

**HIGH COURT OF TRIPURA
AGARTALA**

**IA No.01/2024 in Review Pet. No.05 of 2024
Review Pet. No.05 of 2024
along with
IA No.01/2024 in Review Pet. No.06 of 2024
Review Pet. No.06 of 2024**

The Food Corporation of India & another

.....Applicant/Petitioner(s);

Versus

Smti. Namita Paul

.....Respondent(s).

For Applicant/Petitioner(s) : Mr. R.G. Chakraborty, Advocate.

For Respondent(s) : None.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

Order

10/07/2024

These two review petitions have been preferred against the common impugned Judgment dated 19.10.2023 by the appellant-Food Corporation of India (FCI). Both these review petitions are barred by delay of 149 days and 155 days respectively for condonation of which IA No.01/2024 has been preferred in each of them. The review petitioner has also enclosed the judgment dated 04.01.2024 passed by the Hon'ble Supreme Court in Special Leave to Appeal (C) No(s) 27419-27420 of 2023 whereby the Apex Court has dismissed the special leave petitions arising out of the impugned judgment and order dated 19.10.2023 in RFA No.25/2022 and RFA No.26/2022 passed by this Court.

2. It appears that while dismissing the special leave petitions, no leave has been sought for filing a review petition. Be that as it may, the instant matters have been taken up on successive dates but were adjourned on the

request made on behalf of the petitioner that an outstation counsel would be assisting this Court. On the previous date while accepting the request of adjournment made on behalf of the petitioner, this Court had adjourned the matters by way of last indulgence. Today again Mr. R.G. Chakraborty, learned counsel submits that the outstation counsel has not been able to come for his personal reasons.

3. We are not inclined to adjourn the matters any further. Mr. R.G. Chakraborty, who is on the panel of the FCI, has made a request to dispose of the instant review petitions and the interlocutory applications seeking condonation of delay after considering the judgment rendered by the learned Single Judge of the Gauhati High Court in WP(C) No.3498/2010 dated 26.09.2014.

4. Petitioner, in its application for condonation of delay, has referred to the dismissal of the special leave petitions preferred against the impugned judgment and order dated 19.10.2023. It is averred that thereafter the learned advocate-on-record representing the petitioner before the Apex Court informed the Divisional Manager, FCI, Agartala vide email dated 04.01.2024 that since the aforesaid SLP is dismissed *in limine*, a review petition before the High Court may be preferred in the light of the judgment dated 26.09.2014 passed by the Gauhati High Court. The email was forwarded by the Divisional Manager, FCI, Agartala to the AGM (Contract) on the same date with a recommendation to file a review petition and preferably engage a counsel from outstation. Later on 18.01.2024, the AGM (Contract) informed the Divisional Manager, FCI, Agartala as well as the outstation counsel-on-record that the competent

authority has approved the filing of review petition through him and further requested to coordinate with the advocate for supply of all requisite information and send draft review petition to his office for vetting. It is further stated that since the Standing Counsel was preoccupied with other engagements of the FCI in outlying Benches of the Gauhati High Court, the review petition could only be prepared on 12.02.2024 and was forwarded to the Regional Office, FCI, Shillong for perusal and necessary vetting. Their office was also advised to file a condonation application since the review petition had become time barred. The draft interlocutory application for condonation of delay was also referred vide email dated 13.02.2024 to the FCI Regional Office for vetting. Thereafter on 22.03.2024, their office instructed the Standing Counsel to file the review petition along with the condonation application. The review petition and the condonation application have been filed thereafter with a delay of 149 days and 155 days respectively in both the review petitions. Petitioner has sought condonation of delay on the basis of aforesaid facts and circumstances.

5. However, after going through the delay condonation applications, this Court is not satisfied with the explanation urged. The chronology of dates and events narrated in the Interlocutory Applications are in the nature of routine movement of the files without any sense of urgency to file the review petition after dismissal of the SLP by the Apex Court. The limitation period prescribed for preferring a review petition is only 30 days. We have also gone through the grounds raised in both the review petitions for review of the impugned judgment. On a plain reading of the grounds also it appears that the petitioner has placed reliance upon the judgment dated 26.09.2014 passed by the Gauhati

High Court and facts relating to the merits of the case such as the overloading of transport trucks being used for transportation of food grains, sugar and other allied materials under the contract executed between the parties. Petitioner has also referred to Clause X(c) of the contract agreement which was duly interpreted by this Court in the impugned judgment dated 19.10.2023. None of the grounds urged in the review petitions satisfy the conditions prescribed under Order XLVII Rule 1 read with Section 114 of CPC. The impugned judgment has been rendered by a Division Bench of this Court and challenge thereto has been negated by the Apex Court in Special Leave to Appeal (C) No(s) 27419-27420 of 2023. The plea raised by the petitioner to review the impugned judgment rendered by this Court and as upheld by the Apex Court, cannot be allowed on the basis of a judgment rendered in another case by learned Single Judge of Gauhati High Court in WP(C) No.3498/2010 dated 26.09.2014 in a different context. In WP(C) No.3498/2010, the petitioners before the Gauhati High Court had, at the stage of award of contract in their favour after their technical bids were found responsive and price bids were opened, sought interference of the Writ Court seeking exemption to carry to transport food grains from FCI depots on different routes in the northeastern region through trucks which can carry load above 9 metric ton. The FCI took a stand that the tender process had already been finalized and as such they were obliged to execute the contract at the quoted rate. WP(C) No.3682/2010 on the other hand challenged the FCI's acceptance communication dated 17.06.2010 whereby the tenderers were directed to furnish security money for issuance of formal appointment letter. Other writ petitions decided conjointly raised same issues. The learned Single Bench of the Gauhati High Court did not find any

reason to interfere in the matter and absolve the tenderers from the obligations under the contract. In the present case, after execution of the contract with the plaintiff/respondent herein in 2009 for transportation of food grains/sugar and allied materials at the negotiated rate per metric ton, plaintiff transported food grains in terms of the contract with effect from 16.11.2009 with trucks carrying loads of 16 MT per vehicle. The bills submitted by the plaintiff were also duly cleared by the defendants-FCI. They had also issued road movement permits for the vehicle indicating gross rate, weight of the goods to be carried from 16 MT to 19 MT. However, in the third week of October, 2010, FCI started deviating from the prevailing system of issuing indents for truck and instead of issuing indents on the basis of load capacity of 16 MT to 19 MT per truck, they started issuing indents on the basis of reduced load capacity of 8 MT to 10 MT per truck. Though the plaintiff continued to execute the contracts thereafter sustaining losses, the FCI invoked Clause X(c) of the agreement without any notice ignoring the letter of the plaintiff for enhancement of the rate of transportation in the changed situation. During midst of the execution of the contract after a year, dispute arose between the parties leading to invocation of Clause X(c) of the agreement by the FCI and forfeiture of security money. By the impugned judgment and order rendered in RFA No.25/2022 and RFA No.26/2022, this Court held that forfeiture of security deposit by the contractor could be done in the event of termination of the contract envisaged in Clause XI(c). Consequently, it was held that the plaintiff-contractor was entitled to get the refund of the security deposit along with interest. As such, the issues in the present matter are different. Therefore, on the basis of a judgment rendered by the learned Single Bench of the Gauhati High Court in a writ petition in a

different context, the plea raised by the petitioners for review of the impugned judgment cannot be accepted.

6. Apart from the above contention on the merits of the plea seeking review, we do not find sufficient explanation for condonation of delay on the basis of facts and circumstances discussed above. Accordingly, both the interlocutory applications are dismissed. Consequently, both the review petitions are also dismissed.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ



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