

**HIGH COURT OF TRIPURA
AGARTALA**

RFA No.4 of 2024

Sri Suvajit Paul, S/o Shri Swapan Kumar Paul, resident of B.K. Road,
Banamalipur, P.O.-Agartala, P.S.-West Agartala, District-West Tripura.

..... Appellant (s).

V E R S U S

1. Food Corporation of India, a Government of India undertaking having its
office at 16-20, Barakhamba Road, New Delhi-11006 represented by its
Chairman-cum-Managing Director.

2. The General Manager(R), Food Corporation of India, North-Eastern
Region, Mid-Land, Shillong-3.

3. The Area Manager, Food Corporation of India, District Office, Colonel
Chowmuhani, P.O.-Agartala, P.S.-West Agartala, District-West Tripura.

..... Respondent(s).

For Appellant(s) :	Mr. Kundan Pandey, Advocate
For Respondent(s) :	Mr. Ratan Datta, Advocate
	Mr. Aditya Baidya, Advocate

RFA No.7 of 2024

1. Food Corporation of India, a Government of India undertaking having its
office at 16-20, Barakhamba Lane, New Delhi-110001, represented by its
Chairman-cum-Managing Director.

2. The General Manager(R), Food Corporation of India, Regional Office,
North East Frontier Region, Mawlai Mawroh, Shillong-793008.

3. The Divisional Manager erstwhile Area Manager, Food Corporation of
India, District Office, Colonel Chowmuhani, P.O.-Agartala, P.S.-West
Agartala, District-West Tripura.

..... Appellant (s).

V E R S U S

Sri Suvajit Paul, Son of Sri Swapan Kumar Paul, resident of B.K. Road,
Banamalipur, P.O.-Agartala, P.S.-West Agartala, District-West Tripura.

..... Respondent(s).

RFA No.10 of 2024

1. Food Corporation of India, a Government of India undertaking having its
office at 16-20, Barakhamba Lane, New Delhi-110001 represented by its
Chairman-cum-Managing Director.

2. The General Manager(R), Food Corporation of India, Regional Office,
North East Frontier Region, Mawlai Mawroh, Shillong-793008.

3. The Divisional Manager erstwhile Area Manager, Food Corporation of India, District Office, Colonel Chowmuhan, P.O.-Agartala, P.S.-West Agartala, District-West Tripura.

..... Appellant (s).

V E R S U S

Sri Suvajit Paul, S/o Sri Swapan Kumar Paul, resident of B.K. Road, Banamalipur, P.O.-Agartala, P.S.-West Agartala, District-West Tripura.

..... Respondent(s).

For Appellant(s) : Mr. Ratan Datta, Advocate
Mr. Aditya Baidya, Advocate
For Respondent(s) : Mr. Kundan Pandey, Advocate

HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE BISWAJIT PALIT

CAV reserved on : **11.03.2026.**

Judgment delivered on : **08.04.2026**

Whether fit for reporting : **YES**

JUDGMENT & ORDER

(Biswajit Palit, J)

Since all the three commercial appeals have arisen out of a common judgment and decree and the subject matter of these appeals is identical, so these three commercial appeals are taken up together for disposal by this common judgment and order.

2. Heard Learned Counsel, Mr. Kundan Pandey appearing on behalf of the appellant/plaintiff i.e. the contractor in RFA No.4 of 2024 and for the respondent in RFA No.7 of 2024 and RFA No.10 of 2024. Also heard Learned Counsel, Mr. Ratan Datta appearing on behalf of the respondents-FCI in RFA No.4 of 2024 and for the appellants in RFA No.7 of 2024 and RFA No.10 of 2024.

3. **Short facts of the case of the appellant/plaintiff i.e. the contractor are as follows:**

The original suit was filed by the appellant/plaintiff i.e. the contractor before the Learned Trial Court against the respondents-FCI, claiming detention charges along with interest for delay in unloading of food grains beyond the stipulated period due to shortage of storage space, as per the tender agreement. A counterclaim was filed by the respondents-FCI against the appellant-contractor seeking demurrage charges for failure to clear the wagon within time.

3.1. The case of the appellant-contractor, in short, is that he runs a transport business in the name of M/s Suvajit Paul and the respondents-FCI appointed him as a transport contractor a period of 2(two) years for transportation of food grains/sugar and other allied materials including loading and unloading works at Food Storage Depots from railway siding/FSD Dharmanagar to FSD Nandannagar, Agartala. As per the tender agreement, the appellant started transportation of food grains w.e.f. 27.04.2012 and had been carrying out the work of loading of food grains from Railway Wagon at railway siding, FSD Dharmanagar and transporting the same to FSD, Nandannagar, Agartala, Tripura by using trucks/lorries under road movement permits issued by the Depot in-charge, FCI, Dharmanagar, mentioning the date of dispatch with a validity period of 3(three) days, including the date of dispatch and the date of delivery at the destination. The appellant executed the work of loading and unloading of food grains during the period of contract.

3.2. It was the case of the appellant that due to shortage of accommodation in the FCI storage/go-down at Nandannagar, Agartala, the delivery of food grains could not be effected within the stipulated period and the respondents-FCI almost in all the occasions had detained the loaded vehicles at the destination point for a period of about 4 to 20 days for which

the appellant had to suffer huge financial losses and also had to pay recovery charges. The appellant had claimed a sum of Rs. 800/- per day for detention of every loaded truck at the destination point by writing several letters to the respondent-Area Manager but they did not pay any heed to those letters.

3.3. It was further the case of the appellant-contractor that the General Manager, FCI, Regional Office, NEFR, Shillong by a letter dated 12.07.2013 supplying copy to the appellant/plaintiff informed the Director of Food and Civil Supplies and Consumer Affairs, Govt. of Tripura that due to increase in induction of food grains and inadequate storage capacity in the FCI go-down in the State of Tripura, the respondent-Area Manager was not in a position to unload the trucks. The appellant, from time to time, made claims for detention charges of the vehicles to the respondents-FCI by submitting bills, but no action was taken rather by a letter dated 05.12.2013, the respondent-General Manager wrongly stated that the appellant-contractor claimed Rs.2,84,89,600/- from June, 2012 to September, 2013 and there was no precedent in the North Eastern region for claiming detention charges. Hence, the appellant/plaintiff filed the suit before the Learned Court below seeking recovery of money.

4. Defence of the respondents/defendants i.e. FCI:

The respondents-FCI contested the suit by filing written statement denying the assertions of the appellant-contractor. It was the case of the respondents-FCI that both the parties were bound by the tender agreement and the appellant/plaintiff carried out the work of transportation of food grains from the railway siding/FSD Dharmanagar to FSD Nandannagar, Agartala. The entrustment of the work of transportation of food grains was accepted by the respondent no.2 i.e. the General Manager, pursuant to the NIT dated

13.09.2011 by a letter of acceptance dated 25.04.2012. According to the respondents-FCI, due to failure of the appellant/contractor to supply trucks as per indents issued by the respondents, the respondents-FCI had incurred huge financial losses in terms of “demurrage charges” imposed by the railways.

4.1. It was further the case of the respondents-FCI that as per Clause-X of the tender agreement, the appellant/plaintiff i.e. the contractor was liable for all costs, damage, registration fees, charges and expenses incurred by the Corporation due to negligence of the contractor and as per Clause-XII, the Corporation would be at liberty to reimburse themselves for any loss, damage, charges, costs or expenses suffered or incurred by the Corporation.

The respondents-FCI further took the plea that the rate quoted by the appellant-contractor pertaining to transportation work was accepted by the respondent No.2 i.e. the General Manager on 25.04.2012 and the appellant-contractor was appointed as transport contractor for a period of 2(two) years which was subsequently extended for a further period of 2(two) months. However, the respondents-FCI denied the allegation regarding shortage of accommodation at the receiving depot. The respondents-FCI stated that as per Clause-XVIII(vi) of tender agreement, no compensation was admissible to the contractor in respect of detention of trucks at go-down or any other loading/unloading points or any other place unless such detention is of an “extraordinary kind” and the decision of the General Manager shall be final in all such matters.

4.2. The respondents-FCI also denied the allegation of the appellant/plaintiff regarding detention of 450 to 500 trucks at the receiving depots and submitted that the said allegation was false and fabricated. It was further stated that an enquiry was held in that regard and the appellant-contractor was

warned not to report any false compliant in future without verifying the facts. The respondents-FCI further stated that the claim of the contractor for a sum of Rs. 1,52,62,400/- along with interest was baseless, imaginary, arbitrary, having no legal nexus.

4.3. The respondents-FCI further took the plea that the FCI was under the process of calculating the exact amount of loss incurred by the FCI as railway demurrage due to un-workmanlike performance of the contractor in respect of transportation contract for transportation from Rail Head Siding/FSD Dharmanagar to FSD Nandannagar, Agartala which was awarded by FCI Regional Office, Shillong by a letter dated 25.04.2012. Thus, by the written statement, the respondents-FCI denied the claim of the appellant/plaintiff made in the original suit and prayed for dismissal of the suit with costs.

5. Counterclaim of the respondents-FCI against the original suit:

The respondents-FCI in their counterclaim took the plea that the FCI is a Government of India undertaking primarily engaged for supplying of food grains to maintain the public distribution system smoothly in each State including the State of Tripura by engaging contractors for carrying of food grains/allied materials etc. from railway sidings to various depots in the State of Tripura.

5.1. It was pleaded in their counterclaim that the FCI had issued an NIT on 13.09.2011 under a two-bid tendering system for appointment of transport contractors for a period of 2(two) years for transportation of food grains/sugar and also for loading and unloading of trucks at Food Storage Depots from railway siding/FSD Dharmanagar to FSD Nandannagar,

Agartala. According to the respondents-FCI, the bid offered by the appellant-contractor was accepted by the FCI and by a letter dated 24.04.2012, the FCI appointed the appellant-contractor as a transport contractor for a period of 2(two) years for transportation of the food grains/sugar and other allied materials. The period of contract was extended for a further period of 2(two) months by the respondents-FCI. The respondent further took the plea that as per agreement, the appellant-contractor was under obligation for placement of adequate number of trucks in compliance of the indents issued in favor of the appellant-contractor by the Siding/Depot in-charge, but for failure of clearing the wagons, demurrage charges were being imposed by the railways on the respondents-FCI and they had to incur huge loss.

5.2. It was further stated that the performance of the appellant-contractor in carrying the food grains was not up to the mark, for which the respondents-FCI had to pay railway demurrage w.e.f. May, 2012 to September, 2013; October, 2013 to March, 2014 and April, 2014 to July, 2014 and the said demurrage charges could not be recovered from the bill of the appellant-contractor due to a stay order passed by this Court.

5.3. It was stated that the respondents-FCI issued a letter on 22.12.2015 to the appellant-contractor explaining the grounds regarding the demurrage suffered by the FCI for the above financial years on account of failure to supply trucks for timely unloading of wagons at the siding, but after several persuasions with the appellant-contractor, the performance of the appellant-contractor was not improved, and due to their poor performance, huge detention of wagons took place at Dharmanagar which caused serious disruption to the Public Distribution Systems in the State of Tripura.

Consequently, the respondents-FCI filed the counterclaim claiming demurrage charges from the appellant-contractor.

6. Reply of the appellant-contractor to the counterclaim:

The appellant-contractor contested the counterclaim by filing written statement stating *inter alia* that the respondents-FCI had no cause of action to file the counterclaim and as such, they are not entitled to get any relief.

6.1. It was stated that there was no such provision for claiming demurrage charges in the tender agreement. Further, as per the contract, there was no clause for railway demurrage charges and the Division Bench of this Court by a common judgment and order dated 03.10.2016 in WA No.25 of 2016 and other connected appeals held that FCI could not claim demurrage charges in absence of any provision in the contract. So, the appellant-contractor prayed for dismissal of the counterclaim filed by the respondents-FCI.

6.2. To determine the suit, the Learned Commercial Court framed four issues in the main suit filed by the appellant-contractor and four issues in the counterclaim filed by the respondents-FCI.

7. Arguments on behalf of the appellant contractor:

On behalf of the appellant-contractor, Learned Counsel, Mr. Kundan Pandey submitted that the appellant-contractor filed the suit seeking recovery of money amounting to Rs.1,52,62,400/- along with interest for delay in unloading of food grains beyond the stipulated period as per the tender agreement.

7.1. It was further submitted that the Learned Court below at the time of delivery of judgment, ignoring the evidence on record, only awarded a sum

of Rs.6,49,200/- with 9% interest per annum from the date of filing the main suit till payment for which the appellant-contractor has been compelled to file the appeal bearing RFA No.4 of 2024 for interference.

7.2. Learned Counsel for the appellant-contractor further submitted that the appellant/plaintiff claimed Rs.800/- per day as detention charge per vehicle from the respondent authority, which was not considered, although no such amount in this regard was mentioned in the tender agreement. According to Learned Counsel, as per road movement permit, a stipulated period of 3(three) days was fixed from the place of receipt of goods to the place of delivery, but due to inadequate place of storage, the respondents-FCI did not take any step for unloading of trucks, resulting which the appellant/plaintiff had to incur huge amount of financial losses for payment of detention charges of vehicles to the owners of the trucks beyond the stipulated period. The respondent authority was informed on several occasions in this regard, but no steps were taken by them to resolve the issue. Learned Counsel further submitted that the respondents-FCI although filed written statement and counterclaim, but in support of their contention, no documentary evidence was adduced by the respondents-FCI.

7.3. Learned Counsel further submitted that on behalf of the respondents-FCI, one Mr. Mukesh Pal, Divisional Manager, FCI appeared and filed examination-in-chief in affidavit. His examination-in-chief in affidavit was nothing but the replica of the written statement filed by the respondents-FCI and that he had no personal knowledge about the subject matters in dispute. Further, Learned Counsel submitted that before the Learned Trial Court, the respective Area Manager who was posted on that relevant period of time was not produced for examination by the respondents-FCI. Learned

Counsel, Mr. Pandey further submitted that there was no clause of demurrage charges in the agreement.

7.4. It was further submitted that as stated by the respondents-FCI regarding submission of inquiry report, no such report was produced before the Learned Trial Court for marking of exhibit to substantiate the defence case.

7.5. Learned Counsel further submitted that the appellant-contractor filed the examination-in-chief in affidavit on his behalf and relied upon certain documents which were marked as Exhibit Nos.1 to 77. Further, referring the cross-examination of the said appellant-contractor, Learned Counsel submitted that the respondents-FCI by cross-examination could not make any cloud to disbelieve the case of the appellant-contractor. The said appellant as PW-1, in course of his cross-examination submitted that they had to complete the work of loading and unloading within 3 to 4 days of issuing requisition/indent and after completion of such loading and unloading, next requisition is being issued. The appellant, in his cross-examination further stated that as per Clause-XVIII(a)(vi), he is entitled to get detention charges if such detention is of “extraordinary kind” and in this connection, decision of General Manager is final. It is further stated that the term “extraordinary kind” is not defined in the agreement. The appellant/plaintiff approached to the Zonal Office of the FCI for dispute resolution in terms of Clause-XX of the NIT. It is further stated that the rate towards detention charges was not specified in the agreement. Nothing more came out relevant from the cross-examination of the appellant-contractor.

7.6. Learned Counsel for the appellant/plaintiff further submitted that considering the evidence on record, Learned Trial Court, in respect of period

of detention beyond 3(three) days made a cut-off date of 6(six) days and accordingly, made calculation without any basis for which the compensation claimed by the appellant/plaintiff could not be properly ascertained by the Learned Trial Court.

7.7. It was further submitted by Learned Counsel for the appellant/plaintiff that in the main suit, certain documents namely Exhibit Nos.29, 37, 39, 41, 42, 43, 47, 49, 51, 52, 54, 59, 61, 63, 65, 67, 70, 72 and 75 were produced and duly proved by the appellant/plaintiff as exhibits regarding claiming of payment of detention charge of the vehicles, but those exhibited documents were not considered by the Learned Trial Court which resulted in improper assessment of the compensation claimed by the appellant/plaintiff.

Finally, referring the evidence on record as well as the documents relied upon by the appellant/plaintiff, Learned Counsel urged before this court to allow the appeal filed by the appellant/plaintiff by setting aside the judgment dated 14.12.2023 and decree dated 19.12.2023 passed by Learned Judge, District Commercial Court, West Tripura, Agartala in Commercial Suit No.12 of 2016 and Commercial Suit No.19 of 2016 and also to pass a decree for recovery of Rs.1,52,62,400/- against the respondents-FCI with interest.

7.8. Further, Learned Counsel submitted that since there was no clause of “demurrage” in the agreement and since this Court in WA No.25 of 2016 held that the FCI cannot claim any demurrage charges in absence of any provisions in the contract so, the counterclaim of the respondents-FCI cannot be sustained as per law.

7.9. Reliance was placed upon one judgment of the Hon'ble Supreme Court of India in *Food Corporation of India & Ors. v. Abhijit Paul*¹, wherein in para No.30, Hon'ble the Apex Court has observed as under:

“30. We have every reason to believe that the Corporation, statutorily obligated to procure and distribute foodgrains across the nation, enters into contracts depending on the services it requires. These contracts naturally vary depending on the needs and purposes of the Corporation. With the aid of the provisions in the handling and transport contract from 2010, we are able to understand the intention of the parties while entering into the present road transport contracts. As the present contracts do not involve the task of loading and unloading of foodgrains from the railway wagons as a part of the contractors' responsibility, there is no clause enabling the recovery of demurrages from them by the Corporation. Thus, our interpretation of the expression “charges”, as exclusive of liability for demurrages, stands confirmed.”

Referring the same, Learned Counsel for the appellant/plaintiff submitted that the principle of the said judgment also supports the case of the present appellant-contractor.

8. Arguments made on behalf of the respondents-FCI:

On behalf of the respondents-FCI, Learned Counsel, Mr. Ratan Datta submitted that the suit filed by the appellant/plaintiff was not maintainable.

8.1. Learned Counsel further submitted that in the NIT dated 13.09.2011 no period was mentioned regarding claiming of detention charges of trucks and as such, the appellant-contractor was not entitled to claim for any detention charge of the vehicles. Rather due to non-supply of trucks by the appellant-contractor on time, the respondents-FCI had to suffer huge financial losses and had to pay railway demurrages which are attributable to the appellant-contractor. Learned Counsel for the respondents-FCI submitted that the Learned Commercial Court without appreciating the evidence on record, has partly decreed the suit in favour of the appellant/plaintiff, rejecting the

¹ (2023) 15 SCC 40

counterclaim of the respondents-FCI. It was further submitted that admittedly due to some laches, no documentary evidences were produced by the respondents-FCI but, the case of the appellant-contractor does not come under the purview of “extraordinary kind” as per the tender agreement. As such, the appeal preferred by the appellant-contractor is liable to be dismissed.

8.2. Learned Counsel, Mr. Datta further submitted that in this case, the appellant-contractor was under obligation to supply trucks as per the indents issued by the FCI from time to time. However, the appellant-contractor failed to do so, which resulted in huge detention of wagons at the railway side causing disruption of Public Distribution System in the State. Due to such poor performance of the appellant-contractor, the respondents-FCI had to pay huge amount of railway demurrage charges. Learned Counsel submitted that as per the tender agreement, the appellant-contractor was liable to compensate the respondents-FCI and the FCI was also entitled to recover such compensation. Finally, Learned Counsel for the respondents-FCI prayed before this court to allow the appeal filed by the respondents-FCI and to set aside the judgment and decree passed by the Learned Trial Court and to grant a decree in favour of the respondents- FCI.

9. Analysis of evidence on record and observations:

We have heard both the sides at length and also perused the case record including the plaint, the written statement and the documents submitted by the parties as well as the judgment and decree delivered by Learned Trial Court.

9.1. As already stated, Learned District Commercial Court in the main suit as well as in the counterclaim framed issues and decided all the issues after elaborate discussions. However, in the present appeal filed by the

appellant-contractor, Learned Counsel for the appellant-contractor only confined his argument regarding fixing of cut-off dates as well as non-consideration of some exhibited documents.

On the other side, Learned Counsel for the respondents-FCI, in addition to his reply against the submissions made by Learned Counsel for the appellant-contractor, confined his argument only to the extent that certain relevant documents were not produced and proved in this case on behalf of the respondents-FCI. So, let us confine ourselves to decide those points as raised by Learned Counsel for the parties.

9.2. Admittedly, in this case, the initial tender for carrying of goods was for a period of 2(two) years which was later on extended for a further period of 2(two) months. The appellant-contractor claimed that as per the tender agreement, he has duly supplied trucks for transportation of food grains/sugar from Dharmanagar to Agartala from time to time. However, due to lack of storage space, the trucks could not be unloaded at the respective depots of FCI for which the appellant-contractor had to detain the trucks for period ranging from 4 days to 20 days on different occasions. Consequently, the appellant-contractor claimed detention charges beyond three days at the rate of Rs.800/- per truck along with interest and thus claimed a total sum of Rs.1,52,62,400/- by filing the suit.

To substantiate the claim on behalf of the appellant-contractor, he examined himself as PW-1 and relied upon some documents which were marked as Exhibit Nos.1 to 77.

9.3. On behalf of the respondents-FCI, one witness, Sri Mukesh Pal was examined as DW-1. However, no documentary evidences were adduced by the respondents-FCI to contest the suit filed by the appellant-contractor.

In the counterclaim also, on behalf of the respondents-FCI, said Mukesh Pal was examined as PW-1 and he relied upon certain documentary evidences which were exhibited.

9.4. The appellant-contractor in his examination-in-chief tried to support his version as set out in the plaint. During his cross-examination by the respondents-FCI, he stated that as per the NIT, food grains were to be transported from food go-down, Dharmanagar to food go-down, Nandannagar and that the trucks were placed for carrying of food grains as per the requisition of respondents-FCI. The appellant-contractor further stated that as per Clause-XVIII(a)(vi), the contractor is entitled to get detention charges if such detention is of “extraordinary kind” and the decision of the General Manager, in this regard, was final. However, he also stated that the term “extraordinary kind” was not defined in the agreement. Additionally, the appellant-contractor stated that the rate towards detention charges was not specified in the agreement. No further material facts emerged from his cross-examination.

9.5. Similarly, on behalf of the respondents-FCI, as already stated one Mr. Mukesh Pal was examined as DW-1. He, in his examination-in-chief in affidavit asserted the same facts as mentioned in the written statement as well as in the counterclaim filed by the respondents-FCI. However, during cross-examination by the appellant-contractor he stated that he was appointed as Manager, FCI in the year 2005 and his first posting was at Muradabad, Uttar Pradesh. He further stated that he did not know the definition of the term “cause of action” also expressed his inability to state who were holding the post of Divisional Manager/Area Manager at Agartala during the period from 2012 to 2016. He further deposed that he did not have any personal knowledge

regarding the disputes that arose during the subsistence of contract during the period from 30.04.2012 to 29.04.2014. DW-1 further stated that the extension beyond the period of agreement is/was being granted due to non appointment of new contractor in time. The period of contract involved in the suit ended on 29.04.2014.

DW-1 admitted that he did not produce the original agreement in dispute. He further admitted that he has not submitted/furnished the break up supported by documents to show as to how the respondents-FCI has suffered loss to the tune of Rs.1,01,00,000/-.

DW-1 also could not say anything regarding the judgment dated 04.12.2015 rendered by this Court in WP(C) No.503 of 2012 and WP(C) No.505 of 2012 and stated that the appellant-contractor had addressed several communications to the FCI informing that the loaded trucks were stationed beside the FCI go-down and accordingly, requested the FCI to arrange unloading of goods from the truck. He volunteered that on receiving such letters, the then Area Manager visited the go-down and enquired the matter, and found the said information to be untrue. However, no such inquiry report was submitted before the Court and the then Area Manager was also not examined as witness. It was also stated that the matter in dispute was not referred to the Grievance Cell Redressal Forum by the FCI.

He further stated that there was no clause in respect of demurrage charges in the agreement.

In his cross-examination that DW-1 was confronted with a letter dated 30.12.2013 issued by the then Area Manager namely, B.G. Bhuiya where it was admitted that the appellant/plaintiff being contractor has performed satisfactorily for the financial year 2012-13.

It was also stated that nothing was mentioned in the NIT or the tender agreement in regard to the involvement of railway; and the road movement permit in favour of the appellant-contractor was issued by the respondents-FCI. DW-1 further admitted in his cross-examination that the FCI did never lodge any case either civil or criminal against the appellant-contractor during the subsistence period of agreement. The bills submitted by the appellant-contractor contained the particulars such as date of receipt and dispatch, as well as the delay caused in delivery of the goods and the respondents-FCI raised no objection in regards to the contents of such particulars.

DW-1 was again confronted with the letter dated 12.07.2013(Exhibit No.22) issued by the General Manager where he admitted the contents of the letter.

9.6. At the time of hearing, being asked by this Court, Learned Counsel for the respondents-FCI fairly submitted that the NIT was issued by the department and in the NIT no such period was mentioned regarding detention of trucks. Further, on being asked, Learned Counsel for the respondents-FCI could not satisfy this Court as to why the respondents-FCI issued road movement permits in favour of the appellant-contractor without having any sufficient space/go-down for unloading of the goods carried out by the appellant-contractor through trucks.

9.7. Learned Trial Court, in para No.26 of the judgment, considering the evidence on record of DW-1 came to the finding that there was delay in unloading of trucks of the appellant/plaintiff at the destination point of FCI. Further, in para No.27, regarding “whether such detention is of extraordinary kind”, Learned Trial Court referred Clause-XVIII(a)(vi) of the tender

agreement which says that a contractor is not entitled to any compensation in respect of detention of trucks at go-down or any other loading and unloading points unless such detention is of “extraordinary kind”.

In para No.28, Learned Court below described Clause (B) and in para No.29, Learned Court below referred the exhibited documents bearing Exhibit Nos.9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 27, 28, 31, 32 and 34 and also referred other exhibits bearing Nos.30, 44, 45, 46, 48, 50, 51, 53, 55, 56, 57, 58, 60, 62, 64, 66, 68, 69, 71, 73, 74, 76 and 77 and came to the observation that on the ground of shortage of storage space in the go-down of FCI, there may be a reasonably 1 to 3 days delay in unloading of trucks and for such delay the appellant-contractor cannot be allowed to claim any detention charge and such delay cannot be said to be extraordinary. So, regarding the further delay of next three days, excluding the period prescribed under road movement permits issued by the Depot in-charge, FCI, it held that the appellant-contractor cannot be allowed to complain regarding unloading of trucks at the destination point for the shortage of storage space. It held that as per Exhibit No.22 there was shortage of storage capacity as well as stranding of large numbers of trucks. Learned Trial Court further came to the observation, the appellant-contractor being a transporter of food grains might have had knowledge of such delay because at the unloading point, there ought to have trucks of other contractors also.

In para No.30, the Learned Trial Court gave the following observation:

“30. The tender agreement nowhere defined the term "extraordinary". When both the parties intentionally agreed for detention charge only in case of extraordinary delay then both the parties carried the idea that delay in unloading for some days was permissible considering the size and location of the unloading point. Here in the present case maximum three days delay can be

allowed(excluding the period prescribed under road movement permits issued by the Deport in-charge, FCI) to be called as non-extraordinary. But after such days of delay, the defendant/FCI cannot be allowed to take the plea of Clause-(xviii)(a)(vi) of the tender agreement because for each day's engagement of trucks the plaintiff/Contractor was supposed to pay charges to the truck owners. So from the date of despatch till next six days there cannot be any extraordinary detention. However beyond the period of six days if there is any further delay in unloading of trucks then the same can undoubtedly be termed as extraordinary detention. So, the plaintiff/Contractor here is surely entitled to get compensation for any delay in unloading of trucks beyond the period of six days. The plaintiff/Contractor claimed Rs. 800/- per day for detention of every loaded truck at the destination point. But the plaintiff did not produce any documentary evidence regarding payment of such charge. It is presumed that in 2012-2013 there ought to have been detention charge of Rs.600.00 per day for detention of every loaded truck and so here the plaintiff/Contractor is entitled to get Rs.600.00 per day for detention of every loaded truck."

9.8. Thus, it appears to us that the Learned Trial Court determined detention charges at the rate of Rs.600/- per day. Regarding this amount, Learned Counsel for the appellant/plaintiff, at the time of hearing did not raise any dispute, rather fairly submitted that the appellant-contractor agreed with the said amount. However, the appellant-contractor raised concern about determination of six days as cut-off days for detention of trucks for clearing of loaded goods.

In this regard, we have also gone through the exhibited documents.

From Exhibit No.22, i.e. the letter dated 12.07.2013 issued by General Manager, Regional Office, NEFR, Shillong to the Director of Food, Civil Supplies & Consumer Affairs it appears that by the said communication, the respondents-FCI admitted that as the FCI has increased its induction for the State of Tripura since last few months, there is a problem of storing for the increased food grains as the FCI does not have enough storage capacity and the matter has been aggravated due to on-going evacuation of stock in

Hapania. For the sake of convenience, let us reproduce hereinbelow the communication dated 12.07.2013:

THE FOOD CORPORATION OF INDIA
REGIONAL OFFICE::NEFR::SHILLONG

No: G.5/NEFR/Genl.Corresp/13

Dated: 12.07.2013

*The Director,
Food, Civil Supplies & Consumer Affairs,
Govt. of Tripura,
Agartala*

Sir,

The FCI has increased its induction for the State of Tripura since last few months. There is problem of storing for the increased foodgrains as FCI does not have enough storage capacity. The matter has been aggravated due to on-going evacuation of stock in Hapania.

As per report, about 450 trucks are standing today at different depots in Agartala Complex. More stocks are in the pipeline and are likely to reach Agartala Complex and Chandrapur very soon. The number of stranding trucks will, therefore increase in coming few days.

The contractors namely Abhijit Paul and Subhajit Paul have complained that large numbers of their trucks are standing in Agartala since last many days. The Area Manager, Agartala is not in a position to unload the stocks.

It is therefore, requested to kindly immediately lift the State requirement of stock for the month of August '13, so that space is created in the godown for unloading of the stranded trucks and stocks in the pipeline.

*Yours faithfully,
-Sd illegible"*

From the said communication, it is very much clear that the respondents-FCI themselves admitted that they had no sufficient storage capacity to keep the food grains. So, it is quite surprising as to how the respondents-FCI, knowing fully that they had no capacity to unload the trucks at the respective station, issued road movement permits in favour of the appellant-contractor from time to time and rather, took the plea that the appellant-contractor failed to supply the trucks for carrying of goods. This argument of the respondents-FCI cannot be accepted as valid.

Further, from other exhibited documents relied upon by the appellant-contractor, it appears that on many occasions, vide communications dated 01.08.2012, 07.08.2012, 14.08.2012, 21.08.2012, 23.08.2012, 25.08.2012, 20.11.2012, 30.04.2013, 31.05.2013, 15.06.2013, 25.06.2013, 29.06.2013, 01.07.2013, 15.07.2013, 16.07.2013, 17.07.2013, they have requested the respondents-Area Manager for making arrangements for unloading of sugar-loaded trucks. Those letters were marked as exhibits before the Learned Trial Court by the appellant-contractor. Moreso, by letter dated 20.07.2013 (Exhibit No.27), the appellant-contractor requested the respondents-FCI not to issue any indent till the situation improves and urged the department to utilize the vacant space in go-down at Dharmanagar to avoid the detention of wagons. Subsequently, by another communication dated 25.07.2013, the appellant-contractor raised their demands towards detention charges by enclosing their bills which were not considered by the respondents-FCI.

Thus, after going through the exhibited documents and the evidence on record, it appears to us that the delay beyond 3(three) days for detention of trucks at the respective depot was entirely attributable to the respondents authority.

Admittedly, the term “extraordinary kind” is not defined or prescribed in the agreement. However, it was the admitted position from the side of the respondents-authority that they issued road movement permits for carrying of food grains fixing 3(three) days as limit but it has also been found from the evidence on record that the loaded trucks were detained at the respective depot from 4 to 20 days on different dates because of which the appellant had to pay additional amount as hiring charges of the vehicles. The

respondents-FCI by their act and conduct also admitted that they had no sufficient space/go-down for unloading of loaded goods and, Learned Counsel for the respondents-FCI in course of hearing of argument failed to satisfy this Court by placing any material to disbelieve the said facts. Thus, the delay which occurred due to inaction of the respondents-FCI can be satisfactorily termed as “extraordinary kind”.

Thus, it appears that the Learned Trial Court rightly decided all the issues but the observation of the Learned Trial Court fixing cut-off date for 6(six) days i.e. 3(three) days beyond the initial 3(three) days, was not proper, which should be limited only for 3(three) days and in our considered view, the appellant-contractor shall be entitled to claim detention charges for the delay beyond the initial 3(three) days as per calculation made by the Learned Trial Court below in the said judgment and decree.

9.9. In course of hearing of arguments, Learned Counsel for the appellant-contractor drawn the attention of this Court that Learned Trial Court although exhibited some documents which were marked as exhibit Nos.29, 43, 47, 51, 52, 61, 63, 65, 67, 70, 72, 30, 44, 45, 46, 48, 50, 53, 55, 56, 57, 58, 60, 62, 64, 66, 68, 69, 71, 73, 74, 76 and 77 but those documents were not considered by the Learned Trial Court at the time of delivery of the judgment and decree resulting which the Learned Trial Court has determined a very lesser amount of compensation in favor of the appellant-contractor. Learned Counsel for the appellant-contractor further submitted that if those exhibited documents are not taken into consideration, then the appellant-contractor shall suffer huge financial losses.

9.10. As already stated, Learned Counsel for the respondents-FCI in course of hearing of argument has totally failed to project their defence, to

rebut the claim of the appellant-contractor and as such, we are of the considered view that those exhibited documents needs to be re-considered by the Learned Trial Court.

9.11. Furthermore, regarding demurrage charges, there was no such clause in the agreement, and in the common judgment and order of this Court dated 03.10.2016 in W.A. No. 25 of 2016 it was held that FCI could not claim demurrage charges in absence of provision in the contract, and the same remained unchallenged. So, the respondents-FCI is not entitled to claim “demurrage charges” from the appellant-contractor.

In addition to that, in the light of the judgment of the Hon'ble Supreme Court of India as referred by Learned Counsel for the appellant-contractor (supra), it is clear that there is no scope to fasten the liability of demurrage upon the appellant-contractor.

9.12. Moreover, the witness of the respondents-FCI, in course of his cross-examination very specifically admitted that nothing was mentioned either in the NIT or in the tender agreement regarding involvement of railway and also regarding claiming of demurrage charges, as such, the question of claiming demurrage charges by the respondents-FCI cannot arise and it does not seem to be a sound proposition to sustain the plea of demurrage in this case. So, the respondents-FCI are also not entitled to claim any demurrage from the appellant-contractor.

9.13. In the result, the appeal filed by the appellant-contractor bearing RFA No.04 of 2024 is hereby partly allowed and the appeals bearing RFA No.07 of 2024 and RFA No.10 of 2024 filed by the respondents-FCI is hereby dismissed accordingly.

The judgment dated 14.12.2023 and decree dated 19.12.2023 delivered by Learned Judge, District Commercial Court, West Tripura, Agartala is hereby partly interfered with. The matter is remanded back to the Learned Trial Court for the limited purpose of re-determining the amount of detention charges, fixing cut-off days only for 3(three) days instead of 6(six) days as determined by Learned Trial Court in para No.30 of the judgment (wherein it was observed that “*So from the date of despatch till next **six** days there cannot be any extraordinary detention*”) and also in para No.32 of the judgment and, also to consider the exhibited documents bearing Exhibit Nos. 29, 43, 47, 51, 52, 61, 63, 65, 67, 70, 72, 30, 44, 45, 46, 48, 50, 53, 55, 56, 57, 58, 60, 62, 64, 66, 68, 69, 71, 73, 74, 76 and 77 and thereafter to deliver a fresh judgment within a period of 4(four) months from the date of receipt of a copy of this judgment and order.

With this observation, the aforesaid appeals are disposed of on contest with costs in favor of the appellant-contractor.

Send down the records.

Prepare decree.

All pending application(s), shall stand closed.

(BISWAJIT PALIT, J)

(M.S. RAMACHANDRA RAO, CJ)

Snigdha

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by SNIGDHA DAS
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