

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) NO.366 OF 2012
W.P.(C) NO.372 OF 2012
W.P.(C) NO.332 OF 2014
W.P.(C) NO.333 OF 2014

IN
W.P.(C) NO.366 OF 2012

Sri Abhijit Paul,
son of Sri Swapan Kumar Paul,
resident of B.K. Road, Agartala,
P.O. Agartala, P.S. East Agartala,
District West Tripura.

..... Petitioner

- Vs -

1. Food Corporation of India,
represented by its Managing Director,
having its Head Office at 16-20,
Barkhamba Lane, New Delhi-110001
2. The General Manager,
Food Corporation of India,
North East Frontier Region,
Midland, Shillong-03
3. The Area Manager,
Food Corporation of India,
Colonel Chowmuhani,
P.S. West Agartala, District West Tripura.

.....Respondents

For the petitioner : Mr. A.K. Bhowmik, Sr.Advocate
Mr. R. Dutta, Advocate

For the respondents : Mr. P. Chakraborty, Advocate

IN
W.P.(C) NO.372 OF 2012

Sri Abhijit Paul,
son of Sri Swapan Kumar Paul,
resident of B.K. Road, Agartala,
P.O. Agartala, P.S. East Agartala,
District West Tripura.

..... Petitioner

- Vs -

1. Food Corporation of India,
represented by its Managing Director,
having its Head Office at 16-20,
Barkhamba Lane, New Delhi-110001
2. The General Manager,
Food Corporation of India,
North East Frontier Region,
Midland, Shillong-03
3. The Area Manager,
Food Corporation of India,
Colonel Chowmuhani,
P.S. West Agartala, District West Tripura.

.....Respondents

For the petitioner : Mr. A.K. Bhowmik, Sr.Advocate
Mr. R. Dutta, Advocate

For the respondents : Mr. P. Chakraborty, Advocate

IN
W.P.(C) NO.332 OF 2014

Sri Abhijit Paul,
son of Sri Swapan Kumar Paul,
resident of B.K. Road, Agartala,
P.O. Agartala, P.S. East Agartala,
District West Tripura.

..... Petitioner

- Vs -

1. Food Corporation of India,
represented by its Managing Director,
having its Head Office at 16-20,
Barkhamba Lane, New Delhi-110001
2. The General Manager,
Food Corporation of India,
North East Frontier Region,
Midland, Shillong-03
3. The Area Manager,
Food Corporation of India,
Colonel Chowmuhani,
P.S. West Agartala, District West Tripura.

.....Respondents

For the petitioner : Mr. A.K. Bhowmik, Sr.Advocate
Mr. R. Dutta, Advocate

For the respondents : None

IN
W.P.(C) NO.333 OF 2014

Sri Abhijit Paul,
son of Sri Swapan Kumar Paul,
resident of B.K. Road, Agartala,
P.O. Agartala, P.S. East Agartala,
District West Tripura.

..... Petitioner

- Vs -

1. Food Corporation of India,
represented by its Managing Director,
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Barkhamba Lane, New Delhi-110001
2. The General Manager,
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North East Frontier Region,
Midland, Shillong-03

3. The Area Manager,
Food Corporation of India,
Colonel Chowmuhani,
P.S. West Agartala, District West Tripura.

.....Respondents

For the petitioner : Mr. A.K. Bhowmik, Sr.Advocate
Mr. R. Dutta, Advocate

For the respondents : None

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

Date of hearing : 25.02.2015

Date of judgment & order : 27.02.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER

By means of these writ petitions, the petitioner who is a transport contractor, has out of apprehension, approached this court for a writ of prohibition, directing the respondents not to deduct any amount from his transportation bills for transporting, loading and unloading of food grains, sugar and allied materials for the prescribed route and destination.

2. All these writ petitions are set up in the identical fact-situation and out of the same apprehension that the respondents might deduct the railway demurrage charge from the transportation bills as

raised by the petitioner. Hence all these writ petitions are clubbed together for disposal by a common judgment.

3. For laying the bare facts, it would be apposite to make reference to the order awarding the transport contract of the petitioner against different writ petitions as under :

Sl. No.	Writ Petition	Order awarding transport contract
i.	W.P.(C) No.366/2012	No.Cont.9/NEFR/TC/CBZ-ADN/2011, dated 25.04.2012 (Annexure-2 to the writ petition)
ii.	W.P.(C) No.372/2012	No.Cont.9/NEFR/TC/CBZ-NDN/2011, dated 25.04.2012 (Annexure-2 to the writ petition)
iii.	W.P.(C) No.332/2014	No.Cont.50/NEFR/TE/2014/10, dated 21.03.2014 (Annexure-1 to the writ petition)
iv.	W.P.(C) No.333/2014	No.Cont.9/NEFR/TC/ADHOC/CBZ-ADN/2014/2582, dated 09.07.2014 (Annexure-2 to the writ petition)

4. The petitioner has submitted that after he was awarded the work for the transportation as stated, he commenced the execution of the work on depositing the required security deposit. The petitioner has deposited the bank guarantee to the satisfaction of the respondents. According to the petitioner, the respondents are engaged in unloading the food grains from the railway wagons at the railway siding, FSD Churaibari and the petitioner have been transporting those materials to the FSD Arundhutinagar, Agartala and the respondents unload and store those materials at Arundhutinagar. If for any reason, unloading of goods from railway wagon is delayed beyond the stipulated period, the

demurrages/wharfage charges as per railway rules are to be paid by the respondents. It has been also asserted that the agreement, the petitioner has entered into, does not contain any clause shifting obligation to the petitioner for payment of the railway demurrage etc. But, for similar nature of works, in the earlier agreement, a clause used to be incorporated, which provides as under :

"12(a) The contractors shall be liable for all costs, damages, demurrages, wharfages, forfeiture of wagon, registration fees, charges and expenses suffered or incurred by the Corporation due to the contractor negligence and un-workman like performance of any services under this contract or breach of any terms thereof or their failure to carry out the work with a view to avoid incurrence of demurrage, etc. and for all damages or losses occasioned to the Corporation due to any act whether negligent or otherwise of the contractors themselves or their employees. The decision of the General Manager regarding such failure of the contractors and their liability for the losses, etc. suffered by Corporation shall be final and binding on the contractors."

5. According to the petitioner, since there is no such clause in the agreement under which the petitioner is operating as the transporting contractor, the respondents cannot shift any liability of payment of railway demurrage and wharfage charges. As such, the respondents cannot deduct any amount on that account. As the petitioner apprehends that the respondent would deduct the railway demurrage from the petitioner's bills, he has approached this court for protection against the arbitrary action of the respondents' deducting the railway demurrage from the bills of the petitioner. The petitioner has

submitted that the delay in clearance of the food-grains from the railway wagons cannot be attributed to the petitioner, inasmuch as the respondents are under obligation to that part of the work.

6. Be that as it may, the respondents by filing the counter-affidavit, has submitted that the petitioner was cautioned to improve his performance as the performance was found unsatisfactory. It has been further stated that, in terms of the order delivered in W.P.(C) No.460/2011 (Abhijit Paul Vs. F.C.I.), the Gauhati High Court has permitted the Food Corporation of India to recover the losses suffered due to negligence of the contractor after necessary enquiry. The concerned Depot In-charge should fix the liability of railway demurrage charges etc. after necessary enquiry at his level. As such, the demurrage charges accrued due to the detention of wagons for short supply of trucks from the day of issuance of the indents to the contractor. It is the sole responsibility of the petitioner to bear the losses. The respondents have denied the allegations that the delay in clearance of the wagons took place due to the fault of the respondents. They have further asserted that the claim of the petitioner is not based on records. Apart that, deduction of the railway demurrage has been contemplated/done as per clause 12(a) of the agreement after necessary enquiry. Thus the respondents be permitted to recover the losses suffered due to failure/negligence of the petitioner in the public interest.

7. What transpires from the reply is that the respondents have deducted the amount in contemplation of the deduction under the railway demurrage under clause 12(a) of the agreement, but in reply to the averments made by the petitioner that there is no such clause in the agreement, the respondents preferred not to make any response.

It clearly transpires that, even if there was any enquiry, the petitioner was not given any opportunity to have his say. Neither was he served with a show cause after determining the railway demurrage at any relevant point of time.

8. Even though the dispute has emerged from the contract, this court have the limited jurisdiction to judicially review the action of the respondents, inasmuch as, it has been enunciated by the apex court in **Kumari Shrilekha Vidyarthi Vs. State of U.P. & Ors.**, reported in **AIR 1991 SC 537** that the State activity in contractual matters also may fall within the purview of judicial review. Every State action must survive the test against arbitrariness and abuse of power. Non-arbitrariness, being a necessary concomitant of the rule of law, is imperative that all actions of every public functionary, in whatever sphere, must be guided by reasons and not whim, caprice or personal predilections of the persons entrusted with the task on behalf of the State. Exercise of all powers must be for public good, instead of being abuse of the power.

9. The respondents have failed to disclose that the petitioner is under obligation by the provisions of the agreement to make the

payment of railway demurrage under all or certain conditions. Further it has transpired that either during "enquiry" or after determining the railway demurrage, the petitioner was ever asked to have his say on the matter. Thus this court does not have any hesitation to hold that the action of the respondents is wholly arbitrary and abuse of the power. Hence, the respondents are prohibited from deducting the railway demurrage from the petitioner's transportation bills unless the loss suffered by the Food Corporation of India for any action or inaction of the petitioner is established following the principles of natural justice or by due process of law. At the same time, this court must record that mere absence of any clause like clause 12(a) as reproduced, the petitioner cannot claim total immunity against the loss caused to the respondents by the petitioner during execution of the transport contracts. If for negligence or dereliction of the petitioner any loss is caused to the respondents, the petitioner is under obligation to make good of that loss, but determination shall always be subject to the due process of law.

10. Having held so, the writ petitions are allowed to the extent as indicated above.

There shall be no order as to costs.

JUDGE

ROY