GAHC010070822024

2026:GAU-AS:623

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2123/2024

ANUP TRADE AND TRANSPORT PVT LTD
A COMPANY REGD. UNDER THE COMPANIES ACT, 1956 HAVING ITS REGD OFFICE AT H.NO-51, SUNDARPUR MAIN LANE, JAPORIGOG, GUWAHATI-05, KAMRUP (M),
RE. BY THE DIRECTOR, ANUP KUMAR JASRASARIA

VERSUS

FOOD CORPORATION OF INDIA AND 3 ORS
REP. BY ITS CHAIRMAN CUM MANAGING DIRECTOR, HEADQUARTERS, 16-20, BARAKHAMBA ROAD, NEW DELHI-06, ASSAM

2:EXECUTIVE DIRECTOR (NE)
FOOD CORPORATION OF INDIA
ASSAM
GS ROAD
PALTAN BAZAR
G

3:GENERAL MANAGER
FOOD CORPORATION OF INDIA
ASSAM REGIONAL OFFICE
ASSAM REGION
G.S ROAD
PALTAN BAZAR

4:ASSISTANT GENERAL MANAGER (CONTRACT)
FOOD CORPORATION OF INDIA
ASSAM REGIONAL OFFICE
ASSAM REGION
G.S ROAD

PALTAN BAZA

B E F O R E

HON'BLE MR. JUSTICE DEVASHIS BARUAH

Advocates for the petitioner(s)	:	Mr. B Chakraborty
Advocates for the respondent(s)	:	Mr. PK Roy Senior Advocate Mr. SK Chakraborty
Date on which Judgment is reserved	:	NA
Date of Pronouncement of Judgment	:	**20.01.2026**
Whether the Pronouncement is of the Operative Part of the Judgment	:	NA
Whether the Full Judgment has been Pronounced	:	Yes

JUDGMENT & ORDER (ORAL)

Heard Mr. B Chakraborty, the learned counsel appearing on behalf of the petitioner. I have also heard Mr. PK Roy, the learned Senior Counsel assisted by Mr. SK Chakraborty, who appears on behalf of the Food Corporation of India (for short, the FCI).

2. The present petition has been filed by the petitioner for setting aside and quashing the orders dated 20.05.2023 and 05.12.2023 and the petitioner further has sought for a direction for refund of the deducted amount of Rs.45,99,718/- from the petitioner with interest @ 12% per annum.

3. The brief facts of the case are that a Notice Inviting Tender was issued on 04.10.2019 by the FCI for appointment on regular basis for a period of 2(two) years in respect of Transport Contract Ex Rly. Siding/FSD North Lakhimpur to FSD Ziro (Dolopoliong) via weighbridge. The estimated value of the contract was Rs.4,88,00,000/-. The petitioner participated in the said tender process and an acceptance letter dated 17.12.2019 was issued which the petitioner duly accepted by the communication dated 03.01.2020.

4. Pursuant thereto, the petitioner was appointed as a Transport Contractor Ex Rly. Siding/FSD North Lakhimpur to FSD Ziro (Dolopoliong) via weighbridge on regular basis for a period of two years. It is very relevant to take note of that in the appointment letter, there was no mention as regards the quantity of goods the petitioner had to transport. But what was mentioned was that the petitioner was appointed as a Transport Contractor Ex Rly. Siding/FSD North Lakhimpur to FSD Ziro (Dolopoliong) via weighbridge on regular basis for a period of two years with immediate effect i.e 26.02.2020 at a quoted rate of Rs.2288/- per MT for the entire distance for transportation. It was also mentioned in the said appointment letter that in the event of failure, the Assistant General Manager (Cont) for General Manager (R) /and or Divisional Manager FCI, North

Lakhimpur reserved the right to get the work done at the petitioner's risk and cost to maintain Public Distribution System intact and on such event, the extra cost and expenditure that shall incur in the process will straightway be recovered from any of the petitioner’s dues on any account in terms of the tender agreement either during the currency of the contract or thereafter.

5. The petitioner upon receipt of the said appointment letter dated 26.02.2020 duly accepted the terms vide the communication dated 07.03.2020.

6. The record reveals that the petitioner during the entire period from April 2020 to May 2021 could transport only 1371.123 MT against the allocated quantity of 33,950 MT resulting in a substantial shortfall of 32578.877 MT.

7. It is the further case of the petitioner that the respondent authorities thereupon initiated process for engaging other contractors on adhoc basis for the transportation work from RH/FSD North Lakhimpur via FSD Ziro by issuance of adhoc tender on spot basis dated 22.07.2020. The said aspect was also informed to the petitioner by communication dated 23.07.2020.

8. The record further reveals that a contractor was appointed vide

the communication dated 27.07.2020 at a quoted rate of Rs.3990/- per MT for the entire distance. The said contractor namely, Dipen Saikia could supply only 117 MT and, as such, on account of the additional amount, an amount of Rs.2.3 Lacs was recovered from the petitioner.

9. It is the further case of the petitioner that the FCI issued another Notice Inviting Tender dated 24.04.2021 and the contract was awarded to one M/s. Atu Apa, Developers (Proprietor Sanngha Tagik) at a rate of Rs.2333.33 per MT from 27.08 2021 to 25.02.2022. It is the case of the petitioner that since the rate of the petitioner i.e Rs.2228/- per MT became Rs.2333.41/-, taking into account the diesel price hike *vis-à-vis,* the adhoc rate of Rs.2333.33 per MT, there was no loss/recovery from the petitioner.

10. It is the further case of the petitioner that on account of the failure on the part of the petitioner to transport the allocated quantity the respondents have also imposed damages by applying Clause X(b) of the Model Tender Form and an amount of Rs.10,50,000/- had been imposed upon the petitioner.

11. Mr. B. Chakraborty, the learned counsel appearing on behalf of the petitioner submitted that the petitioner does not have any

grievance as regards the imposition of Rs.10,50,000/- as well as Rs.2,30,000/- made by the FCI. The grievance of a petitioner is that vide an order dated 20.05.2023, the respondent authorities have imposed a fine of Rs.45,99,718/-. It is the case of a petitioner that the said aspect has been decided only on the basis of a CAG report and contrary to the terms and conditions of the contract.

12. The petitioner upon being issued the order on 20.05.2023, sought for a clarification from the respondent FCI vide the communication dated 20.07.2023. On 30.08.2023, a communication was issued by the FCI giving clarification as to how the amount of Rs.45,99,718/- was arrived at and why recovery is sought to be made from the petitioner.

13. Being aggrieved, the petitioner submitted an application on 23.08.2023 before the Grievance Redressal Committee (GRC) for redressal of his grievance against the order dated 20.05.2023. The application submitted by the petitioner before the GRC was, however, rejected, as was intimated to the petitioner by the respondent No.2 vide the communication dated 01.01.2024. It is under such circumstances, the petitioner has assailed the order dated 20.05.2023 as well as the order dated 05.12.2023 and sought for refund of the entire amounts which have been recovered from the petitioner in the

meantime.

14. The instant writ petition was filed on 02.04.2024. This Court vide an order dated 20.04.2024 issued notice and further observed that the pendency of the writ petition shall not be a bar for the respondent authorities to examine the claim of the petitioner for reversal of the deduction.

15. The record reveals that an affidavit-in-opposition was filed by the respondents on 28.08.2025. In the said affidavit-in-opposition, it was categorically mentioned that the petitioner failed to perform the contractual duties as mandated in the contract. Details were given as regards the trucks required and the trucks supplied by the petitioner at paragraph No.3 of the said affidavit-in-opposition. It was further mentioned that the pleas which have been taken by the petitioner were non-acceptable pleas. It was also stated that in the appointment letter, it was categorically mentioned that in the event of failure, the FCI authorities reserved the right to get the work done at the petitioner's risk and cost to maintain the public distribution system intact and in such circumstances, the extra cost and expenditure that shall be incurred in the process would be straightway recovered from any of the dues of the petitioner in any account in terms of the tender agreement either during the currency of the contract or thereafter. It

was mentioned that the petitioner duly accepted the said term and submitted the joining report on 07.03.2020.

16. At paragraph 7 of the said affidavit, it was also mentioned that the petitioner cannot take the plea as regards the area where the supply was required to be made *inasmuch as*, the tenderers were required to get themselves fully acquainted with the size and location of the Godown *vis-à-vis*, the loading or the unloading points before submission of the tender.

17. At paragraph No.9 of the affidavit-in-opposition all the allegations which have been made by the petitioner were rebutted. It was mentioned that the representations which were made by the petitioner were duly considered and thereupon rejected.

18. At paragraph number 9(g), it was mentioned that the deduction of Rs.45,99,718/- was done for the additional stock of 15447.294 MT moved through the alternative route Ex-FSD Bandarduwa to route amounting to incur additional expenditure by FCI i.e. Rs.15447.294 x Rs.252= Rs.38,00,000/- and the short deduction of Liquidation Damage as found by the CAG was Rs.7.07 Lacs and, therefore, the competent authority imposed a total recovery of Rs.45,99,718/-. It

was also mentioned that the petitioner's application dated 23.08.2023 was duly considered as per the established procedure and by giving the petitioner sufficient opportunity to present his case.

19. At paragraph No.9(m), the details were given as to how the amount of Rs.45,99,718/- was in accordance with the terms and conditions of the contract.

20. To the said affidavit-in-opposition, an affidavit-in-reply was filed reiterating the statements which have been made in the writ petition. At paragraph No.14 of the affidavit-in-reply, the petitioner alleged that recovery of Rs.38,92,718.08 was illegal and not permissible on the ground that the contract with M/s.TT Enterprise was a separate contract from different destination i.e. Bandarduwa/Harmutty to Ziro, which was awarded much prior to the contract awarded to the petitioner. It was, therefore, alleged that it cannot be contended by the FCI that the TT Enterprise was appointed when the petitioner had defaulted. It was, therefore, contended that the procedure adopted by the CAG to work out the loss of Rs.252 per MT with reference to that contract was illegal.

It was also mentioned that a contract VOC with TT Enterprise was Rs.6,58,00,000 @ Rs.2540/- per MT, and, therefore, the minimum estimated transportation of that contract was 25,905.51 MT. It was further mentioned that the excess transportation of Rs.5400.185 MT by CAG from May 2020 to July 2020 which was calculated was not intimated. The petitioner further questioned as to how excess transportation by M/s.TT Enterprise of 15447.294 MT was calculated by the FCI is not known and, therefore, the recovery was arbitrary on that ground also.

21. In the backdrop of above pleadings, this Court had also heard the learned counsels appearing on behalf of the parties.

22. Mr. B. Chakraborty, the learned counsel appearing on behalf of the petitioner submitted that the imposition of risk and cost upon the petitioner @ Rs.252 per MT for supply of 15447.294 per MT was contrary to the terms and conditions of the contract, *inasmuch as*, as per the terms and conditions of the contract, the imposition of risk and cost can only be made when there was a failure on the part of the petitioner. Referring to the appointment order of M/s. TT Enterprise, the learned counsel submitted that the appointment order of M/s.TT Enterprise was dated 23.09.2019, which was much prior to the alleged default committed by the petitioner. Therefore, the imposition of the amount of Rs.38,00,000/- is illegal and completely unjustified.

23. The learned counsel appearing on behalf of the petitioner further submitted that there is also no material on record to show that the respondent FCI had transported 15447.294 MT which was allocated to the petitioner through M/s. TT Enterprise. Merely on the basis of the CAG objection, the respondent authorities cannot be permitted to recover from the petitioner, if the respondents have not in fact transported such food grains which were allocated to the petitioner.

24. *Per contra* Mr. P K Roy, the learned Senior Counsel appearing on behalf of the respondents submitted that the petitioner herein had not assailed the communication dated 03.08.2023, whereby the petitioner was duly intimated as to how the amount of Rs.45,99,718/- had been imposed upon the petitioner. The learned Senior Counsel for the respondents further submitted that the petitioner had also not assailed the communication dated 01.01.2024. On these grounds alone, the instant writ petition cannot succeed. The learned Senior Counsel by referring to the affidavit-in-opposition submitted that the petitioner was appointed for a period of 2(two) years for transportation of the food grains from RH/FSD North Lakhimpur to FSD Ziro and despite multiple notices from the FCI, the petitioner performance was inadequate with delayed and incomplete service deliveries thereby jeopardizing the food security under the PDS. The

learned Senior Counsel further submitted that though the petitioner had blamed the external factors, but other contractors successfully managed under similar conditions.

25. The learned Senior Counsel for the respondents further submitted that from the month of April 2020 to May 2021 against the allocated quantity of 33,950 MT, the petitioner transported only 1371.123 MT resulting in a substantial shortfall of 32578.877 MT. The FCI was compelled to engage alternative contractors under the risk and cost clause as per clauses X and XI of the Model Tender Form ensuring uninterrupted food supply. The learned Senior Counsel submitted that M/s. TT Enterprise and Mr. Dipen Saikia had to be engaged at higher rates to compensate for the non-performance of the petitioner so as to fulfill PDS requirement. The FCI had no other option rather than allowing another tender of higher rate for dispatching the stocks and this loss was suffered by FCI due to the negligence on the part of the petitioner. It is under such circumstances, the respondents FCI had deducted the loss suffered by the Corporation as per Clause X(a).

26. The alternative contractors were appointed keeping in view the interest of the Corporation. Further parallel contractor such as Mr. Dipen Saikia was appointed for the same reason and recovery was

made in terms of Clause XI(c). The differential cost incurred due to this arrangement amounting to Rs.13.60 Lacs which was recoverable from the petitioner. Further to that as per the contract provisions Liquidated Damages of Rs.10.85 Lacs was levied, but only 3.79 Lacs was recovered leading to a short recovery of 7.07 Lacs. It was further mentioned that 15447.294 MT was supplied through alternative route Ex-FSD Bandarduwa to FSD Ziro, that too, at the request of the petitioner which had resulted in incurring additional expenditure of Rs.38 Lacs.

27. The learned Senior Counsel further referred to the representation submitted by the petitioner dated 30.04.2021 before the Grievance Redressal Committee (GRC), and further referred to paragraph No.69, whereby the petitioner itself suggested that the FCI may approach the parallel contractor, i.e. Ex. Railhead Harmutty for this tender to fulfill the remaining tenure of the tender and the petitioner was ready to pay the difference of the amount to the parallel contractor only because the petitioner had tried every possible means to complete the tender peacefully.

28. The learned Senior Counsel, therefore, submitted that taking into account the very stand of the petitioner as contained in paragraph No.69 of the representation dated 30.04.2021, the instant writ

petition is totally misconceived.

29. I have heard the learned counsels appearing on behalf of the parties and have perused the materials on record.

30. A perusal of the Notice Inviting Tender dated 04.10.2019 stipulates that the estimated value of the contract in question was Rs.4,88,00,000/-. The petitioner has submitted his offer and a letter of acceptance was issued on 17.12.2019. The petitioner thereupon was issued the appointment letter on 26.02.2020, wherein the rate was quoted at Rs.2228/- per MT for the entire distance for transportation. The petitioner accepted the said appointment letter. One of the conditions so mentioned in the appointment letter having relevance is reproduced hereinunder:

> "*...In the event of failure, the undersigned/ and or Divisional Manager, FCI, North Lakhimpur reserves the right to get the work done at your Risk and Cost to maintain Public Distribution System intact, and on such even the extra cost and expenditure that shall incur in the process, will be straightway recovered from any of your dues on any account in terms of the tender agreement either during the currency of the contract or thereafter.*"

31. The above-quoted stipulation in the appointment letter empowered the General Manager (R) /and or Divisional Manager FCI, North Lakhimpur to get the work done at the petitioner's risk and cost

to maintain the Public Distribution System intact, if there was a failure on the part of the petitioner and such extra cost and expenditure would be straightway recovered from any of the petitioner's dues on any account in terms of the tender agreement either during the currency of the contract or thereafter.

32. The petitioner with open eyes accepted the said terms vide the communication dated 07.03.2020. The fact that the petitioner failed to supply is not in dispute. The further fact that the petitioner transported only 1371.123 MT for the period from April 2020 to May 2021 is also not in dispute. The respondent FCI have categorically stated that the petitioner was allocated a total quantity of 33,950 MT and there was a substantial short fall of 32578.877 MT.

33. As per the submissions made by Mr. B Chakraborty, the learned counsel appearing on behalf of the petitioner, the imposition in terms with Clause X(a), as well as the imposition of an amount of Rs.2.3 Lacs on the basis of risk and cost is not what the petitioner is aggrieved. The grievance of the petitioner as submitted by the learned counsel was that without carrying out the process of any risk and cost endeavour, an amount of Rs.38,00,000/- was imposed upon the petitioner for non-supply of the additional stock of 15447.294 MT through an alternative route Ex-FSD Banderdewa to FSD Ziro which

was not as per the terms and conditions of the contract, *inasmuch as*, the additional amount of Rs.252 per MT was recovered on the basis of certain CAG objection. But a question arises as to whether the petitioner can raise such issues in the present facts and circumstances of the case, more particularly, in a writ proceedings. In this regard, this Court finds it very pertinent to take note of the representation so submitted by the petitioner before the Grievance Redressal Committee dated 30.04.2021 and, more particularly, to the contents of paragraph 69 wherein the petitioner referred to an application dated 08.03.2021 thereby suggesting that the FCI may approach the parallel contractor i.e. Ex. Railhead Harmutty to fulfill the remaining tenure of the tender and the petitioner was ready to pay the difference of the amount to the parallel contractor. Paragraph 69 of the said representation dated 30.04.2021 being relevant is reproduced hereinunder:

> "69. *Faced with such impediments and unrealistic demands/indented quantity, we preferred an application dated 08.03.2021 before the Grievance Redressal Committee, wherein we, without prejudice, suggested that FCI may approach the Parallel contractor i.e. Ex. Railhead Harmutty for this tender to fulfil the remaining tenure of the tender and we were ready to pay the difference of amount to the parallel contractor only because we have tried every possible means to complete this tender peacefully but the concerned authorities are never satisfied and making unrealistic demands. The content of our letter dated 08.03.2021 may be deemed and treated as part and parcel of the instant application and contents thereof are not reiterated herein for sake of brevity."*

34. The petitioner has raised issues in the affidavit-in-reply as to the authenticity of the claim of the FCI that 15447.294 MT was transported by M/s. TT Enterprise which was originally allocated to the petitioner. In the opinion of this Court, this aspect as to whether 15447.294 MT were at all supplied by M/s. TT Enterprise which was originally allocated to the petitioner is an issue which would require an elaborate adjudication on the basis of evidence. Be that as it may, taking into account the stand taken at paragraph 69 of the representation dated 30.04.2021, one aspect is clear that the petitioner had no objection in paying the difference of the amount, if the allocated quantity which the petitioner could not supply was transported through a parallel contractor i.e Ex. Railhead Harmutty.

35. Considering the above, it is the opinion of this Court that this Court in exercise of the writ jurisdiction would not be the appropriate Court for deciding as to whether the FCI transported 15447.294 MT from the allocated quantity of the petitioner through M/s. TT Enterprise. It is also the opinion of this Court that this factual adjudication would impact on the legality and validity of the impugned demand and recovery made by the FCI. Accordingly, the instant writ petition, therefore, stands disposed of with the following observations and directions:

(i). In view of what has been discussed hereinabove, this Court is not inclined to decide the legality and validity of the impugned orders dated 20.05.2023 and 05.12.2023. The reason being that it would require an in-depth analysis of the evidence which a competent Court of Civil Jurisdiction can adjudicate.

(ii). This Court grants liberty to the petitioner to approach the competent Civil Court challenging the orders dated 20.05.2023 as well as 05.12.2023 as well as the recovery of Rs.45,99,718/- from the petitioner and seek realization, if so advised.

(iii). This Court further is of the opinion that the petitioner having *bona fidely* litigated before this Court is entitled to the benefit of Section 14 of the Limitation Act, 1963 and accordingly the period from 02.04.2024 till date be excluded while computing the period of limitation.

(iv). The observations made in the present judgment shall not prejudice either of the parties in any such proceedings initiated before a competent court of writ jurisdiction.

36. There shall be no order as to costs.

JUDGE

Shivani Gautam

Digitally signed by Shivani Gautam
Date: 2026.01.28 17:39:25 +05'30'

Comparing Assistant