2025:JKLHC-JMU:270

Sr. No. 130

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 28.08.2025
Pronounced on: 09.09.2025

WP(C) No.261/2023

1. Mahajan Roller Flour Mills Phase-3 Industrial Area Gangyal, Jammu through its Authorized Signatory Raj Kumar Nargotra, Aged 60 years S/o Sh. Bal Krishna Nargotra R/o5/8 Trikuta Nagar, Jammu.

..... Petitioner(s)

Through :- Mr. Ankesh Chandel, Advocate

Vs

1. Food Corporation of India, through Chairman & Managing Director, 16-20, Barakhamba Lane, New Delhi-110001.
2. General Manager (Region J&K) Food Corporation of India 28-Ob, JDA Railhead Complex, Gandhi Nagar, Jammu J&K 180004.
3. General Manager (Region Punjab) Food Corporation of India .....Respondent(s)
Bay No.34-38, Sector 31-A.

Through :- Mr. Ahtsham Hussain Bhat, Advocate

WP(C) No.1651/2022

1. M/s Amar Roller Flour Mills, Industrial Area Gangyal, Jammu through its Authorized Representative/Managing Partner, Bharat Bhushan Gupta, age 63 years, S/o Late sh. Baldev Raj Mahajan, R/o 1-A, A/D, Gandhi Nagar, Jammu.
2. M/s Amar Flour Mills, A Unit of M/s Amar Roller Flour Mills, Industrial Area Gangyal, Jammu through its Authorized Representative/Managing Partner, Bharat Bhushan Gupta, age 63 years, S/o Late sh. Baldev Raj Mahajan, R/o 1-A, A/D, Gandhi Nagar, Jammu.
3. M/s Modern Amar Roller Flour Mills, A Unit of M/s Amar Roller Flour Mills, Industrial Area Gangyal, Jammu through its Authorized Representative/Managing Partner, Bharat Bhushan Gupta, age 63 years, S/o Late sh. Baldev Raj Mahajan, R/o 1-A, A/D, Gandhi Nagar, Jammu
4. M/s Super Amar Roller Flour Mills, A Unit of M/s Amar Roller Flour Mills, Industrial Area Gangyal, Jammu through its Authorized Representative/Managing Partner, Bharat Bhushan

Gupta, age 63 years, S/o Late sh. Baldev Raj Mahajan, R/o 1-A, A/D, Gandhi Nagar, Jammu

5. M/s New Super Amar Roller Flour Mills, A Unit of M/s Amar Roller Flour Mills, Industrial Area Gangyal, Jammu through its Authorized Representative/Managing Partner, Bharat Bhushan Gupta, age 63 years, S/o Late sh. Baldev Raj Mahajan, R/o 1-A, A/D, Gandhi Nagar, Jammu

..... Petitioner(s)

Through :- Mr. Sunil Sethi, Sr. Advocate with
Mr. Paras Gupta, Advocate

Vs

1. Food Corporation of India, through Chairman & Managing Director, 16-20, Barakhamba Lane, New Delhi-110001.
2. General Manager (Region J&K) Food Corporation of India 28-Ob, JDA Railhead Complex, Gandhi Nagar, Jammu J&K 180004.
3. General Manager (Region Punjab) Food Corporation of India Bay No.34-38, Sector 31-A.

.....Respondent(s)

Through :- Mr. Ahtsham Hussain Bhat, Advocate

CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

01. By this common judgment, both the petitions are proposed to be disposed of as the issues involved in them are identical in nature.

Brief Facts in WP(C) 261/2023

02. The petitioner through the medium of the instant petition WP(C) No. 261/2023 is challenging communication bearing No.JI(S)/OMSS(D)/ Defaulter parties/2021-22/1638 dated 07.09.2021 along with the proceedings initiated thereof which has adversely affected the rights of the petitioner as the same has been passed without there being any application of mind, evidence on record or for that matter giving an opportunity of being heard to the petitioner.

03. The petitioner's firm is engaged in the business of manufacturing of refined flour, atta, maida, suji and allied products in their factory

establishment situated at Gangyal, Jammu J&K having valid registration certificate and the firm stands registered through all the Government Authorities. That the Food Corporation of India which is a Statutory Body and has been created under the Food Corporation Act has been assigned the role of distribution, procuring and maintaining operational and buffer stocks of food grains throughout the territory of India and to ensure that the national food security invites e-tenders from the various stake holders for the purpose, including the lifting of wheat from Godowns and Depots in large quantities.

04. In the aforesaid backdrop, the respondents issued e-tender/NIT bearing Comml.2(1)/Wheat/OMSS(D)/J&K/15-16 dated 28.03.2016 inviting bids from the empanelled traders/bulk consumers for the sale of Wheat under OMSS(D) lying at various Depots under FCI Regional Office, Jammu J&K through E-Auction dated 28.03.2016 which has been reflected in the order impugned. The NIT also lays down the various terms and conditions governing the e-auction. The petitioner firm applied to the aforesaid tender dated 28.03.2016 and submitted his bid after signing all the requisite documents and the petitioner also deposited the Earnest Money and was declared as successful bidder on 31.03.2016 and was allotted the contract for the quantity of 1500/ Metric Tonne against which the petitioner had paid the requisite amount including the EMD for lifting of the Wheat from the Depot of FCI.

05. The petitioner through the medium of the instant petition bearing WP(C) No.261/2023 has sought quashment of the recovery which has been initiated by the Food Corporation of India through its General Manager

by virtue of which the recovery proceedings have been initiated against the petitioners and an amount of ₹2,71,515/- stands recoverable against the petitioners on account of lifting of FAQ Wheat other than the tendered crop for the year 2015-16 URS wheat stocks under OMSS(D) scheme.

06. It is a specific case of the petitioner that the aforesaid communication has been issued without due application of mind and without providing an opportunity of being heard to the petitioner and on the other hand the respondent-Food Corporation of India has unilaterally came to the conclusion that the aforesaid amount is recoverable from the petitioner. In addition, the respondents have also blocked other e-tenders of the petitioners which have nothing to do with the e-tender against which the alleged dispute has arisen.

07. The allegation made in the aforementioned communication that FAQ wheat was lifted from the designated depots instead of URS wheat for the crop year 2015-16, allegedly causing a loss to the corporation, according to the petitioner, is entirely baseless, lacking credible evidence, and made without affording the petitioner any opportunity to be associated with or respond to the findings recorded by the respondents.

Brief facts in WP(C) No. 1651/2022

08. The present writ petition challenges unilateral and arbitrary recovery proceedings initiated by the respondent–Food Corporation of India (FCI) against the petitioners. The dispute arises despite the fact that the entire quantity of wheat lifted under the tender process was duly released under the supervision and certification of FCI's own officials.

09. The petitioners had earlier approached this Court in WP(C) No. 1912/2021, which was disposed of by judgment dated 09.05.2022. This Court directed the petitioners to submit a comprehensive representation to the respondents and further directed the respondents to afford a detailed hearing and pass a reasoned order. These directions were necessitated as the respondents had admitted that no opportunity of hearing had been granted to the petitioners prior to passing of the impugned recovery order.

10. Pursuant to the Court's directions, the petitioners submitted a detailed representation dated 06.06.2022, clearly outlining the factual and legal position. It was specifically submitted that the wheat was lifted only upon proper approval and certification by FCI officials, and that the petitioners had no role in the classification or substitution of wheat.

11. However, despite this representation and in disregard of the tender conditions, the respondents passed the impugned orders raising arbitrary demands and recoveries. Aggrieved by this action, the petitioners have once again approached this Court by way of the present writ petition.

Arguments on behalf of petitioner in WP(C) 261/2022

12. Mr. Ankesh Chandel, learned counsel for the petitioner submits that the impugned communication debarring the petitioner unit from participating in other e-tenders is against all canons of law and the action of the respondents to recover the amount without providing an opportunity of being heard and without associating the petitioner in the so called one sided enquiry, is not tenable in the eyes of law and the order impugned which is an offshoot of the said report i.e. CAG report, the copy of which

was never supplied to the petitioner cannot sustain the test of law and is liable to be quashed.

13. Learned counsel for the petitioners further submits that even the figure which has been reflected in the communication impugned dated 07.09.2021 is contrary to record. He further submits that the tender was allotted to the petitioners initially for three months on 31.03.2016 which was extended for another three months and the contract was over way back in 2016 and it appears that the respondents have arisen from deep slumber after a period of five years in the year 2021, through the medium of the impugned notice and the respondents have initiated recovery against the petitioner on the basis of some CAG report, the copy of which was never supplied to the petitioner nor the petitioner was ever given an opportunity to put forth his claim and in absence of following the procedure as envisaged under the law, the impugned communication has been issued without application of mind after a period of five years.

14. Learned counsel for the petitioners has also drawn the attention of the Court that whereas, other Millers who were figuring in the communication dated 07.09.2021 issued by the respondents, had assailed the said order before this Court by way of writ petition bearing WP (C) No. 1912/2021, titled "M/s Amar Roller Flour Mills & Ors. v. Food Corporation of India & Ors." wherein this Court was pleased to pass a judgment dated 09.05.2022 and it was only through the medium of the response/objections filed by the respondent–FCI in the aforesaid proceedings that the petitioner came to know that the impugned communication dated 07.09.2021 was in fact related to the E-Auction

Winner List dated 17.03.2016 as well as the E-Auction Winner List dated 31.03.2016, and that certain advices had also been issued by the FCI in this regard. However, a bare reading of the impugned communication dated 07.09.2021 reveals that it makes reference only to the winning list dated 31.03.2016, without any mention of the winning list dated 17.03.2016 or the subsequent advices.

15. Lastly, the learned counsel for the petitioners submit that the impugned communication is bad in the eyes of law being factually and legally incorrect and there is no credible evidence against the petitioners which could be made basis for passing of the aforesaid order, initiating recovery against the petitioner. Even on merits, the petitioners submit that the petitioners have lifted only wheat quality of URS and never lifted wheat quantity of FAQ as alleged in the notice impugned and thus the allegation levelled in the notice impugned is without any basis and is liable to be rejected.

16. Mr. Chandel, further submits that even if any fault has to be attributed, the offices of the Food Corporation of India has been indicted by the report which has been relied upon by the Food Corporation of India and that by no stretch of imagination can be applied against the petitioner. He further submits that any fault if attributed to the employees of the Food Corporation of India, the petitioner can in no way be penalized.

<u>Arguments on behalf of petitioner in WP(C) 1651/2022</u>

17. Mr. Sunil Sethi, learned Senior Counsel appearing on behalf of the petitioners, has drawn the attention of this Court to a representation alleged to have been filed before the respondent-authority. In the said

representation, a categorical stand has been taken by the petitioners that wheat of URS (Under Relaxed Specification) quality was lifted and not FAQ (Fair Average Quality) wheat.

18. The learned Senior counsel has drawn the attention of the Court to the representation alleged to have been filed before the respondent authority wherein a specific stand has been taken that the Wheat of URS quality has been lifted and not FAQ and with a view to fortify his claim, he has also placed on record the documentary proof in the shape of receipts evidencing the factum that the Wheat quality of URS has been lifted which aspect of the matter has not been denied by the respondents. Once a specific stand has been taken by the petitioners while filing the instant writ petition and also in the representation alleged to have been filed before the respondent authority and which stand also been substantiated from a documentary proof as well, then the very allegation of the Food Corporation of India that the petitioner has lifted the said Wheat FAQ is contrary to the record. He further argued that the recovery even if has to be made that can be done only under statutory provision and in absence of any statutory provision, the enquiry can only be initiated in terms of an agreement and that too in accordance with law and not otherwise. He further submits that the only mode for the Food Corporation of India was to have filed a suit for recovery in case, respondent intend to recover the said amount by way of penalty, as the issue in question involves marshalling of evidence and only then the subjective satisfaction can be arrived at whether the lifting has been done from a particular mode or otherwise. Learned counsel has further drawn the attention of the Court to

the terms and conditions of the tender with particular reference to Clause 15, a perusal whereof, reveals that in case there is any dispute, the same can be adjudicated by the competent Court.

19. In order to fortify his claim, Mr. Sethi, has placed on record documentary evidence in the form of receipts, which, according to him, clearly demonstrates that only URS quality wheat was lifted. Notably, this specific aspect has not been denied or rebutted by the respondents.

20. Mr. Sethi, further submits that, even assuming the question of recovery arises, the same can only be affected under a valid statutory provision. In the absence of such a statutory mechanism, any inquiry or recovery must strictly be initiated and carried out under the terms of the agreement executed between the parties, and that too in accordance with law. He has further contended that if the respondents intended to recover any amount by way of penalty, the appropriate legal course would have been to institute a civil suit for recovery. This, according to the learned Senior Counsel, is imperative given that the issue involves marshalling of evidence and evaluation of factual disputes particularly as to whether the wheat lifted was of URS or FAQ quality and only upon proper adjudication of such evidence a conclusion can be reached.

21. Learned counsel has also referred to the terms and conditions of the tender, with specific emphasis on Clause 15. He submits that a perusal of the said clause reveals that any dispute arising out of the contract is subject to adjudication by a competent Court of law, thereby excluding unilateral penal action by the FCI.

Arguments on behalf of respondents

22. ***Per contra***, a reply has been filed on behalf of the respondents through learned counsel Mr. Ahtsham Hussain Bhat, wherein the respondents have taken a specific stand that the contract awarded to the petitioners for 1500/3000 MT of wheat pertained exclusively to URS (Under Relaxed Specification) wheat for the crop year 2015-16. However, according to the respondents, the petitioners lifted FAQ (Fair Average Quality) wheat instead, which was in violation of the terms and conditions of the Modern Tender Form (MTF). It is further asserted that FAQ wheat commands a higher market price, thereby resulting in a financial loss to the Corporation.

23. The respondents while filing the reply affidavit have justified their action of initiating recovery proceedings by projecting that since the petitioner had lifted the FAQ Wheat instead of URS Wheat under the extension period, the recovery for the same has been initiated. In so far as the claim of the petitioner that the petitioner has been condemned un-heard the respondents have submitted their reply by projecting that number of opportunities were provided to the petitioner and even the demand notices were issued from time to time for depositing the differentiate cost of FAQ illegally lifted instead of URS Wheat actually to have been lifted and thus the action taken by the respondents is in conformity with the CAG observations.

24. The learned counsel for the respondents further submits that the act of the petitioner is in violation of the terms and conditions governing the MTF and thus the respondents were justified in recovering the differential amount from the petitioner. The respondents have tried to justify their

action on the basis of the observation of CAG and the recoveries which have been initiated against the petitioner has been pointed out by audit conducted by CAG which has raised a concern on undue benefit gone to RFM (Roller Flour Mill).

25. In so far as according of due consideration to the cases of the counter-parts, which have been projected by the petitioners in the instant petition is concerned, the respondents have submitted that the representation of the petitioners in WP(C) No.1912/2021 was rejected on the ground that no supporting documents were provided in support of the fact that the FAQ Wheat was not lifted and this was the precise reason that the case of the petitioners was also rejected. In addition, the respondents submits that the petitioners and their unauthorized agents were heard in person in the office chamber of respondent No.2- General Manager (Region J&K) FCI Jammu and all the petitioners, who were aggrieved, were asked to provide the proof about lifting FAQ Wheat and since no documents or supporting material was provided by the petitioners in defence, the decision with regard to rejection of their case was taken. The respondents, thus, submit that an amount of ₹2,71,515/- which is by way of differential amount is being payable by the petitioners for which the recovery have been initiated.

26. The learned counsel for the respondent has referred to the doctrine of public interest as a public sector undertaking, as the FCI is the custodian of public property and has a fiduciary obligation to safeguard government assets and funds. The Supreme Court has repeatedly held that state

entities must take all possible measures to prevent or recover losses caused by the private parties.

27. When a query was put to the learned counsel appearing on behalf of the respondents whether the petitioners have been associated either by FCI or by CAG while forming an opinion that the petitioners have lifted the Wheat quality of FAQ and not of URS, which led to the loss to the State exchequer, the learned counsel could not give any satisfactory reply.

28. Mr. A. H. Bhat, learned counsel appearing on behalf of the respondents further submits that as per the report of the CAG, the action has also been taken against the employees of the Food Corporation of India, who were involved in the instant matter. He has also provided a list of the officials of the FCI involved in the instant matter pursuant to the report of the CAG which has been taken on record and the perusal whereof reveals that 15 employees of the Food Corporation of India were involved in the instant matter.

29. He further submits that since there is a specific allegation of the petitioners that said notices have not been issued and the said allegation of the petitioners, according to the learned counsel for the respondents, is contrary to record, as the record reveals that the notices have been issued to the petitioners before passing the order impugned. However, the respondents could not provide any record evidencing the factum whether the petitioners has lifted the Wheat quality of FAQ and not URS at the stage of taking a decision. He further submits that the Clause 15 which has been relied upon by the petitioners is not applicable to the case of the

petitioners on the ground that the same falls within the chapter 'instructions bidders' and terms and conditions governing e-auction. He further submits that this condition would be applicable at pre e-auction stage and not thereafter.

LEGAL ANALYSIS

30. Heard learned counsel for the parties and perused the record. The outcome of the instant petitions is contingent upon the thorough examination and determination of the following legal and factual issues, which are central to the matter at hand.

31. With a view to decide the controversy in question, it would be appropriate to reproduce the relevant Clauses of the Tender Notice as under:

Clause 10 (B)

The food grains will be sold on 'as is where is basis.

Clause 10 (D)

The buyer shall make his own arrangement for transport and will not be entitled to claim any facility or assistance for transportation from the Food Corporation of India. However, the stocks shall be loaded in the trucks of the successful bidder at the cost of FCI.

Clause 10 (F):

The FCI shall deliver stocks on 100% weighment basis. The weighment slip shall be prepared in triplicate and signed by the buyer/his representative in token of acceptance of quantity and quality.

Clause 13 (Compliance of Laws)

'Both FCI and bidder shall comply and abide by all applicable laws including without limitation all applicable rules made thereunder'

Clause15(Jurisdiction):

"Any unresolved disputes between the bidder (s) to the contract will be settle in the Court of Law of competent jurisdiction at Jammu."

32. In the present case, it is imperative to interpret the relevant contractual clauses governing the sale and delivery of food grains by the Food Corporation of India (FCI) to the successful bidder. The clauses under

consideration Clause 10(D), Clause 10(F) and Clause 15, outline the terms related to the condition of goods, transportation responsibilities, weighment procedure, compliance with laws, and jurisdiction for dispute resolution. A detailed examination of these provisions is essential to ascertain the rights and obligations of the parties involved and are examined as under;

33. **Clause 10 (D)**

Clause 10(D) unambiguously outlines the responsibilities regarding transportation and loading of stocks. While it is the responsibility of the successful bidder to arrange for transport vehicles, the actual process of loading the stocks onto the trucks is to be carried out exclusively by the Food Corporation of India (FCI) at its own expense. This provision reinforces the fact that the petitioners had no involvement in the physical handling or classification of the goods. Given this clear delineation of roles, the petitioners cannot be held accountable for any discrepancies in the nature or quality of the stocks that were loaded. The entire process of delivery, including the classification and loading of the wheat, was under the complete supervision and control of FCI officials. Therefore, any allegations of misclassification such as the assertion that FAQ (Fair Average Quality) wheat was loaded instead of URS (Under-Release Standard) wheat are entirely baseless, unjustifiable, and legally untenable.

34. **Clause 10(F)**

The aforesaid clause places the entire responsibility for certifying the stock both in terms of quantity and quality squarely on FCI's staff at the time of delivery. The petitioners' role was limited to acknowledging the

delivery by signing the slips, which reflected the certification and approval of the stocks by FCI. The clear language of the clause leaves no room for ambiguity or dispute. The petitioners only signed the weighment slips after FCI's staff had certified and approved the stocks, confirming both quantity and quality. Once the weighment slips were signed and executed under the supervision of FCI officials, the matter of the stock's quantity and quality was finalized. FCI, having certified and delivered the goods, is now estopped from raising any subsequent disputes or afterthoughts concerning issues such as classification, quality, or any recovery claims.

ISSUE No.1

35. Whether the Comptroller and Auditor General of India (CAG) can validly comment upon or evaluate the quality of agricultural produce, or whether its jurisdiction is limited to auditing financial records and assessing technical or quantifiable losses within Government Departments?

36. The Comptroller and Auditor General of India (CAG) operates within a constitutionally defined framework focused on financial, fiscal, and procedural auditing, with responsibilities that include evaluating adherence to financial propriety, detecting procedural irregularities, assessing expenditure efficiency, and quantifying technical losses like storage deterioration, pilferage, or wastage during handling. However, the CAG's role is non-executive and non-investigative, and it is not empowered to assess the quality of agricultural produce or make conclusions about the quality of goods. A technical loss, such as weight

loss due to storage deterioration, falls within the CAG's domain of financial and technical auditing. Importantly, the CAG's reports are not binding or self-executing and serve only as recommendations; they do not carry conclusive evidentiary value unless accepted by the competent Government authority or legislature after scrutiny. Recovery or adverse actions against a private party cannot be initiated based solely on CAG observations, unless these are independently determined through adjudicatory proceedings, which include a thorough appreciation of evidence and adherence to due process. In the present case, the respondents' reliance on a CAG report to justify recovery, without an independent determination of liability, is impermissible under law, contradicting both contractual stipulations and judicial precedents. Even if a CAG report is considered as having some evidentiary value, it can only be regarded as an indication of possible irregularities and cannot impose financial liability without further corroboration and formal adjudication through proper legal channels.

37. Any such observation by the CAG on crop quality, if not backed by scientific or statutory testing by competent bodies has no legal sanctity and its mandate cannot form the basis of punitive or administrative action.

38. Even otherwise also, it is not within the domain of the Comptroller and Auditor General of India (CAG) to form or express an opinion on whether the wheat lifted was of URS (Under Relaxed Specifications) quality or FAQ (Fair Average Quality) standards. The distinction between URS and FAQ wheat is a technical and qualitative assessment, requiring examination of grain characteristics and other scientific parameters,

which can only be determined by trained quality control personnel through physical inspection and laboratory testing at the time of procurement. The CAG, being a constitutional audit authority, is not vested with the statutory function or technical expertise to conduct such scientific evaluations. Its mandate is limited to auditing financial transactions and verifying compliance with procedural and fiscal norms. The authority to determine the quality of wheat lifted lies exclusively with the Food Corporation of India (FCI) and other competent procurement agencies, which are required to carry out such assessments based on established procurement guidelines and quality norms. Any adverse finding on quality by such agencies must be arrived at after conducting a proper inquiry, evaluating documentary and physical evidence, and after affording the concerned party (petitioner) a fair opportunity of being heard, in compliance with the principles of natural justice.

39. Therefore, any unilateral or *ex parte* conclusion drawn by the CAG regarding the nature of wheat quality without the involvement of the petitioners and without technical corroboration by the FCI or other qualified agencies is legally not tenable in the eyes of law, procedurally flawed, and outside the scope of the CAG's jurisdiction and it's finality.

Thus, the issue no.1 is decided in favour of the petitioners.

ISSUE No.2

40. Whether any unilateral or *ex parte* conclusion drawn by the Comptroller and Auditor General (CAG) regarding the quality of wheat without associating the petitioner and without technical corroboration from the Food Corporation of India (FCI) or other

competent authorities is legally sustainable and within the scope of the CAG's jurisdiction?

41. The CAG is a constitutional authority established under Article 148 of the Constitution of India. Its primary mandate is to conduct audits of financial transactions, compliance with rules, and assessment of procedural and technical losses within Government Departments and Public Sector Undertakings. However, the role of the CAG does not possess the requisite technical or scientific competence to assess qualitative aspects of perishable agricultural commodities like wheat.

42. In the present context, the determination of as to whether the wheat lifted was of FAQ (Fair Average Quality) or URS (Under Relaxed Specifications) is a matter of scientific and technical examination, requiring grain testing, moisture analysis, infestation checks, and conformity with procurement norms prescribed under the FCI guidelines. Such evaluations can only be performed by qualified personnel of the FCI, State procurement agencies, or other designated quality control bodies like Agmark or FSSAI. These bodies have the authority, technical tools, and procedural mechanisms to test, certify, and determine the quality of food grains. When the CAG, in the course of a financial audit, unilaterally comments on the quality of wheat lifted, without seeking expert opinion, field inspection reports, or lab results from competent authorities and more so, without affording the petitioners an opportunity to be heard or to present evidence in rebuttal such a conclusion is procedurally flawed and violative of the principles of natural justice.

43. As per the law laid down by the Hon'ble Apex Court in case titled ***A.K. Kraipak v. Union of India (AIR 1970 SC 150)*** and reaffirmed in multiple subsequent judgments, any administrative or quasi-judicial action that affects civil consequences must comply with the audi alteram partem principle, the relevant paragraph is reproduced as under:

> ***" 20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George v. University of Kerala the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."***

44. Moreover, in **Arvind Gupta v. Union of India, reported in (2013) 1 SCC 393**, the Hon'ble Supreme Court clarified that the CAG performs an audit function, not an investigative or adjudicatory function, and its reports are advisory and not conclusive proof of wrong doing. In the **Centre for Public Interest Litigation and ors. vs. Union of India and**

others reported in (2012) 3 SCC 1, the Hon'ble Apex Court reiterated **that** ***the findings of the CAG may initiate inquiry but cannot by themselves form the basis of punitive action unless tested by appropriate administrative or judicial scrutiny.***

45. Therefore, any *ex parte* observation or inference by the CAG regarding the alleged procurement of substandard wheat in absence of proper inquiry by the FCI, technical verification, and due hearing to the petitioner is not only beyond the CAG's constitutional domain but also lacks legal sanctity. Such findings, if acted upon without independent investigation, may lead to arbitrary and unjust consequences, violating Articles 14 and 21 of the Constitution.

46. Article 14, which guarantees equality before the law and guards against arbitrary State action, is infringed when punitive consequences are imposed on the petitioner without adherence to a fair and uniform procedure. Simultaneously, Article 21, which guarantees the right to life and personal liberty, including the right to livelihood, reputation, and due process, is also breached when adverse actions are taken without affording the petitioner a reasonable opportunity of being heard. Thus, any such action founded solely on untested CAG observations is constitutionally unsustainable and legally impermissible.

47. Accordingly, any conclusion drawn solely by the CAG concerning the quality of wheat, without technical corroboration from authorized bodies and without the petitioners' participation, is legally untenable, procedurally improper and beyond the scope of the CAG's statutory audit

jurisdiction. Therefore, it cannot be relied upon against the petitioners to take adverse action against them without affording an opportunity of being heard.

Thus issue no.2 is also decided in favour of the petitioners.

ISSUE No.3

48. Whether the failure to provide a copy of the CAG report to the petitioners particularly when the report contains adverse findings affecting the petitioners' rights and the absence of any notice or opportunity of hearing, renders such action violative of the principles of natural justice and thus legally sustainable.

49. When a public authority, including a constitutional body like the Comptroller and Auditor General (CAG), draws conclusions or makes observations in a report that adversely affect the rights, reputation, or legal standing of an individual or entity, it becomes imperative that the affected party is given an opportunity to be heard. In the present context, where the CAG has reportedly made adverse findings against the petitioner, which have been relied upon by the FCI in relation to the supply or procurement of wheat and that too without furnishing a copy of the report or issuing any prior notice, a clear violation of the principles of natural justice has occurred.

50. The doctrine of natural justice, an essential facet of Article 14 (right to equality) and Article 21 (right to life and liberty) of the Constitution of India, mandates that no person shall be condemned unheard (***audi alteram partem*).** This principle applies not only to judicial and quasi-judicial proceedings but also to administrative actions that result in civil

consequences. The Hon'ble Supreme Court has consistently held that any administrative action or report that has the potential to affect rights, impose liabilities, or damage reputation must conform to fair procedure.

51. In this case, the failure to furnish the petitioners with a copy of the CAG report that contains adverse findings constitutes a denial of procedural fairness. The petitioner was not afforded any opportunity to respond to the allegations or clarify the facts before the report was finalized or acted upon. In absence of prior notice and returning of the findings behind the petitioners' back amount to an *ex parte* condemnation, which is legally unsustainable. Such an omission becomes particularly egregious when the report has been used or is likely to be used for consequential administrative actions, such as, blacklisting, recovery proceedings, or criminal investigation. Therefore, any CAG observation that is adverse in nature assumes practical significance and cannot be treated as a mere internal audit remark. The party affected must be given an opportunity to participate in the process, to explain their position, and to present relevant documents or evidence in support of their defence.

52. Hence, the unilateral preparation and finalization of a CAG report without giving notice to the petitioner, without supplying a copy of the findings, and without offering an opportunity of being heard, amounts to a violation of natural justice, fair play and due process, thereby rendering the report legally infirm and vulnerable to challenge under Article 226 of the Constitution.

Thus, issue no 3 is decided in favour of the petitioners.

ISSUE No.4

53. Whether the Food Corporation of India, after the completion of the transaction after five years, can unilaterally determine a breach and initiate recovery proceedings, even though Clause 15 expressly provides that all disputes are to be adjudicated exclusively by the competent courts at Jammu?

54. Before deciding the aforesaid issue, it would be relevant to discuss the relevant Clause 15 of the Tender Notice as under:

55. ***Clause 15***

Clause 15 of the contract clearly stipulates that all disputes arising out of or relating to the tender shall be adjudicated exclusively by the courts of competent jurisdiction at Jammu**.** This provision leaves no room for unilateral action by the Food Corporation of India (FCI).

By issuing the contested recovery orders without recourse to the court, FCI has overstepped its authority, effectively assuming jurisdiction that was not granted to it under the terms of the contract. As such, these recovery orders are, at first glance, invalid and without legal authority**,** directly contradicting the binding contractual agreement that mandates judicial intervention for dispute resolution.

Further, it is an established fact that the petitioners only lifted wheat that had been approved and certified by FCI officials, without any alteration or substitution. Any subsequent attempt to impose liability on the petitioners despite their adherence to FCI's approval process contravenes the agreed-upon dispute resolution procedure under Clause 15. The dispute resolution mechanism specified in Clause 15, which mandates adjudication in Jammu courts, is a settled principle of contract law. As reiterated in the case of *Union of India v. Tantia Construction Co. Ltd.* (2011) 5 SCC 697, the parties are bound by the dispute resolution mechanism they mutually agreed upon in the contract. Therefore, any attempt by FCI to unilaterally impose recovery measures is legally unsustainable.

56. By unilaterally issuing the impugned recovery order years after the transaction was concluded, the Food Corporation of India (FCI) has acted in derogation of the express contractual mechanism for dispute resolution. The FCI, in assuming itself to possess the power to adjudicate an alleged breach and determine the liability upon the petitioners without judicial oversight, has exercised jurisdiction which it does not possess under law. This conduct bypasses the mandatory forum agreed upon between the parties and amounts to a self-serving adjudication of liability, in direct violation of Clause 15.

57. Such unilateral action by the FCI is *ex facie* without the authority of law. The power to adjudicate disputes and impose civil liability rests solely with courts of competent jurisdiction, particularly when the parties have expressly contractually agreed to such a forum. The binding nature of contractual terms cannot be overridden unilaterally by one party, especially a public authority. In doing so, the FCI has acted in breach of fundamental principles of administrative fairness, legality, and rule of law.

58. Moreover, it is an admitted and undisputed fact that the petitioners lifted only such quantity and quality of wheat as was approved and certified by the FCI at the time of transaction. There was no deviation or substitution of the goods supplied. Therefore, any retrospective attempt by the FCI to revisit and revise the concluded transaction without recourse to judicial determination and in disregard of the agreed procedure, is manifestly arbitrary, illegal, and unconstitutional.

59. Thus, the impugned recovery proceedings initiated by the FCI suffer from multiple legal infirmities; they contravene the express terms of the contract, violate principles of natural justice, and reflect an arbitrary assumption of jurisdiction. The petitioners cannot be held liable through a process that circumvents the very adjudicatory framework the FCI itself agreed to. Any such unilateral imposition of liability is liable to be quashed as being contrary to law and violative of the petitioners' fundamental rights guaranteed under Articles 14 and 19(1)(g) of the Constitution of India.

***Thus, Issue no 4 is decided in favour of the petitioners*.**

ISSUE No.5

60. Whether the respondents are legally justified in initiating recovery proceedings against the petitioners solely on the basis of audit observations contained in the report of the Comptroller and Auditor General of India (CAG), despite the fact that such reports are merely recommendatory in nature, lack adjudicatory authority, and do not constitute conclusive or binding evidence of liability under law.

61. This Court is of the considered view that the recovery proceedings initiated by the respondent-authorities are unsustainable both in law and on facts. The CAG, though a constitutional authority under Article 149 of the Constitution, does not possess adjudicatory powers. Its role is to examine the accounts of the Union and State Governments and make recommendatory observations**,** not binding determinations. The Hon'ble Supreme Court in ***All India Railway Recruitment Board v. K. Shyam Kumar*, reported in (2010) 6 SCC 614**, has held that CAG reports cannot be treated as conclusive evidence to fix liabilit**y** on individuals or entities

unless such findings are accepted by the competent authority and followed by a lawful adjudicatory process. The impugned recoveries, being grounded solely on internal audit objections, are therefore ex facie arbitrary and violative of the principles of natural justice**.**

62. Further, this Court finds considerable force in the petitioners' plea of estoppel, both in fact and in law. It is not disputed that the stocks in question were lifted only after due certification, release, and approval by FCI officials**,** in terms of Clause 10(F) of the governing contract. The said clause expressly provides that all goods issued were subject to inspection and certification by the respondent's own officers. Once such certification is granted, it creates a legitimate expectation that the transaction has attained finality. To allow the respondents to now turn around and allege misclassification or wrongful lifting years after the completion of delivery and without any intervening adjudication would amount to approbation and reprobation, which is impermissible in law. The doctrine of estoppel, as explained by the Hon'ble Supreme Court in ***BSES Ltd. v. Tata Power Co. Ltd.*****, (2004) 1 SCC 195**, bars such inconsistent conduct that causes prejudice to the other contracting party.

63. Additionally, the inordinate delay of more than five years in initiating recovery proceedings raises serious questions of fairness and legality. The respondents have not offered any justification for this unexplained lapse of time. Even assuming that the cause of action arose upon the alleged wrongful lifting of stocks in 2015–2016, the initiation of recovery in the year 2021 or later is clearly barred by laches apart from being time-barred under the Limitation Act, 1963**.** In light of the above, this Court is

of the considered opinion that the impugned recoveries, being premised on non-binding audit remarks, initiated after unreasonable delay, and in contradiction with the respondent's own certification under the contract, are not legally sustainable. The proceedings are vitiated by procedural impropriety, delay, and breach of contractual and constitutional safeguards**,** and are accordingly liable to be set aside.

Thus, issue No.5 is decided in favour of the petitioners.

ISSUE No.6

64. Whether the respondents' claim for the alleged recovery, having been initiated several years after the completion of the transaction in question, is ex facie barred by limitation under the provisions of the Limitation Act, 1963, and whether such belated initiation renders the entire recovery proceedings without jurisdiction, *non est* in law, and liable to be set aside on this ground?

65. Upon a careful consideration of the material placed on record, this Court finds substantial merit in the petitioners' contention that the impugned recovery proceedings are vitiated by limitation and delay. It is not in dispute that the supplies and lifting of wheat, forming the basis of the alleged liability, were completed during the financial years 2015–2016. However, the respondents have sought to initiate recovery only several years thereafter, without demonstrating any acknowledgment of liability under Section 18 of the Limitation Act, 1963, or any continuing cause of action. Under Article 55 of the Schedule to the Limitation Act, a suit for compensation for breach of a contract must be filed within three years from the date the breach occurs. Alternatively, under Article 113**,** which applies residually, a similar limitation of three years governs civil claims

for which no specific article applies. In either case, the outer limit for initiating recovery, if at all permissible, would have expired by 2019. Initiating recovery proceedings thereafter, without resorting to proper adjudicatory mechanisms, renders the claim *ex facie* barred and legally unsustainable.

66. The Hon'ble Supreme Court in **State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd.**, reported in **(2007) 11 SCC 363**, categorically held that even when a statute is silent on limitation, administrative and statutory powers must be exercised within a reasonable period, failing which the proceedings may be quashed. Similarly, in **Karnataka Power Corporation Ltd. v. K. Thangappan**, (**2006) 4 SCC 322**, the Hon'ble Court reiterated that stale claims not raised within the reasonable or prescribed timeframes cannot be enforced to the prejudice of the opposite party. These principles apply with equal force to the facts at hand.

67. Additionally, the long and unexplained lapse of more than five years before the initiation of recovery reflects gross delay and laches, attracting the principles laid down in **P.S. Sadasivaswamy v. State of Tamil Nadu**, reported in **(1975) 1 SCC 152**, where the Hon'ble Supreme Court held that even absence of a statutory bar, courts will not assist stale demands where the party has slept over its rights. In **State of M.P. v. Bhailal Bhai, AIR 1964 SC 1006,** it was held that "equity does not assist the indolent," and delayed claims defeat the legitimate expectation of finality.

68. This Court also takes note that the recovery claim appears to be raised in violation of the express terms of the contract and without any independent

adjudicatory process. Recovery proceedings premised solely on internal assessments or untested audit remarks, without affording opportunity to the petitioners to contest or refute liability, are not merely unlawful but also in violation of Article 14 of the Constitution, which guarantees fairness and non-arbitrariness in state action. The State and its instrumentalities are bound to act within the confines of legal authority**,** and cannot revive a dead claim merely by administrative fiat.

69. Accordingly, in light of the statutory bar under the Limitation Act**,** in absence of any adjudicated liability, and the inordinate delay and procedural unfairness surrounding the impugned recovery, this Court finds that the respondents' claim is legally untenable and liable to be set aside.

70. In light of the above judicial precedents, it is clear that any adverse finding made in a CAG report without giving the affected party notice, a chance to participate, or a copy of the report violates the principles of natural justice and procedural fairness. Such unilateral and ex parte actions are legally unsustainable and liable to be quashed by a constitutional court. The petitioners, having been condemned unheard, has strong grounds to challenge the report and any consequential actions flowing from it under Article 226 of the Constitution.

Thus, issue no 6 is decided in favour of the petitioners.

Conclusion:

71. In view of the foregoing analysis, it is abundantly clear that the Comptroller and Auditor General (CAG), being a constitutional audit

authority, lacks the technical jurisdiction to draw qualitative conclusions regarding agricultural produce, such as, wheat, which falls within the exclusive domain of technically competent agencies like the Food Corporation of India (FCI) and other such agencies having expertise.The role of the CAG is neither adjudicatory nor investigative in nature, and it does not extend to making determinations on qualitative aspects of perishable agricultural commodities such as wheat. The evaluation of whether the wheat lifted was of URS (Under Relaxed Specifications) or FAQ (Fair Average Quality) is a highly technical matter involving physical inspection and scientific testing, which lies within the exclusive domain of trained quality control authorities working under the aegis of the Food Corporation of India (FCI) or other competent statutory bodies.

72. Any adverse conclusion drawn by the CAG in this regard, without the benefit of technical verification by the concerned agency and without associating the petitioner in the process, cannot be treated as legally conclusive or binding. Moreover, the non-furnishing of a copy of the CAG report to the petitioner, particularly, when such report contains adverse findings that have been relied upon for consequential administrative action, constitutes a grave violation of the principles of natural justice. The Hon'ble Supreme Court and various High Courts in catena of judgments have time and again held that any material forming the basis of adverse action must be disclosed to the affected party, and a reasonable opportunity of hearing must be afforded before any punitive or prejudicial step is taken.

73. The unilateral reliance on the CAG's observations, without independent investigation or corroboration by the competent authorities and without following due process, amounts to arbitrary administrative action and infringes the petitioner's fundamental rights under Articles 14 and 21 of the Constitution of India. Article 14 prohibits arbitrary and unequal treatment by the State, while Article 21 guarantees the right to life and liberty, which has been broadly interpreted to include the protection of an individual's livelihood. This means that any action or decision that negatively impacts a person's means of earning a living must be communicated to the affected individual beforehand. Failure to provide such communication not only deprives the person of the opportunity to respond or seek redress but also constitutes a violation of their fundamental rights under Article 21. In essence, the right to livelihood is an integral part of the right to life, and any infringement on it without due notice and opportunity to be heard undermines the constitutional safeguards intended to protect individuals from arbitrary and unjust deprivation.

74. Accordingly, the findings rendered by the CAG concerning the quality of wheat lifted by the petitioner having been made without technical evaluation, without adherence to due process, and without affording the petitioner an opportunity of hearing are held to be legally unsustainable. Any administrative or penal action founded solely upon such unilateral observations is vitiated in law. In view of the above, all six issues raised in the writ petition are answered in favour of the petitioner and against the respondents.

75. Keeping in view the authoritative enunciation of law as referred and the discussion made hereinabove, both the writ petitions bearing ***WP(C) No. 261/2023 and WP(C) No. 1651/2022 are allowed*** and the impugned communications bearing No. JI(S)/OMSS(D)/ Defaulter parties/2021-22/1638 dated 07.09.2021 in WP(C) No. 261/2022 as well as No. ROJ/Coml/Audit Para/2017/428 dated 05.07.2022 in WP(C) No. 1651/2022 are hereby quashed and the respondents are restrained from withholding the amount of the petitioners in any other tender and also not to create any kind of impediments to the petitioners with respect to any of the future tender/e-auctions on the basis of the alleged illegal impugned orders/communications. Further the respondents are also restrained from initiating recovery proceeding against the petitioners.

76. Disposed of along with connected applications.

(WASIM SADIQ NARGAL)
JUDGE

JAMMU
09.09.2025
Vijay

Whether the order is speaking: Yes
Whether the order is reportable: Yes