

# IN THE COURT OF SENIOR CIVIL JUDGE- 2 AIZAWL DISTRICT: AIZAWL, MIZORAM

MONEY SUIT NO. 15 OF 2000

Plaintiff:

B. Purbanchal Road Service (P) Ltd.  
Second Floor, Office No. 5  
Parameswari Building  
Chatribari, Guwahati- 781001

*By Advocate's*

: Mr. W. Sam Joseph

*Versus*

Defendants:

1. The Food Corporation of India  
Through the Managing Director  
New Delhi
2. The Senior Regional Manager  
Food Corporation of India  
N.E. F. Region, Midland  
Shilling- 793003
3. The District Manager  
Food Corporation of India  
District Office, Aizawl
4. Union of India  
Through the Secretary to the Govt. of India  
Ministry of Food and Civil Supply  
New Delhi

*By Advocate's*

: Mr. Abul Hussain

Date of Arguments : 18-05-2011

Date of Judgment & Order : 23-05-2011

**BEFORE**

Dr. H.T.C. LALRINCHHANA, Sr. CJ- 2

**JUDGMENT & ORDER**

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**GERMINATION OF THE CASE**

The instant case is re-heard as per the directions of Hon'ble Gauhati High Court, Aizawl Bench in connection with RSA No. 02 of 2006 in Food Corporation of India & Ors. Vs. B. Purbanchal Road Service (P) Ltd. & Ors. dt. 12<sup>th</sup> January, 2007. The Hon'ble Gauhati High Court thereby set aside the judgment & decree passed by learned ADM (J), Aizawl District in RFA No. 21 of 2004 Dt. 28/9/2005 which affirmed the judgment and decree passed by learned Assistant to Deputy Commissioner, Aizawl District under Money Suit No. 15 of 2000 directed to pay Rs. 1,51,682.50 p by the defendants to the plaintiff within thirty days from 20/7/2004 failing which interest rate at 6% per annum will be liable to pay. The Hon'ble Gauhati High Court therefore directed that *"The case is remitted back to the learned trial court who shall proceed with Money Suit on the basis of the materials on record and deliver judgment after appreciating all evidence with special reference to the no-demand certificate executed by the plaintiff"*.

This is a suit for a sum of Rs. 6,00,000/- (Rupees six lakhs) and for other consequential relief filed by B. Purbanchal Road Service (P) Ltd., Second Floor, Office No. 5, Parameswari Building, Chatribari, Guwahati-781001 against (i) The Food Corporation of India Through the Managing Director, New Delhi (ii) The Senior Regional Manager, Food Corporation of India, N.E. F. Region, Midland, Shilling- 793003 (iii) The District Manager, Food Corporation of India, District Office, Aizawl (iv) Union of India Through the Secretary to the Govt. of India, Ministry of Food and Civil Supply, New Delhi on the grounds that the plaintiff being appointed Transport Contractor for carrying food grains from Ex. Guwahati to Kolasib for the period of 1997-1999 had deposited a total amount at Rs. 30,00,000/- (Rupees thirty lakhs) with the Food Corporation of India. On 25.4.1998, a Truck vehicle B/R No. AS-01 D/1489 took a load from Guwahati Vide. RMP No. 731/073009 with 178.45 quintals of rice and in accordance with the said RMP, the rice loaded at Guwahati was Rice Grade- A but at FSD Kolasib, the stock received from the said truck vehicle was said to be Rice Raw Common. Due to the said discrepancy in variety of goods, the bill submitted by the plaintiff on 30/4/1998 under Bill No. 149 was pending. Subsequently, a sum of Rs. 8,922.50 p was deducted from Bill No. 268 of 21.4.1999 as alleged variety difference, cheque no. 541968 for Rs. 16,777/- was thereby released on 11.6.1999. Again in the month of July, 1999, the plaintiff was asked to deposit a sum of Rs. 8923/- for the said variety difference. Due to afraid of blockage of security deposit, the plaintiff had deposited the same, as directed again, the plaintiff had deposited another sum of Rs. 1,33,837/-. Otherwise, impounding of security deposits. The plaintiff again thereby deposited the same due to the said compulsion. The plaintiff therefore deposited Rs. 1,51,682/- to the defendants in total. The security deposits of the plaintiff at Rs. 3 lakhs was also detained for four months without sufficient reasons. Due to no scientific tests at Kolasib and Guwahati, the plaintiff denied of allegation to misappropriation of rice. Due to detention of security deposits by the defendants, the plaintiff calculated that the total loss is Rs. 2,40,000/-. The plaintiff thereby prays the following relief- (i) a decree for Rs. 6 lakhs in favour of the plaintiff (ii) a decree at interest rate at 18% per annum from the said Rs. 6 lakhs (iii) costs of the suit (iv) permanent injunction, attachment and (iv) any other relief which the court deems fit and proper.

In the written statements, the defendants 1, 2 & 3 contended that there is no cause of action in the suit. In short, the defendants denied of all claims preferred by the plaintiff in the plaint stating that the truck vehicle of the plaintiff B/R No. AS-01-D/1489 loaded Grade -A rice at Guwahati but delivered Rice raw common at Kolasib is a willful damage caused by the plaintiff. As per the agreement, the plaintiff is liable to indemnify loss occurred to the defendants. The causes of delay of releasing security deposits to the plaintiff was also rather the fault of the plaintiff because of variety of rice grade inadvertently with the loaded rice. The suit is therefore liable to dismiss with costs.

### **ISSUES**

The issues were framed on 27.10.2000, wherein, as per O. XIV R 5 of the CPC, the amended form of issues were as under-

1. Whether the plaintiff has cause of action against the defendants or not
2. Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend.

## BRIEF ACCOUNT OF EVIDENCE

### For the plaintiff:

The plaintiff had produced the following witnesses namely-

1. Mr. B.K. Agarwalla S/o Mr. Bishwanath Agarwalla (Hereinafter referred to him as PW-1)
2. Mr. Sudeep Chaudury S/o B.B. Chaudury (L) (Hereinafter referred to him as PW-2)

The **PW- 1** deposed in his examination in chief that the plaintiff is a registered company under the Companies Act, 1956 having its registered office at Guwahati and he is the Managing Director the said company, the defendants allotted the plaintiff to carry foodgrains from Guwahati to Kolasib during 1997-1999 by entering into a contract. For the said contract the plaintiff's company had deposited Rs. 30 lakhs to the defendants. In the instant case, rice Grade A was loaded at Guwahati towards Kolasib, the personnel who received at Kolasib had reported that the rice received at Kolasib was Rice raw common instead of Grade –A rice. He never travelled in the truck for the said transportation, but there was no scientific method of gradation at Kolasib in the instant rice. Although they had submitted bills to the defendants under No. 149 Dt. 30/4/1998 for the said RMP but it was pending. Subsequently, the sum of Rs. 8922.50 was deducted from Bill No. 268 of 21/4/99 towards the alleged variety of rice. While cheque No. 541968 was released to them by the defendant on 11/6/99, they were asked to deposit a sum of Rs. 8923/- for the said discrepancy of rice and was paid again. After four months, they were again directed to submit another sum of Rs. 1,33,837/- for the said variety of rice and they also deposited the same under protest. The said directions to deposit a sum of Rs. 1,51,682.50 p was illegal and arbitrary. Due to the said mistake on the part of the defendants, a security deposits at Rs. 30 lakhs was delayed to release for a period of four months. Notice u/s 80 of CPC was also served to the defendants prior to institution of the suit.

*Ext. P- 1 is the appointment*

*Ext. P- 2 is the agreement*

*Ext. P- 3 is RMP No. 731/073009 Dt. 25/4/1998*

*Ext. P- 4 is the bill submitted to the defendants Dt. 30-04-1998*

*Ext. P- 5 is the bill No. 268 Dt. 21/4/99 where making first deductions by the defendants*

*Ext. P- 6 is the order copy directing to pay Rs. 133,837.00*

*Ext. P- 7 is the letter Dt. 2/6/1998*

*Ext. P- 8 is a copy of Legal Notice*

*Ext. P- 9, 9 (i), 9 (ii) and 9 (iii) are Postal receipt*

*Ext. P- 10 and Ext. P- 11 are postal acknowledgement*

During his cross examination, he deposed that they exclude to file the registration of their company in the instant suit, he admitted that as a matter of contract, Ext. D- 1 will guide the instant transportation of rice. In November, 1999, he had received back security deposits at Rs. 30 lakhs. He do not have any prayer to declare the rice carried by Truck vehicle B/R No. AS-01 D/1489 which was received at Kolasib was Grade- A. He neither present on the spot at Guwhati and Kolasib while loading and unloading of rice from Truck vehicle B/R No. AS-01 D/1489.

In his re-examination, he further deposed that they do not claim security deposits at Rs. 30 lakhs but just compensation for delay of releasing to them.

The **PW- 2** deposed in his examination in chief that he is the Manager of the plaintiff's company since 1992 till date. So far as his knowledge concerned the rice loaded at Guwahati and delivered at Kolasib carried in Truck vehicle B/R No. AS-01 D/1489 were the same. In one occasion, although the defendants recorded at Guwahati that the rice carried by the plaintiff was rice raw common but delivered at Kolasib, it was found that the said rice was Grade-A rice, they faithfully reported the same without claiming any compensation.

In his cross examination, he deposed that the contract in between the plaintiff's company and the defendants corporation in the instant case is for a period of two years. He did not know the name of the driver employed by the plaintiff in the instant case. RMP Dt. 25/4/1998 was signed by the driver of Truck vehicle B/R No. AS-01 D/1489 as per satisfaction of the quality and quantity of rice which they carried. He did not know the exact terms and conditions of the agreement reached between the plaintiff and the defendants in the instant case. No officials of the plaintiff's company had accompanied the Truck vehicle B/R No. AS-01 D/1489 for carrying rice from Guwahati to Kolasib in the instant case. He cannot say that whether the quality of rice carried in Truck vehicle B/R No. AS-01 D/1489 from Guwahati to Kolasib was changed/misappropriated or not. He cannot say whether security deposit was paid in cash or draft or cheque and cannot say the date of completion of contract.

In re examination, although he exclaimed that he was present when consignment of rice was carried in Truck vehicle B/R No. AS-01 D/1489 reached at Kolasib but he did not know the date and time on which the said truck vehicle delivered rice at Kolasib.

For the defendants:

On the otherhand, the defendants had produced the following witnesses namely-

1. Mr. Tapas Kanti Sarkar S/o Late Birendra Sarkar (Hereinafter referred to him as DW-1)
2. Mr. Nagen Chandra Baruah S/o Late Kirty Ram Baruah (Hereinafter referred to him as DW-2)

The **DW- 1** deposed in his examination in chief that he is serving under Food Corporation of India since 1976 and during 1997-1998, he served in the capacity of Technical Assistant Grade- 1 at Kolasib under District Office of FCI, Aizawl and his main duty was to check quality of incoming and outgoing foodstuffs, he was also the personnel who verified/tested the quality of the instant rice with the help of vernier scale carried by Truck vehicle B/R No. AS-01 D/1489 under RMP No. 731/073009 containing 195 rice bags equated with 178.45 quintals, he found that instead of Rice Row Grade 'A', it was Rice Raw Common which was done by him in the presence of the authorized representative of the plaintiff and the representative of the plaintiff contractor also satisfied with his scientific tests. The said consignment was thereby separately kept for further course of action with intention to dispatching end. The particulars of the said consignment was duly recorded in the Book of Accounts maintained by the Depot Officials and the matter was duly conveyed to their

official higher authorities. He denied the allegation of the plaintiff saying that there was no scientific method of tests of the instant rice.

In his cross examination, he deposed that according to their norms, they are supposed to check/test 10% of the consignment in the normal course and is therefore about 20 bags in one full load. He was at Kolasib from Jan., 1998 to December, 1998 and is from Technical Branch of Quality Control. He denied that in the tests of the quality of rice by a vernier scale, human error can lead incorrect findings.

The **DW- 2** deposed in his examination in chief that he is serving under Food Corporation of India since 1971. During Sept., 1996 to Dec., 1998 he served in the capacity of AG- II Depot at Kolasib under District Office of FCI, Aizawl. His main duty was to maintain the physical stock and stock account of food grains at FSD, Kolasib. In the first part of May, 1998, under RMP No. 731/073009, one truck vehicle reached them carrying 195 bags of rice equated with 178.45 quintals. As declaration of the quality of the said rice by their Technical Assistant Mr. T.K. Sarkar, he maintained the said records and thereby reported the matter to their higher authorities. The representative of the plaintiff- contractor was also present on the spot at the time of tests of the quality of the said rice at Kolasib and he admitted the result of the said tests/checked.

In his cross examination, he deposed that even by merely looking of rice, he can differentiate whether rice raw common or grade 'A' rice. He usually sent his report on the basis of Technical report. He cannot say that whether the assessment made at Guwahati in respect of the quality of the instant rice was correct or not. During his tenure, when rice as raw common was sent to Kolasib but delivered rice grade-'A', no compensation was paid by the FCI although they reported such incident to their higher authorities.

### **POINTS OF RIVALRY**

Mr. Abul Hussain, learned counsel for the defendants contended that by signing of Ext. D-14 by the plaintiff which is No Demand Certificate on 10/6/1999, the plaintiff does not have any locus standi to file the instant suit by taking reliance in the observations of Hon'ble Gauhati High Court in the case of **Union of India Vs. M/s Rameshwarlall Bhabchand** decided on 31-07-1969 and reported in AIR 1973 Gau. 111, the ratio of the said judgment is that despite the demand for balance amount of claim, suit therefore will not lie if that demand had been made afater encashing cheque for smaller sum specified to be in full and final settlement of the claim u/s 8 of the Indian Contract Act, 1872.

Mr. W. Sam Joseph, learned Advocate for the plaintiff argued that the ratio laid down in **Union of India Vs. M/s Rameshwarlall Bhabchand (supra.)** is different from the instant case and is therefore irrelevant on the grounds that while No Demand Certificate was signed on 10/6/1999, Ext. P-6 viz. Variety differenced stock transported Ex. Guwahati to Kolasib for deposit of Rs. 1,33,837/- was issued on 04.11.99 after signing of No Demand Certificate, the defendants rather breached the said No Demand Certificate. Their claim is not out of the sum disbursed in the said No Demand Certificate but deposits of the said Rs. 1,33,837/- while no scientific test was performed at Kolasib in the instant case to ascertain the exact quality of rice delivered at Kolasib by the plaintiff in the instant cause.

## FINDINGS

### Issue No. 1 Cause of action

For analyzing the cause of action in the suit, I am compelled to look into the observations of Hon'ble Apex Court as held in **Swamy Atmananda & Ors. Vs. Sri Ramakrishna Tapovanam & Ors.** decided on 13/04/2005 in connection with Appeal (Civil) 2395 of 2000 and reported in 2005 AIR 2392, 2005 (3) SCR 556, 2005 (10) SCC 51, 2005 (4) SCALE 117, 2005 (4) JT 472, it was settled that-

“A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.”

It was again observed in **Kunjan Nair Sivaraman Nair Vs. Narayanan Nair and Ors.** decided on 06/02/2004 in connection with Appeal (Civil) 838 of 2004 reported in 2004 AIR 1761, 2004 (2) SCR 202, 2004 (3) SCC 277, their Lordship of Hon'ble Supreme verdict that-

“A mere look at the provisions shows that once the plaintiff comes to a court of law for getting any redress basing his case on an existing cause of action, he must include in his suit the whole claim pertaining to that cause of action. But if he gives up a part of the claim based on the said cause of action or omits to sue in connection with the same, then he cannot subsequently resurrect the said claim based on the same cause of action.”

In **M/s. Kusum Ingots & Alloys Ltd. Vs. Union of India and Anr.** decided on 28/04/2004 in connection with Appeal (civil) 9159 of 2003 reported in 2004 AIR 2321, 2004 (1) Suppl. SCR 841, 2004 (6) SCC 254, 2004 (5) SCALE 304, 2004 (1) Suppl. JT 475, the Supreme Court went on that-

“Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.”

In **I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others:** reported in 1998 (2) SCC 70, the Apex Court further held that-

"16. The question is whether a real cause of action has been set out in the plaint or something purely illusory has been

stated with a view to get out of Order 7 Rule 11 CPC. Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint."

In view of the above well settled legal principles on cause of action, the plaint speaks or reveals cause of action and the sequence is also in order towards proof in further proceedings of the case and is no need of detail elaborations.

## **Issue No. 2**

### **Entitlement of relief and it's extend.**

While the so called '*Actori incumbit onus probandi*' (Simply known as 'The burden of proof lies on the plaintiff') remain existed, as also deposed by PW-1 in his examination, they do not claim to declare the rice delivered by the plaintiff at Kolasib in the instant cause is in consonance with the rice loaded at Guwahati which is very essential like in the instant suit. In a nutshell, without eliciting or knowing the truth which caused the suit, how can the court deliver judgment towards justice. The PW-1 admitted that he neither present at Guwahati and Kolasib while loading and unloading the instant rice, he is therefore unable to reveal the truth on the alleged variety difference of rice. The PW-2 also fails to depose any vital facts about the quality of rice loaded and unloaded at Guwahati and Kolasib. More so, while the suit is valued at Rs. 6 lakhs as claimed by the plaintiff, the assessment made in the schedule of claim in the plaint is calculated at Rs. 6,00,782.50. At the time of arguments, Mr. W. Sam Joseph fairly submitted that they do not have a claim at all any act and payment made during and before signing of the said No-Demand Certificate. In this catena, evidences led by the PW-1 itself confessed and admitted that another sum paid by the plaintiff to the defendants on the alleged variety difference of rice was paid before signing of No-demand certificate except on Rs. 1,33,837/-. The exact relief sought by the plaintiff also at the last stage became vague and is not known to pin point.

Thus, although admitted the argument advanced by Mr. W. Sam Joseph that any claims binds by no-demand certificate is not liable to pay as the terms and conditions embodied in the said No-demand certificate Dt. 10/6/1999 estopped parties.

The gist of arguments advanced by learned counsel for the plaintiff on no scientific method is not applied at Kolasib when unloading of the instant rice, the DW-1 is a Technical personnel using scientific tools like vernier scale in the presence of the representative of the plaintiff's corporation his findings was admitted by the representative of the plaintiff's corporation on the spot. Neither the driver of the concerned truck vehicle nor handy man was acted as witnesses by the plaintiff is also a serious lacunae whilst the burden of proof lies in the plaintiff as stated before. The cardinal prudent observation of Hon'ble Supreme Court is reminding in view of the loopholes on the part of the plaintiff in the instant case as held in the case of **Shreenath & Another vs Rajesh & Others** decided on 13 April, 1998 reported in 1998 AIR 1827, 1998 (2) SCR 709, 1998 (4) SCC 543, 1998 (2) SCALE 725, 1998 (3) JT 244. It was observed that-

"The seekers of justice many a time has to take a loan circuitous routes, both on account of hierarchy of Courts and the procedural law. Such persons are and can be dragged till the last ladder of the said hierarchy for receiving justice but even here he only breaths eariness of receiving the fruits of that justice for which he has been aspiring to receive. To reach this

stage is in itself an achievement and satisfaction as the, by then has passed through a long arduous journey of the procedural law with many hurdles replica of mountain attain with ridges and furrows. When he is ready to take the bite of that fruit, he has to pass through the same terrain of the procedural law in the execution proceedings the morose is writ large on his face. What looked inevitable to him to receive it at his hands distance is deluded back into the horizon. The creation of hierarchy of Courts was for a reasonable objective for conferring greater satisfaction to the parties that errors, if any, by any of the lower Courts under the scrutiny of a higher Court be rectified and long procedural laws also with good intention to exclude and filter out all unwanted who may be the cause of obstruction to such seekers in his journey to justice. But this obviously is one of the causes of delay in justice. Of course, under this pattern the party wrongfully gaining within permissible limits also stretches and litigation as much as possible. Thus, this has been the cause of anxiety and concern of various authorities, Legislators and Courts. How to eliminate such a long consuming justice? We must confess that we have still to go long way before true satisfaction in this regard is received. Even after one reaches the stage of final decree, he has to undergo a long distance by passing through the ordained procedure in the execution proceedings before he receives the bowl of justice.

I am therefore not in a position to adjudicate the case/suit in favour of the plaintiff without knowing the truth on the existence of the case as direction for payment of Rs. 1,33,837/- is made due to Variety differenced stock transported Ex. Guwahati to Kolasib and the claimed amount of the plaintiff at the last stage is Rs. 1,33,837/- instead of Rs. 6 lakhs preferred in the plaint.

### **ORDER**

On appreciating evidences of both parties and as per the findings discussed as above, I therefore have no option except to dismiss of the suit. Otherwise misleading or eroding of justice from the true sense and correct position. The suit is therefore dismissed on the ante grounds. No order as to costs of the suit.

The case shall stand disposed of accordingly. Give this copy to both parties and all concerned.

**Dr. H.T.C. LALRINCHHANA**

Senior Civil Judge- 2  
Aizawl District: Aizawl

Memo No. MS/15/2000, Sr. CJ (A)/

Dated Aizawl, the 23<sup>rd</sup> May, 2011

Copy to:

1. B. Purbanchal Road Service (P) Ltd. Second Floor, Office No. 5, Parameswari Building, Chatribari, Guwahati- 781001 through Mr. W. Sam Joseph, Advocate
2. The Food Corporation of India Through the Managing Director- New Delhi through Mr. Abul Hussain, Advocate



3. The Senior Regional Manager, Food Corporation of India, N.E. F. Region, Midland- Shilling- 793003 through Mr. Abul Hussain, Advocate
4. The District Manager, Food Corporation of India, District Office, Aizawl through Mr. Abul Hussain, Advocate
5. Union of India Through the Secretary to the Govt. of India, Ministry of Food and Civil Supply- New Delhi through Mr. Abul Hussain, Advocate
6. P.A. to District & Sessions Judge, Aizawl Judicial District: Aizawl
7. Case Record

PESKAR