

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

RESERVED ON: 28.04.2025
DELIVERED ON: 06.05.2025

CORAM:

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

MAT NO. 806 OF 2024

WITH

I.A. NO. CAN 1 OF 2024

**CHAIRMAN-CUM-MANAGING DIRECTOR, FOOD CORPORATION OF
INDIA AND OTHERS**

VERSUS

SUNIL SAHA AND OTHERS

WITH

FMA NO. 735 OF 2024

WITH

I.A. NO. CAN 1 OF 2024

**REGIONAL MANAGER, CENTRAL WAREHOUSING CORPORATION AND
OTHERS**

VERSUS

SUNIL SAHA AND OTHERS

Appearance:-

Mr. Devajyoti Barman, Adv.

Mr. Sudhir Kumar Sengupta, Adv.

**.....For the Appellants
[in MAT 806 of 2024 and
For the Respondent
in FMA 735 of 2024]**

Mr. Samrat Chowdhury, Adv.

**.....For the Appellant
[in FMA 735 of 2024 and
for the Respondent/CWC
in MAT 806 of 2024]**

Mr. Debabrata Saha Roy, Adv.

Mr. Pingal Bhattacharyya, Adv.

Mr. Neil Basu, Adv.

Mr. Sankha Biswas, Adv.

.....For the Respondent/Writ Petitioner

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. These intra court appeals are directed against the order dated 19.03.2024 passed in WPA 19546 of 2018 filed by the first respondent in both the appeals who shall hereinafter be referred to as the writ petitioner.

2. The writ petition was filed for issuance of a writ of mandamus to direct the appellants to release/ disburse the amount deducted from the writ petitioner's handling and transport bills on account of demurrage charges; to direct the appellants not to withhold any amount as deducted from the writ petitioner's handling and transport bills on account of demurrage charges amounting to Rs. 1,46,67,382/-. The other reliefs sought for were incidental and ancillary to the main relief.

3. The learned Single Bench by the impugned order allowed the writ petition and directed both the appellants to disburse the amount deducted from the writ petitioner's handling and transport bills amounting to Rs. 1,46,67,382/- within a timeframe. Aggrieved by such direction, the appellants namely, the Food Corporation of India (FCI), the appellant in MAT 806 of 2024 and the Central Warehousing Corporation (CWC), the appellant in FMA 735 of 2024 have filed these appeals.

4. The learned Advocate appearing for the FCI contended that there is no privity of contract between the FCI and the writ petitioner and a positive direction to pay a particular sum of money could not have been issued to the appellant, FCI. It is further stated that nowhere the writ petitioner had disclosed as to how the sum of Rs. 1,46,67,382/- was computed and the calculation in that regard was never made known and as such a positive direction to pay the said amount could not have been issued by the learned Writ Court.

5. Nextly, it is contended that the claim made by the writ petitioner is barred by limitation as the deduction towards the demurrage charges was done by FCI from the amounts payable to CWC and the writ petition having been filed in the year 2018 ought to have been dismissed. Further, it is submitted that in the agreement entered into between the writ petitioner and CWC there is an arbitration clause and the writ petition ought to have been dismissed as not maintainable. Further, as disputed questions of fact are involved and the matter is purely a contractual dispute, the writ petition was not maintainable.

6. The learned Advocate appearing for CWC contended that the terms and conditions of the agreement between the writ petitioner and CWC were reduced into writing and such terms and conditions are binding upon the writ petitioner and one such condition being an arbitration clause which would operate as a bar for the writ petitioner to maintain the writ petition. Further, it is submitted that apart from the bills raised by the writ petitioner on CWC, CWC are entitled to levy a service charge of 8% and this amount is claimed from FCI. Further, it is submitted that the facts will clearly disclose that FCI cannot levy demurrage charges and in fact there was assurance at several points of time that FCI will not levy demurrage charges on account of dispatch of excess wagons over and above the capacity of the respective godowns maintained by CWC. In this regard, the learned Advocate referred to the various letters written by CWC to FCI dated 19.09.2012, 21.09.2012, 22.09.2012 to demonstrate that CWC at the earliest point of time had informed FCI that demurrage charges are not leviable on account of facts set out in those communications.

7. It is submitted that FCI did not dispute or send any reply to any of the communications sent by CWC and therefore, it is an admitted position that demurrage charges could not have been levied and deducted from the payment effected to CWC, which in turn had to deduct the said amount from the payments payable to the writ petitioner. Further, FCI placed reliance on an investigation report, copy of which was not furnished to CWC, nor CWC were put on notice about the investigation done and the observations contained therein and, therefore, that report cannot be put

against CWC by FCI. Further, it is contended that the CWC would support the stand taken by FCI that the claim made by the writ petitioner is barred by limitation, the writ petition was not maintainable as there was a binding arbitration agreement between CWC and the writ petitioner.

8. The learned Advocate appearing for the writ petitioner referred to the terms and conditions of the contract entered into between CWC and the writ petitioner and also to the various communications and letters sent by CWC to FCI on behalf of the writ petitioner and a perusal of such letters will clearly show that the amount of Rs. 1,46,67,382/- was rightly computed which is evident from the letter dated 10.04.2013 addressed by the CWC to FCI. Therefore, it is argued that the quantum of money directed to be paid to the writ petitioner by the learned Writ Court was clearly quantified and not in dispute and therefore, the learned Writ Court was fully justified in issuing the direction to effect payment to the writ petitioner. Furthermore, the FCI never disputed the quantification as communicated by CWC and at this distance of time FCI cannot contend that there was no basis disclosed as to how the amount quantified was calculated. To support this contention, the learned Senior Advocate appearing for the writ petitioner referred to the affidavit-in-opposition filed in the writ petition by CWC and wherein while dealing with the averments made in Paragraphs 5 to 12 in the writ petition it has been stated that the alleged demurrage charges arose on account of non-availability/ insufficiency of storage place at Central Warehouse, Raninagar and that by letters dated 14.09.2012, 19.09.2012 and 21.09.2012, the Warehouse Manager of CWC repeatedly informed the Area

Manager of FCI, Jalpaiguri about the shortage of space in accommodating rakes placement since that would exceed beyond the occupancy reserved by and allotted to the FCI thereat.

9. Further, it has been stated that the Area Manager, FCI, Jalpaiguri intimated CWC that they would not be liable for any demurrage charges for non-clearance of the rake and by letter dated 14.09.2012 the Area Manager, FCI, Jalpaiguri has also assured that no demurrage charges shall be levied on CWC due to the non-clearance of the rake brought in for unloading issue due to non-availability or shortage of storage place. Further, Paragraph 11 of the affidavit-in-opposition was referred to which dealt with averments in Paragraphs 16 to 20 of the writ petition wherein CWC has stated that it is an admitted position that FCI had deducted huge amount from the handing and transport bills of CWC towards the demurrage charges and that CWC has sought for clearance of the said bills and amount therein which are still pending for disbursement. In the affidavit-in-opposition it has been further stated that the investigation report of the committee of FCI is bereft of any logic or reasoning and CWC were not given any opportunity to make any writ petition in support of the said investigation in spite of calculating into a purported finding whereby, CWC is directly affected and prejudiced. Thus, it is submitted by the learned Senior Advocate for the writ petitioner that the above stand taken by the CWC in their affidavit-in-opposition clearly supports the stand taken by the writ petitioner.

10. Further, it is submitted that the claim made by the writ petitioner is not barred by limitation and several representations were made by the

appellant, the earliest of which is dated 06.06.2014 and the last communication was made on 19th December, 2017 after which an application was filed under the Right to Information Act on 21st December, 2017 and the writ petitioner having not been favoured with any reply to any of the communications was left to no other option except to approach this Court to file a writ petition. Further, it is submitted that in the correspondence between CWC and FCI it has been clearly set out that no demurrage charges were leviable and this being an admitted position, the learned Writ Court was right in allowing the writ petition and directing payment of the said amount.

11. The learned Advocate appearing for the FCI submitted that CWC at no point of time challenged the deduction which was made towards demurrage charges nor did they challenge the correctness of the investigation report and at no point of time any objection was raised and these issues have been clearly set out by FCI in their affidavit-in-opposition filed in the writ petition. In support of his contention, reliance was placed on the decision in the case of ***Esquire Shipping & Trading Pvt. Ltd. Versus Maharashtra Maritime Board***¹, ***Shantilata Khuntia Versus State of Odisha***², ***Essar Oil Limited Versus Hindustan Shipyard Lrd.***³, ***Rambhau Namdeo Gajre Versus Narayan Bapuji Dhotra (Dead) Through Lrs.***⁴, ***State of UP Versus Bridge and Roof Company India***

¹ 2009 0 Supreme (Bom) 520

² 2017 0 Supreme (Ori) 1317

³ 2015 0 Supreme (SC) 692

⁴ 2004 0 Supreme (SC) 953

Ltd.⁵, Rajasthan State Industrial Development and Investment Corporation Versus Diamond and Gem Development Corporation Ltd.⁶, State of J & K Versus Ghulam Mohd. Dar⁷, Harbanslal Sahnia Versus Indian Oil Corporation Ltd.⁸

12. The above decisions were relied on by the learned Advocate for the FCI to support the stand that a time-barred claim cannot be agitated in a writ petition; disputed questions of fact cannot be gone into in a writ petition; there is no privity of contract between the writ petitioner and FCI; the writ petition is not maintainable in a contractual dispute and the writ petition is barred as there is an arbitration clause in the agreement between the writ petitioner and CWC.

13. We have elaborately heard the learned Advocates for the parties and carefully perused the material on record. The first aspect to be considered is whether the writ petition praying for a direction to pay a particular sum of money to the writ petitioner was maintainable, and whether the writ petition was maintainable when there was an arbitration clause in the agreement entered into between the writ petitioner and CWC.

14. It is well settled that generally the Court should not exercise its writ jurisdiction to enforce the contractual obligation as the primary purpose of the writ of mandamus, is to protect and establish rights and to impose a corresponding imperative duty existing in law. The grant or refusal of the writ is on the discretion of the Court and the writ cannot be granted unless

⁵ 1996 0 Supreme (SC) 1282

⁶ 2013 0 Supreme (SC) 147

⁷ 2003 0 Supreme (SC) 1182

⁸ 2002 0 Supreme (SC) 1280

it is established that there is an existing legal right of the applicant or an existing duty of the respondent. Thus, it has been held that the writ does not like to protect or establish a legal right but to enforce one that is already established. While dealing with the writ petition, the Court may exercise discussion taking into consideration a wide variety of circumstances, inter alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ and the nature and extent of injury that is likely to ensue by such grant or refusal. It was further held that discretion must be exercised by the Court on ground of public policy, public interest and public good, the writ petition is equitable in nature and thus its issuance is governed by the equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for the issuance of the said writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether there exist proper pleadings. The applicant must make a demand which is clear, plain and unambiguous. It was further held that a demand and its subsequent refusal either by words or by conduct, are necessary to satisfy the Court for the opposite party determined to ignore the demand of the applicant with respect to the enforcement of the legal right. However, the demand may not be necessary when the same is manifest from the facts and circumstances, that is, when it is an empty formality or when it is obvious that the opposite party would not consider the demand.

15. Bearing the above legal principle in mind we proceed to examine the facts and circumstances of the case. The writ petitioner entered into a contract with CWC, dated 28.06.2011, for handling and transportation works in respect of receipts, dispatches, re-bagging, standardization and ex godowns release etc. The agreement contained an arbitration clause stating that all disputes and differences arising out of or in any way touching or concerning the agreement shall be referred to arbitration by any person appointed by the Managing Director, CWC, New Delhi. The provisions of the Arbitration and Conciliation Act, 1996 would apply to the arbitration.

16. The existence of an arbitration agreement between the writ petitioner and CWC is put against the writ petitioner to state that the writ petition was not maintainable. Firstly, it is to be noted that the arbitration agreement is between the CWC and the writ petitioner. From the averments made in the affidavit-in-opposition filed by CWC to the writ petition, as set out above, it is evidently clear that CWC disputed and denied the claim for huge demurrage charges and deduction thereof as done by FCI. Thus, the CWC was in ad-idem with the writ petitioner to state that in the given facts and circumstance no demurrage charges was leviable or deductible. The deduction of the demurrage charges was done by FCI in the bills raised by CWC and consequently CWC effected the deduction in the bills submitted by the writ petitioner. Thus, when there is no dispute or differences with regard to the deduction of the demurrage charges between the CWC and the writ petitioner, the question of invoking the arbitration clause would not arise and the existence of such a clause cannot operate as a bar for filing the writ

petition with specific reference to the facts and circumstances of the case on hand. While on this issue, it is relevant to take note of the various correspondents between CWC and FCI and CWC and the writ petitioner. By a letter dated 14.09.2012 the Warehouse Manager of CWC had addressed the Area Manager, FCI, Jalpaiguri stating that on the date of opening, balance of utilization space was 88% and one rake is being unloaded and on receipt of the complete rake the occupancy level will reach to 104% and request was made to FCI to take necessary step to restrict the further rake placement, if any in the pipelines unless and until good quantity is issued out (cleared), and under no circumstances further rake can be accommodated. Further it was clearly stated that in case of minimum placement (of rakes) and for non-clearance of rakes CWC will not be held responsible for demurrage charges, if any, so accrued. FCI did not deny or dispute the contents of the said letter dated 14.09.2012. From the said letter it was evidently clear that at the earliest point of time CWC informed FCI that their storage capacity will exceed 100% that is 104% and further rake placement was directed to be restricted/ stopped and they also made it clear that in case of any placement of rake is done, for non-clearance CWC will not be responsible for payment of demurrage charges. CWC by letter dated 14.09.2012 informed the writ petitioner that as per the assurance given by the Area Manager, FCI, Jalpaiguri no demurrage charges will be levied on CWC so accrued prior to the takeover of the rake by CWC. Accordingly, no demurrage charges will be deducted or withheld from the writ petitioner's admitted bills and this is as per the telephonic discussion had with the Regional Manager of CWC on 13.09.2012. CWC reiterated the stand regarding no liability

towards demurrage charges by letter dated 14.09.2012 addressed to the Area Manager, FCI, Jalpaiguri.

17. Similar stand was taken in the letter dated 19.09.2012, 21.09.2012. FCI without reference to any of these letters had addressed the Warehouse Manager, CWC, Raninagar, Jalpaiguri by letter dated 22nd September, 2012, stating that the wheat special Ex-Sirhind (SIR) to Jalpaiguri has been placed and kept stranded since 15.09.2012 due to the shortage of storage place in godown as the information received by the CWC. As sufficient release orders (ROs) has been issued upon CWC depots and respective stocks were lifted from the godowns which might create sufficient storage place to accommodate the stranded wheat rake. Therefore, CWC was requested to start the unloading operation immediately that is on 22.09.2012 and accepted the stock in over and above to avoid incurring high instance of demurrage. From this letter dated 22.09.2012 it is clear that FCI were apprised of the fact that the CWC godown did not have any storage capacity which was duly intimated to FCI by CWC by various letters. As mentioned above FCI did not dispute or deny the stand taken by the CWC that they shall not be liable for any demurrage charges for the reason set out in the said letters, despite such stand being taken by CWC, FCI proceeded to recover demurrage charges. This prompted CWC to address FCI to release the withheld amount by letters dated 03.01.2013, 10.04.2013. The contents of letter dated 10.04.12013 sent by the Regional Manager, CWC to the Area Manager, FCI, Jalpaiguri is of utmost importance and for better appreciation the same is extracted hereinbelow:

92 Annexure - P/10-68 -

P/10

**WAREHOUSING CORPORATION
OF INDIA UNDERTAKING)**

Date: 10.04.2013

Kol/Fin/FCI-Raninagar/2012-13 461

Manager,
Corporation of India,
Raiguri.

Sub: Recovery of Rs.27,98,100/- from H&T bills of CW, Raninagar for
September & November, 2012 - Reg.

It is observed from the H&T bills for Rs.63,22,822/- for the periods September &
November, 2012 your office settled payment of only (Rs.24,06,765/-) after making
recovery of Rs.27,98,100/- on account of alleged DC/WC.

In this connection, you may please refer to the correspondence of Warehouse
Manager, CW, Raninagar, wherein it was clearly stated that when FCI rake was placed
during September there was no space at the Warehouse as stock position at the
Warehouse was over and above the space reservation. The rakes were accepted only
after delivery of stocks as there was no alternative. This was known to the Area
Manager as well as other officials and they have also requested that no demurrage
charges would be recovered from the bills of CWC.

Despite the factual position as stated and also by ignoring the ground reality,
your office deducted Rs.27,98,100/- arbitrarily. As per the standing instruction of FCI
communicated vide FCI, HQ, New Delhi Circular No.4(25)/2000/Stg-VII dated
3.6.2000 a separate claim should be lodged on CWC for any dues and deduction should
not be made from the storage/ H&T charges bill unless the bonafide counter claim of
FCI are not paid by CWC within 3 months from the date of referring the claim with
CWC.

In view of the above it is requested to release the amount of Rs.27,06,795/-
deducted on account of alleged DC/WC immediately as CWC may not be in a position
to continue the Rake acceptance facility in such a situation.

Incidentally it is also bring to kind notice that a sum of Rs.33.94 lakh towards
current undisputed storage charges bill and further sum of Rs.56.67 lakh towards
undisputed current H&T charges bill are lying pending with your Office for a quite
long time. It is also requested to arrange for release of above said payment
immediately.

09
18/4/13

REGIONAL OFFICE
CMC BUILDING, PHASE-I, 6th FLOOR, NEW MARKET COMPLEX, 15N, NELLIE SENGUPTA SARANI, KOLKATA-700087
Phone: 2252-7610, Fax: 033 2252-8101/8842, E-mail: rmkoll.cw@nic.in

To In paragraph.....
Foregoing Petition affirmed
By.....

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:: 2 ::

Copies of communication made by the Warehouse Manager, CW, Raninagar
your office as well as this office to FCI, RO and also to your office are enclosed.

Yours faithfully,

(P. Manivasagam)
Regional Manager

Copy to: 1. The General Manager (WB), FCI, 6, Royd Street, Kolkata - 700016 - for kind
information that a sum of Rs.27,98,100/- has been recovered by Area
Manager, FCI, Jalpaiguri towards DC & WC from H&T bills of CW,
Raninagar and CW, Alipurduar for the month of September and November,
2012 arbitrarily despite the correspondences made by Warehouse Manager,
CW, Raninagar with the Area Office, Jalpaiguri from time to time apprising
the vacant space position during the period when the rakes were placed.
Then Area Manager, FCI as well as other officials aware of the position and
they understanding the gravity of the situation arranged for delivery of
stock for clearance of space and they did also assure to our Warehouse
Manager that CWC shall not be held liable for such detention. The Area
Office deducted the DC/WC as stated above which is quite a surprise to us.
We would therefore request to advise the Area Manager, Jalpaiguri to
release the amount deducted from the bills. The copies of correspondence
referred are enclosed for kind information.

2. The Warehouse Manager, CW, Raninagar/ Alipurduar - for information
with the advice to take up the issue with the Area Manager, FCI, Jalpaiguri
and get the amount recovered as well as payment of current and undisputed
storage and H&T charges bills released immediately.

P. Manivasagam
Regional Manager 10/4/13

18. From the above letter it is seen that the amount deducted and sought to be released was Rs. 27,98100/-, Rs. 27,06,795/-, Rs. 33,94,000/- , Rs. 56,67,000/- (Rs. 1,45,65,895/- in total). The sum total of the above amounts works out to nearly 1.45 crores. This matches with the amount directed to be paid by the learned Writ Court except for a minor variation. One more important fact which emerges from the above communication is the footnote to the letter wherein the copy has been marked to the General Manager (West Bengal, FCI, Kolkata) wherein it has been clearly stated that the demurrage charge and warfare charge having arbitrarily deducted despite correspondence made by Warehouse Manager, CWC with the Area Office, FCI, Jalpaiguri from time to time apprising the vacant space position during the period when the rakes were placed. Further, it has been stated that the Area Manager, FCI as well as other officials were aware of the position and they instead of understanding the gravity of the situation arranged for delivery of stock for clearance of space and did they also assure to the Warehouse Manager of CWC that CWC shall not be held liable for such detention. Therefore, CWC expressed their surprise as how the demurrage charges/ warfare charges could have been deducted from their bills. The copies of all the earlier correspondents were enclosed to the letter dated 10.04.2013 sent to the General Manager (West Bengal), FCI. The contents of the above letter has not been disputed by FCI at any point of time nor shown to have been disputed in the writ petition. Thus, when there is no dispute as regards the facts and there was no dispute or differences between CWC and the writ petitioner with regard to the correctness of the deduction of demurrage charges by FCI, the question of resorting to

arbitration as provided in the agreement between the writ petitioner and CWC would not arise. Therefore, the writ petition was maintainable and the learned Single Bench was fully justified in entertaining the writ petition. The other correspondence between FCI and CWC will also clearly show that FCI was fully aware of the fact situation that the dispatch of the rakes was far and in excess of the storage capacity which should have been cancelled by FCI as CWC had informed FCI as early as in 2012 not to make further dispatches.

19. The Learned Advocate appearing for CWC has explained as to how the stored foodgrains will be cleared from the godown and it is on the basis of “first come first go” principle. Therefore, unless and until the foodgrains are cleared fresh stock cannot be piled up and if done so it will result in de-stacking and re-stacking involving high cost and expenditure.

20. The next aspect to be considered is whether the claim made by the writ petitioner was barred by limitation. In the preceding paragraphs, we have referred to the various communication sent by the CWC to FCI setting out clearly that demurrage charges/warfares charges could not be deducted from the bills submitted by the CWC. Despite several requests made by CWC to release the payment, FCI did not respond to any of such communications nor disputed or denied the stand taken by CWC. It is at that juncture, the writ petitioner had to approach CWC by way of representation and the correspondence started between the writ petitioner and CWC which commenced from 06.06.2014. The writ petitioner rightly addressed CWC and not FCI as their contract was with CWC. Unfortunately,

none of the representations sent by the petitioner evoked any response. However, in the meantime, the writ petitioner continued to function as a contractor for CWC handling other consignments. CWC had addressed FCI by letter dated 09.06.2014 stating that the rakes could not be handled by CWC due to non-availability of vacant space at the warehouse and also due to delay in lifting the stock by FCI for creating space and therefore CWC is not responsible for detention of rakes besides consequential claim in any form from the railway on account of demurrage charges if any.

21. Ultimately, the writ petitioner having left with no other option submitted representation to FCI on 10.05.2015 clearly setting out all the facts, correspondence between CWC, FCI etc. and stated that deduction of huge amount of money as mentioned in the said letter as demurrage charges is not acceptable and requested to disburse payment against all the bills submitted by the writ petitioner without deducting any amount as demurrage charges. This was followed by other communication sent by the writ petitioner to FCI dated 08.04.2017, 18.05.2017, 22.06.2017, 07.08.2017, 19.12.2017. None of the letters were responded and no reply was given to the writ petitioner by FCI. Thereafter, the writ petitioner filed application under the Right to Information Act dated 21.12.2017 and 02.01.2018 for which there was no response and the information sought for was not furnished. Therefore, the writ petition was filed. As noticed above, the agreement was between the writ petitioner and the CWC and therefore the writ petitioner had to represent to CWC at the first instance and not to FCI. In all probabilities, the writ petitioner was led to believe that CWC

would come to their rescue since CWC in no uncertain terms had taken a stand that no demurrage charges is leviable or deductible. This stand of CWC would wholly enure in favour of the writ petitioner. In such circumstances the writ petitioner cannot be faulted for having waited till CWC is favoured with an appropriate reply by FCI, more particularly, considering the fact that the writ petitioner was continuing to perform various other contracts for CWC. Thus, in the given facts and circumstances, the claim made by the writ petitioner is not barred by limitation. CWC though was consistent in their stand that no demurrage charge could be deducted, after a certain point of time did not pursue their claim with FCI, presumably because FCI and CWC function under the same Ministry of Government of India. This situation has led to the writ petitioner becoming a victim for no fault committed by them. The learned advocate for the writ petitioner had led much emphasis on the investigation report prepared by the team of officers of FCI in respect of high demurrage charges.

22. Next aspect is with regard to the investigation report prepared by officers of FCI. Firstly, the investigation report is an internal document of FCI. Based on the findings of the Investigating Committee, CWC were not called upon to explain their stand nor copy of the investigation report was furnished to CWC or the writ petitioner. Therefore, the investigation report cannot be relied on by the FCI to negate the stand of the CWC or that of the writ petitioner. Be that as it may, in the column "observation" in the investigation report, the investigating officers had recorded that the Warehouse Manager, CWC had intimated his inability to accept the rakes

due to non-availability of sufficient storage space to accommodate the full rakes vide letter dated 06.09.2012, 10.09.2012, 11.09.2012 and 12.09.2012 and in this regard from the beginning, the Manager CWC was unwilling to accept/accommodate the rakes beyond 100% capacity utilisation.

23. Further it is observed that prior intimation given to the higher authorities about the above matter with a request to take suitable steps on urgent basis vide email dated 06.09.2012 was not favoured with any response from higher authority (of FCI). Further the report states that prior intimation was given to higher authorities about non-availability of space to accommodate the said rakes with a request to take suitable steps on urgent basis vide emails dated 11.09.2012 and 12.09.2012 but there was no response from the higher authorities (of FCI). Further it has been observed that the rake was placed at a time when CWC godown at Jalpaiguri were jam-packed with over capacity utilisation due to continued rakes placement over the previous three weeks. With these observations, the investigating team states that the above are “probable” reasons of such incidents of high demurrage charges. Thus, the investigation report does not solely fix the responsibility on CWC rather has recorded the stand taken by the CWC from the very beginning. Therefore, the investigation report would support the stand taken by CWC and not otherwise.

24. Another stand taken by the learned advocate for FCI is that the deduction made from the bills submitted by CWC were never challenged nor findings in the investigation report. As mentioned above, the investigation report being an internal document, the contents of which were not disclosed

to CWC nor CWC were afforded an opportunity to put forth their stand upon the report being furnished, the report cannot be put against CWC or for that matter on the writ petitioner. The stand taken by the FCI that the deduction was not challenged by CWC appears to be factually incorrect. As could be seen by the various communications, in fact, the CWC at the very first instance, had lodged a "caveat" stating that they shall not be liable for any demurrage charges. Therefore, FCI will be wholly unjustified in taking stand that the deduction was never challenged or disputed. Thus, we are fully satisfied that the action of FCI in levying demurrage on CWC was wholly arbitrary, unreasonable and unjustified in the facts and circumstances of the case which remained undisputed. Therefore, such deductions from the bills submitted by CWC has to be held to be illegal and liable to be reversed, and CWC has to be released with the entire payment of the deducted amounts as mentioned in by the learned writ court which in turn has to be paid by CWC to the writ petitioner. In the light of the undisputed facts and circumstances no liability can be fastened on CWC and the liability shall be solely rest on FCI, as it has been held that the deduction towards demurrage charges was unjustified, arbitrary, unjust and illegal.

25. For all the above reasons, the appeals fail and are dismissed and the order and direction issued by the learned Single Bench is affirmed with the following directions:-

(1) FCI shall pay a sum of Rs. 1,46,67,382/- to CWC within a period of two weeks from the date of receipt of the server copy of this order and upon

receipt of the said amount, CWC shall pay the writ petitioner the said amount within two weeks thereafter.

(2) In the event, FCI fails to comply with the above direction within the above time limit the amount shall be payable together with interest at 8% from the date of the order passed by the learned Single Bench i.e. dated 19.03.2024 till the date of payment.

(3) Similarly, if the CWC upon receipt of the money from the FCI fails to make payment to the writ petitioner within the time stipulated, CWC will be liable to pay the amount together with interest at 8% from the date of the order passed in the writ petition i.e. from 19.03.2024 till the date of payment. No costs.

(T.S. SIVAGNANAM, C.J.)

I Agree

[CHAITALI CHATTERJEE (DAS), J.]

(P.A – SACHIN/PRAMITA)