

GAHC010240132022



undefined

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

Case No. : WP(C)/7577/2022

G B CHOWDHURY HOLDINGS PVT LTD
A COMPANY REGD. UNDER THE COMPANIES ACT, 1956 HAVING ITS REGD.
OFFICE AT SARUMOTORIA, OPPOSITE DISPUR CAPITAL COMPLEX,
DISPUR, GUWAHATI-06, REP. BY ITS DIRECTOR, SMT. SUJATA GURING
CHOWDHURY.

VERSUS

THE FOOD CORPORATION OF INDIA AND 2 ORS
REP. BY ITS CHAIRMAN CUM MANAGING DIRECTOR, BARAKHAMBA
ROAD, NEW DELHI-06.

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

3:EXECUTIVE DIRECTOR (NE)
FOOD CORPORATION OF INDIA
ZONAL OFFICE
(NE)
G.S. ROAD
ULUBARI
GUWAHATI-781007

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner(s) : Mr. B. Chakraborty, Advocate

For the Respondent(s) : Mr. B. K. Singh, SC, FCI

Date on which judgment is reserved : NA

Date of pronouncement of judgment : 20.04.2026

Whether the pronouncement is of the
Operative part of the judgment? : NA

Whether the full judgment has been
Pronounced? : Yes

JUDGMENT AND ORDER (ORAL)

Heard Mr. B. Chakraborty, the learned counsel appearing on behalf of the Petitioner and Mr. B. K. Singh, the learned counsel appearing on behalf of the Food Corporation of India.

2. The Petitioner herein is aggrieved by the report of the Grievance Redressal Committee dated 01.09.2022 thereby rejecting the petitioner's Appeal and the consequential order dated 20.09.2022 passed by the Respondent No.3.

3. The brief facts which led to the filing of the instant writ petition are that the Petitioner herein is a contractor engaged in the business of transportation works under the Food Corporation

of India. A Notice Inviting E-Tender was issued on 11.06.2021 from eligible contractors pertaining to handling and transport contract as well as for road transport contract. The Petitioner being interested, participated in the said Notice Inviting E-Tender for the road transport contract for the work, i.e. Road Transport Contract Ex-FCI Changsari (CFCC) to FSD Shillong via Weighbridge.

4. It is very pertinent to take note of that in the said Notice Inviting E-Tender, and more particularly, the Note being NB:(1), it was stipulated that there shall be no request for increase in quoted rate(s) per MT on the plea of diversion/change in the route from point to point on any account. The Petitioner being successful in submission of its bid, was issued a Letter of Acceptance on 29.09.2021 at the rate of Rs.1095/- per metric ton for the entire distance Ex-FCI Siding Changsari (CFCC) to FSD Shillong via Weighbridge on regular basis for the period of two years.

5. It is the case of the Petitioner that on 04.05.2022, the learned High Court of Meghalaya had directed the closure of the Umiam Bridge to all vehicles in excess of 10 metric tons. The resultant effect of the said order passed by the learned Meghalaya High Court was issuance of an order on 11.05.2022 by the Superintendent of Police Ri-Bhoi District thereby

stipulating that the maximum permissible limit of Umiam Spill Way Bridge should not exceed 10 metric tons. It is the case of the Petitioner that the distance for which the Petitioner had quoted its rate of Rs.1095/- per MT was taking into consideration that the transportation would be made via the Umiam Bridge the distance of which was 118.2 Kms. However, in view of the order passed by the learned Meghalaya High Court and the consequential directions issued by the Superintendent of Police, Ri-Bhoi, the Petitioner had to take a different route, i.e. through the Mawryngkneng and the resultant distance was 190 Kms. The Petitioner out of fear that penalty would be imposed for not going ahead with the transportation, fulfilled the terms of the contract by carrying out transportation through the longer route of 190 Kms. The Petitioner had to incur additional expenses on account of the distance having enhanced, and as such, sought for compensation on account of the additional distance. This request made by the Petitioner was rejected by the Grievance Redressal Committee vide the report dated 01.09.2022, and subsequently, intimated by the Respondent No.3 vide an order dated 20.09.2022. It is under such circumstances, the Petitioner is before this Court.

6. The Respondents pursuant to the issuance of notice by this Court had filed an affidavit-in-opposition thereby supporting the

report of the Grievance Redressal Committee as well as the impugned order issued by Respondent No.3. It is the specific contention of the Respondents in the affidavit-in-opposition that the terms and conditions of the Notice Inviting E-Tender were absolutely clear that there would be no escalation on account of diversion would be entertained. In addition to that, the Respondents have also mentioned in their affidavit-in-opposition that the rejection of the petitioner's claim for additional compensation was done so as per the contractual terms and conditions and there was no illegality or arbitrariness for the invocation of the public law remedy under Article 226 of the Constitution. It was also mentioned at paragraph No.18 of the said affidavit-in-opposition that the Government of Meghalaya, Transport Department had issued a Press Release dated 30.04.2021 pertaining to goods-laden vehicles plying over the Umiam Concrete Bridge directing strict maintenance of a gross weight of any goods-laden vehicles plying over the Umiam Concrete Bridge upto 20 metric tons (one vehicle at a time). It was further mentioned that the matter on restrictions on vehicles plying over the Umiam Bridge by the Government of Meghalaya was in news since long which was evident from the Notifications/Press Releases issued from time to time by the Government of Meghalaya. It was also mentioned that the Notice

Inviting E-Tender was issued on 11.06. 2021 and the aforementioned facts existed and were known to the bidders including the present Petitioner.

7. The Petitioner filed an affidavit-in-reply stating inter-alia that the notices which have been referred at paragraph No.18 of the affidavit-in-opposition permitted vehicles with 20 metric tons to ply. However, on account of the orders passed by the learned Meghalaya High Court, only vehicles less than 10 metric tons were allowed to ply, and therefore, the fact that the Petitioner was aware prior to submission of the bid in pursuance to the Notice Inviting E-Tender dated 11.06.2021 was a misconceived statement made in the affidavit-in-opposition. The Petitioner further stated that the Respondent Authorities, being a State within the meaning of Article 12 of the Constitution, has to act fairly, reasonably and rationally, and therefore cannot be permitted to deny the Petitioner the additional amount which the Petitioner had to incur on account of the additional distance which was beyond the control of the Petitioner.

8. This Court has duly heard the learned counsels appearing on behalf of the parties and has given an anxious consideration.

9. The materials on record show that the Notice Inviting E-Tender dated 11.06.2021, more particularly, in respect to road

transport contract had categorically stated the following at NB:
(1) which is reproduced herein under:-

“NB:-1) No request for increase in quoted rate(s) PER MT shall be considered on the plea of diversion/change in route from point to point on any account.

All prospective bidders are advised to get fully acquainted with the distance before participating in the tender. Further for the RTC stated in the table above the rate should be quoted as PER MT basis for the entire distance. If rate is quoted otherwise it shall be considered INVALID repeat INVALID.”

10. It is further pertinent to take note that the contract in question was not awarded on the basis of distance, rather awarded on the basis of the quoted rate(s) per MT.

11. The directions which were passed by the learned Meghalaya High Court thereby limiting the vehicles bearing a total weight in excess of 10 metric tons was issued on 04.05.2022 much after the Petitioner had submitted its bid and the Letter of Acceptance was issued. The consequential order which was passed by the Superintendent of Police, Ri-Bhoi District dated 11.05.2022 is also subsequent to the submission of the bid by the Petitioner as well as the Letter of Acceptance which was issued to the petitioner.

12. The petitioner herein claims that the petitioner had quoted

the rate taking into account the distance from Ex-CFCC (FSD) Changsari to FSD Shillong via the Umiam Bridge which is 118.2 Kms., but on account of the order passed by the learned Meghalaya High Court dated 04.05.2022 as well as the order issued by the Superintendent of Police, Ri-Bhoi District dated 11.05.2022, the petitioner claims that the petitioner had to travel an additional distance thereby incurring huge expenditure beyond what was anticipated by the Petitioner.

13. It is very pertinent to take note that this Court while exercising the jurisdiction under Article 226 of the Constitution do not act as an Appellate Authority, but only ascertains as to whether the actions on the part of the Respondent Authorities are unfair, unjustified and arbitrary or contrary to the settled terms and conditions between the petitioner and the Respondent Corporation. This Court has also perused the report of the Grievance Redressal Committee wherein applying the terms of the Notice Inviting E-Tender and the Model Terms and Conditions of the contract have rejected the petitioner's claim.

14. The learned counsel appearing on behalf of the petitioner submitted that the petitioner is entitled to additional compensation on the basis of the principles of quantum meruit as enshrined in Section 70 of the Indian Contract Act, 1872. If that be so, the petitioner has to place relevant evidence in that

regard as to whether the petitioner is entitled to on the basis of the principles of quantum meruit. In such regards, there would be necessity for the Petitioner to prove factually as to whether the Petitioner had taken certain permissions prior to diverting the transportation route on account of the closure of the Umiam Bridge or for that matter the Petitioner was compelled by circumstances to take the longer route for reasons necessary. These would require evidence. The report so submitted by the Grievance Redressal Committee however appear to be in consonance with the contractual terms and conditions, and as such, the same cannot be said to be unfair or arbitrary necessitating the exercise of jurisdiction under Article 226 of the Constitution. The said opinion however is in the context of exercising the jurisdiction under Article 226 of the Constitution and not an adjudication as to whether the petitioner is entitled to additional compensation on account of the principles of quantum meruit as enshrined in Section 70 of the Indian Contract Act, 1872.

15. Considering the above, it is the opinion of this Court that this is not a fit case for exercising jurisdiction under Article 226 of the Constitution. Accordingly, the writ petition stands dismissed.

16. Before parting with the record, this Court however observes

that the dismissal of the instant writ petition shall not preclude the petitioner to claim additional compensation, if so entitled to under law from the Respondents and the observations so made herein above shall not prejudice or preclude the petitioner to file a suit before the Competent Court of Civil Jurisdiction basing its claim on the principles of quantum meruit.

17. This Court has also taken note of that the petitioner has been diligently and bonafidely pursuing its remedy before this Court on the assumption that this Court would have the jurisdiction. As this Court is not inclined to exercise its extraordinary jurisdiction in the present matter, it is the opinion of this Court that the petitioner should be given the benefits under Section 14 of the Limitation Act, 1963 for the period during which the instant writ petition has been pending, i.e. from the date of filing of the present writ petition, i.e. 22.11.2022 till today, i.e. 20.04.2026.

18. The writ petition accordingly stands dismissed subject to the observations made herein above. No costs.

JUDGE