

(2024) 03 CAL CK 0066
In the Calcutta High Court
Case No : WPA No. 19546 Of 2018

Sunil Saha

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 19-03-2024

Acts Referred:

Constitution Of India, 1950 — Article 12, 226

Citation : (2024) 03 CAL CK 0066

Hon'ble Judges : Moushumi Bhattacharya, J

Bench : Single Bench

Advocate : Debabrata Saha Roy, Pingal Bhattacharyya, Subhankar Das, Sankha Biswas, Samrat Chowdhury, Devajyoti Barman, Sanjukta Basu Mallick

Final Decision : Allowed

Judgement

Moushumi Bhattacharya, J

1. The petitioner was engaged as a Handling and Transport (H & T) Contractor by the Central Warehousing Corporation (CWC), Jalpaiguri for two time-spans in 2011 – 2013 and 2013 – 2015. The petitioner was to unload food grains from Railway wagons and transport it to the godowns of CWC and unload the grains to the godowns. The Food Corporation of India (FCI) is the owner of the food grains. According to the terms and conditions of the Agreement executed between the petitioner and the CWC, the petitioner was to raise bills on CWC after performing the work and CWC was to make payment to the petitioner in accordance with the invoices.

2. The petitioner however was unable to unload food grains from Railway wagons due to various circumstances. The petitioner claims that the petitioner sought instructions from CWC on these occasions and that CWC informed the petitioner that the petitioner was to unload the food grains at whichever space was available and that no demurrage charges would be levied on the petitioner or deducted from the petitioner's bills.

3. Learned counsel appearing for the petitioner submits that the CWC assured the petitioner all along that no amounts would be deducted from the petitioner's bills. Counsel submits that the petitioner does not have any claims against the FCI since there was no contract between the petitioner and the FCI at any point of time.

4. Learned counsel appearing for the respondent nos. 4 – 7 and 9 / Central Warehousing Corporation submits that the petitioner was responsible for handling and transporting food grains of the depositor and hence the petitioner was providing such services to Food Corporation of India. Counsel submits that the CWC forwarded the H & T bills of the petitioner to FCI for payment and approximately Rs. 61 lacs is liable to be deducted from the petitioner's bills as demurrage charges.

5. Counsel raises a preliminary objection of the writ petition being barred by limitation since the contract was operative from 2012 – 2015. It is also submitted that the petitioner waived its claims in the form of a "No Demand Certificate" being issued in favour of CWC after completion of the tenure of the Agreement. On the merits of the dispute, counsel submits that the FCI was responsible in utilising the space reserved by FCI at the Central Warehouse at Raninagar as well as for the delay in clearing out the existing stock for creating sufficient space for storing the food grains. Counsel disputes the investigation report prepared by the FCI on the ground of the said report being prepared by the Officials of the FCI.

6. FCI objects to the maintainability of the writ petition on the same grounds as that of CWC. Learned counsel appearing for FCI submits that the petitioner's claims are not supported by documentary evidence and that FCI has already paid Rs. 43.35 lacs to the petitioner as opposed to the petitioner's claim of Rs. 1.17 crores. Counsel submits that the writ petition involves disputed questions of fact and that there is no privity of contract between the petitioner and the FCI. Counsel also seeks to rely on the arbitration clause in the contract executed between the petitioner and the CWC.

7. The petitioner has prayed for a direction on the CWC and the FCI for releasing of the amount deducted from the petitioner's handling and transportation bills on account of demurrage charges amounting to Rs. 1,46,67,382/-. It is undisputed that the petitioner, as the successful bidder to a e-tender floated by CWC, was appointed as a handling and transport contractor for two tenures commencing from 28.9.2011 and 28.9.2013. While the CWC says that the petitioner was providing H & T services to FCI as the Depositor of the CWC at the Central Warehouse at Raninagar, FCI disputes the claim of the petitioner on merits without denying its liability to the claim. FCI's stand is in fact of FCI having made payment of a substantial amount to the petitioner in terms of the bills raised by CWC for the work done by the petitioner.

8. Curiously both CWC and FCI take the same objections to the writ petition, namely, that of limitation and disputed questions of fact.

9. With regard to limitation, although the tenure of the Agreement was from 28.9.2011 – 27.9.2013 and again from 28.9.2013 – 27.9.2015, there is sufficient evidence of a recurring and continuous cause of action. The petitioner raised its bills on CWC and CWC demanded the money from FCI on 21.1.2014. FCI intimated its inability to make payments on 6.6.2014. The petitioner made a number of representations thereafter to FCI as well as the CWC starting from 20.1.2014 - 19.12.2017 including an application under Right to Information Act, 2005 on 21.12.2017 and 2.1.2018. The petitioner sought information from CWC on the amount withheld by CWC from the H & T bills of the petitioner for the Warehouse at Raninagar, Jalpaiguri. The present writ petition was thereafter filed in September, 2018. Hence there is no delay in filing of the present writ petition.

10. This Court is unable to accept the other objection with regard to disputed questions of fact and money claims. In *Unitech Limited vs. Telangana State Industrial Infrastructure Corporation*; 2021 SCC OnLine SC 99, the Supreme Court relied on *ABL International Ltd. vs. Export Credit Guarantee Corporation of India*; (2004) 3 SCC 553 to conclude that writs under Article 226 of the Constitution of India are maintainable for asserting contractual rights against the State or its instrumentalities as defined under Article 12 of the Constitution. The Supreme Court reiterated the legal principles laid down in *ABL International* to hold that a writ petition involving a consequential relief of monetary claim is also maintainable. In any event, whether the Court finds the existence of any factual disputes which are outside the jurisdiction of the Writ Court exercising discretionary powers under Article 226 of the Constitution of India depends on the individual facts of each case. Hence, the Writ Court can certainly interfere in disputed questions of fact or even where the claim is purely a monetary claim provided the Court finds sufficient reasons for such interference, that is, infraction of any of the rights guaranteed in Part III of the Constitution of India.

11. On the merits of the controversy, it is evident that the petitioner has been unfairly treated by both the CWC as well as FCI. The petitioner entered into an Agreement with CWC for handling and transporting food grains belonging to FCI. Demurrage charges, if any, were foisted on the petitioner by reason of the acts of omission / commission on the part of FCI and CWC. Hence, neither of the respondents can seek vindication from their accountability by putting the ball in each other's courts. The dispute between CWC and FCI would also be evident from the letter of CWC to FCI on 10.4.2013 requesting the FCI to release an amount of approximately Rs. 27 lacs which was deducted on account of demurrage charges.

12. While CWC is primarily responsible for payments of the petitioner's bills for the work done and there is no dispute that the petitioner did perform its contractual obligations, the FCI is the sole disburser of the money to CWC which CWC would then pay to the petitioner. FCI's denial of the petitioner's claims on merits also links the petitioner and the FCI with sufficient clarity in respect of FCI's liability. FCI in fact says that FCI has already made payments of Rs. 43.35

lacs to the petitioner which shows that FCI cannot escape from its liability for withholding a substantial amount of money from the petitioner's bills.

13. Significantly, neither CWC nor FCI has given any satisfactory response or defence as to why the amount of Rs. 1,46,67,382/- was withheld from the petitioner's handling and transportation bills when the demurrage charges were incurred by reason of FCI and CWC's failure to provide warehousing space for storing the food grains. It is even more significant that CWC assured the petitioner at the relevant point of time that no amount shall be deducted from the petitioner's bills and also admitted the petitioner's claim without raising any dispute.

14. Moreover, FCI's letter to CWC on 6.6.2014 requesting the latter to take steps for creating sufficient storage space on top priority basis so that the stranded food grains can be unloaded at the earliest shows that the inability of creating that space was on account of CWC or at least between CWC and FCI for which the petitioner cannot be made to suffer the consequences.

15. Although both the respondents rely on "No Demand Certificate" dated 6.08.2018, the Court does not wish to place much reliance on that document since it is common knowledge that contractors are coerced into signing such certificates as a condition for release of pending dues. In any event, the No Demand Certificate does not indicate anywhere that the deductions made from the petitioner's bills were included in the scope of the Certificate. It is also admitted that the petitioner sent several representations on account of the demurrage charges to the respondents independent of the No Demand Certificate.

16. FCI has relied on a judgment delivered by Co-ordinate Bench in *Mandip Kumar Agarwal v. Union of India and Others*; WPA No. 3963 of 2023, IA No.: CAN 1 of 2023. However, the judgment makes it clear that FCI had taken a no-liability stand only with regard to security deposit paid by the petitioner/Handling and Transport Company to the CWC. The Court however proceeded to direct CWC to disburse a substantial amount of money for the work done by the petitioner within a specific time frame. The present case is factually distinguishable. FCI itself has admitted to paying Rs. 43.35 lacs to the petitioner against the petitioner's bills in terms of a Reconciliation Sheet as would appear from the notes filed by FCI. Hence, FCI cannot shirk its responsibility towards the petitioner's claims.

17. The facts narrated above makes it clear that the respondents have deducted amounts Rs. 27,98,100/-, Rs. 63,22,882/-, Rs. 23,52,000/- and Rs. 2,94,000/- for the contractual time-frames on account of demurrage charges. Significantly, the petitioner has claimed relief against both the respondents in the prayer portion of the writ petition without exempting FCI. The correspondence between CWC and FCI also shows that the petitioner has been made to suffer the consequences of a dispute between CWC and FCI and for reasons for which the petitioner cannot be held liable under any circumstances. Failure to arrange

warehouse space for unloading the goods handling and transported by the petitioner is entirely within the work/obligations of both CWC and FCI which would be clear from the correspondence exchanged between them. The respondents have not shown any credible defence to the petitioner's claim save and except technical points of limitation and the limited jurisdiction of Writ Courts with regard to contractual matters and money claims. All these arguments have been rejected in the earlier part of this judgment.

18. The Court is hence inclined to grant relief to the petitioner, also for the fact that the petitioner's claims have been pending since long, at least since 2018 when the present writ petition was filed. WPA 19546 of 2018 is accordingly allowed and disposed of by directing the respondents i.e Central Warehousing Corporation and Food Corporation of India as well as its Officers who have been arrayed as party respondents, to disburse the amount deducted from the petitioner's handling and transport bills amount to Rs. 1,46,67,382/- to the petitioner within 4 weeks from the date of this judgment. The mode of payment will be the same as was used by the respondents to make payment to the petitioner before filing of the present writ petition. If the petitioner has any other preferred mode for receiving the amount, the petitioner shall communicate the same to the respondents within 1 week from the date of this judgment. The respondents will disburse the amount within 4 weeks from the date on which the petitioner makes the communication as to the mode of the payment to the respondents.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.