder Nath (PW-2) and S.R. Jaggi (PW-3). The witnesses were cross-examined by the defendant. It will be useful to delve upon the evidence of witnesses in the paragraphs infra.

7. PW-1, Sh. Radhey Shyam, was the Assistant Secretary of the plaintiff. He proved the Certificate of Incorporation of the plaintiff company (Exhibit PW-1/1) as well as the copy of the Articles of Association (Exhibit PW-1/2). This witness also proved the Resolutions dated 11.1.1960 and 27.3.1966 (Exhibit PW-1/3).

8. PW-2, Sh. Surinder Nath, was the Joint Managing Director of the plaintiff company. He has signed the plaint. As per his evidence, the contract was made between the parties on 15.7.1963 for a period of nine months. plaintiff was to supply vehicles to the defendant for imparting training to army personnel. The vehicles were to be supplied at Alwar. According to this witness, the contract provided for the maximum and minimum quantity of vehicles to be supplied by the plaintiff. In his testimony, he has stated that the defendant used to give the indent in the morning and thereafter plaintiff supplied them the requisite number of vehicles. After training the defendant used to return the vehicles in the evening and a receipt was obtained by the defendant. Normally, the defendant used vehicles for 8 hours and for any period beyond 8 hours, defendant used to pay on pro rata basis. This was the normal procedure, which was being followed. This witness has also deposed that initially the agreement did not contain any Clause that the vehicles will not be used on holidays and Sundays. Even on holidays and Sundays, the plaintiff used to maintain the maximum and minimum number of vehicles. However, the defendant did not pay for holidays and Sundays. This witness has further deposed that the parties thereafter entered into a supplementary agreement. He has also testified that various letters were written to the defendant claiming payment for holidays and Sundays and bills were submitted for this purpose. He has also deposed that the defendant started using these vehicles for convoys for 24 hours and the vehicles would not come back for 15-20 days or even sometimes after one month. During this period, the vehicles remained in the custody of the defendant. The Commandant has stated to him that he was authorized to make payments only for 8 hours and suggested that two separate bills be prepared one for 8 hours and the other for remaining hours so that payment for use of vehicle upto 8 hours is made on time. The defendant made the payment of bills for eight hours but supplementary bills for 16 hours were not paid. According to this witness, the vehicles were supplied for

imparting training to army personnel for which they used to be sent outside by the defendant for training during night hours as well as hill training and, thus, the vehicles were used for 24 hours. This witness was cross-examined at length. During cross-examination, he did not deny the suggestion that in September, 1963, the plaintiff made a complaint to the defendant to the effect that defendants were commissioning lesser number of vehicles than expected. The plaintiff also wanted rescheduling of the demand to make it more viable and in view of this background a supplementary agreement was entered into between the parties. This witness also denied the suggestions that the supplementary bills were made after 30.11.1963. He also denied the suggestion that the representatives of the plaintiff used to accompany the convoys. It was stated that the vehicles were used in the parade ground at Alwar and the vehicles remained parked at the same place. This witness admitted as correct the suggestion that the plaintiff was not maintaining any log register to record the time when the vehicle was given to the defendant and when the vehicles used to be returned back. The plaintiff maintained a staff of 8-10 persons in the Alwar Office. The witness also denied the suggestion that the plaintiff had deputed an employee of the company to accompany the defendant's convoy, whenever the vehicles were supplied by the plaintiff, were taken outside the limits of Alwar. He also denied the suggestion that the plaintiff required to keep one driver for each five vehicles which were made available at Alwar.

9. PW-3, Sh. S.R. Jaggi, was stated to be working with the plaintiff company and was posted at Alwar office in connection with the transport contract with the defendant. According to this witness, the contract was of the supply of different vehicles to military at Alwar. The plaintiff company was supposed to provide 300-400 vehicles daily to the defendant on hire, as per contract. There were different fleet owners from whom the plaintiff arranged the vehicles for providing them to the defendant. The defendant had provided the plaintiff the ground in Alwar where the plaintiff used to park these vehicles there. The plaintiff used to receive indent from the defendant one day in advance and based on the requirements contained in that indent, the vehicles used to be delivered to the defendant by their Supervisor. The army officials used to take the vehicles from the ground where the vehicles were parked and brought them back to the same place. As per this witness, for Sundays sometimes the defendant would indent and sometimes they would not. Although for few Sundays, vehicles were supplied and payments were made. This witness has deposed that vehicles were made available on Sunday and holidays for supply to the defendant and bills were raised for these Sundays and holidays upto 30.11.1963. Thereafter another agreement was entered into w.e.f. 1.12.1963, as per which, Saturdays and Sundays were excluded. This witness has deposed that the defendant has expressed their desire to take the vehicles out of Alwar to other States to which the plaintiff had represented that vehicles would remain in the custody of defendant for 24 hours. Therefore, the plaintiff would charge for 24 hours. Bills were supplied, however, on the advice of the defendant, the bills were split in 8

hours and 16 hours. This witness was cross-examined and during crossexamination he has stated that he had never accompanied the convoys.

10. On the consideration of the pleadings and evidence led by the parties, the findings on the issues are being recorded hereinafter:

Issue No. 1: Whether plaint has been signed, verified and instituted by a duly authorized person?

11. During the course of hearing, learned Counsel for the defendant fairly conceded that there was no dispute to issue No. 1. Hence issue No. 1 is decided in favour of the plaintiff. The suit has been filed by duly authorized person.

Issue No. 2: Whether the suit has been instituted within time?

12. The present suit was instituted on 29.3.1971. As per the contract disputes and differences between the parties were to be resolved through arbitration. The plaintiff demanded reference to arbitration first on 25.7.1964 vide Ex. P-35 and again on 30.7.1964 vide Ex. P-36. The plaintiff again demanded arbitration on 10.9.1964. This communication included the claim of refund of security deposit in the sum of Rs. 1,39,700/- (Ex. P-37). The plaintiff again called upon the defendants vide notice dated 8.12.1964 (Ex. P-40) for payment of the entire claim or in the alternative reference to arbitration. The matter was referred to an Arbitrator, however, the plaintiff herein filed a suit for supersession of the reference and a Single Judge of this Court vide order dated 4.3.1970 in Suit No. 267/1966 superseded the arbitration. The order of the learned Single Judge was confirmed by the Division Bench on 1.2.1971, when the appeal of the Union of India was dismissed. Learned Counsel for the plaintiff has submitted that as per Sections 37(3) and Section 37(5) of the Arbitration Act, 1940, the period from the date of demand for arbitration and supersession of the reference has to be excluded from the period of limitation, i.e. from 25.7.1964 when the first demand was made for arbitration to 1.2.1971 when the Judgment of the Single Judge was confirmed by the Division Bench; further two months time has to be excluded for Section 80, CPC notice. According to him after deducting this period, the suit of the plaintiff is well within time.

13. According to learned Counsel for the defendant issue Nos. 2 and 7 are to be decided together. She submits that for the first time the plaintiff had raised the issue of refund of security deposit vide its letter dated 28.4.1964 (Ex. P-28). The said claim was denied by the defendant vide letter dated 21.5.1964. She further submits that the first notice of demand dated 25.7.1964 (Ex. P-35) does not make any demand relating to the security deposit. She further submits that the claim with regard to security deposit has been raised for the first time after denial on 21.5.1964 and the present suit was instituted on 29.3.1971. Thus as per learned Counsel for the defendant, the claim with regard to the security deposit is barred by time. She further submits that the plaintiff cannot seek benefit of extension of limitation for the time consumed between institution of Suit No. 267/1966 and the date of decision i.e. 4.3.1970 for the reason that the

plaintiff was fully convinced about the inefficacy of the arbitration proceedings. To buttress her point, learned Counsel has relied upon the statement made by PW-2 in the cross-examination held on 3.10.2001 whereby PW-2 has admitted that "the arbitration proceedings would not fructify, just before filing of the Suit 267/1966, which was decided by order dated 4.3.1970." Learned Counsel for the defendant further argued that the claim of security deposit was not included in the first notice of demand and thus it should have been raised within three years of its first demand i.e. 28.4.1964 or at best from the date, the same was declined i.e. 21.5.1964. The argument being that the claim for refund of security deposit was not treated as an integral part of arbitration notice and thus never formed part of the arbitration proceedings and thus time consumed in the arbitration proceedings as also in the prosecution of the suit No. 267/1966 cannot be said to extend limitation for the said claim.

14. Learned Counsel for the plaintiff, however, has rejoined submitting that firstly: the limitation would commence from 1.4.1964 up till 10.9.1964. The notice including demand for refund of security deposit was made on 10.9.1964 and even if the demand for refund of security was not made in the first notice dated 25.7.1964, the plaintiff cannot be estopped from raising the demand subsequently. Even otherwise there was no dispute with regard to the refund of security deposit by the defendant. Learned Counsel further relies upon reply to the legal notices dated 10.9.1964 (Ex. P-37) and dated 16.9.1964 (Ex. P-38), wherein the defendant, whilst not disputing the demand, had assured that the letter dated 10.9.1964 was receiving attention. Thus, as per learned Counsel for the plaintiff, the plea of the defendant that the demand of the plaintiff for refund of the security deposit was refuted is factually incorrect. To make good his point, the reply to the notice dated 11.7.1963 (Ex. P-38) has been relied upon by the plaintiff and the same reads as under:

I am to refer to your letter No. PNM 12/C/5129 dated 10.9.1964 regarding demand for arbitration and to state that the matter is receiving attention.

Yours faithfully,

Q. Master (General)

15. I find no force in the contentions of the defendant insofar as its challenge to limitation is concerned. It is worthwhile to mention that the defendant has at no stage refuted the plaintiffs claim for security deposit. It is admitted position that the defendant have withheld security of the plaintiff only on the ground that the plaintiff did not issue a No Claim Certificate. To this, learned Counsel for the plaintiff has adduced before this Court that the plaintiff could not issue a No Claim Certificate in view of the disputes in the bill. Apropos the limitation period with respect to the filing of this suit is concerned, it is not in dispute that the period during which the matter was pending in the Court is to be excluded while computing the period of limitation. Thus the following dates would be relevant: the contract came into being on 31.3.1964. The plaintiff demanded reference to

arbitration firstly on 25.7.1964(Ex. P-35) and again on 30.7.1964, and thereafter, on 10.9.1964 while including the claim of refund of security deposit (Ex. P-37) the matter went to arbitration. The arbitration was superseded by the Court by order dated 4.3.1970. The judgment was confirmed by the Division Bench on 1.2.1971. This suit was filed on 29.3.1971. Even assuming that the first notice of demand was made on 25.7.1964 and the order of the Division Bench was passed on 1.2.1971, the period from 25.7.1964 to 1.2.1971 has to be excluded. Having excluded the said period, the present suit would thus be within the period of limitation. Even otherwise, Counsel for the defendant has fairly conceded that the claim with regard to refund of security deposit alone is beyond limitation. In view thereof, issue No. 2 is decided in favour of the plaintiff.

Issue No. 3: Whether the contract between the parties upto 30th November, 1963, covered Sundays and holidays also, and if so, are the plaintiffs entitled to compensation on account of vehicles kept in readiness and available on such Sunday and holidays? and

Issue No. 4: If the plaintiffs are entitled to any amount under the preceding issue, is the amount stated in para 15 of the plaint, that amount of what other amount is due?

16. It is submitted by learned Senior Counsel for the plaintiff that issue Nos. 3 and 4 should be addressed together. These issues relate to the period 15.7.1963 to 30.11.1963. During this period the plaintiff submitted bills for a total sum of Rs. 2,06,323.24. These bills have been proved by PW-1, R.S. Aggarwal as Ex. PW-1/5, PW-1/6, PW-1/7 and PW-1/8. Learned Counsel for the plaintiff relies on the special conditions of contract, the Tender dated 6.7.1963, as well as the Appendix-A thereto. According to learned Counsel for the plaintiff mere reading of the Special Conditions, of Contract would show that the contract does not make any exclusion for Sundays or holidays. He relies on the Schedule to Appendix-A which states the "approximate number required daily?minimum and maximum". He further states that the Contract nowhere stipulates that the plaintiff is not required to supply requisite vehicles on Sundays and holidays and thus there is no basis for the defendant to contend that there are no charges payable for Sundays or holidays, even if the minimum number of vehicles are not requisitioned by the defendant. He further submits that the plaintiff was obliged to keep the minimum number of vehicles ready for supply of the same to the defendant on Sunday and holidays. He further supports this contention by submitting that the plaintiff, as a matter of fact, supplied vehicles to the defendant on a number of holidays and Sundays. The plaintiff has brought to the knowledge of this Court the fact that the defendant actually demanded vehicles on several Sundays and holidays and the plaintiff supplied the same on 21st and 28th July, 11th August, 3rd, 10th, 17th and 24th November (all Sundays); 27th and 28th September, 16th and 17th October, (holidays). Bills for supply of vehicles for these days were submitted to the defendant and payments were made. Learned Counsel further submits that the plaintiff had raised the issue

regarding the requirement of vehicles on Sundays and holidays, as early as on 25th July, 1963 (Ex. P-3) and clarification was sought whether the vehicles would be required on Sundays or holidays or not. The defendant did not give any clarification in this matter and ultimately Supplementary Agreement w.e.f. 1.12.1963 was executed excluding Sundays and holidays, unless special notice was given for any requirement. plaintiff submitted four bills for Sundays or holidays to defendants vide letter dated 11.12.1963 (Ex. P-18), however, defendants did not clear these bills on the ground that no transport was used on those days. The plaintiff has relied upon the evidence of PW-2, Surinder Nath, wherein he had stated that the plaintiff maintained requisite number of vehicles on holidays or Sundays. The witness further goes on to state that plaintiff had obtained these vehicles from the market and as a result whereof it incurred a liability straightaway by making payments for such vehicles for Sundays or holidays to the person from whom the vehicles were taken.

17. Learned Counsel for the plaintiff next relies upon the evidence of S.R. Jaggi (PW-3) who was posted at Alwar in connection with the contract. In the evidence he has also stated that he arranged the vehicles from different fleet owners and that on some Sundays the defendants used to indent and on other Sundays and holidays no indentment was made. The long and short of the averments of learned Counsel for the plaintiff is that the plaintiff was constrained to maintain vehicles on Sundays and even on holidays. It is stoutly contended by the plaintiff that the defendants in the cross-examination of PW-2 and PW-3 did not challenge these facts. More so, the defendants did not lead any evidence from their side, to rebut in any way the evidence given by the witnesses of the plaintiff. Learned Counsel for the plaintiff has placed reliance on Appendix-A to the Special Conditions to the Contract, which is an admitted document (Ex. P-43), Which is reproduced thus:

"Appendix	"A"	to	SPECIAL	CONDITIONS	SCHEDULE
Month	Type of Horse	Approximate	Vehicle	Power number	Required Daily
Maximum			&		Minimum
					1 to

31 May 63 Cars 8 to 24

Trucks : above 15 Lorries: horse power

1 to 30 Jun. 63 Cars 8 to 25 horse power

Trucks: above 15 200 375 Lorries: horse power

15 to 31 Jul. 63 Cars 8 to 25 horse power

Trucks: above 15 250 400 Lorries: horse power

1 to 31 Aug. 63 Cars 8 to 25 horse power

Trucks: above 15 300 400 Lorries: horse power

1 to 30 Sep. 63 Cars 8 to 25 horse power

Trucks: above 15 300 400 Lorries: horse power

1 to 31 Oct. 63 Cars 8 to 25 horse power

Trucks: above 15 300 400 Lorries: horse power

1 to 30 Nov. 63 Cars 8 to 25 horse power

Trucks: above 15 300 400 Lorries: horse power

1 to 31 Dec. 63 Cars 8 to 25 horse power

Trucks: above 15 300 400 Lorries: horse power

1 Jan. to 64 Cars 8 to 25 31 Jan. horse power

Trucks: above 15 300 400 Lorries: horse power

1 to 29 Feb. 64 Cars 8 to 25 horse power

Trucks: above 15 300 400 Lorries: horse power

1 to 31 Mar. 64 Cars 8 to 25 horse power

Trucks: above 15 300 400 Lorries: horse power

----- 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 contract operating officer.

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

Lt Col. Comdr HQ Delhi and Rajasthan Area Regt ASC Signature of For and on behalf of the Government of India the tenderer(s)

18. Relying upon the aforesaid document, learned Counsel for the plaintiff submits that the first column shows that the vehicles were required everyday. The Schedule to Appendix-A unambiguously makes explicit the time period within which the vehicles were to be supplied daily, which time period entailed the first and last day of every month. It is thus the case of the plaintiff that bare perusal of the Schedule makes clear that the vehicles were required every single day of the month and thus the plaintiff is entitled to charges on all days of the month for which the bills were supplied.

19. Issue Nos. 3 and 4 are opposed by the defendant on the ground that the claim is not based on any actual use, but on hypothetical calculation and it is for this reason that the plaintiff has used the nomenclature "compensation" and not "hire charges". She has referred to the following description on each of the bills which reads as follows: "Vehicles which remained at the disposal of contract operating officer but not utilized on [date] based on average vehicles used on

previous day i.e. [date]." In view thereof, it is contended by learned Counsel for the defendant that the vehicles were neither indented nor used, and thus, the claim of the plaintiff is neither supported by any term of the Contract nor any substantial calculation or any cost incurred by the plaintiff. It is further contended that the plaintiff has not produced any bills relating to the usage of the previous dates and as such the calculation purported by the plaintiff is not sustainable.

20. Relying upon Clause 8 of the Special Conditions of Contract, learned Counsel for the defendant has adduced that the plaintiff is not entitled to payment for more than actual number of vehicles indented and supplied, She further relies on Clause 10 of the Special Conditions which reads as follows:... "The time will be reckoned from the time the vehicle is handed over to the officer operating the contract or his representative to that of returning the vehicle to the contractor." According to learned Counsel, the said Clause 10 clearly shows that the time to be reckoned for calculating the charges would be the actual user hours. It is further submitted that payment was to be made to the plaintiff only after usage of the vehicles and, internment thereof by the defendant.

21. Learned Counsel for the defendant has further brought to the knowledge of this Court that the vehicles were neither used nor indented on Sundays and holidays as is evident from the letter dated 19.12.1963 (Ex. P-19). She next relies on the evidence of PW-3, S.R. Jaggi, wherein he had stated that the plaintiff would receive indent of the defendant one day in advance and based on the requirement contained in that indent, the vehicle used to be delivered to the defendant. It is the case of the defendant that the plaintiff has not been able to show any letter of indent or any request made by the defendant for the supply of vehicle^ on Sundays and holidays, and thus the plaintiff cannot claim any compensation or any charges on the basis of hypothetical calculations as the vehicles were never actually used. It is stoutly argued by learned Counsel for the defendant that the contract unequivocally stipulates that the payment was to be made only after the actual use of the vehicles supplied and not for the period when the said vehicles were neither indented nor used.

22. I find no force in the contentions put forth by the plaintiff with respect to payment to be made for the vehicles supplied on Sundays and holidays, even if the vehicles were not indented. It is not in dispute that as per the Special Conditions of Contract and Appendix A thereto the contract did not make an exclusion of Sundays and Holidays. Schedule A mentions "approximate numbers required daily". Counsel for the plaintiff has, however, failed to show any Clause in the Contract which stipulates that in case an indent was not made on Sundays and holidays or any other day, the defendant would be liable to make payments. Moreover, it is not the case of the plaintiff that it was mandatory for the defendant to either make an indentment of the minimum number of vehicles, or for that matter, even pay for the same as it is an undisputed fact that the indentment was made for vehicles below the prescribed minimum number as well

for which no claim was ever made by the plaintiff. It is further noteworthy that even the bills which have been raised are on the basis of the number of vehicles indented a day prior to a holiday and not on the basis of the prescribed minimum number of vehicles. Another aspect which is important to note that the plaintiff has not placed on record any evidence to show how and on what basis the plaintiff has arrived at the formula of raising bills for Sundays and holidays on the basis of vehicles indented, a date prior to a holiday. I am inclined to accept the stand of the plaintiff in view of the fact that none of the bills that have been placed on record by the plaintiff are based on the prescribed minimum number of vehicles, which, in effect, clearly suggests that the plaintiff was well aware of the fact that although the prescribed minimum number of vehicles were to be kept ready at all times during the contract period, the supply thereof to the defendant and the consequent payment received by the plaintiff invariably was to be determined on the basis of the number of vehicles mentioned in the letters of indent.

23. Furthermore, the plaintiff's grievance with respect to non-utilization of his vehicles on Sundays and holidays appears to be utterly misplaced in view of the Tender document, the opening portions whereof, unequivocally stipulate that the plaintiff was expected to deliver the vehicles to the defendant "in such quantities, at such times, in such manner, to such person and at such place (within the area covered by the contract, as specified in the schedule) as the Government may direct". That is to say, while it was onerous upon the plaintiff to maintain the prescribed number of vehicles, the actual use and indentment thereof eventually depended upon the number of vehicles which the defendant eventually required irrespective of whether such number was below the prescribed minimum. There is also no express provision, either in the Tender document or in the Special Conditions to the Contract, stipulating that the defendant was expected to indent all the minimum prescribed number of vehicles every time when the vehicles were supplied. Thus, issue Nos. 3 and 4 are decided against the plaintiff.

Issue No. 5: Whether the plaintiffs are entitled to receive any payment in respect of vehicles taken for long convoys out of Alwar for more than 8 hours and, if so, at what rate? and

Issue No. 6: Whether the plaintiffs are estopped from claiming the amounts claimed in respect of Sundays and holidays and for a period of more than 8 hours on the grounds mentioned in the written statement?

24. Issue Nos. 5 and 6 are also taken up together. The plaintiff has filed 32 bills pertaining to the vehicles taken by the defendant on long convoys to various places such as Lucknow, Shimla, Deradun, Kalka, Jalandhar, Jaipur, Bharatpur and Bulandshahr, etc. from the ASC Centre, Alwar. The basis of calculating the amounts on these bills by the plaintiff is that the hire has been reckoned from the moment of departure of the vehicles from Alwar till the time the vehicle was returned at the Alwar Centre. In these bills 8 hours duty for these days has already been deducted as has been received by the plaintiff. These bills have

been exhibited as Exs.P-47 to P-81 (except Exs.P-58, P-59, P-70 and P-80) and the bills are for a total sum of Rs. 12,89,429.02. The bills are for the balance 16 hours for the duration of the convoy. The separate bills for 8 hours are stated to be submitted separately in as much as the plaintiff apprehended that the defendant would not have cleared any amount at all. These bills have been proved in the evidence of PWs 2 and 3. It is vehemently argued by the learned Counsel for the plaintiff that the defendants have neither challenged the contents of the bills qua the time of departure/arrival, destination and dates, However, the defendants have objected to the payment on the ground that the plaintiff is not entitled to claim hiring charges. It is argued by learned Counsel for the defendant that hiring charges were due only for 8 hours in a day, notwithstanding the fact that the vehicles were taken on a convoy from Alwar, used and returned by parking them in the army lines at whatever place they were.

25. On the other hand, it is submitted by learned Counsel for the plaintiff that the notice inviting tender specifically states that it was "tender for the supply of Hired Transport at Alwar (Rajasthan)", The schedule of rates also stated that it was for the vehicles "for training recruits at Alwar", Learned Counsel further relies on Clause 10 of the Special Conditions of Contract which states that time of hire "will be reckoned from the time the vehicles are handed over to the Officer Operating the Contract or his representative to that of returning the vehicles to the contractor on termination of duty every day...." It is submitted by learned Counsel for the plaintiff that the vehicles supplied, or handed over by the plaintiff at Alwar to the officer operating the Contract, and upon use thereof the same were returned to the plaintiff at the ASC Centre, Alwar. During this intervening period, the vehicles were taken on a convoy and were returned to the plaintiff only when they came back to Alwar. Relying on the evidence of PWs 2 and 3, learned Counsel for the plaintiff submits that no representative of the plaintiff accompanied the convoy, inasmuch as the contract required the plaintiff to have his establishment at the unit lines at Alwar and was not to remain attached with the vehicles either in the convoy or otherwise, It is thus the case of the plaintiff that it had no control whatsoever on the vehicle supplied by him once the said vehicles were taken on a convoy outside Alwar. Further relying upon Clause 10 of the Special Conditions, it is argued by learned Counsel for the plaintiff that merely because the vehicles, when taken on a convoy, were parked outside Alwar, did not exclude the liability of the defendant from making payment towards hiring/ handing over the vehicles. It is argued that what is material is not where the vehicles were parked but what needs to be appreciated is that the handing back of the vehicles to the plaintiff could be possible only at Alwar inasmuch as the plaintiff or any of its employees did not accompany the vehicles when they on convoy.

26. Learned Counsel for the defendant has countered the aforesaid contention of the plaintiff on the ground that the vehicles were taken for training recruits in the ASC Centre, and since the training programme covered all sorts of terrains

especially hilly and rocky tracks, etc. it was natural and logical that the contract was not confined to the employment of vehicles at Alwar alone. To buttress her point she relies on Clause 33 of the Special Conditions of Contract as well as Appendix-B thereto to show that any car, truck or lorry of the capacity of 5 tonnes would be used on any class of road or across country day and by night. According to learned Counsel for the defendant, it is implicit in Clause 10 of the Special Conditions that the vehicles supplied by the plaintiff could be used on any road either during the day or night. She further relies on Clause 39 of the Special Condition of Contract to show that the Government was not responsible for making any payment to the driver or for arranging their conveyance to and from residence or for their boarding and lodging. It is further stipulated therein that the drivers on requisition were to be provided food during the times when the vehicles were taken on long drives.

27. I find considerable force in the submissions of the defendant. It would be worthwhile to throw light on Clauses 30 and 39 which are reproduced as under:

Clause 30 of the Special Conditions-

The contractor shall provide an adequate number of permanent licenced drivers at his expense subject to minimum of one for every five vehicles supplied. The contractor agrees that the representatives so provided will be responsible for the vehicles/all accessories/fittings thereto....

Clause 39 of the Special Conditions-

...when vehicles are on long (raining drivers 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 man meal will be recovered from the contractor.

28. Bare perusal thereof clearly shows that it was incumbent upon the plaintiff to provide one driver for every five vehicles, and further, as and when vehicles were taken on convoy, the drivers accompanying the same were responsible for the vehicles/all accessories/fittings thereto. As per the evidence of PW-3, S.R. Jaggi, no drivers of the plaintiff accompanied the vehicles, in view thereof, the plaintiff inarguably committed breach of Clause 30 of the Special Conditions. In view of the fact that it was incumbent upon the plaintiff to depute drivers for receiving the vehicles, which obligation the plaintiff apparently failed to discharge, the burden cannot now be shifted on the defendant to make good the claims being sought by the plaintiff vide the present suit.

29. Moreover, the plaintiff has adduced no evidence to show as to how many number of hours the vehicles were actually and truly used when they were taken on convoy, or for that matter, has not brought on record any log books or meter readings to justify its claim of the vehicles being used for in excess of eight hours. On the contrary, it is relevant to note that PW-2, namely, Surinder Nath has admitted that "[i]t is correct that plaintiff was not maintaining any log

register to record the timing when the vehicle was given to the defendant and when the vehicle used to be returned back". What is pertinent to be appreciated is that it is not the employment of the vehicles outside Alwar, but the actual use thereof for more than eight hours when taken on a convoy that was determinative of payment that was to be made to the plaintiff. There is nothing in the contract to suggest that every time the vehicles were taken on a convoy, it was onerous on the plaintiff to make payments to the defendant on the basis that the vehicles supplied by it had piled for more than eight hours in the day. Even otherwise, to make good such a claim, the plaintiff ought to have proved that the vehicles were in fact used for more than eight hours in a day.

30. I am further fortified in my view by Clause 11 of the Special Conditions of Contract which unequivocally stipulates that "[the Contractor shall not object to his vehicles being employed beyond the period of eight 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." Furthermore, there is nothing in the Special Conditions of Contract, particularly Clauses 30 and 39 thereof, to indicate that during the course of convoys, the plaintiff was not required to adhere to or comply with respect to making provisions for driver, cleaners, maintenance and repair of vehicles, etc. Even otherwise, the provisions in no manner suggest that the defendant was not responsible for making any payment to the driver or for arranging there conveyance to and from residence or for the boarding or lodging. Thus, the claim of the plaintiff for payment in respect of vehicles taken for long convoys out of Alwar is sans merit and thereby dismissed.

Issue No. 7: Whether the plaintiffs are entitled to be refunded of all the securities held by the defendant?

31. As far as issue No. 7 is concerned, the defendants have withheld security of the plaintiff only on the ground that the plaintiff did not issue a No Claim Certificate. In view of dispute in bills, learned Counsel for the plaintiff submits that he could not issue a No Claim Certificate and secondly, there was no justifiable reason whatsoever for the defendant to have withheld the security deposit.

32. It is noteworthy that the defendant, admittedly, has made no claim of any nature against the plaintiff. In view thereof, the defendant has no reason or justification to withhold the security deposit. Issue No. 7 is accordingly decided in favour of the plaintiff and/against the defendant.

Issue No. 8: Are the defendants estopped from disputing the claim of the plaintiff?

33. Both the parties have mutually decided to give up issue No. 8.

Issue No. 9: Are the plaintiffs entitled to any interest on the amount claimed,

and so, at what rate?

34. The plaintiff has claimed interest @ 6% per annum from the date the said amount became payable i.e. 1.4.1964 till the filing of the suit on 28.2.1971 and has also claimed pendente lite and future interest @ 12% per annum.

35. In view of the fact that issue Nos. 3 and 4 as well as 5 and 6 have been decided against the plaintiff, the latter's claim for interest on the amount claimed ipso facto does not survive and is accordingly dismissed.

36. To conclude, I have no hesitation in expressing that the averments of the plaintiff seeking payment in respect of the use of vehicles on Sundays and holidays (taken up vide issues 3 and 4) is without merit. Learned Counsel for the plaintiff, I am afraid, has failed to adduce or appreciate the Contract in its proper perspective. Having gone through the contract in its entirety, which includes the Tender Document, the Special Conditions of Contract and the Appendices as well as the Supplementary Agreement, I have not a speck of doubt in my mind that the Contract cannot be interpreted in any manner except that it was incumbent upon the plaintiff to maintain a minimum number of vehicles ready on any stipulated day of the contract period, notwithstanding whether or not any vehicle was used or intended by the defendants. As I understand it, the very purpose of fixing the Schedule, as provided in Appendix-A, was to allow the plaintiff to keep available the type of vehicles on all stipulated days so that the defendants could requisition for the same at the appropriate time. Further, the very purpose of indentment of the vehicles which the plaintiff supplied indicates that the defendant had the leverage to ask for a particular number of vehicles within the prescribed range of vehicles maintained by the plaintiff and that this number was to invariable fluctuate between the minimum and the maximum.

37. Further, the claim of the plaintiff seeking payment for vehicles taken for long convoys out of Alwar (taken up vide issues 5 and 6) also appears to me to be counter-intuitive primarily for the reason that there is nothing on record to suggest that the contract intended to restrict the movement of the vehicles supplied within Alwar. The possibility of the vehicles supplied to be plied beyond Alwar is well-contained and envisaged in Clause 11 of the Special Conditions which categorically proscribes the plaintiff from objecting to the employment of its vehicles beyond the period of eight hours at any time of the contract period. Even otherwise, for the claim of the plaintiff qua payment for vehicles taken for long convoys out of Alwar to hold water, good such a claim, the plaintiff ought to have proved that the vehicles were in fact used for more than eight hours in a day.

38. Lastly, what is indeed staggering to note is that the various averments made by the plaintiff seeking payment in respect of the use of vehicles on Sundays and holidays as well as for vehicles taken for long convoys out of Alwar payment contradict the explicit provisions of the Contract which stands admitted in this Court and which contract the plaintiff entered into with open eyes. Thus, any

relief provided by this Court plaintiff qua issues 3 and 4 as well as 5 and 6 would run counters to Section 92 of the Indian Evidence Act, 1872 which states that when the terms of any contract or any matter required by law to be reduced to the form of a document have been proved, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying adding to, or subtracting from, its term.

39. In light of the aforesaid specific findings qua the issues raised, the present suit is decreed in favour of the plaintiff and against the defendant, in the sum of Rs. 1,39,700/- being the amount of security deposit, to be refunded/paid within six weeks from today.

40. Parties to bear their own costs.

41. Decree sheet shall be drawn up accordingly.