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2026:GAU-AS:16499-DB

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

Case No. : WA/121/2025

THE FOOD CORPORATION OF INDIA AND 3 ORS
REGIONAL OFFICE,REPRESENTED BY ITS CHAIRMAN-CUM-MANAGING DIRECTOR, BARAKHAMBA ROAD, NEW DELHI-110006.

2: THE GENERAL MANAGER (REGIONAL)
FOOD CORPORATION OF INDIA
REGIONAL OFFICE
ASSAM REGION
PALTANBAZAR
GUWAHATI
ASSAM
PIN- 781008.

3: THE ASSISTANT GENERAL MANAGER (CONT.)
FOOD CORPORATION OF INDIA
REGIONAL OFFICE
ASSAM REGION
PALTANBAZAR
GUWAHATI
ASSAM
PIN- 781008.

4: THE DIVISIONAL MANAGER
FOOD CORPORATION OF INDIA
DIVISIONAL OFFICE
NORTH LAKHIMPUR
ASSAM
PIN- 787001

VERSUS

M/S NIT TRADERS
HAVING ITS REGISTERED OFFICE AT G.C. ROAD, WAKAF BUILDING, TEZPUR, DIST. SONITPUR, ASSAM, PIN- 784001, REPRESENTED BY ITS

PROPRIETOR SRI DIGANTAJIT BARUAH, AGED ABOUT 55 YEARS, SON OF LATE LAKHI PRASAD BARUAH, R/O- G.C. ROAD, WAKAF BUILDING, TEZPUR, IN THE DISTRICT OF SONITPUR, ASSAM, PIN- 784001.

– B E F O R E –

HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Appellant(s) **:** Mr. Mr. B.K. Singh, Advocate.

For the Respondent(s) **:** Mr. A.C. Borbora, Senior Advocate assisted by Mr. N. Dey, Advocate.

Date on Hearing **:** 11.11.2026.

Date of Judgment **: 11.11.2026.**

JUDGMENT & ORDER (ORAL)

(K. Goswami, J)

We have heard Mr. B.K. Singh, learned Advocate for the appellants; Mr. A.C. Borbora, learned Senior Advocate assisted by Mr. N. Dey, learned Advocate for the respondent.

2] The present appeal has been preferred by the appellants/Food Corporation of India (FCI) & 3 Ors., assailing the judgment & order dated 10.10.2023 passed by a learned Single Judge of this Court in WP(C) No. 3249/2022, whereby the writ petition, preferred by the respondent herein was allowed and the impugned Notice dated 19.04.2022, seeking recovery of a sum of Rs.12,60,298.18/-, was set aside.

3] The brief facts of the case are that pursuant to a tender floated for the appointment of a contractor on an *ad hoc* basis for a period of six months for handling and transportation of foodgrains, sugar and allied materials under the contract titled "Ex-Railway Siding, North Lakhimpur,

including Transportation from Ex-Railway Siding, North Lakhimpur to FSD North Lakhimpur via Weighbridge and Handling Works at Railway Siding, North Lakhimpur" for a distance of 13 kilometers, the respondent/writ petitioner submitted its bid. Upon evaluation, the respondent/writ petitioner's bid, along with those of other bidders, was found to be responsive. Consequently, a Letter of Appointment (LOA) dated 19.06.2015 was issued in favour of the respondent/writ petitioner, appointing it as the Handling and Transport Contractor for the aforesaid work.

Pursuant thereto, the respondent/writ petitioner deposited the requisite security deposit and bank guarantee and completed all other necessary formalities. Thereafter, the respondent/writ petitioner commenced execution of the allotted work and duly completed the same within the stipulated period, without any complaint whatsoever from the appellant/FCI.

Upon completion of the contractual work, the respondent/writ petitioner submitted seven bills amounting to a total sum of Rs.56,11,653.29/- for transportation over a distance of 13 kilometres, as specified in the tender notice and the Letter of Appointment, for processing and payment by the appellant/FCI.

However, out of the total amount claimed, the appellant/FCI released only a sum of Rs.48,50,000/-, while withholding the remaining amount on the purported ground that the respondent/writ petitioner had been paid for an excess transportation distance of 5 kilometres, as the

actual distance between Ex-Railway Siding, North Lakhimpur and FSD North Lakhimpur via the weighbridge was allegedly only 8 kilometres, and not 13 kilometres as claimed by the respondent/petitioner.

Despite the respondent/writ petitioner submitting representations challenging the aforesaid deduction and seeking release of the outstanding contractual dues, no favourable action was taken by the appellant/FCI. Rather, after a lapse of more than six years, the appellant/FCI, vide Recovery Notice dated 19.04.2022, demanded a further sum of Rs.12,60,298.18/- from the respondent/writ petitioner, alleging excess payment under the contract. Accordingly, the aforesaid action was assailed before the learned Single Judge by filing the above referred writ petition which having been allowed, the present writ appeal has been preferred by the appellant/respondent FCI.

4] Mr. B.K. Singh, learned Advocate for the appellant/FCI submits that, upon part-payment of the final bills submitted by the respondent/writ petitioner, a special audit was conducted, wherein it was reported that the distance between Ex-Railway Siding, North Lakhimpur, and FSD North Lakhimpur, via the weighbridge in question, was, in fact, 8 kilometres. Consequently, it was found that the respondent/writ petitioner had been paid for a distance exceeding the actual distance. Accordingly, a decision was taken to recover the excess amount paid to the respondent/writ petitioner, as the payment had been calculated on the basis of a distance of 13 kilometres. It is in this backdrop that the appellant/FCI contends that the judgment under appeal, whereby the recovery notices were set aside, warrants interference by this Court.

5] *Per contra*, Mr. A.C. Borbora, learned Senior Advocate for the respondent/writ petitioner submits that, as per the tender notice, the distance specified for the weighbridge in question was 13 kilometres. Therefore, the subsequent action of the appellant/FCI in unilaterally reducing the said distance to 8 kilometres and seeking to recover the amount paid on the basis of the originally stipulated distance of 13 kilometres is wholly arbitrary, irrational and unreasonable. It is, accordingly, contended that the judgment and order under appeal, whereby the aforesaid action of the appellant/FCI was interfered with and the recovery notices were set aside, calls for no interference by this Appellate Court.

6] We have given our due consideration to the arguments advanced by the learned counsel appearing for the contending parties and have perused the material available on record.

7] Since the present proceedings arise out of an intra-Court appeal, we are conscious of the settled principles that interference with the order passed by the learned Single Judge is not warranted merely because another view on the facts or law is possible. Interference would be justified only where the decision under challenge is demonstrated to be erroneous, perverse or otherwise legally unsustainable. Bearing the aforesaid principles in mind, we shall now proceed with the facts and circumstances of the present case.

8] The principal controversy arising for consideration in the present appeal is whether the appellant/FCI could unilaterally alter or reduce the

distance prescribed in the tender notice in respect of the transportation work, after the contract had been awarded and the work had already been duly executed by the respondent/writ petitioner. It is an admitted position that, under the Tender Notice dated 08.05.2015, the distance between Ex-Railway Siding, North Lakhimpur and FSD North Lakhimpur via the weighbridge was specified as 13 kilometres. It further appears from the Letter of Appointment that the accepted rates were 219% Above Schedule of Rates (ASOR) for transportation and 230% ASOR for handling. The appointment of the respondent/writ petitioner as the Handling and Transport Contractor was, however, on an *ad hoc* basis for a period of six months, and the contract was not extended beyond the said period.

It also emerges from the materials available on record that the respondent/writ petitioner submitted its final bills by calculating the transportation distance at 13 kilometres, in conformity with the distance specified in the tender notice and the terms of the Letter of Appointment. However, pursuant to an audit conducted by the Special Audit Team of the appellant/ FCI, it was subsequently observed that the actual distance between the aforesaid Railway Siding and FSD North Lakhimpur via the weighbridge was only 8 kilometres and not 13 kilometres. On the basis of the said audit observation, the appellant/FCI took the view that the respondent/writ petitioner was not entitled to payment for the entire distance of 13 kilometres and that the payments already made to the respondent/writ petitioner, to the extent they exceeded the admissible distance of 8 kilometres, constituted excess payments liable to be recovered. Consequently, the appellant/FCI issued

the impugned Recovery Notice dated 19.04.2022, seeking recovery of a sum of Rs.12,60,298.18/- from the respondent/petitioner.

9] Upon consideration of the facts and circumstances of the case, we are unable to endorse the action of the appellant/ FCI in retrospectively reducing the transportation distance specified in the tender notice after the contract had been awarded and the work had been duly completed. It is a settled principle of contract law that once a contract is concluded, neither party is entitled to unilaterally alter its terms and conditions without the consent of the other contracting party.

In the present case, the respondent/writ petitioner had submitted its bid on the basis of the terms and conditions stipulated in the tender notice, which expressly specified the transportation distance as 13 kilometres. The said distance also formed the basis for the execution of the contract and submission of the final bills by the respondent/writ petitioner. Having accepted the bid, issued the Letter of Appointment and permitted the respondent/writ petitioner to execute the contractual work on the basis of the stipulated terms, the appellant/FCI could not, at a subsequent stage, seek to substitute the originally stipulated distance with a reduced distance of 8 kilometres and consequently demand recovery of the amount paid in accordance with the concluded contract. Such an action would, in effect, amount to a unilateral alteration of the contractual terms, which is impermissible in law. Moreover, the appellant/FCI, being an instrumentality of the State, is also required to act fairly, reasonably and in conformity with the mandate of Article 14 of the Constitution of India, even in matters arising out of

contractual relationships.

In this regard, the principles laid down by the Apex Court in ***Kumari Shrilekha Vidyarthi & Ors. -Vs- State of U.P. & Ors. :: (1991) 1 SCC 212***, assume relevance, wherein it was held that the State does not shed its constitutional obligations upon entering into a contractual relationship and that its actions in the contractual sphere are equally amenable to the requirements of Article 14 of the Constitution of India.

10] We also find that the learned Single Judge, while adjudicating the challenge to the impugned Recovery Notice dated 19.04.2022, had duly considered the nature of the contractual relationship between the parties, the terms of the tender notice and the Letter of Appointment, as well as the circumstances under which the impugned recovery was sought to be effected. The learned Single Judge observed that the contractual relationship between the parties was governed by the ordinary law of contract and that, in the absence of any statutory provision conferring such power, the appellant/FCI could enforce only those contractual rights which formed part of the concluded contract and could not unilaterally introduce or impose any additional terms and conditions. It was further observed that the respondent/writ petitioner had executed the contractual work in accordance with the Tender Notice dated 08.05.2015 and the Letter of Appointment dated 19.06.2015, without any complaint from the authorities of the appellant/FCI during the period of execution. The learned Single Judge also took note of the fact that the impugned recovery was sought to be effected after a lapse of approximately six years from the completion of

the contractual work, without affording any prior opportunity of hearing to the respondent/petitioner and without obtaining its consent. Accordingly, holding that the proposed recovery of Rs.12,60,298.18/- was unilateral, arbitrary and beyond the terms of the concluded contract, the learned Single Judge set aside the impugned Recovery Notice dated 19.04.2022 and restrained the appellant/FCI from recovering the said amount from the final bills, security deposit, bank guarantee or any other dues of the respondent/writ petitioner. The learned Single Judge further directed the appellant/ FCI to process the claim of the respondent/writ petitioner in respect of the outstanding amount of Rs.6,11,491/- and take necessary steps for its disbursement within the stipulated period, subject to completion of any requisite formalities.

11] Having regard to the facts and circumstances of the case, the materials available on record and the legal principles governing the concluded contractual relationships, we are of the considered view that the findings and conclusions arrived at by the learned Single Judge represent a plausible and legally sustainable view. We find no infirmity in the reasoning adopted by the learned Single Judge warranting interference in the present appeal. The appellant/FCI cannot be permitted to retrospectively alter the stipulated transportation distance and seek recovery of the alleged excess payment merely on the basis of a subsequent audit observation, particularly when the respondent/writ petitioner had executed the contractual work in accordance with the terms and conditions of the tender notice and the Letter of Appointment. Accordingly, we find no merit in the present appeal and no ground is

made out for interference with the impugned judgment and order passed by the learned Single Judge.

12] The present appeal accordingly stands dismissed.

No order as to costs.

JUDGE **CHIEF JUSTICE**

Comparing Assistant

Pranab Chandra Das

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