

GAHC010101922023



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

Case No. : I.A.(Civil)/1398/2023

FOOD CORPORATION OF INDIA AND 3 ORS.
REPRESENTED BY THE CHAIRMAN CUM MANAGING DIRECTOR
BARKHAMBA ROAD, NEW DELHI 110006

2: THE GENERAL MANAGER (REGION)
FOOD CORPORATION OF INDIA

REGIONAL OFFICE
ASSAM REGION
PALTAN BAZAR
GUWAHATI
ASSAM 781008

3: THE ASSISTANT GENERAL MANAGER (CONT.)
FOOD CORPORATION OF INDIA

REGIONAL OFFICE
ASSAM REGION
PALTAN BAZAR
GUWAHATI
ASSAM 781008

4: THE DIVISIONAL MANAGER
FOOD CORPORATION OF INDIA
DIVISIONAL OFFICE
JORHAT
ASSAM 78400

VERSUS

BIKASH KUMAR MORE,
S/O LATE CHIRANJILAL MORE, RESIDENT OF WARD NO. 4, NEAR
DERGAON CHARIALI, DERGAON, DIST GOLAGHAT, ASSAM 785614

Advocate for the Petitioner : MR. P K ROY

Advocate for the Respondent : MR A C BORBORA

Linked Case : WA/385/2022

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BARKHAMBA ROAD
NEW DELHI 110006

2: THE GENERAL MANAGER (REGION)
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VERSUS

BIKASH KUMAR MORE
S/O LATE CHIRANJILAL MORE

RESIDENT OF WARD NO. 4
NEAR DERGAON CHARIALI

DERGAON
DIST GOLAGHAT
ASSAM 785614

Advocate for : MR. P K ROY

Advocate for : MS. N DEY appearing for BIKASH KUMAR MORE

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

07.08.2023

(SOUMITRA SAIKIA, J)

Heard Mr. P.K. Roy, learned Senior counsel assisted by Mr. S.K. Chakraborty, learned counsel for the applicant. Also heard Mr. U.K. Nair, learned Senior counsel assisted by Mr. N. Borpatra Gohain, learned counsel for the respondent.

2. This interlocutory application has been filed by the applicant-FCI praying for alteration of the order dated 27.02.2023 passed in W.A. No. 385/2022 to the extent that the applicant would refund of Rs. 89,99,853/- to the petitioner within a reasonable period of time subject to furnishing of collateral/solvent security by the opposite party to the satisfaction of the FCI authorities until final determination of the dispute under Clause-XX of the contract agreement.

3. The opposite party who is a transport Contractor was awarded the contract for the work "*Ex-Railway Siding JPR/JTTN/FCI FSD Cinnamara to Sibsagar Complex (FSD Jaganikotia and Sibsagar) via weighbridge (Distance 78.185 KMS)*" by the FCI. By order dated 03.08.2015, the petitioner was appointed as the Transport Contractor for the *Ex-Railway Siding JPR/JTTN/FCI FSD*

Cinnamara to Sibsagar Complex (FSD Jaganikotia and Sibsagar) via weighbridge (Distance 78.185 KMS) work for the period of two years at his quoted rate of Rs. 7.11 PMT-PKM (Distance of 78.185 KMs) on the terms and conditions mentioned in the tender document. The said work was duly completed by the opposite party within the stipulated period and payments were accordingly made for the works executed. Subsequently, the FCI authorities found that an amount of Rs. 89,99,853/- (Rupees Eighty Nine Lakh Ninety Nine Thousand Eight Hundred Fifty Three only) was overpaid to the petitioner beyond the terms of the contract and therefore, it sought to recover the same by invoking the "set off" clause as per the Contract Agreement. The said recovery was made from the security deposits which were available with the FCI as well by withholding the bill amount pertaining to another work. Being aggrieved, the opposite party as the writ petitioner approached this Court by filing W.P.(C) No. 2126/2022. A Single Bench of this Court by Judgment and Order dated 03.11.2022 allowed the writ petition and held that the recovery made by the FCI amounting to Rs. 89,99,853/- (Rupees Eighty Nine Lakh Ninety Nine Thousand Eight Hundred Fifty Three only) from the contractors bill to be arbitrary, unreasonable and unsustainable in law and the same was accordingly set aside. The amount recovered from the petitioner was directed to be refunded to the petitioner within a period of three months from the date of receipt of a certified copy of this Order. The petitioner was also given liberty to make appropriate application for claiming any interest to be paid by the FCI. The FCI preferred a writ appeal being W.A. No. 385/2022 against the order passed by the learned Single Judge. By order dated 27.02.2023, the writ appeal was disposed of on withdrawal giving liberty to the FCI to approach the grievance redressal committee as provided for under the terms and conditions of the contract. The appellant-FCI

was permitted to approach the competent forum as per provision of law. It was further directed that the findings of the learned Single Judge will not be a hurdle in approaching the relevant competent forum as deemed appropriate under the provisions of law. However, the directions of the learned Single Judge for release of payments was directed to be complied with and the writ appeal was accordingly dismissed on withdrawal with liberty as prayed for.

4. The FCI as the applicants are now before this Court by way of this application praying for alteration of the order dated 27.02.2023 passed in W.A. No. 385/2022 to the extent that the petitioner be directed to furnish a collateral security for release of the amount of Rs. 89,99,853/- in terms of the directions of the Court, in order to secure the public interest.

5. The learned counsels for the parties have been heard. The averments made in the I.A. have been carefully perused.

6. The learned counsel for the applicant submits that although there is a direction by the Court to release of payment, however, in view of the order dated 27.02.2023 passed in W.A. No. 385/2022, the matter has to be decided afresh before the grievance redressal forum in terms of the liberty granted and therefore, further extension of time is necessary and also collateral security is necessary as the amount sought to be released to the petitioner is after all public revenue. The learned counsel for the applicant submits that if the security, as prayed for, is submitted by the respondent then the amount can be released immediately.

7. Mr. U.K. Nair, learned Senior Counsel appearing for the respondent disputes the contentions of the learned Senior Counsel for the applicant contending that the prayer for extension of time cannot be permitted in view of

the specific directions of the learned Single Judge directing for release of payments and which have been sustained by the writ appellate Court vide order dated 27.02.2023 passed in W.A. No. 385/2022 notwithstanding that the appeal was permitted to be withdrawn. As such, there is no merit in this application and the same be dismissed accordingly.

8. Having heard the learned counsels for the parties, it is seen that by order dated 27.02.2023 passed in W.A. No. 385/2022, at the request of the appellant-FCI, the appeal was permitted to be withdrawn with liberty to approach the grievance redressal forum or any other competent forum as per provisions of law and the grievance redressal forum will, thereafter, consider the matter afresh. It was further directed that the findings of the learned Single Judge vide the Judgment and Order dated 03.11.2022 passed in W.P.(C) No. 2126/2022 will not be a hurdle in approaching the relevant or the competent forum as deemed appropriate under the provisions of Law. However, the Division Bench had sustained the directions of the learned Single Judge in respect of the payments directed to be made to the petitioner. In that view of the matter, the FCI was required to comply with the directions of the learned Single Judge read with the order dated 27.02.2023 passed in W.A. No. 385/2022.

9. In view of such directions being made and upon hearing the learned counsels for the parties, this Court is of the considered view that ends of justice will be met if the application is disposed of by directing the FCI to release the amount due to the petitioner as directed by the learned Single Judge vide Judgment and Order dated 03.11.2022 passed in W.P.(C) No. 2126/2022 read with order dated 27.02.2023 passed in W.A. No. 385/2022 within a period of 30 days from the date of receipt of certified copy of this order. The respondent will also furnish a solvent surety to the satisfaction of the FCI in respect of the amount

payable to the respondent in terms of the order as indicated above. The respondent will furnish the solvent surety before the FCI and thereafter, the FCI will release the amount as directed within a period of 30 days from the date of receipt of certified copy of the order.

10. With the above observation, the interlocutory application stands disposed of.

JUDGE

CHIEF JUSTICE

Comparing Assistant