GAHC020001692026 2026:GAU-NL:573-DB

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

Case No. : WA/11/2026

THE GENERAL MANAGER (R), FOOD CORPORATION OF INDIA,
REGIONAL OFFICE (NAGALAND) AND ANR
REPRESENTED BY ASSISTANT GENERAL MANAGER (CONTRACT),
REGIONAL OFFICE (NAGALAND), H/NO. 105, BANK COLONY,
DIMAPUR, NAGALAND - 797112

2: THE AREA MANAGER
FCI
DO
DIMAPUR/IMPHAL
REGIONAL OFFICE (NAGALAND)
H/NO. 105
BANK COLONY
DIMAPUR
NAGALAND - 79711

VERSUS

M/S B.K. ENTERPRISES
REPRESENTED BY ITS PROPRIETOR, SHRI GURUMAYUM
BIMALKUMAR SHARMA, S/O (L)G. GOURACHANDRA SHARMA, R/O
SOIBAM LEIKAI, OLD CHEKON BAZAR, P.O. IMPHAL AND P.S.
POROMPAT, IMPHAL EAST, MANIPUR - 795001

Advocate for the Petitioner : TAKA MASA, SR. ADV,
ARENLONG,SENTILONG,SORENI MOZHUI,,TIAKUMLA

Advocate for the Respondent : N JOTENDRO SINGH, LUCY WEO,M SOLO,S. MURTAZA AHMED

BEFORE:

HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER
HON'BLE MR. JUSTICE NCHUMBEMO MOZHUI

Advocates:

For the Appellant	: Taka Masa, Sr. Adv.
	: Sentilong
For the Respondent	: N. Jotendro Singh, Sr. Adv.
	: M. Solo

Date on which Judgment was reserved	: **15.10.2026**
Date of pronouncement of Judgment	: **27.10.2026**
Whether the pronouncement is of the operative part of the Judgment?	: --
Whether the full Judgment has been pronounced?	: Yes

:JUDGMENT & ORDER (CAV):

(Y. Longkumer, J.)

1. This intra court appeal has been preferred by the Appellant against the impugned judgment and order dated 04.12.2025 passed in WP(C)/231/2024.

2. Heard Senior Counsel for the Appellant, Mr. Taka Masa, assisted by learned counsel, Mr. Sentilong. Also heard learned Senior Counsel, Mr. N. Jotendro Singh, assisted by learned counsel, Mr. M. Solo, for the Respondent/Writ Petitioner.

3. The facts of the instant case in brief are that the appellant/Food Corporation of India (FCI), had issued an NIT dated 24.01.2019 for appointment of a Road Transport Contractor (RTC) for the route Dimapur to Bishnupur. M/s B.K. Enterprises, the Writ Petitioner participated in the

tender process, emerged successful, and was issued an Acceptance of Tender dated 29.03.2019. In terms of the tender conditions, the Petitioner was required to furnish a security deposit (SD). The petitioner, therefore, deposited 50% of the SD amounting to Rs. 30,61,703/- (Rupees Thirty Lakhs Sixty-one Thousand Seven Hundred Three only) on 23.04.2019, with the balance 50% stipulated to be recovered from running bills after commencement of the work.

4. Subsequently, the Respondent/writ Petitioner failed to comply with the contract agreement and submitted a representation dated 20.11.2019 to the competent authority of the FCI seeking withdrawal from the tender and praying for refund of the SD.

5. As the representation was not disposed for some time the Respondent/writ petitioner approached this Court in WP(C)/226/2019, wherein by an order dated 22.11.2019, this Court directed the FCI authorities to consider and dispose of the Respondent's representation within a stipulated time. The then General Manager (Regional), FCI, Nagaland, disposed of the representation in compliance with the order passed in WP(C)/226/2019, but also refunded the entire SD of Rs. 30,61,703/- to the Respondent on 27.12.2019.

6. Thereafter, by order dated 06.01.2020, the FCI/Appellant terminated the tender and by order dated 07.01.2020, the FCI imposed a penalty on the Respondent under Clause IX(e) of the Model Tender Form (MTF), debarring the Respondent from participating in FCI tenders for a period of five years.

7. The Respondent raised a grievance before the Grievance Redressal

Committee (GRC) against the order of termination dated 06.01.2020 and the order imposing penalty dated 07.01.2020. After hearing the party, the writ petitioner's grievance was rejected by an order dated 01.05.2020 by the GRC. The GRC by the order dated 01.05.2020 upheld the decision to debar the Respondent/petitioner from participation in FCI tenders for a period of 5 (five) years, and the GRC also upheld the right of the FCI for recovery of losses suffered by the Corporation. The GRC also gave a clear finding that allowing the release of the SD while terminating the contract was sheer non-application of mind on the part of the then General Manager (Regional). Therefore, the Committee also recommended for initiating disciplinary action against the erring official.

8. Thereafter, the Respondent/Petitioner challenged the said order dated 01.05.2020 passed by the GRC, as well as the order dated 07.01.2020 imposing penalty, by filing WP(C)/75/2020, which was dismissed by the learned Single Judge by order dated 25.03.2021. The dismissal was affirmed by the Division Bench in WA/165/2021 by an order dated 03.11.2021. The Respondent/Petitioner also filed a Special Leave Petition before the Supreme Court against the order of the Division Bench. However, the same was withdrawn by the Respondent on 26.08.2022, thereby giving finality to the order of the GRC dated 01.05.2020 as well as the order dated 07.01.2020 imposing penalty.

9. The Appellant/FCI, pursuant to the findings of the GRC vide order dated 01.05.2020, issued impugned communications dated 16.07.2021, 22.07.2021 and 03.08.2021 in terms of the conditions of the MTF for recovery of loss incurred by the FCI amounting to Rs. 40,27,369/- (Rupees

Forty Lakhs Twenty Seven Thousand Three Hundred Sixty-nine only). Thereafter, the Appellant had also sent the impugned communication letters dated 05.08.2021 and 06.08.2021 to the UCO Bank for encashment and invoking of Bank Guarantees deposited by the Respondent/Writ Petitioner.

10. Being aggrieved by the communications dated 16.07.2021, 22.07.2021, 03.08.2021, 23.04.2024 and also the letters written to the UCO Bank dated 05.08.2021 and 06.08.2021, the Respondent/Petitioner filed the instant WP(C)/231/2024. The learned Single Judge, by the impugned judgment and order dated 04.12.2025, partly allowed the writ petition and set aside the letters to the UCO Bank dated 05.08.2021 and 06.08.2021. The learned Single Judge held that the interference is only on the aspect of violation of the principles of natural justice and if at all the Corporation is to make any recovery, it has to be done strictly by following the due process of law and after giving adequate opportunity to the Writ Petitioner to make his representations. The learned Single Judge also directed that such action has to be supported by properly worked out calculation as to how the amount of Rs. 40,27,369/- has been arrived at. It was also directed that the Bank Guarantees for an amount of Rs. 10,54,200/- (Rupees Ten Lakhs Fifty-Four Thousand Two Hundred only) and Rs. 14,97,500/- (Rupees Fourteen Lakhs Ninety-Seven Thousand Five Hundred only) were to be refunded to the Petitioner within a period of 45 (Forty-five) days from the date of the judgment and order. Being aggrieved, the Appellant has come before this court.

11. Learned Senior Counsel for the Appellant submits that the learned

Single Judge in the impugned judgment and order dated 04.12.2025 had wrongly held that the action of invoking the Bank Guarantees by communications dated 05.08.2021 and 06.08.2021 was done without giving an opportunity to the Petitioner. It is stated by the learned Senior Counsel that the violation of principles of natural justice was not a ground taken in the writ petition.

12. The learned Senior Counsel further submits that the impugned communications dated 05.08.2021 and 06.08.2021 were issued in compliance with the impugned office order dated 03.08.2021. It is submitted that the office order dated 03.08.2021 is the basic order, which was not interfered with by the learned Single Judge. It was only the consequential communications dated 05.08.2021 and 06.08.2021, which were interfered with. Therefore, the direction of the learned Single Judge to refund the Bank Guarantee to the Petitioner was against the settled principles of law.

13. It is further submitted that the learned Single Judge had failed to appreciate the fact that being aggrieved by the impugned letter No. Cont.4 (1) NEZ/WP(C)75of2020/BK/2020 dated 16.07.2021; the impugned letter No. Cont/NR.NIT/RT.SA WOMBUNG-BISHNUPUR/2018-20(3)/1777-78 dated 22.07.2021; the impugned letter No. Cont./GeneralCoress./RO-Man/2021 dated 03.08.2021; the impugned letter dated 05.08.2021 issued by the DGM(R), FCI Regional Office, Manipur; the impugned order No. ZO NE-17.0012.0(11.0)/13/2023-ONT-ZO-NE dated 23.04.2024, and the impugned letter dated 06.08.2021 issued by the DGM(R), FCI, Regional Office, Manipur, the Respondent/Writ Petitioner had filed a

second appeal before the GRC through the representation dated 07.08.2023. The GRC, after giving sufficient opportunity of being heard to the Petitioner, had passed the impugned order No. ZO NE-17.0012.0(11.0)/13/2023-ONT-ZO-NE dated 23.04.2024, upholding the decision taken by the General Manager (Regional), Dimapur, for recovery by invoking the Set-off clause in the MTF. The records clearly show that the principles of natural justice had been duly followed as the writ petitioner was heard in person along with his two advocates.

14. Learned Senior Counsel states that the learned Single Judge failed to appreciate the fact that the actions of the FCI was taken strictly and in accordance with the condition Nos. IX(c), IX(e), XII(b) and XIV of the MTF. He also submits that the learned Single Judge did not interfere with the aforementioned letters dated 16.07.2021, 22.07.2021, and orders dated 03.08.2021 and 23.04.2024, but interfered only with the two letters, i.e. letters dated 05.08.2021 and 06.08.2021.

15. Learned Senior Counsel also submits that the subject matter in WP(C)/75/2020, WA/165/2021, SLP (Civil) Diary No. 23129/2022, and WP(C)/231/2024, had all arisen out of the same subject-matter, i.e. the failure of the Respondent/Petitioner to perform the contract pursuant to the NIT No. 1/2019 and the legal consequences thereof. The learned Senior Counsel submits that this Court in WP(C)/75/2020 and WA/165/2021 had already upheld the GRC order dated 01.05.2020, upholding the decision to debar the Respondent for five years. The GRC had also directed to recover the losses incurred by the FCI in terms of the MTF. The subsequent actions of the FCI, which were in pursuance to the

order dated 01.05.2020 passed by the GRC are the subject-matter of the instant appeal arising out of WP(C)/231/2024. Accordingly, the issues in the instant appeal and WP(C)/231/2024 are interconnected with the previous writ petitions and previous Writ appeal, and therefore the principles of *constructive res judicata* will apply in the present case.

16. Another ground taken by the learned Senior Counsel is that the recovery of loss, amounting to Rs. 40,27,369/-, was based on proper assessment based on the quantification of costs incurred after the withdrawal of the Writ Petitioner from the NIT. Learned Senior Counsel has accordingly prayed for setting aside the impugned judgment and order dated 04.12.2025 passed in WP(C)/231/2024.

17. Learned Senior counsel has relied on the following authorities in support of his submissions:

i. ***M.C. Mehta v. Union of India & Ors.*** **[(1999) 6 SCC 237]**;

ii. ***Government of Maharashtra & Ors. v. Deokar's Distillery*** **[(2003) 5 SCC 669]**;

iii. ***Shiv Chander More & Ors. v. Lieutenant Governor & Ors.*** **[(2014) 11 SCC 744**]; and

iv. ***State of Uttar Pradesh v. Sudhir Kumar Singh & Ors.*** **[(2021) 19 SCC 706**].

18. Per contra, learned Senior Counsel appearing for the Respondent/Writ Petitioner has submitted that there is no illegality or perversity in the judgment and order dated 04.12.2025 in

WP(C)/231/2024 and submits that the FCI's recovery and invocation of the Bank Guarantees amounted to double jeopardy as the penalties under the MTF were already imposed on the Writ Petitioner and hence the subsequent recovery was *ultra vires*.

19. Learned Senior Counsel also argues that the refund of the SD amounting to Rs. 30,61,703/- had already attained finality and could not be reopened unilaterally by the FCI. It is also submitted that no actual loss was ever demonstrated by the Appellant and recovery of the litigation expenditure, advertisement cost and departmental TA/DA violated Section 74 of the Indian Contract Act, which permits only reasonable compensation based on proven loss. The learned Senior Counsel has also submitted that the principles of constructive *res judicata* will not apply in the instant case as a new cause of action has arisen in view of the impugned order dated 23.04.2024 passed by the GRC, which had unilaterally decided on imposing a penalty of Rs. 40,27,369/- on the Petitioner, without giving him an opportunity of being heard. It is submitted that the Petitioner in WP(C)/231/2024 was aggrieved by the order dated 23.04.2024 and the subsequent letters of communication to the Bank dated 05.08.2021 and 06.08.2021 due to the fact that he was not given an opportunity of being heard before forfeiting the said amount.

20. We have duly considered the submissions made by the learned counsel for the parties and perused the records and also the authorities relied upon by the parties.

21. The issue to be decided by this Court is whether there was any illegality or perversity in the order dated 04.12.2025 passed by the

learned Single Judge in WP(C)/231/2024.

22. In the backdrop of the various rounds of litigation on the subject-matter, we are of the view that the issue regarding the failure of the Writ Petitioner to perform the contract is an admitted fact. It is also borne from the records that the order of the GRC dated 01.05.2020 was also under challenge in previous writ petitions and the order dated 01.05.2020 has been upheld. The only issue which remained to be decided by the learned Single Judge in WP(C)/231/2024 was whether the forfeiture of Rs. 40,27,369/- and the invocation of the two Bank Guarantees by communications dated 05.08.2021 and 06.08.2021 could stand the test of law.

23. The learned Single Judge held that the Bank Guarantees which were sought to be invoked by letter dated 05.08.2021 and 06.08.2021, were deposited by the petitioner in connection with other works and also held that the invocation of Bank Guarantees is the prerogative of the Corporation. However, such prerogative can be exercised only in connection with the work in which such Bank Guarantee was submitted. It was also held that no notice or show-cause was given to the Petitioner before the impugned recovery was made. It was held that the two communications dated 05.08.2021 and 06.08.2021 are unsustainable in law and were set aside. The learned Single Judge also held that the interference is only on the aspect of violation of the principles of natural justice. The Court also held that the calculation of the amount of Rs. 40,27,369/- has to be supported by properly worked-out calculation and the process has to be fair and transparent.

24. We have duly examined the terms and conditions of the MTF, particularly condition Nos. IX, X, XI, XII and XIV. Condition No. XIV under the heading, **Set-off**, is reproduced herein below:

> ***XIV. Set-off:***
>
> *Any sum of money due and payable to the Contractor (including Security Deposit is refundable to the Contractor) under this Contract may be appropriated by the Corporation and set off against any claim of the Corporation for the payment of any sum of money arising out of, or under this contract or any other Contract made by the Contractor with the Corporation. FCI reserves the right to claim from the tenderer or bidder any amount of tax, interest, penalty and litigation cost, if any, that may be incurred in future due to GST reporting/compliance mistake(s) on part of the Service Provider.*

25. A bare perusal of the above provision would show that any sum of money due and payable to the contractor, including Security Deposit under the contract, may be appropriated by the Corporation and set off against any claim of the Corporation for the payment of any sum of money arising out of or under the contract or any other contract made by the Contractor with the Corporation. We are of the considered view, therefore, that the Appellant Corporation had every right to recover the losses from any other Security Deposit made by the Contractor against other contracts also by invoking the set-off clause. Accordingly, we are of the view that the learned Single Judge could not have held that the invocation of Bank Guarantee by the FCI could be exercised only in connection with the work in which such Bank Guarantee was submitted and, therefore, we

respectfully disagree with the finding of the learned Single Judge.

26. We are also in agreement with the contention made by the learned Senior Counsel for the Appellant that when the basic order is not interfered with, the consequential orders could not have been set aside. The Supreme Court in the case of *Deokar's Distillery (supra)*, had held that when the basic order was not challenged, the parties were not entitled to challenge the consequential communications or orders. We have found that the learned Single Judge has not interfered with the basic orders/letters dated 16.07.2021, 22.07.2021, 03.08.2021 and 23.04.2024. The impugned letters dated 05.08.2021 and 06.08.2021, which were interfered with, are merely consequential communications in compliance with the basic orders dated 03.08.2021 and 23.04.2024. As a result, the interference in the consequential communications/letters cannot stand the test of law. It is pertinent to note that the writ petitioner had also filed an appeal against the judgment & order dated 04.12.2025 passed in WP(C)/231/2024 which was registered as WA/5/2026. However, the said writ appeal was withdrawn on 11.03.2026. As a result the letters dated 16.07.2021, 22.07.2021 and orders dated 03.08.2021 and 23.04.2024 with regard to recovery of losses by the FCI have attained finality.

27. In view of the above discussion and findings, we interfere with the impugned judgment and order dated 04.12.2025 passed in WP(C)/231/2024 in so far as it directs the FCI/appellant to refund the Bank Guarantees to the writ petitioner and the same is set aside.

28. Be that as it may, we also direct that before recovery of the amount of Rs. 40,27,369/- the Respondent/Writ Petitioner may be given an

opportunity of being heard on the quantum and the same may be recovered only after serving due notice on him, as we have also noted that the letters dated 05.08.2021 and 06.08.2021 are not addressed to the Respondent/Writ Petitioner, but are addressed to the Chief Manager of the UCO Bank, Imphal Branch.

29. With the above observations and directions, the appeal stands disposed of.

JUDGE **JUDGE**

Comparing Assistant

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