



IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM: NAGALAND: MIZORAM AND ARUNCHAL PRADESH)
ITANAGAR PERMANENT BENCH.

Appeal From
Writ Petition (Civil)

Wp(c) 69 (AP) 2018

Appellant
Petitioner.

M/S Goapur Makcha & Am

----VERSUS----

Respondent
Opposite Party

State of A.P & G Ors.

Counsel for the Appellant

Petitioner M. Kato A. Timung
B. Sora M. Tanga
B. Lingu L. Kamcham
N. Sora J. Rome
P. etc M. Tamut
T. Noshi
T. EPA

Counsel for the Respondent
Opposite Party GA (AP)

Noting by Officer or Advocate	Serial	Date	Office not, reports, orders or proceeding with signature
(1)	(2)	(3)	(4)

M/s Goapur Makcha

Daporijo, Upper Subansiri District, Arunachal Pradesh through its proprietor Shri Goapur Makcha, S/o late Tata Makcha, a resident of Mite Village, P.O. & P.S : Daporijo, Upper Subansiri District, Arunachal Pradesh, duly represented **Shri Tarin Makcha**, S/o late Tata Makcha, a resident of Mite Village, P.O. & P.S : Daporijo, Upper Subansiri District, Arunachal Pradesh, a Power of Attorney-holder of M/s Goapur Makcha.

Contact No. 8014486533, Email.: NIL

.....*Petitioners*

-Versus-

1. The State of Arunachal Pradesh represented by the Chief Secretary, Government of Arunachal Pradesh, Itanagar.

2. The Secretary,
Department of Food and Civil Supplies,
Govt. of Arunachal Pradesh, Itanagar.

3. The Secretary,

Department of Finance, Government of
Arunachal Pradesh, Itanagar.

4. The Director,

Department of Food & Civil Supplies, Govt.
of Arunachal Pradesh, Naharlagun.

**5. The DDFCS (P & D, Legal &
License),** Directorate of Food & Civil
Supplies, Govt. of Arunachal Pradesh,
Naharlagun.

6. The Deputy Commissioner

Upper Subansiri District, Daporijo,
Arunachal Pradesh.

7. The District Supply Officer

Upper Subansiri District, Daporijo,
Arunachal Pradesh.

.....*Respondents*

WP(C)69(AP)/2018

::: BEFORE :::

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

05.06.2018

Heard Mr. M. Kato, learned counsel appearing for the petitioner and Ms. R. Basar, learned Govt. Advocate for all the respondents.

2. The petitioner herein is a Public Distribution Scheme (PDS) wholesale Nominee-cum-Carriage Contractor for rice and wheat and deals in carrying and supplying of food grains items from one place to other under the Hill Transport Subsidy (HDS) from one depot to other depots within the District or the State OF Arunachal Pradesh for the said purpose.

3. It is submitted that the petitioner has invested huge amount and to repay the same, Power of Attorney was executed in favour of the present Attorney-Holder on 04.12.2017, by which he has been duly authorized to file this writ petition.

4. Pursuant to an order dated 07.06.2005 of the Director of Civil Supplies, Govt. of Arunachal Pradesh, the Deputy Commissioner, Upper Subansiri District, Daporijo, informed the petitioner that the State Govt. have approved the appointment of the petitioner's firm as a PDS wholesale Nominee-cum-Carriage Contractor for PDS rice and food grains and head load carriage of food grains and other PDS items in respect of Upper Subansiri District, Arunachal Pradesh for the year 2005-2006 @ of Rs. 2.05 paise only per quintal per KM for vehicular transport and Rs.125/- only per qtl. per KM for head load carriage, observing that the said approved rate will remain valid upto 31.02.2006. Pursuant to the said communication of the Govt. of Arunachal Pradesh, dated 07.06.2005, the Deputy Commissioner, Upper Subansiri District, accordingly appointed the petitioner's firm for carriage and distribution of the PDS articles on condition that the petitioner's firm have to deposit an amount of Rs. 4,00,000/- towards security. The petitioner has entered an agreement with the Govt. of Arunachal Pradesh on 09.06.2005 to carry and deliver the food grains of said PDS articles from one place to other or one depot to other depot within the State/District as laid down in

the said agreement dated 09.06.2005 with regard to the arrangement between the petitioner and the Deputy Commissioner, Upper Subansiri District. It is stated that in compliance of the said agreement, dated 09.06.2005, the petitioner carried out the work awarded as per the terms and condition and supplied the items to various locations of Upper Subansiri District for the period of 2005-06 and claimed bill as per the proforma, mentioning the bill Nos., dates and amount along with Lifting Certificate of FCI and acknowledgements and other documents, which were verified and checked by the team of Scrutiny Members consisting of the Deputy Commissioner, Daporijo, District Supply Officer, Manager(A/C), FCI, North Lakhimpur Area Manager, FCI, North Lakhimpur and the representative of the petitioner, where the total bill of Rs.1,37,49,796/- was prepared. The Deputy Commissioner, Upper Subansiri District by his communication dated 15.05.2005 forwarded the bills of the petitioner to the Area Manager, FCI, North Lakhimpur requesting him to pay the bill amounts, but as the said amount has not been paid till date, the petitioner has preferred this writ petition on 21.02.2018 for necessary direction to the respondents herein to pay the said amount along with interest @15% per annum from 15.10.2006.

5. On being enquired, the petitioner submitted that several representations were filed earlier on behalf of the petitioner before the respondent No.4, the Director of the Food and Civil Supplies, Government of Arunachal Pradesh for making necessary payment of his bills.

6. Mr. Kato, learned counsel for the petitioner also submits that a Board was constituted by the State respondents in May 2016 to verify again the pending bills towards Hills Transport Subsidy (HTS) payable to the petitioner during the year 2005-06 and the said Board found that an amount of Rs. 1,14,99,809/- is payable to the petitioner, which is yet to be paid to him. Therefore, the petitioner again on 05.12.2017 submitted a representation before the respondent No. 4, but, as all his efforts failed to evoke any response from the respondents, the petitioner has filed the this writ petition. It is also stated that as the Board constituted by the Government found that the petitioner is entitled to an amount of Rs. 1,14,99,809/- for his HTS, therefore, the petitioner has filed this writ petition for necessary directions to the respondents to pay the said amount with interest @

15% per annum from the date of submission of final bills dated 10.05.2006 (Annexure-5 to the petition).

7. From the Annexures appended to this writ petition, it is seen that in the Annexure-3, i.e. the agreement dated 09.06.2005 between the State Government and the petitioner, at Clause 21, it is specified that –

"The payment for transportation of goods shall be made by the First Party within 01(one) month from the date of receipt of payment from the FCI authorities. The Carriage Contractor will submit bills at the net weight as per FCI norms for Rice drawn from FCI supported by delivery Challan duly received by respective PDS Nominees/FPS Dealers. The First Party shall not entertain any bills unless consignment wise delivery is made in full."

8. At Clause-25 of said agreement dated 09.06.2005, it is mentioned that –

"The same shall be referred to the Deputy commissioner, Daporijo, since the Deputy Commissioner selects and appoint the Carriage Contractor for the transportation of controlled FCI items as the controlled food grains are the property of the Government and whose decision shall be final and binding upon both the parties."

9. Further, in Clause-26 of the said agreement dated 09.06.2005, it was provided that –

"The legal jurisdiction of the said Deed of Agreement is confined to Judicial Court at Daporijo, Upper Subansiri District, Arunachal Pradesh."

10. The amount claimed by the petitioner for his Bills towards HTS is only in terms of the said Agreement dated 09.06.2005. As per the Clauses of the agreement dated 09.06.2005, if any dispute between the parties of the said agreement, it is required to refer the same to the Deputy Commissioner specified therein and the petitioner is required to approach the appropriate forum prescribed in the said agreement for redressal of the any of his grievances with regard to any of the Clauses to the said agreement dated 09.06.2005. Even for the sake of argument of the petitioner with regard to the maintainability of this writ petition, the petitioner has also not stated the reason for filing this writ

petition on 21.02.2012 for the first time, though the cause of action arose on 10.05.2006, on submission of his Bills under the HTS. Except submitting that the representations were filed earlier, the petitioner did not state any reason for the delay in approaching this Court more than 11 years from the said cause of action. On being asked, the petitioner submitted that for payment of his bills, Board was constituted in terms of the order of the Government in May 2016 and the petitioner entitled for an amount of Rs.1,14,99,809/- for the said work that he carried out as per the agreement dated 09.05.2006 noted above.

11. The Hon'ble Supreme Court in the case of *K. V. Rajalakshmi & Anr. Vs. State Of Mysore and Anr.*, reported in *AIR 1967 SC 993* have held that – *The representations would not be adequate explanation to take care of delay.*

12. In the case of *State of Orissa Vs. Pyare Mohan Mishra* reported in *(1977) 3 SCC 996* as well as in the case of *State of Orissa etc. Vs. Arun Kumar Patnaik & Anr.* reported in *1976 (3) SCC 579* the Hon'ble Supreme Court have held that – *making of repeated representation cannot be regarded as satisfactory explanation of the delay* and the Hon'ble Supreme Court have dismissed in the both the cases, for approaching the Court on the ground of delay alone.

13. In the case of *Shiv Dass Vs. Union of India and Ors.* reported in *(2007) 9 SCC 274*, the Hon'ble Supreme Court have held that – *In the case of belated approach writ petition has to be dismissed. Delay or laches is one of the factors to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India, (in short the 'Constitution'). In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved, the matter is still within the discretion of the Court as pointed out in Durga Prasad Vs. Chief Controller of Imports and Exports and Ors., (AIR 1970 SC 769) and such discretion has to be exercised judicially and reasonably.*

14. The Hon'ble Supreme Court in the said judgment of *Shiv Dass* (Supra) have held that – *If petition is filed beyond a reasonable period say three years,*

normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years.

15. In the present case, the petitioner is totally silent regarding his approach to the Writ Court seeking his relief after more than 11 years, except stating of filing representations by him. Moreover, in terms of the agreement dated 09.05.2005 between the respondents and the petitioner, the petitioner herein is required to approach the appropriate forum for redressal of his grievances. Moreover, for release of his payment claimed by him, the case of the petitioner does not come under any of the exemption for approaching this Court as held by the Hon'ble Supreme Court, by passing the alternative forum in terms of said agreement dated 09.05.2005 for seeking the relief as prayed for.

16. For the reasons above, this writ petition lacks merit and accordingly stands dismissed.

✓
JUDGE

M. Srinivas