(2011) 12 CAL CK 0106

In the Calcutta High Court

Case No : Writ Petition No. 13899 (W) of 2009

Sri Hari Krishan Agarwal APPELLANT

Vs

The State of West Bengal and Others RESPONDENT

Date of Decision : 14-12-2011

Acts Referred:

Citation : (2011) 12 CAL CK 0106

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Kashi Kanta Moitra, Mr. Alok Kr. Ghosh, Mr. Anup Kr. Lahiri, Mr. Srikanta Moitra, Mr. Arindam Banerjee and Mr. Ashis Kr. Mukherjee, for the Appellant;Subrata Talukdar and Mr. Sucharita Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—In this Writ Petition, the Petitioner prays for an Order commanding upon the Respondents, the Respondent No. 2 in particular (the Joint Secretary, Department of Food and Supplies, Govt. of West Bengal) to grant Transport Rebate as admissible under the different Government Orders which are in force from the new Jalpaiguri Base Depot to Kumai (distribution point of the MR dealer) as per approved distance (132.8 kms.) w.e.f. 19.3.1997 till payment. He has further prayed for an Order commanding upon the Respondents to sanction the ex go down selling rate (extra rate) per quintal for both rice and wheat from the same date. He has also prayed for a direction upon the said Respondent No. 2 to release the outstanding Transport Rebate and/or arrears which remain payable to the Petitioner for having lifted the rationed commodities from the new Jalpaiguri Base Depot to Kumai under the Kalimpong sub-division

2. The Petitioner is an MR Dealer (Shop No. 67) and is the sole proprietor running his business in the name and style of "Kumar Brothers". The said Dealership is situated at Kumai, P.S. Garubathan under the Kalimpong sub-division in the district of Darjeeling.

The said MR Dealership was initially tagged with the MR Distributorship of one M/s. Goel Brothers, Chunabhatti, P.O. Bagrakote in the District of Darjeeling. The Petitioner used to lift commodities from the said Distributor for distribution to the ration card holders of Kumai. However, the Petitioner has a grievance that the said Distributorship of Goel Brothers did not deliver proper quantities to them for supply to the ration card holders. They also sometimes refused to supply ration commodities in spite of Indents having been passed by the sub-divisional Controller of Food and Supplies.

3. The Petitioner has a further grievance that the said Distributorship of M/s. Goel Brothers even dared to go against the indents of the licensing authority and sometimes, went to the extent of cancelling those Indents under their own handwriting and signature on the log book. The Petitioner has a further grievance that in spite of these activities, the Respondent authorities "miserably failed" to take action against such an "influential" Distributorship. On the contrary, the MR shop of the Petitioner was transferred/tagged with a storing Agent at Kalimpong.

4. These facts were brought to the notice of the higher authorities several times and a series of Complaints were lodged by the Petitioner but all went in vain. Ultimately, the MR shop of the Petitioner was tagged/transferred to the NJP Base Depot under Orders of the authorities of the District Food & Supplies.

5. The Authorities had instructed the Petitioner to lift stock meant for public distribution from the NJP Base Depot directly on the basis of Delivery Orders. The situation however remained unchanged and the commodities were not supplied by the person-in-charge of the NJP Base Depot. The Respondent No. 7 (Regional Deputy Director) asked for an explanation from the Respondent Nos. 8 and 9 (District Controller and sub-divisional Controller) for such mal distribution of the commodities to the card holders of Kumai. The Respondent No. 8 then sent a Radiogram, instructed the Respondent No. 9, the Licensing Authority, for immediate allotment of stocks to the Petitioner for distribution of commodities to the ration card holders of Kumai. Even then, efforts went in vain and instead of taking any action, the Dealership of the Petitioner was ordered to be tagged with M/s. Goel Brothers vide memo dated 27.8.1996 (Annexure-P/1).

6. The Petitioner has alleged that thereafter, the said Distributorship of Goel Brothers wrote a letter on 30.8.1996 by which the Licensing Authority was "challenged" and told not to supply any ration commodities to the Petitioner. The Petitioner has stated that the Respondent No. 9, being the Licensing Authority, failed to control the said Distributors and also failed to interfere in the matter which ultimately created serious prejudice to the locality for non-supply of ration commodities to the Petitioner''s Dealership at Kumai. According to the Petitioner, there was a nexus of the food officials and the Distributorship of Goel Brothers and the said Department should have acted fairly to alleviate the sufferings of the Petitioner. However, considering the difficult situation and annoyance of the ration card holders of Kumai, the sub divisional Officer of Kalimpong (Respondent No. 6) issued a letter on 27.1.1997 (Annexure-P/2) by which he directed the

Petitioner''s Dealership to lift the commodities directly from the Base Depot at NJP and not from the Distributor. The sub-divisional Controller was requested to take up the matter with the District Controller, Food & Supplies.

7. The Respondent No. 8 (District Controller) in compliance of the Order of SDO, Kalimpong issued an Order directing the Petitioner to lift and transport the commodities directly from the Base Depot as a special case vide his letter/order dated 19.3.1997 but imposed a condition that he would not claim any additional rebate for lifting the stocks from the said Base Depot. The Petitioner immediately objected vide letter dated 26.3.1997 wherein he stated that "the condition of not allowing rebate from NJP (Base Depot)" as per Rules, was unfortunate and that it could not be understood as to why the rebate was withheld when G.O. No. 8571/1(10) FS dated 19.11.1996 clearly stated that rebate shall be allowed from the lifting point to the distribution point without any ceiling.

8. However, it appears that thereafter the Petitioner deposited the sum of Rs. 87,992.10 paise and Rs. 27,220.10 paise against Delivery Order Nos. 218521 and 218671 for 160 Quintals of rice and wheat and approached the Inspector-in-charge, NJP Base Depot for lifting supplies but by letter dated 14.2.1997 (Annexure-P/4), the Inspector-in-charge refused to deliver and wrote to the District Controller (Annexure-P/4) vide his letter dated 14.2.1997 that the Petitioner had produced the above drafts to him for lifting foodgrains and "it is to further inform you that the D.O.''s was issued from the Sub-divisional Controller, Kalimpong addressed to Base Depot NJP but it is found in the break up of Kalimpong sub-division issued from yourselves that there is no stock allotted to Kumar Brothers, Kumai and so I am returning the D.O.''s to Kumar Brothers, Kumai."

9. The Petitioner has stated that he then informed the Respondent No. 9 to take appropriate steps but no action was taken.

10. Thereafter the Petitioner moved a Writ Petition before this Court vide W.P. No. 4555 (W) of 1997 and, by an Order dated 4.4.1997 (Annexure-P/5) at Page 84, Hon''ble Mr. Justice Samaresh Banerjee (as his Lordship then was) passed an Order that pending hearing of the said application, there would be an interim Order to the effect that the District Controller, Food & Supplies and the sub-Divisional Controller, Food & Supplies shall take all steps so that the rationed articles can be supplied to the MR Dealership of the Petitioner in terms of the Order passed by the S.D.O, Kalimpong on 27th January, 1997 (Annexure-P/2) herein whereby and where under and as per the direction of the additional District Magistrate (General), Darjeeling and as per "No Objection" given by the Distributor, the Petitioners would lift the MR commodities directly from the Base Station, NJP and not from the Distributor because of the pendency of a High Court case. The said Order dated 27.1.1997 reads as follows:-

ORDER

No. ____/Con., Dated Kalimpong the Jan. 27th,''97.

As directed by Addl. District Magistrate (General), Darjeeling and the no objection given by the distributor, it is hereby ordered that Kumar Soore will lift the M. R. Commodities, directly from the base station, N. J. P. and not from the distributor because of a pending H. C. Case. The Sub-divisional Controller, Food & Supply is therefore requested to take up the matter immediately with the District Controller, Food & Supply, Siliguri, Darjeeling.

(Roshni Sen, I.A.S.)

Sub-divisional Officer

Kalimpong

(Quoted)

11. Pursuant to the Order passed in the said Writ Petition, the Petitioner was then allowed to lift the commodities from the NJP, FCI Base Depot w.e.f. 19.3.1997. According to the Petitioner, there was no Complaint regarding his performance in distribution of the MR commodities. However, what became a sore point with the Petitioner was that he was not allowed any Transport Rebate from NJP Base Depot for transportation of the commodities to Kumai on and from 19.3.1997.

12. The Petitioner has stated that Transport Rebate has been allowed by the Govt. of West Bengal from the point of lifting to the point of the distribution vide G.O. 8571/1(10) FS dated 19.11.1996. This G.O. has been brought on record by the Petitioner in his Supplementary Affidavit at page 22 thereof. The said Supplementary Affidavit was filed pursuant to the leave granted by this Court on 2.9.2009 which was so granted in terms of Prayer-E to the said Writ Petition. In the said Government Order dated 19.11.1996, it has been stated that in supersession of all previous orders issued earlier in respect of the hill areas of Darjeeling, the Governor had been pleased to sanction the rates of Transport Rebate to the MR Dealers in hill areas of Darjeeling District @ 90 paise per quintal per kilometre for transport by jeep, Land Rover, Pack Pony and Head Load and @ 45 paise per quintal per kilometre for transport by truck and that there would be no ceiling in this respect. It has further been stated in the same Government Order that in view of the peculiar climatic conditions and difficulties, the Governor had sanctioned, in addition to the Transport Rebate, the loading and unloading charge at the rate of Rs. 1.15 paise per Quintal to the MR dealers of that area which would be included in the special Transport Rebate. The said Government Order was made effective from 1.9.1996. For convenience, the said Government Order reads as follows:

Government of West Bengal

Food & Supplies Department

11A, Mirza Galib Street, Cal-87.

No. 8571 (2)FS

FS/Sectt/Food/4P-2/96

From : Sri S. R. Gupta Joint Secretary to the Govt. of West Bengal.

To : (1) The Director of District Distribution, Procurement and Supply.

(2) The Sr. Regional Manager, Food Corporation of India, West Bengal Region, Calcutta-87.

Sub : Sanction of Transport Rebates at special rates for rice and wheat to ration dealers of hill areas of Darjeeling district.

Sir,

In supersession of all previous orders in the matter of sanction of Transport Rebate, I am directed by order of the Governor to state that in view of all round increase in operational cost of ration dealers in this State due to price hike of diesel and difficulties faced by ration dealers in transporting public distribution of foodgrains, it has become necessary to enhance and also to rationalise Transport Rebate allowed to ration dealers of hill areas of Darjeeling district.

2. The Governor is, therefore, in Supersession of all orders issued earlier in this respect for hill areas of Darjeeling district pleased to accord sanction the rates of Transport Rebate to modified ration dealers in hill areas of Darjeeling district @ 90 paise per quintal per kilometre for transport by jeep, Land Rover, Pack Pony and Head Load and @ 45 paise per quintal per kilometre for transport by truck. There will be no ceiling in this respect.

3. In view of the peculiar climate condition and difficulty in communication in hill areas of Darjeeling, the Governor has further been pleased to accord sanction, in addition to the Transport Rebate, a loading and un-loading charge @ Rs. 1.15 paise per quintal to the modified ration dealers in this area which will be included in their special Transport Rebate.

4. This order will take effect from 1st September, 1996.

Yours faithfully,

(S.R. Gupta)

Joint Secretary to the Government of West Bengal.

No. 8571/1(10)/ FS

Dated : 19.11.96

(Quoted)

13. The Petitioner has stated that on the basis of the aforementioned Government Order, the District Magistrate, Darjeeling (Respondent No. 5) approved the Distance Certificate for 132.8 kms. from the NJP Base Depot to Kumai for sanction of Transport Rebate vide letter dated 24.10.1997. The

Respondent No. 9 (Sub-divisional Controller) vide his letter dated 28.10.1997 calculated the rebate on the basis of the said Distance Certificate. The said Certificate of the District Magistrate is at Page 23 of the Supplementary Affidavit and the calculation made by the sub-Divisional Controller on 28.10.1997 is at pages 24 to 25 of the said Supplementary Affidavit.

14. Thereafter, the Respondent No. 6 (sub-Divisional Officer, Kalimpong), vide his letter dated 15.7.1998 (Annexure-P/6) at page 87, wrote to the District Controller (Food & Supplies) stating that in view of the approval of the aforesaid District Certificate and in terms of the Government Order dated 19.11.1996, the case of the Petitioner for Transport Rebate be considered since there was no ceiling in respect of said Transport Rebate at special rates in the hill sub-Division of Darjeeling. He also requested that action for sanction of the Transport Rebate for the entire approved distance of 132.8 kms be taken for transportation of the stocks for public distribution. The relevant portion of the said letter of the sub-Divisional Officer, Kalimpong is at page 88 of the Writ Petition.

15. Thereafter, on 27.9.1999 (Annexure-P/7 at page 89), the Principal Secretary of the Darjeeling Gorkha Hill Council wrote to the District Magistrate, Darjeeling informing him that the matter pertaining to sanction of Transport Rebate to the Petitioner be expedited.

16. The Petitioner has stated that he came to know that the Respondent No. 8 (District Controller, Food & Supplies) in a Note sheet dated 1.3.2000 submitted a detailed report to the Regional Deputy Director, Food & Supplies, Siliguri indicating that the Petitioner was eligible for Transport Rebate as per the Distance Certificate approved by the District Magistrate, Darjeeling. The said Respondent No. 7, by another letter dated 9.6.2000, admitted the claim of the Petitioner for Transport Rebate from NJP Base Depot to his MR shop at Kumai and stated that the claim as stated, was justified though the proposed rate may be disputed. The Note sheet dated 1.3.2000 is at page 27 of the Supplementary Affidavit and the letter dated 9.6.2000 is at page 31 of the said Supplementary Affidavit.

17. Upon a perusal of the Note-sheet dated 1.3.2000, it is evident that after having given a short history of the matter leading to the issuance of the Distance Certificate, the matter was directed to be referred to the Regional Deputy Director, Food & Supplies for necessary instructions. It appears that on the basis of the Note-sheet referred to above, the Regional Deputy Director, Food & Supplies issued the Order dated 9.7.2000 wherein, at internal page 2 and in the concluding portion of the last paragraph (which begins at page 31), he observed that "therefore, the dealer''s claim for Transport Rebate for his carrying the stock from NJP has some justification though the proposed rate of the rebate may be disputed".[SIC]

18. It appears that thereafter by a Memo dated 1.2.2001, the District Controller, Food & Supplies, Darjeeling at Siliguri wrote to the District Magistrate, Darjeeling

wherein while referring to the subject of grant of Transport Rebate to the Petitioner, he stated that the matter was long pending. He also stated that Transport Rebate was exorbitant for which the details of facts and figures had been submitted to the Regional Deputy Director through a Note-sheet dated 1.3.2000 for proper instructions in the light of allowing Transport Rebate at a special rate. He further stated that the Regional Deputy Director had given his opinion vide Memo dated 9.6.2000 and in para-6 of the said memo it had been mentioned that most of the distance was on plain area but it may be pointed out that the stock was being carried for hill areas and no heavy vehicles would move for the hills. He further stated that if the Transport Rebate was taken into account by a break up of the plain route for plain area and hill rate for hill area, then the question of transit point may be raised. He also stated that some Dealers of the foothills of the Kurseong sub-Division which have been tagged with MR Distributor, Siliguri were being allowed Transport Rebate at special rates for the total distance from MR Distributor''s go down to their respective shops. The District Controller therefore requested for necessary instructions from the District Magistrate, Darjeeling. This letter is to be found at page 33 of the Supplementary Affidavit.

19. The Petitioner has also relied upon a memo No. 799 dated 23.5.2001 written by the District Controller, Food & Supplies, Darjeeling at Siliguri and addressed to the District Magistrate, Darjeeling (page 35 of the Supplementary Affidavit) wherein he has stated that in similar cases, Transport Rebate was paid from NJP to the unloading points at the admissible rates and in that view of the matter, he had no objection if Transport Rebate was also allowed to Kumar Brothers (Petitioner) at admissible rates under Government Order for hill areas of the Darjeeling District.

20. It appears that when nothing was being done, the Petitioner sent a legal notice dated 29.8.2002 (Annexure-P/9 at page 91). The Petitioner has also stated that the District Magistrate by his letter dated 28.8.2001 (page 37 of the Supplementary Affidavit) had sent a letter to the District Controller allowing Kumar Brothers to receive the Transport Rebate from FCI Base Depot at NJP to the unloading point at the admissible rates for hill areas of Darjeeling District. However two days thereafter on 30.8.2001 (page38 of the Supplementary Affidavit), the District Magistrate cancelled the aforementioned memo dated 28.8.2001 and directed the District Controller not to give effect to the Order until further Orders.

21. Being aggrieved, the Petitioner then moved a 2nd Writ Petition being W.P. 14850 (W) of 2001 and according to the Petitioner, the same is still pending and no affidavits have been filed in spite of directions. The Petitioner has stated in para 27 that his prayers have not yet been considered.

22. The Petitioner has again mentioned that on 25.2.2003 the District Controller, Food & Supplies had written yet another letter to the Regional Deputy Director wherein while referring to the legal notice referred to above, he had informed

him that as per his desire, a hearing of the proprietor of M/s. Kumar Brothers was taken by him on 27.11.2002 in which the proprietor (Petitioner) had personally attended. Finally in para-3, the District Controller stated that "regarding allowing of Rebate for the entire distance from the N.J.P. F.C.I. Depot to Kumai (MR) shop No. 67 this is to state that the demand is genuine. The payment of Transport Rebate could be made for this office as per approved distance from NJP to MR shop No. 67, if allowed by his authority (R.D.D.)" This letter is to be found at page 39 of the Supplementary Affidavit.

23. On 8.4.2003 (page 40 of the Supplementary Affidavit), the Regional Deputy Director wrote to the Director of D.D.P & S stating that it was needless to say that the MR Dealership of the Petitioner lifted rice and wheat directly from the FCI Depot at NJP from 1997. Thereafter while referring to various correspondence in this matter, he informed the said Director that he was sending the relevant papers to him for taking further action in the matter.

24. On 22nd October, 2001, the District Magistrate wrote to the Regional Deputy Director saying that the Government may be moved for payment of Transport Rebate to the Petitioners.

25. The Petitioner has relied upon a document dated 17th February, 2006 issued under memo no. 12/Food/IV-6/05 issued from the office of the District Magistrate, Darjeeling and addressed to the sub-Divisional Controller, Kalimpong sanctioning Transport Rebate to 8 persons out of which, the distance of some was longer than the Petitioner. The Petitioner has submitted that this is discriminatory and it amounts to showing favour to others.

26. Mr. Subrata Talukdar, learned Senior Government Advocate had agreed to argue this case without any Affidavits. Let it be recorded that opportunity to file Affidavits was given by Order dated 2.9.2009 but no Affidavits were ever filed nor was any prayer made to extend the period for filing the Affidavits. On the contrary, the matter was taken up on various other dates such as 10.5.2010 when nobody appeared for the State. Similar was the case on 28.1.2011 and again on 23.2.2011. On the said day, this Court directed that the matter be listed next week with an observation that if there was no representation on behalf of the State, then the same shall be taken up ex parte. Thereafter on 11.7.2011, again nobody appeared for the State and therefore, the case was then directed to be listed on 15.7.2011.

27. On 15.7.2011, learned Senior Government Advocate submitted that he would seek instructions and accordingly this case was directed to be put up on the 5th August, 2011. Mr. Talukdar made his submissions on the basis of his instructions on various dates and finally, on the day when the case was closed for judgment. These dates were 5.8.11, 18.8.11, 1.9.11, 14.9.11 and 19.9.11.

28. Mr. Subrata Talukdar, learned Counsel for the State firstly attempted to submit that the Petitioners had themselves agreed not to claim any additional rebate. He referred to the Order dated 19.3.1997 (page 81). Referring to the

said Order, he then drew the attention of this Court to another communication dated 31.1.2008 as contained in Annexure-P/11 at page 110 which is the letter of the District Controller of Food & Supplies which says that as per directives of the Director vide letter dated 9.1.1998, the Petitioners, MR shop was tagged with Goel Brothers at Chunabhatti. He has also stated that by granting Transport Rebate, it will amount to a departure from the scheduled practice of tagging with Distributors and therefore, it will also amount to imposing a huge burden on the State merely because he had to be sent directly to the NJP Base Depot because of his conflict with M/s. Goel Brothers. He submits that moreover, since the Petitioner had agreed not to charge any additional rebate, the said relief cannot be granted to him.

29. The submissions of the learned Counsel for the State are totally misconceived. Firstly, when there is a Government Order dated 19.11.1996 holding the field in the shape of a delegated piece of subordinate legislation expressed in the name of the Governor of the State, there can be no estoppel even if the Petitioner had agreed. Moreover from the facts narrated and from the documents brought on record, it is evident that the authorities themselves considered the situation prevailing vis-?-vis the Petitioner and M/s. Goel Brothers and in that background allowed him the benefit of lifting the articles directly from the Base Depot at NJP. Moreover, when such an Order was passed by the sub-Divisional Officer at Kalimpong on 27.1.1997, there was nothing to say that the Petitioner had agreed that he would not claim Transport Rebate. Moreover, the question in this case is not claiming additional rebate. The question is the claim of Transport Rebate. Transport Rebate has been allowed by a Government Order on 19.11.1996 and therefore, even if the Petitioner is assumed to have agreed of not claiming additional rebate, it does not mean that he had agreed not to claim Transport Rebate. The two cannot be allowed to be confused by the learned Counsel for the State only for purposes of creating a confusion and prejudicing the mind of the Court.

30. Moreover from the host of documents brought on record, it is evident that even the authorities have admitted the fact that the Petitioner''s claim was genuine. This would be evident from the letters dated 9.6.2000 written by the Regional Deputy Director, Food & Supplies (page 31 of the Supplementary Affidavit), the letter dated 25.2.2003 written by the District controller, Food & Supplies, Darjeeling and addressed to the Deputy Regional Director (page 39 of the Supplementary Affidavit) and the authorities having themselves stated that the claim to the Petitioner was genuine and justified, it does not lie in the mouth of the said Counsel to submit before this Court that the Petitioner should not be granted any relief.

31. Another interesting feature of this case is that on 28.8.2001 (page 37 of the Supplementary Affidavit) the District Magistrate had himself allowed Transport Rebate but two days thereafter and without assigning any reasons, he cancelled that Order and directed the District Controller not to give effect to his earlier

Order. While the earlier Order shows that the District Magistrate had allowed Transport Rebate in favour of the Petitioner, the said Order stood cancelled without assigning any reasons and therefore, the said cancellation cannot be said to have been issued without application of mind or in accordance with law.

32. In this context, yet another letter of the District Magistrate, Darjeeling is memo No. 226/Food dated 24.9.1997 in which he had approved and sanctioned the proposal for Transport Rebate in favour of the Petitioner and had enclosed therein the Distance Certificate issued by the Assistant Engineer, Kalimpong. This letter has not been cancelled by the District Magistrate till date and it remains valid even if the other one dated 28.8.2001 was sought to be cancelled, though illegally. Under the Circumstances and for the foregoing reasons, this Court is of the view that the authorities have unnecessarily harassed the Petitioner for no reason at all. If the Government Order is still in existence and if the authorities had themselves sanctioned and approved the proposal of Transport Rebate and if they had themselves held that the claim of the Petitioner was genuine, then there is absolutely no justification on the part of the Respondents to sit tight over the issue for a such long period of time to the prejudice of a person who is a citizen of India doing business in the State and even, in this country. If this be attitude of the Bureaucracy, then this Court fails to understand as to how the business community will thrive in this State?

33. This Writ Petition stands allowed. The authorities are directed to grant Transport Rebate to the Petitioner w.e.f. 19.3.1997 for the approved distance of 132.8 kms. from NJP Base Depot to Kumai in terms of the Government Order referred to above within a period of 2 weeks from today failing which, each of the payments will carry additional interest @ 6% from the date it became payable till the date of actual payment.

The Writ Petition stands allowed.

Upon appropriate Application(s) being made, urgent Photostat Certified copy of this Judgment, be given/issued expeditiously subject to usual terms and conditions.

