

**SUPREME COURT OF INDIA**

Food Corporation of India

Vs.

Pratap Kundu

C.A.No.9127 of 2019

(Ashok Bhushan and M.R.Shah,JJ.,)

29.11.2019

**JUDGMENT**

**M.R.Shah,J.,**

SLP(C) No.21970 of 2019

1. Delay condoned. Leave granted.
2. Both these appeals which, as such, can be said to be cross appeals arise out of the impugned judgment and order dated 12.04.2019 passed by the High Court of Calcutta in F.M.A. No. 1168 of 2017, filed by the original appellants - Food Corporation of India and others.
3. The facts leading to the present appeals in nutshell are as under: By judgment and order dated 23.06.1998, the Calcutta High Court in Writ Petition No. 1491 of 1997 filed by the contract casual labourers supplied by an earlier contractor for the Bikna Depot directed that the contract casual labourers would be entitled to payment of wages equivalent to Class IV employees. The appeal filed by the Food Corporation of India (for short 'FCI') came to be dismissed by the Division Bench of the High Court on 16.07.1998. The judgment and order passed by the Division Bench of the High Court dated 16.07.1998 was challenged by the FCI before this Court by way of Civil Appeal Nos. 6064-6065 of 1998. That on 16.12.1999 after the earlier contract period came to an end, the appellant - FCI floated tender for appointment of Handling and Transport Contractor for the Bikna Depot. The respondent - contractor submitted his tender in which he quoted 471% above the schedule of rates fixed in the tender. Appendix VIII of the tender provided the schedule of rates for the contract and printed rates were provided on all items. The tenderer was required to quote rates above the schedule rates provided in the contract. Item No. 24 was for supply of casual labour. That the aforesaid Civil Appeals arising out of special leave petitions were pending before this Court so far as Item No. 24 which was for supply of casual labour and therefore it was stated in the tender that "relevant rate of wages is to be paid and such rate shall abide by the decision of pending SLP as filed by FCI in the Hon'ble Supreme

Court". That by judgment and order dated 28.09.2000, this Court dismissed the aforesaid Civil Appeal Nos. 6064-6065 of 1998 upholding the judgment of the Division Bench of the High Court dated 16.07.1998. That vide communication dated 17.01.2000, tender of the respondent was accepted and he was appointed as Handling and Transport Contractor for a period of two years at the negotiated rate of 471% ASOR (above the schedule rates). That the original contract was meant for a period of two years, i.e., up to 16.01.2002. That after the original contract was over, the respondent-contractor submitted a bill dated 19.07.2002 claiming ASOR of 471% on the amount paid to the contract casual labourers. In the meantime, one contempt petition was filed before the High Court alleging non-compliance of the earlier judgment and order passed by the learned Single Judge, confirmed up to this Court. The High Court vide judgment and order dated 04.04.2003 convicted the officers of the FCI for contempt of court and sentenced them to undergo three months imprisonment and fine for violation of the orders for non-payment to the contract casual labour. The order passed by the High Court in the contempt petition was the subject matter before this Court in Civil Appeal Nos. 9472-9473 of 2003. This Court stayed the further proceedings before the High Court. That the demand of the contractor claiming ASOR of 471% on the amount paid to the contract casual labourers was rejected by the FCI. The contractor filed Writ Petition No. 7790 of 2004 seeking, inter alia, additional amount for payment of the contract casual labourers. By judgment and order dated 14.01.2010, this Court disposed of Civil Appeal Nos. 9472-9473 of 2003 and directed the FCI to make payment of wages to the workmen in Scale-II, as revised from time to time, and also directed that the arrears and wages should be directly paid to the workmen and legal representatives of the workers without involving any contractor or other agency. It was also directed that once the payments were made, the sentence awarded would stand set aside. That thereafter contempt petition Nos. 56-57 of 2011 were filed by the contract casual labourers alleging non-compliance of order dated 14.01.2010 passed in Civil Appeal Nos. 9472-9473 of 2003 passed by this Court. The same came to be dismissed by this Court by order dated 04.07.2011. That in Writ Petition No. 7790 of 2004 filed by the contractor, the High Court vide order dated 08.12.2011 directed the CMD of FCI to pass a reasoned and speaking order on the grievance raised by the contractor. The CMD of FCI passed a detailed speaking order dated 15.03.2012 holding, inter alia, that the contractor was not entitled to claim raised by him regarding 471% of ASOR on the wages actually paid to the casual labour because the claim was contrary to the contract between the parties. The contractor amended the aforesaid petition. In the aforesaid amended writ petition No. 7790 of 2004, the contractor prayed for the following reliefs:

"b) A writ in the nature of Mandamus commanding the respondents and their men and agents to make payment A.S.O.R as per the bill submitted by the petitioner in terms of Clause 24 of the tender at the rate of 471% A.S.O.R. above the Schedule Rate immediately being Annexure "P-4" and "P-11" to this writ petition and further commanding the respondents to delete the liability as fixed up upon the petitioner towards payment of E.P.F., Administrative Charges and Income Tax liability by the District Manager, Food Corporation of India, Bankura vide his letter dated 24.04.2004 and the statement annexed thereto being Annexure "P-10" to the writ petition."

3.1. That the learned Single Judge of the High Court, by judgment and order dated 12.04.2016, allowed the aforesaid Writ Petition No. 7790 of 2004 and quashed and set aside the speaking order dated 15.03.2012 passed by the CMD, FCI and directed the CMD to verify the bill and make payment of the unpaid dues with liberty to deduct the payment already made.

3.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge, the FCI preferred appeal before the Division Bench of the High Court being MAT No. 1151 of 2016/F.M.A. 1168 of 2017. That by the impugned judgment and order, the High Court has disposed of the appeal with the following directions:

“(a) the appellant will furnish details to the Chairman of how the Supreme Court judgment and order dated 14th January, 2010 was applied to fix the differential daily rate of casual labourers between Rs.308.85/- per day and Rs.353.19/- per day between January and March, 2000 and October to December, 2001 respectively and the differential rate for the subsequent period up to July, 2004.

(b) the Chairman shall also determine the exact amount of wages that was payable, applying the above Supreme Court judgment the amount that was actually paid by the appellant directly to the labourers and the wages outstanding, if any. According to the said Supreme Court judgment, such outstanding wages is to be paid directly to the workers/their heirs. In fact, the said judgment of the Supreme Court dated 14th January, 2010 has left open other issues to be determined. One such issue is the amount representing the profit receivable by the respondent. The Chairman will determine the profit to be earned by the respondent out of this contract, in accordance with law. He shall make the determination with intelligible reasons within four months of communication of this order, upon hearing the parties. If any amount is determined by the Chairman to be payable to the respondent the same shall be released by the appellant to him within 8 weeks of making the determination.”

3.3 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, both the FCI as well as the contractor have preferred the present appeals.

4. Shri N.K. Kaul, learned Senior Advocate has appeared on behalf of the FCI and Mrs. Meenakshi Arora, learned Senior Advocate has appeared on behalf of the Contractor in respective appeals.

4.1 Shri N.K. Kaul, learned Senior Advocate appearing on behalf of the FCI has vehemently submitted that as such the High Court in the impugned judgment and order has clearly given a finding that after the judgment of this Court dated 14.01.2010, the rate of wages payable to the labourers under the said contract would be according to the rate specified in that judgment and not on 471% ASOR basis,

still the High Court has dismissed the appeal and has directed the CMD to calculate the amount of wages.

4.2 It is further submitted by Shri N.K. Kaul, learned Senior Advocate appearing on behalf of the FCI that it is required to be noted that the contract specifically provided that the rate quoted by the contractor and agreed to between the parties of 471% was above the schedule of rates provided in Appendix VIII of the contract. It is submitted that Appendix VIII clearly shows that such a schedule of rate was only provided regarding Item Nos. 1 to 23 and 25 of the Appendix. It is submitted against Item No. 24, which was with respect to supply of casual labourers, it was specifically provided that “Relevant rate of wages is to be paid and such rate shall abide by the decision of pending SLP as filed by the FCI in the Hon'ble Supreme Court”. It is submitted that there was no schedule of rate for Item No. 24 which was for supply of casual labour and therefore the claim of 471% above schedule of rates (ASOR) has no application to the quotation pertaining to supply of casual labour.

4.3 It is further submitted by Shri N.K. Kaul, learned Senior Advocate appearing on behalf of the FCI that the High Court has failed to consider the fact that after the order passed by the Supreme Court dated 14.01.2010, a contempt petition was filed which came to be dismissed by this Court on 4.7.2011 as the order passed by this Court was complied with. It is submitted that therefore the High Court has materially erred in passing the impugned judgment and order, more particularly directing the CMD to re-calculate the wages.

4.4 It is further submitted by Shri N.K. Kaul, learned Senior Advocate appearing on behalf of the FCI that the High Court has materially erred in directing the Chairman to determine the profit to be earned by the contractor out of his contract. It is submitted that while passing such a direction, the High Court has not properly appreciated and considered the order passed by this Court dated 14.01.2010. It is submitted that in the order dated 14.01.2010 passed by this Court, this Court never kept an issue left open, more particularly with respect to profit received by the contractor. It is submitted that therefore the High Court has clearly erred in directing the CMD to determine the profit to be earned by the contractor.

4.5 It is further submitted by Shri N.K. Kaul, learned Senior Advocate appearing on behalf of the FCI that, in fact, the contractor paid the wages @ Rs.106.38/- per day and if his enhanced claim of 471% ASOR on the wages paid to the casual labour is accepted, in that case, there would be unjust enrichment to the contractor. It is submitted that the additional claim of the contractor for Item No. 24 is Rs. 5,34,41,520/-. It is almost three times the amount due to him under the contract. It is submitted that in any case this Court having decided the rate of wages to be paid to the casual labour and in view of the direction to pay the same directly to the labour without any intermediary, there was no question of payment of any further amount as per the additional claim made by the contractor of 471% ASOR on the wages paid to the casual labour.

5. Ms. Meenakshi Arora, learned Senior Advocate appearing on behalf of the contractor has vehemently submitted that as such the Division Bench of the High Court has materially erred in referring the matter back to the Chairman of the FCI to decide certain issues and even consider to determine the profit receivable by the contractor. It is submitted that referring the matter back to the Chairman of the FCI would be nothing but a futile exercise of power by the Chairman, who has already rejected the claim of the contractor by its order dated 15.03.2012.

5.1 It is further submitted by Ms. Meenakshi Arora, learned Senior Advocate appearing on behalf of the contractor that even otherwise the Division Bench of the High Court has materially erred in interfering with the decision of the learned Single Judge in which the learned Single Judge rightly held that Clause 24 of the agreement of wages of the casual labourers is covered by 471% of ASOR, which the FCI was obliged to pay to the contractor as per the terms of the agreement.

5.2 It is further submitted by Ms. Meenakshi Arora, learned Senior Advocate appearing on behalf of the contractor that, as such, both the parties were bound by the terms and conditions of the agreement and therefore when the contractor submitted the tender with 471% ASOR and the same was accepted, the contractor shall be entitled to 471% ASOR on every item including the supply of the casual labourers.

5.3 It is further submitted by Ms. Meenakshi Arora, learned Senior Advocate appearing on behalf of the contractor that, as such, the contractor had to pay provident fund etc. over and above the wages to be paid and therefore the same was required to be compensated by the FCI. It is submitted therefore that the FCI authorities are obliged to pay ASOR at the tune of 471% for supply of casual labourers, as categorically laid down in the agreement.

5.4 It is further submitted by Ms. Meenakshi Arora, learned Senior Advocate appearing on behalf of the contractor that even according to FCI the contractor shall be entitled to 471% ASOR with respect to Item Nos. 1 to 23 and 25. It is submitted that therefore there is no question of not paying 471% ASOR with respect to supply of casual labourers. It is submitted therefore that the demand of the contractor making the claim of 471% ASOR with respect of supply of casual labourers is absolutely just and proper and as per the agreement between the parties, which the learned Single Judge rightly appreciated. It is submitted therefore that the Division Bench of the High Court has materially erred in interfering with the judgment and order passed by the learned Single Judge which was absolutely in consonance with the terms and conditions of the agreement.

6. We have heard the learned counsel for the respective parties at length. At the outset, it is required to be noted that the controversy centres around the interpretation of Clause 24 of the agreement and the dispute is whether the contractor is entitled to 471% ASOR in

respect of all items including item No. 24 for supply of casual labourers? It is required to be noted that the original contract period was from 18.01.2000 to 17.01.2002 and it was extended till 13.07.2004. It is also required to be noted that at the time when the contract between the FCI and the contractor was entered into, there was already a dispute pending with respect to the rate of wages to be paid to the casual labourers. Therefore, so far as Item No.24 for supply of casual labourers is concerned, it was provided that “relevant rate of wages is to be paid and such rate shall abide by the decision of pending SLP as filed by the FCI in the Hon’ble Supreme Court”. It is also required to be noted that in Appendix VIII with respect to other items, namely item nos. 1 to 23 and 25, specific rates were mentioned, however, with respect to Item No. 24 - supply of casual labourers, it was blank and with respect to Item No. 24, it was specifically provided that the wages to be paid to the casual labourers shall abide by the decision of the pending SLP. The contractor paid the wages to the casual labourers at the rate of Rs.106.38 per day. The first SLP came to be dismissed by this Court on March 29, 2004. However, still the dispute continued. Contempt proceedings were initiated which ultimately reached this Court by way of Civil Appeal Nos. 9472-9473 of 2003. Civil Appeal Nos. 9472-9473 of 2003 came to be finally disposed of by this Court on 14.01.2010 and it was directed that the FCI shall fix the pay of the casual labourers as also of the deceased workers, who were petitioners in the first or second case filed in the High Court, in Scale-II, as revised from time to time (as on 1.1.1997, the scale was Rs.4320-7330). This Court also directed that all the payments shall be made to the workers and legal representatives of the deceased workers directly without involving any contractor and other agency. Therefore, the dispute with respect to wages came to be finally settled/disposed of by this Court by its order dated 14.01.2010 passed in Civil Appeal Nos. 9472-9473 of 2003. Therefore, the casual labourers were entitled to the wages as per the final order passed by this Court dated 14.01.2010 in Civil Appeal Nos. 9472-9473 of 2003, and as per the terms and conditions of the contract, more particularly with respect to Item No. 24 the wages were required to be paid as per the determination in the pending SLP, i.e., Civil Appeal Nos. 9472–9473 of 2003.

6.1 At this stage, it is also required to be noted that even subsequently the workers filed contempt petition before this Court which came to be dismissed as this Court was of the opinion that order dated 14.01.2010 passed in Civil Appeal Nos. 9472-9473 of 2003 has been complied with. That thereafter the contractor made the claim claiming 471% ASOR with respect to supply of casual labourers at 471% ASOR as per the claim the contractor claimed between Rs.607.43 to Rs.1225.19 per day. The FCI determined and paid the wages as per the direction issued by this Court in the order dated 14.01.2010 ranging between Rs. 308.85 to 391.35 per day. The statement with respect to claim made by the contractor and the amount paid to the casual labourers as determined and paid by the FCI is as under:

Period	Bill raised by Pratap Kundu, HTC & paid by FCI (per day/Casual Labourer	Now being Claimed by Contractor Pratap Kundu @ 471% on wages raised	Amount paid to Casual Labourers for the contract period of Pratap Kundu (18.01.2000 to 13.07.2004) after order dated 14.01.2010 of Hon'ble Supreme Court in SLP No. 9472-9473 of 2003 filed by FCI v. Bijoy Kumar Singh & Ors.
Jan-Mar, 00	Rs.106.38	Rs. 607.43	Rs.308.85
Apr-May,00	Rs.106.38	Rs. 607.43	Rs.306.31
June, 2000	Rs.106.38	Rs.607.43	Rs.317.42
July-Sept, 00	Rs.106.38	Rs.607.43	Rs.321.46
Oct-Dec.,00	Rs.106.38	Rs.607.43	Rs.325.31
Jan-Mar, 01	Rs.106.38	Rs.607.43	Rs.333.88
Apr-Jun, 01	Rs.106.38	Rs.607.43	Rs.331.92
Jun-Sept, 01	Rs.106.38	Rs.607.43	Rs.334.08
Oct-Dec, 01	Rs.106.38	Rs.607.43	Rs.343.00
Jan-Mar, 02	Rs.106.38	Rs.607.43	Rs.353.19
Apr-Jun, 02	Rs.106.38	Rs.607.43	Rs.352.54
July-Sept.,02	Rs.106.38	Rs. 607.43	Rs.353.85
Oct-Dec.,02	Rs.106.38	Rs.607.43	Rs.360.73
Jan-Mar, 03	Rs.106.38	Rs.607.43	Rs.372.23
Apr-Jun, 03	Rs.206.73	Rs.1180.42	Rs.369.96
Jul-Sept, 03	Rs.209.96	Rs.1198.87	Rs.374.96
Oct-Dec, 03	Rs.213.23	Rs.1217.54	Rs.379.96
Jan-Mar, 04	Rs.214.58	Rs.1225.25	Rs.389.23
Apr-Jun, 04	Rs.214.57	Rs.1225.19	Rs.390.19
July, 04	Rs.214.57	Rs.1225.19	Rs.391.35

The aforesaid claim has been rejected by the Chairman of the FCI and according to us the same was rightly rejected by the Chairman as the wages to the casual labourers were required to be determined and paid as per the order passed by this Court dated 14.01.2010 in Civil Appeal Nos. 9472-9473/2003. Therefore, as such, the Division Bench of the High Court has rightly observed and held that after this Court's judgment and order dated 14.01.2010, the rate of wages payable to the labourers under the subject contract would be according to the rate specified in that judgment and not on 471% ASOR basis. We are in complete agreement with the said finding recorded by the Division Bench. Therefore, it is observed and held that the contractor shall not be entitled to the wages to be paid to the casual labourers on 471% ASOR basis and the wages to be paid to the labourers would be at the rate specified in the order dated 14.01.2010 in Civil Appeal Nos. 9472-9473/2003. However, the Division Bench of the High Court was of the opinion that there is no clarity how judgment and order dated 14.01.2010 has been applied by the FCI to calculate the wages of the casual labourers, therefore, the Division Bench of the High Court has referred the matter back to the Chairman of the FCI to consider how the differential rate of casual labourers between Rs. 308.85/- per day and Rs.353.19/- per day between January and March, 2000 and October to December, 2001 respectively and the differential rate for the subsequent period up to July, 2004 has been determined and the Chairman is directed to determine the exact amount of wages that was payable, applying the judgment and order passed by this Court dated 14.01.2010 in Civil Appeal Nos. 9472-9473/2003.

6.2 So far as the direction issued by the Division Bench of the High Court directing the Chairman to determine the profit earned by the contractor out of his contract is concerned, the same is not sustainable at all. The Division Bench of the High Court has observed that the judgment and order of this Court dated 14.01.2010 has left open other issues to be determined. We do not find anything in the order dated 14.01.2010. On bare reading of the order dated 14.01.2010 there does not appear to be left open other issues to be determined, as observed by the High Court in the impugned judgment and order. Under the circumstances, that part of the direction issued by the Division Bench directing the Chairman to determine the profit earned by the contractor deserves to be quashed and set aside.

7. In view of the above and for the reasons stated above, the appeal filed by the FCI being Civil Appeal arising from SLP (C) No. 21970 of 2019 is hereby partly allowed. It is observed and held that the casual labourers shall be entitled to the wages according to the rates specified in the order dated 14.01.2010 passed by this Court in Civil Appeal Nos. 9472-9473/2003 and the contractor shall not be entitled to 471% ASOR basis with respect to supply of casual labourers as claimed by him. Therefore, it is specifically observed and held that the FCI shall be liable to pay the wages payable to the casual labourers under the subject contract according to the rates specified in the judgment and order dated 14.01.2010 passed by this Court in Civil Appeal Nos. 9472-9473/2003 and not on 471% ASOR basis. It goes without saying that the contractor shall be entitled to reimburse the wages paid by him, i.e., Rs.106.38 per labourer, if the same is not reimbursed/paid to the

contractor. Therefore, remand to the Chairman of the FCI shall be restricted to the determination of the wages as per the judgment and order dated 14.01.20120 passed by this Court in Civil Appeal Nos. 9472-9473/2003, more particularly as contained in paragraph a & b of the operative portion of the impugned order. However, that part of the direction issued by the Division Bench in the operative portion of the order by which the Chairman is directed to determine the profit earned by the contractor, the same is hereby quashed and set aside. The appeal preferred by the FCI is partly allowed in terms of the above. Consequently, the appeal preferred by the contractor being Civil Appeal arising out of Diary No. 35242/2019 stands dismissed. There shall be no order as to costs.