

HIGH COURT OF TRIPURA
AGARTALA

RFA 5 of 2024

- 1. Food Corporation Of India**
having its registered office (Headquarter)
at 16-20, Barakhamba Lane, New Delhi-110001
being represented by the General Manager,
N.E.F. Region, Mawlai, Mawroh Shillong- 793008, Meghalaya.
- 2. The Area Manager,**
Food Corporation of India,
District Office, Agartala, Colonel Chowmuhan
P.S. West Agartala, District- West Tripura.

.....Plaintiffs/Appellants

Versus

Shri Ashish Kumar Dey,
Resident of Shib Bari Road Dharmanagar- 799250
District- North Tripura.

.....Defendant/ Respondent

For the Appellant(s)	: Mr. Ratan Datta, Advocate. Mr. Sourav Debnath, Advocate. Mr. S. Dhanuk, Advocate.
For the Respondent(s)	: Mr. Sankar Bhattacharjee, Advocate. Mr. Subendu Noatia, Advocate. Ms. Jeley Debbarma, Advocate.
Date of hearing and delivery of Judgment & Order	: 15.07.2025
Whether fit for reporting	: Yes/No

**HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT
J U D G M E N T & O R D E R (O R A L)**

[Dr. T. Amarnath Goud, JJ]

[1] Heard Mr. Ratan Datta, learned counsel appearing for the plaintiff-appellant, Food Corporation of India (*for short* FCI). Also heard Mr. Sankar Bhattacharjee, learned counsel for the defendant-respondent.

[2] The present appeal is filed under Section 96 of the Code of Civil Procedure challenging the impugned judgment dated 17.10.2023 and decree dated 19.10.2023 passed by the learned Judge, District Commercial Court, West Tripura, Agartala, in Commercial Suit-05 of 2016 whereby and where-under the suit of the appellants was dismissed.

[3] The brief fact of this case as enumerated in the plaint before the Court below is that, Food Corporation of India (FCI) is a statutory corporation setup with the objectives of providing effective price support operations for safeguarding the interests of the farmers, distribution of food grains throughout the country and that the corporation being a body corporate is being represented by the General Manager of the North East Frontier Region situated at Shillong and that the FCI invited Tender bearing No. CONT 9/NEFR/TC/CBZ-CDR/2009 dated 31.01.2009 for appointment of Transport contractor for the purpose of transportation of food grains etc. from Railway siding/FSD Churaibari to FSD Chandrapur for period of two years and that the tender submitted by the defendant and two other tenderers namely, M/S Ranjit Kr. Saha & Sons, Agartala and M/S Namita Paul, Agartala were accepted by the plaintiffs and that the rate quoted by the defendant contractor was 47.5% above the Schedule of rate prescribed by the plaintiffs i.e, Rs. 1176.54 paisa per MT for the entire distance and the same was accepted by the plaintiffs vide fax dated 20.04.2009 and letter No.Cont.9/NEFT/TC/CBZ-CDR/09 dated 29.04.2009 wherein it was stated that the contract would be governed by the terms and conditions of the tender document signed and submitted by the defendant on 03.02.2009 and advised to start work w.e.f. 30.04.2009. As per the terms and conditions of the contract agreement the defendant agreed to deposit the security deposit of Rs. 47,41,000/- and the plaintiffs allowed the defendant contractor to start with the contract work by carrying the food grains from Railway siding/FSD Churaibari to FSD Chandrapur w.e.f. 30.04.2009 but the defendant joined for the work on 05.05.2009.

[4] It was further pleaded that the defendant according to the agreement started work under contract but suspended the same after 24.12.2010

and in the month of October, 2010 started violating the terms and conditions of the agreement and such action of the defendant was completely in violation of the terms and conditions of the contract agreement and that essential food grains stored in go-down of the plaintiffs was reduced and due to non carrying of food grains by the defendant from Railway siding/FSD Churaibari to FSD Chandrapur it caused serious crisis adversely affecting public distribution system and that the defendant was repeatedly requested by the plaintiffs to maintain the contractual obligations but the he did not respond. It was further contended that that the plaintiffs vide letter nos F9/NEFR/HTC/Misc-Corres/2008-09 dated 18.10.2010, 19.10.2010, 20.10.2010, 06.11.2010, 09.11.2010 and 12.11.2010 informed the defendant about his failure to perform the contract and that the plaintiffs would be constrained to impose Clause X(c) of the agreement vide letter dated 24.11.2010 and they would continue the work in public interest by calling other interested contractors at the risk and cost of the defendant contractor and thereafter plaintiff No.2 invited 'Limited Spot Tender Notice' vide No. Cont.9/AGT/Adhoc/R&C/CBZ/2009-10 dated 03.12.2010 and in response to it, plaintiff No.2 accepted the offer of some contractors namely, M/S Sunil Ch Dey, Sri Abhijit Paul and Smt Putul Saha and appointed them as ad-hoc contractors for transportation of the food grains from Railway Siding/FSD Churaibari to FSD Chandrapur for six months vide letter No. Cont. 9/DO-AGT/TC/CBZ-CDR/Adhoc/2010 dated 24.12.2010 to save the PDS system and for lifting the accumulated store of food grains from FSD Churaibari. It was also contended that vide letter No. Cont.9/NEFR/TC/CBZ-CDR/2009 dated 24.03.2011 the period of the regular contract with the defendant contractor was extended and that he was informed to continue the same but the defendant did not pay any heed and the plaintiffs were constrained to appoint ad-hoc contractors to continue the work up to 04.08.2011 which was discontinued by the defendant and the defendant had to carry the food grains from Railway Siding/FSD Churaibari to FSD Chandrapur at their own approved rate from 05.05.2009 to 04.08.2011 for carrying food grains per MT at the scheduled rate of Rs. 797.66 ASOR-47.5% but from October, 2010 defendant failed to supply trucks as indented resulting in heavy

food crisis in Agartala resulting to huge demurrage loss to FCI. It was further pleaded that because of non performance of the contractual obligations under the contract agreement and its consistent breach thereof FCI suffered huge loss amounting to Rs.1,23,11,613/- and thus the plaintiffs filed the suit before the Court below for recovery of compensation from the defendant by an appropriate decree.

[5] The defendant filed written statement before the Court below denying the allegations made against him in the plaint. Thereafter, on the basis of pleadings, following issues were framed by the learned Court below for the purpose of determination of the suit:

“I) Is the suit maintainable in its present form and nature?

II) Whether the plaintiffs (FCI) had performed their part of contract before invoking clause X(c) of the contract or not?

III) Whether the plaintiffs are entitled to get the recovery of Rs. 1,23,11,613/- along with interest since 24 11 2010?

IV) What other relief/reliefs the plaintiffs are entitled to get?”

[6] Thereafter, on perusal of material evidence on record and upon hearing both the parties, learned Court below finally has dismissed the suit filed by the plaintiffs by its judgment & order dated 17.10.2023 and decree dated 19.10.2023 passed in Commercial Suit 05/2016. The relevant contents of the said impugned order dated 17.10.2023, read as under:

“.....11 Now lets examine whether the plaintiffs could prove such facts by documentary evidence. In support of evidence PW1 only submitted original tender agreement and four Demand Notices. Though PW.1 stated in evidence that the plaintiffs informed the defendant vide letter dated 18.10.2010, 19.10.2010, 20.10.2010, 06.11.2010, 09 11.2010 and 12.11.2010 informing him about his failure to perform the contract and that he was liable to make good the loss caused to the plaintiffs for breach of contractual obligations and the cost value performance of the unperformed work under the tender agreement but PW.1 did not produce copy of such letters.

12. Though the four Demand Notices i,e; Exhibit 2(i) to 2(iv) speak about appointment of transport contractors and for payment of extra expenditure but in cross examination PW1 admitted that he did not submit copy of "limited spot tender notice" nor submitted copy of any paper showing engagement of new contractors. He also admitted that neither

copy of agreement concluded with the ad-hoc contractors, nor copy of work order issued to them, was submitted. He also admitted that contractor's wise details in respect of carrying food grains by the ad-hoc contractors from 24.12.2010 to 23.06.2011 and from 24.06.2011 to 04.08.2011 was not placed before the court. Finally it was suggested to him that no ad-hoc contractors were appointed and that the FCI did not suffer any loss. When it was the claim of the plaintiffs that because of non performance of the part of the tender agreement by the defendant the plaintiffs had to invite limited spot tender and that the ad-hoc contractors were appointed who performed the unperformed part left by the defendant by carrying the food grains for 24.06.2011 to 23.12.2011, which was further extended by three months and that as a result, the FCI suffered loss but such plea was not substantiated by any documentary evidence.

13. The PW1 did not produce any documentary evidence to show that limited spot tender was issued for engagement of ad hoc contractors and that thereafter the ad-hoc contractors were appointed and that such ad-hoc contractors carried food grains from 24.06.2011 to 23.12.2011 and that the FCI had to pay Rs. 1,23,11,613/- to the ad hoc contractors.

14. It is not the case of the plaintiffs that the ad-hoc contractors were appointed on any oral agreement. The FCI being a Govt. Corporation ought to have produced documentary evidence regarding its claim towards issuance of "limited spot tender notice" for engagement of ad-hoc contractors or engagement of ad-hoc contractors or carrying of food-grains by the ad-hoc contractors or payment of such carriage charge etc. But in absence of such documentary evidence the claim of PW1 for appointment of ad-hoc contractors, performance for the unperformed part left by the defendant, payment for Rs. 1,23,11,613/- cannot be believed to be true.

15. Thus it is held that the plaintiffs miserably failed to prove that "limited spot tender notice" for engagement of ad-hoc contractors was issued or that the ad-hoc contractors were appointed or that the rate quoted by them was higher than the rate quoted by the defendant or that the ad-hoc contractors carried the food grains from 24.06.2011 to 23.12.2011 or that Rs.1,23,11,613/- was paid to them for such transportation.

Accordingly issue No. ii & iii) are decided in negative and against the plaintiffs.

Issue Nos. iv):-

16. When the Issue No. ii & iii) are decided in negative and against the plaintiffs, as aforesaid, then issue No. (iv) is also decided in negative and against the plaintiffs.

ORDER

17. In the result suit of the plaintiff fails and they are held to be not entitled to the reliefs, as prayed for. Resultantly, the instant suit is dismissed, however, without any cost.

18. Prepare a decree accordingly.

19. The case is thus disposed off on contest.....”

[7] Being aggrieved and dissatisfied with the aforesaid impugned judgment & order dated 17.10.2023 and decree dated 19.10.2023 passed in Commercial Suit 05/2016, the instant appeal has been preferred by the appellants seeking the following reliefs:

- “i) Admit the instant appeal,
- ii) Call for the record of Commercial Suit 05 of 2016 from the Court of Ld. District Commercial Court, West Tripura, Agartala,
- iii) Issue notice upon the Respondent,
- iv) And after hearing the parties be pleased to reverse/quash/modify the Judgment & Decree dated 17.10.2023 passed by the Learned District Commercial Court, West Tripura, Agartala ***** passed in Commercial Suit 05 of 2016 and be pleased to pass any other appropriate order/direction as may be deemed fit and proper

[8] Mr. Ratan Datta, learned counsel appearing for the appellant-FCI submits that learned Trial Court did not consider the pleadings and documents of the parties on record and thereby committed miscarriage of justice. He further submits that the plaintiffs informed the defendant vide letter dated 18.10.2010, 19.10.2010, 20.10.2010, 06.11.2010, 09.11.2010 and 12.11.2010 apprising him about his failure to perform the contract and that he was liable to make good the loss caused to the plaintiffs for breach of contractual obligations and the cost value performance of the unperformed work under the tender agreement. According to the learned counsel, if those letters were exhibited, the plaintiffs would have been succeeded in the suit. He, therefore, urges this Court to set aside the impugned judgement and decree passed by the learned trial Court remanding back the matter to the concerned Court with a direction to give an opportunity to the appellants for producing such relevant documents and to start fresh adjudication at the stage of evidence.

[9] Heard the submissions made at the Bar. Perused the evidence placed on record.

[10] Upon hearing the submissions made by both the sides, this Court is of the considered view that the matter pertains to recovery of money of

Rs.1,23,11,613/-(Rupees One Crore Twenty-three Lakhs Eleven Thousand Six Hundred and Thirteen) from the defendant and the plaintiff being Food Corporation of India filed the present suit for recovery before the trial Court and being an unsuccessful the present appeal has been preferred. It is pleaded by Mr. Ratan Datta, learned counsel for the appellant-FCI that some documents which were referred in the pleadings were the Xerox copies and since the original relevant documents were not placed on record, those could not be marked as exhibits and in the process, the plaintiffs could not support their case and ultimately failed. He has further expressed his confidence in succeeding the matter on the strength of those relevant documents.

[11] Since the matter pertains to an institution and the responsible officers managed the state of affairs of the plaintiff-Food Corporation of India, it cannot be appreciated the manner in which the Food Corporation of India has dealt with the suit for so many years without filing or marking the originals as exhibits and as a result, losing the legal battle before the trial Court that too when the recovery of amount is huge. At this juncture, the counsel for the plaintiff-appellants pleads for remanding the matter back and giving the opportunity of filing the original documents and to mark them as exhibits and to lead the case from a stage of evidence. Though, to meet the ends of justice, for a moment, this Court is inclined to consider the said submission as the same is unopposed by the defendant-respondent counsel, it draws the concern of this Court that, for the action of the plaintiff- officers not acting diligently, the Court is burdened with litigation by another round. This Court feels that this kind of casual approach of the plaintiffs cannot be accepted and the concerned officers whoever are responsible as on the date of filing of the suit should be held accountable for not filing of the original documents and for not furnishing the relevant documents to the counsel to be placed on record before the Court below.

[12] Therefore, the Food Corporation of India shall deduct a sum of Rs.15,000/- (Fifteen thousands only) from the each of the concerned responsible plaintiff officers who were working during the time of filing of the

original suit in the year, 2013 before the learned Court below, *i.e.* (1) the then General Manager, N.E.F. Region, Jowai Road, Shailong-3, Meghalaya and (2) Shri Debananda Khanikar, son of Shri Bhaven Chandra Khanikar, the then Area Manager of the District Office, Agartala of Food Corporation of India, from their respective salary and pay the same to the account of the '*High Court Employees Welfare Fund Committee*' in its UCO Bank Account No. 26060110003312 IFSC: UCBA0002606 within one month from today and the said amount [Rs.30,000/- in total] be imposed as cost to be paid by the above officers of FCI which is recoverable by FCI from their salaries by following pay and recover procedure.

[13] In the light of the observations made, in order to meet the ends of justice and to give a reasonable opportunity to the plaintiffs, the Court below shall receive the relevant documents as per procedure and proceed with the matter from the stage of evidence and complete the trial as per law by giving due opportunities to both the sides.

[14] With the above observations and directions, the matter is remanded back to the learned Court below for fresh adjudication and accordingly, the impugned judgment dated 17.10.2023 and decree dated 19.10.2023 passed by the learned Judge, District Commercial Court, West Tripura, Agartala, in Commercial Suit-05 of 2016 are set aside. Resultantly, the instant appeal stands disposed of. As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

[15] Send down the LCR alongwith the copy of this judgment.

B. PALIT, J

DR. T. AMARNATH GOUD, J

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