

GAHC010222292022



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

Case No. : WA/26/2023

1. THE FOOD CORPORATION OF INDIA,
HAVING ITS HEAD QUARTER AT 16-20,
BARAKHAMBA LANE, NEW DELHI- 110001,
INDIA AND REGIONAL OFFICE IN PALTAN BAZAR,
GUWAHATI, KAMRUP (M)- 781008, ASSAM.,
REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR.

2: THE EXECUTIVE DIRECTOR,
FOOD CORPORATION OF INDIA,
ZONAL OFFICE (NE), G.S. ROAD,
G. L. PUBLICATION BUILDING,
ULUBARI, GUWAHATI- 781007.

3: THE GENERAL MANAGER,
FOOD CORPORATION OF INDIA,
REGIONAL OFFICE, MT TOWER,
G.S. ROAD, PALTAN BAZAR,
GUWAHATI- 781008,
KAMRUP (METRO), ASSAM.

.....**Writ Appellants**

-VERSUS-

M/S G.B. CHOWDHURY HOLDINGS PVT. LTD.,
A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956 AND
HAVING ITS REGISTERED OFFICE AT CHOWDHURY TILLA,
SARUMOTORIA, OPPOSITE DISPUR CAPITAL COMPLEX, GUWAHATI-
781006, ASSAM AND IS REP. BY ITS DIRECTOR.

.....**Respondent**

– BEFORE –

HON'BLE THE CHIEF JUSTICE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

For the Appellants : Mr. Kamal Agarwal, Senior Advocate assisted by
Mr. B.K. Singh, Advocate.

For the Respondent : Mr. N. Deka and Mr. M. Gogoi, Advocates.

Date of Hearing & Judgment : 09.08.2023.

JUDGMENT & ORDER (ORAL)

[Sandeep Mehta, CJ]

The instant intra-Court writ appeal is preferred by the appellant Food Corporation of India (FCI) for assailing the judgment and final order dated 13.09.2022 passed by the learned Single Judge accepting the writ petition, being WP(C) No.214/2019 preferred by the writ petitioner/respondent with the following directions to the appellants herein.

“21. For the reasons stated above, the writ petition succeeds and is hereby allowed. The writ petition is disposed of with a direction upon the respondent nos.1, 2 and 3 to release the balance payment to the petitioner in respect of the additional 52.5 KM @ Rs.10.98 per MT per KM within a period of 60(sixty) days from the date of receipt of a certified copy of this order. The respondents will also ensure that the security deposit of the petitioner is released along with the payments, as directed by this Court.”

2. The facts relevant and essential for disposal of the writ appeal, are noted hereinbelow:

The appellants herein issued Notice Inviting e-Tender (NIeT) dated 30.03.2015 inviting bids from interested contractors for execution of transport contracts under the Food Corporation of India (FCI) in respect of as many as 13 different routes. The tenders were invited in 2(two) bid system, wherein the contractors were required to submit their technical bid as well as price bid. The tender document itself indicated that the rate quoted should be per MT per KM as per MTF. If the rate quoted is otherwise then it would be converted per MT per KM taking the distance as mentioned in the NIeT.

The writ petitioner/respondent herein submitted its bid in respect of the work mentioned at Serial No.5 of the NIeT, pertaining to "Ex-Railway Siding, Salchapra to FCI, FSD, Nandannagar (Tripura) via Weighbridge" having distance of 232 KMs. The NIeT portrayed that the total distance to be covered in the route for which the respondent/writ petitioner had submitted its bid, was 232 KMs. As such, the writ petitioner/respondent quoted an amount of Rs.2,549/- per MT taking the distance to be 232 KMs. In accordance with the tender condition noted above, the rate quoted by the writ petitioner/respondent was converted into per MT per KM taking the distance as mentioned in the NIeT, which worked out to Rs.10.98 per MT per KM. Accordingly, the writ petitioner/respondent became the L-1 bidder and the work was awarded to it. On completion of the work, payment was also made to the writ petitioner/respondent for a distance of 232 KMs @ Rs.10.98 per MT per KM.

3. It transpires that numerous discrepancies were noted by the authorities regarding the distance originally projected in the NIeT dated 30.03.2015 in respect of as many as 4(four) different routes. Accordingly, a 4(four) member Review Committee was constituted by the FCI to verify the actual distance and

to prepare a report as regards the road distance pertaining to Ex-Railway Siding, Salchapra to FCI, FSD, Anundhuti Nagar, Nandan Nagar and Chandrapur as well as Ex-Railway Siding, Bihara to FSD, Chandrapur and Nandan Nagar.

After making physical verification of the distance, the Review Committee submitted a report dated 12.09.2016, prepared by 4(four) responsible officials of the FCI. As per the contents of the report pertaining to the work executed by the writ petitioner/respondent, the actual distance in the route "Salchapra to FCI FSD, Nandannagar (Tripura) via Weighbridge", was found to be 284.8 KMs as against the distance originally projected in the NIeT i.e. 232 KMs. It is an admitted position that the FCI authorities have accepted the findings of the Review Committee to be correct.

As soon as the report of the Committee became available, the writ petitioner/respondent approached the FCI authorities seeking payment for the additional distance of 52 KMs over and above the originally projected distance of 232 KMs in the NIeT. However, such claim of the writ petitioner/respondent was rejected by the FCI authorities. The appeal submitted to the Grievance Redressal Committee (GRC) in the year 2018 was not considered, upon which, the writ petitioner/respondent approached the learned Single Judge by filing the captioned writ petition which came to be allowed in the above mentioned terms.

4. The learned Single Judge accepted the writ petition filed by the writ petitioner/respondent on the basis of the judgment rendered in **WP(C) No.4111/2017 (N.E. Trade & Transport & Anr. -Vs- Food Corporation of India & Ors.)**, which was disposed of by the judgment dated 03.04.2018 by upholding the claim of the contractor who had been awarded one of the works under the very same NIeT dated 30.03.2015 as the writ petitioner/ respondent

herein.

5. It is an admitted position that the writ appeal preferred against the said judgment dated 03.04.2018 rendered in **WP(C) No.4111/2017** (supra), has been rejected by the Division Bench by order dated 07.05.2019 passed in WA No.316/2018 [**Food Corporation of India & Ors. -Vs- N.E. Trade & Transport & Anr.**] and the FCI has already made payment to the contractor in compliance of the direction passed by this Court in WP(C) No.4111/2017 (supra).

However, for opposing the claim of the respondent/writ petitioner, the FCI relied upon the Division Bench judgment dated 24.02.2020 rendered in the case of **Food Corporation of India & Ors. -Vs- M/s Anup Trade and Transport Pvt. Ltd. & Anr. (WA No.36/2020)** to contend that identical claim of another contractor which was entertained by the learned Single Judge in WP(C) No.3138/2018, was declined by Division Bench.

6. The learned Single Judge distinguished the said judgment on facts and allowed the writ petition, WP(C) No.214/2019 by order dated 13.09.2022, which is assailed in this writ appeal.

7. Mr. K. Agarwal, learned Senior counsel assisted by Mr. B.K. Singh, learned counsel representing the appellants, vehemently and fervently contended that the controversy involved in the instant writ appeal is squarely covered by the decision rendered in the case of **Anup Trade and Transport Pvt. Ltd.** (supra) and thus, the learned Single Judge was not justified in accepting the writ petition.

8. Per contra, Mr. N. Deka, learned counsel representing the respondent/writ petitioner urged that the Division Bench judgment in the case

of ***N.E. Trade & Transport*** (supra) arises out of the very same NIeT in which the respondent was awarded transportation work for one section. The FCI has accepted the judgment of the learned Single Judge passed in WP(C) No.4111/2017 in said case after rejection of the appeal by the Division Bench and as a consequence, payment has been made to the contractor concerned. Thus, as per, Mr. Deka, the FCI authorities are not entitled to adopt a different approach in the matter of the respondent herein.

He further submitted that the judgment in the case of ***Anup Trade and Transport Pvt. Ltd.*** (supra) relied upon by the FCI is distinguishable on facts because in the said case, the claim of the contractor for payment towards extra mileage was not outrightly denied. Rather, the contractor was relegated to approach the Grievance Redressal Committee (GRC) for ventilating its grievances. He urged that in the present case, the respondent/ contractor has already approached the Grievance Redressal Committee way back in the year 2018 but no decision has been taken on the said application. He thus implored the Court to dismiss the instant writ appeal and affirm the order of the learned Single Judge.

9. We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the material placed on record.

10. At the outset, we may note that the aspect of difference in distances, as referred to above, is not in dispute because the FCI, constituted a Committee to examine the said complaint of the contractors who performed the contract under the NIet dated 30.03.2015. The Committee verified the distances and has given a report that the actual distance on the route for which the respondent was awarded the work was 54 Kms. more than the distance of 232 Kms as projected in the NIeT.

It is also not in dispute that the case of the ***N.E. Trade & Transport*** (supra) arose on another route which was advertised under the very same NIeT, for which the respondent was awarded the contract in question albeit for a different route. In the said case, the Division Bench, by judgment dated 07.05.2019 has affirmed the judgment of the learned Single Judge directing the FCI to make payment of the additional work for the excess KMs as derived by the Committee constituted by the Corporation itself. It is also not in dispute that the FCI has accepted the verdict in the case of ***N.E. Trade & Transport*** (supra) after rejection of its **WA No.316/2018** vide judgment dated 07.05.2019 and payment for extra kilometers worked out by the Committee has been made to the contractor.

11. This being the position, the FCI cannot change its stands and act in contravention to its own decisions. The Division Bench judgment in the case of ***M/s Anup Trade and Transport Pvt. Ltd.*** (supra) is distinguishable on facts because in the said case, the contractor had not approached the Grievance Redressal Committee and hence, this Court, relegated the contractor to invoke the jurisdiction of the Grievance Redressal Committee for ventilating its grievances. It is noteworthy that the Division Bench in the case of ***M/s Anup Trade and Transport Pvt. Ltd.*** (supra) observed that based on the rate quoted being Rs.11.41 per MT per KM, the Court may not indulge in re-assessment of the rate.

However, the present one is not a case which involves any exercise of re-assessment of rate. The original rate quoted by the respondent contractor, was converted to per MT per KM by the FCI. The issue involved here is whether the actual distance covered in the transportation work was correctly quoted in the tender document and if not whether the contractor is entitled to claim

additional payment for the extra distance as derived at by the Committee constituted by the FCI and more particularly, when the findings of the Committee are admitted by the FCI.

12. In this view of the matter and as, in the work order arising out of the very same NIeT, the Division Bench of this Court has extended relief to a similarly placed contractor, taking a different view in the case of the respondent herein, is absolutely unwarranted, more so, when the FCI has complied with the judgment rendered by the Division Bench in the case of ***N.E. Trade & Transport*** (supra).

Furthermore, the Grievance Redressal Committee, to whom the respondent/writ petitioner moved for ventilating its grievances raising claim for payment of excess distance, has not decided the claim even though a period of 5(five) years has passed, thus, the said remedy does not appear to be an efficacious remedy so as to non-suit the respondent on the ground of alternative remedy.

13. As a consequence, we do not find merit in this writ appeal, which is dismissed as such.

14. Payment of extra mileage shall be made to the respondent in terms of the judgment dated 13.09.2022 rendered by the learned Single Judge.

JUDGE

CHIEF JUSTICE

Comparing Assistant