

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM &
ARUNACHAL PRADESH)
ITANAGAR BENCH.

RFA 01 (AP) / 2012

The State of Arunachal Pradesh,
Represented by the Secretary to the
Govt. of Arunachal Pradesh,
Department of Supply and Transport,
Itanagar.

.....Appellant.

By Advocate:
Ms. G. Deka, Addl. Sr. G.A.

-Versus-

M/s Meena Express,
Represented by Gokar Lombi
(Proprietor) of the firm, resident of
E-Sector, Naharlagun,
District-Papum Pare,
Arunachal Pradesh.

.....Respondent.

By Advocate:
Mr. M. Boje.

BEFORE
THE HON'BLE JUSTICE Dr. (MRS.) INDIRA SHAH

Date of hearing : 07-02-2014

Date of Judgment & Order : 14-02-2014

JUDGMENT & ORDER (CAV)

This is an appeal against the judgment and decree dated 29.06.2012 passed by the learned District & Sessions Judge, (Western Zone, YPA) in MS. No. 222 (Y) 2011 decreeing the suit in favour of respondent issuing direction to the appellant to pay a sum of Rs.1,45,

98,824/- (Rs. One Crore Forty five lakhs Ninety Eight Thousand Eight hundred Twenty Four) to the respondent failing which the amount would carry an interest @ 12 % per annum.

2]. Heard Ms. G. Deka, learned Addl. Sr. Govt. Advocate for the appellant and Mr. M. Boje, learned counsel appearing on behalf of the respondent.

3]. The respondent, herein, as plaintiff filed a money suit which was registered in MS. No.222 (AP) 2011 against the State of Arunachal Pradesh for realization of an amount of Rs. 1, 45, 98, 824/- (Rs. One Crore Forty five lakhs Ninety Eight Thousand Eight hundred Twenty Four) @ 12 % per annum.

4]. The plaintiff's case in brief, is that, the plaintiff and the defendant entered into an agreement on 06.08.2003 whereby the plaintiff was awarded with the work of Transportation of essential commodities from ADST, Likabali to CPO PD with effect from 01.04.2003 to 31.03.2004. The said contract work was successfully executed by the plaintiff. During the existence of the agreement the rate of carriage was enhanced @ Rs. 50/- (Rs. Fifty) only per 20 (twenty) Kg load per km for head load and Rs. 946 (Rs. Nine hundred & forty six) only per Quintal per Km for land route in respect of the respondent/plaintiff. The said rate of carriage was reviewed by the Government of Arunachal Pradesh and vide order dated 30.12.2003 the appellant authority reduced the rate from Rs. 50/- per Kg load per Km to Rs. 25/- per 20 Kg load per Km to maintain the uniform rate for the same work. Subsequent, to that, the plaintiff/firm was entrusted to carry and transport Rice i.e 1000 Quintals and Iodised Salt 1000 Quintals from PDS, Aalo to CPO Centre, Pidi through land route/head load vide order dated 09.02.2004. The plaintiff executed their contract work with effect from 12.02.2004 to 17.02.2004. The plaintiff submitted his bills for Rs. 3,00,07,800/- for necessary payment. Out of the aforesaid amount, the appellant/defendant released an amount of Rs.1,45,98, 824/- (Rs One Crore Forty five lakhs Ninety Eight Thousand Eight hundred Twenty Four) on 27.03.2008. Claiming the balance amount, the

plaintiff filed writ petition No. 442 (AP) 2009 and the said writ petition was disposed of with direction to the appellant authorities to pay the outstanding dues to the plaintiff within a specific time. When the outstanding dues of the plaintiff was not paid, the plaintiff again approached this Court by filing Writ petition No. 362 (AP) 2010 and this Court disposed of the matter with direction that the State authorities shall verify the claims of the plaintiff, including the rates quoted by him and upon such verification, if it is found that the amount of Rs.1,58,99,800 or any part thereof is due and payable to him, the same shall be made available to him.

5]. In pursuance, to the direction given by this Court, the appellant authorities vide order dated 15.12.2010 stated that the Department has already cleared the dues payable to the plaintiff @ Rs. 25 per 20 Kg per Km i.e. the rate which was in force at the relevant period. The plaintiff again approached this Court by filing a writ petition No. 103 (AP) 2011 and this Court held that the disputed question of fact could not be decided in a writ proceeding under Article 226 of the constitution of India, which can be decided in a properly instituted suit before a competent Civil Court having jurisdiction over the matter. The plaintiff, thereafter, filed the aforesaid money suit before the District and Sessions Judge, YPA. The appellant/defendant contested the suit by filing written statement wherein they admitted that the plaintiff had in fact executed the contract work as per the agreement. According to them, as per the initial agreement, the rate for transportation of the essential commodities was Rs. 4270/- per Quintal. The contract agreement was executed on 06.08.2003 vide order dated 14.01.2004, the plaintiff was asked to transport 1000 Quintals of Rice and 1000 Quintals of I/salt through Land/head load for the month of December quota only and vide communication in the month of February, 2004, the Director of Civil Supply and Transport asked the Assistant Director of Civil Supply and Transport to pay Rs. 880/- Per Quintal of Rice and Rs. 285/- only per Quintal of Iodized Salt. Again vide order dated 15.01.2004, the rate of transportation was revised. Vide communication dated 30.12.2003, the Under Secretary, (Civil Supply), Government of Arunachal Pradesh

addressing the Director of Civil Supply and Transport, Arunachal Pradesh enhanced the rate of carriage contract in respect of the plaintiff to Rs. 50 Per 20 Kg load per Km. According, to defendant, the plaintiff executed the work during the period between 12.02.2004 to 17.02.2004 when the uniform rate of Rs. 25 per 20 Kg load per Km was in force. There was no agreement between the parties at the rate of Rs. 50 per 20 Kg per Km.

6]. The learned Trial Court on the basis of the pleadings has framed the following issues:-

(1) whether the present money suit is maintainable under the law as well as in fact.

(2) Whether the plaintiff is entitled for Rs. 50 per 20 Kg per Km for the execution of the works as per the agreement dated 06.08.2003 and 14.01.2004 by the defendants.

(3) Any other reliefs can be granted to the plaintiff.

7]. The plaintiff adduced evidence of 5 (five) witnesses and exhibited the documents in his favour. One witness, on behalf of the defendant was examined. The learned Trial Court while deciding the issue No. 1 held that the suit is maintainable in law as well as in fact.

8]. The learned Trial Court observed that in the initial deed of agreement there is no mention of carriage rate. There is no agreement or guideline for fixation or re-fixation of the carriage rate and therefore, the said agreement shall be governed by the general contract rule. The contract was awarded to the plaintiff vide order dated 14.01.2004 @ Rs. 50 Kg per load per Km, which was in continuation of the letter dated 30.12.2003. The subsequent reduction of the contract carriage was not intimated to the plaintiff. DW.1 in his cross examination admitted that the subsequent order of reduction of rate of carriage was communicated to all the Deputy Commissioners of the Districts and to all the concerned Firms, which was, however denied by the plaintiff. The learned Trial

Court took notice of the fact that the said letter was issued by Under Secretary (Civil Supply), Government of Arunachal Pradesh to the Director (Civil Supply and Transport), Government of Arunachal Pradesh, Naharlagun and the copy of the order was also forwarded to:-

1. Director, Civil Supply, Arunachal Pradesh, Naharlagun.
2. P.S. to Hon'ble Ministers, Civil Supply, Govt. of Arunachal Pradesh.
3. All the Deputy Commissioners, Govt. of Arunachal Pradesh.
4. All the District Civil Supply Officers, Govt. of Arunachal Pradesh.

9]. But there is no indication that the copy of the said order was forwarded to the carriage contractor particularly to the plaintiff. The learned Trial Court held that the re-fixation of the rate was never communicated to the plaintiff and it cannot be imposed to the plaintiff who had agreed to execute the work @ Rs. 50 per 20 Kg load per Km and accordingly the learned Trial Court decreed the suit in favour of the plaintiff.

10]. It is submitted by the learned counsel for the parties that the plaintiff entered into the deed of agreement on 06.08.2003 and as per the aforesaid deed, the rate of lifting of 70 quintals per month from Likabali PD was Rs. 4270 only. This rate in the scheduled deed of agreement is inclusive of both land route/head load charges from Likabali PD.

11]. The Order No. DST/NLG/CONT-05(Pt-II dated 14-01-2004 was a consolidation and communication of revised carriage rates e-route CPO Pidi prevailing during the relevant period to the firm only. It was neither a work order nor an agreement of contract with the respondent-plaintiff.

12]. The appellant has in this appeal has mentioned that the respondent-plaintiff had received payments in respect of two bills for the work executed after 21-01-2004 to at a rate of Rs.25 per KG load per KM without raising any objection and thus he had knowledge of uniform rate of Rs.25/- per 20 KG load per KM during the relevant period of time. Further more, the plaintiff received Rs.73,18,146/- against four bills for lifting of normal quota. Out of four bills, bill No.ME/03/2003-04/11 dated 16-07-2004 had been paid at the rate of Rs.25/- per 20 KG load per KM as the work had been carried out after 21-01-2004. The plaintiff admitted the payment as genuine and accepted it without objection.

13]. The fact that out of four bills, one bill was for the period after 21-01-2004 and the plaintiff received the payment at the rate of Rs.25/- per 20 KG load was not specifically brought to the notice of the trial court.

14]. It is further submitted by the learned counsel for the appellant that the rate of carriage was regulated not only against the plaintiff but against all carriage contractors at the relevant point of time. Moreover, as per Clause-(2) of the agreement, it has been provided that *“the quantities of stores to be transported upto each destination as set forth in the Schedule attached thereto are approximate and given as rough guide only. The quantity may be increased or decreased at the discretion of the First Party”*. The similarly situated contractors including the plaintiff admittedly received their payments at the uniform rate of the relevant period.

15]. In view of above, this Court finds that it is a fit case to remand back to the learned Trial Court for re-trial after giving opportunity to the parties to adduce evidence with regard to the two bills of the respondent-plaintiff where he accepted the payment of Rs.25/- per 20 KG load per KM during the relevant period and also to brought on record the relevant provisions of deed of agreement for carriage contract.

16]. Accordingly, the judgment and decree dated 29-06-2012 passed by the learned District & Sessions Judge, Western Zone, Yupia in MS No. 222(Y) 2011 is hereby set aside and quashed. The matter is remanded back to the learned Trial Court for re-trial after giving opportunity to the parties to adduce evidence with regard to the two bills of the respondent-plaintiff where he accepted the payment of Rs.25/- per 20 KG load Per KM during the relevant period.

17]. Return the LCR along with a copy of the judgment and order to the learned court below forthwith. The learned trial Court is directed to make an endeavour to dispose of the matter within a period of 3 months from the date of receipt of the LCRs along with a copy of the judgment and order.

18]. The appeal stands disposed of in terms of the observations as indicated above.

JUDGE

Talom