

GAHC010030912023



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

Case No. : WP(C)/862/2023

KANAKA TEA ESTATE
REP. BY ITS SOLE PROPRIETOR DILIP KUMAR SAIKIA, S/O. LT.
BHADRESWAR SAIKIA, LONGDONGBASTI, SALONA, NAGAON-782139,
ASSAM.

VERSUS

THE FOOD CORPORATION OF INDIA AND 6 ORS
REP. BY ITS CHAIRMAN CUM MANAGING DIRECTOR, BARAKHAMBA
ROAD, NEW DELHI, PIN-110006.

2:THE GENERAL MANAGER (REGIONAL)

FOOD CORPORATION OF INDIA
REGIONAL OFFICE
ASSAM REGION
PALTANBAZAR
GUWAHATI
ASSAM
PIN-781008.

3:THE ASSTT. GENERAL MANAGER (CONT)

FOOD CORPORATION OF INDIA
REGIONAL OFFICE
ASSAM REGION
PALTANBAZAR
GUWAHATI
ASSAM
PIN-781008.

4:THE ASSTT. GENERAL MANAGER (VIGILANCE)

FOOD CORPORATION OF INDIA
REGIONAL OFFICE
ASSAM REGION
PALTANBAZAR
GUWAHATI
ASSAM
PIN-781008.

5:THE DIVISIONAL MANAGER

FOOD CORPORATION OF INDIA
DIVISIONAL OFFICE
KOKRAJHAR
ASSAM
PIN-783370.

6:THE DIVISIONAL MANAGER

FOOD CORPORATION OF INDIA
DIVISIONAL OFFICE NAGAON
ASSAM
PIN-782001.

7:THE AREA MANAGER

FOOD CORPORATION OF INDIA
DISTRICT OFFICE
NAGAON
ASSAM
PIN-782001

Advocate for the Petitioner : MR A C BORBORA, MRS. R BORBORA,MS. N DEY,MR. M SMITH,MR. N BORPATRAGOHAIN

Advocate for the Respondent : SC, F C I, MS. M DUTTA,MRS. A CHAKRABORTY,MR. S K CHAKRABORTY,MR. P K ROY

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner

: Mr. A. C. Borbora, Sr. Advocate.
Assisted by Ms. M. Dey, Advocate.

For the Respondents : Mr.P. K. Roy, Sr. Advocate,
Assisted by Mr. A. Chakraborty, Adv.

Date of Hearing : 27.08.2024.

Date of Judgment : 27.08.2024.

JUDGMENT & ORDER (ORAL)

1. Heard Mr. A. C. Borbora, learned Senior Counsel assisted by Ms. M. Dey, learned counsel for the petitioner. Also heard Mr. P. K. Roy, learned Senior Counsel assisted by Mr. A. Chakraborty, learned counsel for the respondents.
2. It is the case of the petitioner that he was appointed as the Handling Contractor w.e.f. 22.01.2016 for a period of 2 (two) years for Handling Works at FCI, FSD, Balajan in the district of Kokrajhar. According to the petitioner, the said work has been completed in all respects, the bills have been cleared and even the security deposit was refunded to the contractor. However, by the impugned action, a demand has been made for Rs. 10,39,504.23/- which apparently is in respect of some other work.
3. Fundamentally, an internal communication dated 26.10.2022 and 03.11.2022 are under challenged in this writ petition. It is the contention of the learned counsel for the petitioner that such action to recover the amount has been taken unilaterally, without giving any reasonable opportunity of hearing to the petitioner inasmuch as the respondents are not within jurisdiction to raise such demand in the manner they have done it.
4. Per contra- the learned Senior Counsel for the FCI referring to the Clause 12 of the Contract entered into between the petitioner and the respondents for the handling contract relating to FSD Balajan under Kokrajhar district, contends that

under the said contract, the respondent authorities are empowered to set off any amount relating to other contracts by the same contractor with the FCI.

5. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the materials available on record.
6. The impugned communication dated 26.10.2022 reflects that it is an internal communication issued by the General Manager (Vigilance) addressed to the Assistant General Manager (Contract) and it discloses that the authority has granted approval for recovery of an amount of Rs. 10,39,504.23/- from the petitioner being the payment towards stacking and de-stacking on same day at FSD Balajan during the material period.
7. The other impugned communication dated 03.11.2022 reflects that it is a communication of Assistant General Manager (Cont) to the Divisional Manager, Food Corporation of India, Divisional Office, Nagaon, whereby a request was made to recover the aforesaid amount of Rs. 10,39,504.23/- from the pending contract bills of the petitioner relating to adhoc handling contract at RH Habibargaon.
8. Thus from the aforesaid, it is clear that the FCI is liable to pay an amount of Rs. 10,39,504.23/- against the payment in respect of the contract namely "Adhoc Handling Contract at RH Habibargaon". It is also clear from the aforesaid communication that the respondent FCI want to recover the aforesaid amount for already completed handling contract at FSD Balajan under DDO, Kokrajhar.
9. The Clause 12 of the contract relating to the FSD Balajan, Kokrajhar, prescribed that any sum of monetary due and payable to the contractor under the contract may be appropriated by the Corporation and set off against any claim of the Corporation for the payment of any sum of money arising out of or under this contract or any other contract made by the contractor with the

Corporation.

10. From the aforesaid, it is seen that a power under the contract has been given to make a set off. However, to pass an order under such clause, a determination is to be made as regards claim and counterclaim between the Corporation and the parties which needs factual assertion and for such factual assertion. It is important to note herein that an adjudication process is prescribed in the contract under Clause XVIII(b). Such clause prescribes that in case of any dispute arising out of and touching upon the contract, the same will be first referred to the Dispute/Grievance Rederessal Committee constituted and functioning at the Zonal Office of the Corporation, with a view to settle the dispute and if any dispute remains thereafter, the same will be settled in the Court of law having competent jurisdiction, however, admittedly such prescribed procedure has not been opted and no notice has been issued to the petitioner. Therefore, hearing the contractor will be necessary otherwise the recovery proposed in the present case will result in adverse civil consequences.
11. The principles of natural justice mandates that a reasonable opportunity must be given to a person before taking any action against him. The adjudicating authority must disclose all the material placed before it and must give reasonable opportunity to the affected to submit his/ their case. A fair hearing means that a person against whom an adverse order is passed should be informed of the charges against him giving him an opportunity to submit his explanation to the charges and the person is also have a right to know the material on the basis of which the allegation is proposed to be decide.
12. Law is by now well settled that when there is adverse civil consequences, the principle of natural justice is required to be followed however, admittedly in the case in hand, though a decision has been made to recover the amount, no principles of natural justice have been followed or any reasonable opportunity of

hearing has been granted to the petitioner. Therefore, in the considered opinion of this Court, such course of action is not sustainable and therefore, the impugned decision to recover an amount of Rs. 10,39,504.23/- is liable to be interfered with.

13. At this stage, Mr. Roy, learned Senior Counsel has submits that in similar circumstances, a Division Bench of this Court in WA/297/2022, while upholding the decision of learned Single Bench, directing payment, protected the right of the FCI to go for adjudication for settlement of the dispute i.e. the claim of set off by the respondent Corporation.
14. Mr. Roy, learned Senior Counsel further submits that the Hon'ble Apex Court in **Food Corporation of India –Vs- M/s G. B. Chaudhury Holding Pvt. Ltd (B) (SLP(C) No. 2032/2023)** has also clarified that the “adjudication” shall mean the Dispute/Grievance Redressal Mechanism provided under the agreement entered into between the parties.
15. This Court is of the view that if there is a claim of set off and there is an adjudicative mechanism, the FCI shall always be at liberty to resort to such adjudicative mechanism, however, the recovery cannot be made even in terms of the said adjudicative mechanism in the manner that has been proposed in the case in hand.
16. Therefore, considering the matter in entirety and the reasons recorded hereinabove, it is provided that the impugned decision to unilaterally recover the amount as recorded hereinabove is interfered with and it is directed that the respondent shall release the aforesaid amount of Rs. 10,39,504.23/- to the petitioner within a period of one month from today. If the payment is not made within the said one month, the amount shall carry an interest @ 6% per annum. However, it is made clear that the Corporation shall be within its liberty to opt for

their right under the contract, if so advised, subject to payment of the aforesaid amount.

17. This writ petition stands disposed of.

JUDGE

Comparing Assistant