HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 2490/2021

Reserved on: 21.05.2026
Pronounced on: 06.06.2026
Uploaded on: 06.06.2026

Operative part or full Judgement**: Full**

M/S Alpine Agro Services,
Through authorized partner,
Abdul Majid Mattoo (79 Yrs.)
S/O Mubarik Shah Mattoo
R/O Bul Bul Bagh, Barzulla,
Srinagar. …Petitioner(s)

Through:
Mr. Salih Pirzada, Advocate
Mr. Ahmad Basuad, Advocate

Vs.

1. **Union of India through,**
   Ministry of Consumer Affairs,
   Food & Public Distribution Deptt.,
   New Delhi.
2. **Food Corporation of India through,**
   General Manager, FCI,
   Regional Office, Jammu,
   Jammu & Kashmir.
3. **Assistant General Manager (PEG),**
   Food Corporation of India,
   Jammu.
4. **Manager Store,**
   Divisional Officer,
   Food Corporation of India,
   Srinagar. ...Respondent(s)

Through:
Mr. T. M. Shamsi, DSGI with
Ms. Yasmeen Jan, Advocate for R-1
Mr. Jahangir Ahmad Ganai, Sr. Advocate with
Mr. Omais Kawoos, Advocate for R-2 to R-4

CORAM:

HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE

JUDGEMENT

HIGH COURT JAMMU & KASHMIR AND LADAKH

01. The petitioner has invoked the writ jurisdiction of this Court seeking quashment of communications/orders dated 03.09.2021 and 15.11.2021 issued by the respondent-Food Corporation of India (FCI), whereby recoveries have been ordered to be effected from the monthly rentals payable to the petitioner-firm on account of the alleged delay in completion of black-topping of the internal roads of the godown established by the petitioner under the Private Entrepreneur Guarantee (PEG) Scheme.

02. The petitioner-firm, a registered partnership concern, claims to be aggrieved of the action of the respondents in effecting recoveries by way of penalty from the rentals payable under the Lease and Service Agreement executed between the parties, on the grounds that the construction of the godown was completed in conformity with the prescribed norms and specifications and that the same was taken over by the respondents after being found suitable and operationally fit for storage purposes; that the only work which remained to be completed was the black-topping of the internal roads. It is submitted that, under the applicable guidelines, the said work was required to be completed within one year from the commissioning of the facility. The petitioner asserts that the work could not be completed within the stipulated period due to circumstances beyond his control, including the demise of a partner and the extraordinary law and order situation which prevailed in the Kashmir Valley during the year 2016.

03. The case set up by the petitioner, in brief, is that the respondent-FCI invited tenders for construction of godowns for storage of

HIGH COURT JAMMU & KASHMIR AND LADAKH

food grains in the Union Territory of Jammu & Kashmir under the PEG Scheme. The petitioner-firm participated in the tendering process and was awarded the work of construction of a godown having a storage capacity of 17,500 MT at Srinagar on "Build, Own and Operate" basis vide Letter of Memorandum dated 21.05.2013 for a guaranteed period of ten years.

04. It is pleaded that though a Lease and Service Agreement was initially executed between the parties, the same could not be registered owing to the demise of one of the partners, namely Irfan Mattoo. Consequently, a fresh Lease and Service Agreement came to be executed on 17.06.2016, which was deemed to have commenced with effect from 26.02.2015. Under the terms of the agreement, the godown was taken over on Guaranteed Hiring Basis (GHB) for the period commencing from 27.02.2015 upto 20.05.2024 at the approved rate of Rs.10.20 per quintal per month, subject to annual escalation in accordance with the Wholesale Price Index (WPI).

05. The petitioner avers that despite the godown having remained continuously operational since February, 2015, the respondents issued a communication dated 21.10.2016 proposing imposition of penalty on account of non-completion of the black-topping work. It is asserted that the said communication was never served upon the petitioner and that knowledge thereof was acquired only in November, 2017.

06. Upon coming to know of the aforesaid communication, the petitioner submitted a representation seeking reconsideration of

HIGH COURT JAMMU & KASHMIR AND LADAKH

the proposed action. However, the said representation came to be rejected vide communication dated 07.11.2017. The petitioner further places reliance upon a communication dated 02.01.2018 issued by the District Development Commissioner, Bandipora, wherein it was stated that no macadamization work had been undertaken in the district during the year 2016, owing to the prevailing law and order disturbances. According to the petitioner, the said communication substantiates the plea that the delay in completion of the black-topping work was attributable to circumstances beyond its control.

07. It is the specific case of the petitioner that the black-topping work was ultimately completed during May–June, 2017. Notwithstanding the same, the respondents imposed a penalty amounting to Rs.1,58,002/-, which was recovered from the rentals payable by the respondent-FCI, to the petitioner, alleging that despite having already recovered the aforesaid amount, the respondents proceeded to impose further recoveries through the impugned communications dated 03.09.2021 and 15.11.2021.

08. The respondents have contested the writ petition by filing reply/objections and have, at the outset, raised a preliminary objection with regard to the maintainability of the writ petition, asserting further that the impugned communications merely implement the decisions taken by the High Level Committee (HLC) in its meetings held on 09.11.2016, 28.03.2017 and 16.11.2017. It is contended that the petitioner has challenged only the consequential communications and not the decisions of the

High Level Committee, which constitute the very foundation of the impugned action.

09. The respondents submit next that at the time of inspection prior to takeover of the godown, it was noticed that the drainage work as well as black-topping of the internal roads had not been completed; that the petitioner furnished an affidavit dated 24.02.2015, undertaking to complete the drainage work by March, 2015 and the black-topping work by September, 2015, however, the petitioner failed to adhere to the undertaking so furnished, the respondents granted additional relaxation and extended the period for completion of the black-topping work upto one year from the date of takeover, i.e., upto 26.02.2016.

10. The respondents further maintain that black-topping of the internal roads constitutes an essential component of the infrastructure envisaged under the Model Tender Form (MTF) and that non-completion thereof amounts to breach of contractual obligations. Reliance is placed upon Clause 5 of the Lease and Service Agreement which, according to the respondents, empowers the lessee to terminate the contract in the event of failure, on the part of the lessor to fulfil its contractual obligations, nevertheless, instead of terminating the agreement, a lenient view was adopted and recoveries were ordered, in terms of the decisions taken by the High Level Committee.

11. It is further submitted that the explanation furnished by the petitioner regarding the law and order situation in the Valley is untenable, inasmuch as the extended deadline for completion of

HIGH COURT JAMMU & KASHMIR AND LADAKH

the black-topping work expired on 26.02.2016, whereas the disturbances referred to by the petitioner commenced only in July, 2016; that the issue relating to non-completion of black-topping by PEG investors, across the country, was examined by the High Level Committee, which observed that black-topping constituted an essential requirement and that non-compliance, therewith, could not be treated as a minor deviation.

12. The respondents state that the High Level Committee initially considered withdrawal of the guarantee and conversion of the hiring arrangement to Actual Utilization Basis (AUB). However, upon reconsideration, it was decided that in cases where black-topping was completed beyond one year, recoveries would be effected by reducing the rentals on Actual Utilization Basis, along with deduction equivalent to twice the Cost Saving Amount (CSA).

13. It is submitted that the impugned recoveries have been effected in pursuance of the aforesaid policy decisions taken uniformly throughout the country and are not confined to the petitioner alone.

14. It is further submitted that during the pendency of the proceedings, the respondents were permitted to place on record an additional affidavit explaining the methodology adopted for calculating the recoverable amount. In the said affidavit, it has been stated that the recovery of Rs.1,58,002/- was initiated in compliance with audit objections raised by the Comptroller and Auditor General (CAG) of India, which had noticed that certain

HIGH COURT JAMMU & KASHMIR AND LADAKH

PEG godowns, including that of the petitioner, had not completed black-topping work, despite receiving rentals on Guaranteed Hiring Basis.

15. The respondents explain that the Guaranteed Hiring Basis ensures payment of assured rentals irrespective of the actual utilization of the storage capacity. According to them, the petitioner, having failed to provide complete infrastructure in terms of the Model Tender Form, was not entitled to avail such benefit.

16. It is further stated that the amount recoverable was calculated on the basis of the estimated cost saved by the petitioner by not undertaking the black-topping work and the corresponding time value of money. As per the calculation furnished, the cost of black-topping was assessed at Rs.123.22 per square metre. Considering the area of the godown premises measuring 7,693.68 square metres, the annual cost saving was computed at Rs.9,48,015/-, translating into a monthly figure of Rs.79,001/-. The recovery of Rs.1,58,002/- represented twice the monthly cost-saving amount.

17. The respondents reiterate that the impugned recoveries are traceable to the decisions of the High Level Committee, which had directed that in cases where black-topping was completed beyond the permissible period, rentals from the commencement of hiring till completion of the black-topping work would be regulated on Actual Utilization Basis with deduction of twice the Cost Saving Amount.

18. It is lastly pleaded that since the petitioner completed the black-

HIGH COURT JAMMU & KASHMIR AND LADAKH

topping work only during the year 2017, recoveries were initiated for the period commencing from February, 2015 till completion of the work, strictly in accordance with the formula approved by the High Level Committee.

19. Learned counsel appearing for the petitioner submits that the impugned action of the respondents is arbitrary, violative of the principles of natural justice and *dehors* the terms and conditions governing the contract between the parties. It is argued that neither the Lease and Service Agreement nor any other contractual stipulation authorizes unilateral imposition of penalty or recovery from the rentals, in the manner sought to be effected by the respondents. It is further contended that no opportunity of hearing was afforded to the petitioner prior to issuance of the impugned communications and that the respondents, having continuously utilized the godown without any interruption and having suffered no demonstrable loss, cannot impose punitive recoveries upon the petitioner.

20. Learned counsel for the petitioner, referred and relied upon the law laid down by the Apex Court in the cases reported as (2015) 4 SCC 136, (2006) 10 SCC 236 and (2023) 2 SCC 703, in support of his submissions.

21. The Supreme Court in the judgement in ***Noble Resources Ltd. v. State of Orissa, (2006) 10 SCC 236***, held that merely because a dispute arises out of a contractual relationship, the jurisdiction of this Court under Article 226 of the Constitution is not completely ousted, where the action of the State or its instrumentalities is

alleged to be arbitrary, unreasonable or violative of Article 14 of the Constitution of India. It is argued that since the respondent-FCI is a State within the meaning of Article 12 of the Constitution, its actions are required to satisfy the test of fairness and non-arbitrariness even in contractual matters, and therefore the impugned recoveries are amenable to judicial review.

22. Learned counsel for the petitioners has also placed reliance upon the judgment rendered in ***M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703***, to submit that contractual powers vested in a State instrumentality cannot be exercised in a manner that is manifestly arbitrary, unreasonable or disproportionate and that the doctrine of fairness continues to apply even within the contractual sphere. It is contended that the respondents, despite having accepted the infrastructure, operationalized the godown and continued to derive benefit therefrom, could not subsequently alter the financial arrangement by effecting unilateral recoveries allegedly on the basis of subsequent policy decisions of the High Level Committee, particularly when such recoveries were neither expressly contemplated under the Lease and Service Agreement nor preceded by any adjudicatory determination of breach.

23. Placing reliance on the judgement of the Hon'ble Supreme Court in ***Kailash Nath Associates v. Delhi Development Authority, (2015) 4 SCC 136***, he contended that even where a contract provides for levy of liquidated damages or penalty, compensation can be awarded only when actual loss or damage is suffered, and

HIGH COURT JAMMU & KASHMIR AND LADAKH

a party cannot recover penal amounts in the absence of proof of loss unless the case falls within the narrow category of contracts where damage is impossible to quantify. It is submitted that the respondents, having continued to utilize the godown without interruption and having failed to demonstrate any actual financial loss occasioned due to delayed black-topping, could not have imposed recoveries of a punitive character upon the petitioners.

24. Learned counsel appearing for the respondents has placed reliance upon the judgment rendered by the ***Hon'ble Supreme Court in State of Punjab and Others v. Dhanjit Singh Sandhum (2014) 15 SCC 144***, to contend that a party having accepted the terms and conditions of a contract and derived benefits thereunder cannot subsequently approbate and reprobate by disputing liabilities flowing from the same contractual arrangement. It is submitted that the doctrine of election and estoppel precludes a contracting party from accepting benefits under an agreement while simultaneously seeking to avoid obligations arising therefrom. Learned counsel contends that the petitioners, having furnished undertakings regarding completion of black-topping work within the stipulated period and having continued under the contractual arrangement, are estopped from challenging consequential recoveries effected by the respondents pursuant to the contractual terms and policy decisions taken under the PEG Scheme.

25. I have heard learned counsel for the parties at length and perused the material available on record.

HIGH COURT JAMMU & KASHMIR AND LADAKH

26. The controversy in the present petition essentially revolves around the legality and validity of the recoveries sought to be effected by the respondent-Corporation on account of the delayed completion of black-topping of the internal roads of the godown established by the petitioner under the PEG Scheme.

27. The factual matrix is largely undisputed. It is not in dispute that the petitioner was awarded the project for construction of a 17,500 MT capacity godown at Srinagar under the PEG Scheme and that the facility was taken over by the respondent-FCI on Guaranteed Hiring Basis with effect from 27.02.2015. It is equally not disputed that, at the time of takeover, the black-topping of the internal roads had not been completed and that the petitioner had furnished an undertaking to complete the said work within the stipulated period.

28. It also emerges from the record that despite the undertaking furnished by the petitioner, the black-topping work was not completed within the period initially contemplated. The respondents have placed considerable emphasis on the fact that an extension of time upto 26.02.2016 had already been granted and that the petitioner failed to complete the work even within the extended period.

29. On the other hand, the petitioner seeks to justify the delay by referring to circumstances which, according to him, were beyond his control, including the demise of one of the partners and the extraordinary law and order situation which prevailed in the Kashmir Valley during the year 2016. Reliance has also been

placed upon the communication issued by the District Development Commissioner, Bandipora, indicating that no macadamization work had been undertaken in the district during the relevant period.

30. A significant aspect which requires consideration is the fact that the godown admittedly remained operational and continued to be utilized by the respondent-Corporation during the entire period in question. The petitioner has emphasized this circumstance to contend that no prejudice was caused to the respondents and that the continued utilization of the facility militates against the subsequent imposition of punitive recoveries.

31. Equally, the respondents have sought to justify the impugned action by asserting that black-topping constituted an essential component of the infrastructure envisaged under the Model Tender Form and that failure to provide the same amounted to a breach of contractual obligations. According to the respondents, the issue was not confined to the petitioner's case alone but formed part of a larger policy decision applicable to similarly situated PEG investors throughout the country.

32. The pleadings further indicate that the impugned recoveries have their genesis in the decisions taken by the High Level Committee. The respondents have consistently maintained that the communications impugned in the present petition are merely consequential in nature and flow from decisions taken by the High Level Committee in its meetings held from time to time. The extent to which such decisions constitute the source of

HIGH COURT JAMMU & KASHMIR AND LADAKH

authority for the recoveries and their interplay with the contractual stipulations governing the parties assumes relevance in the present proceedings.

33. Another aspect which merits examination pertains to the nature of the recovery itself. The petitioner asserts that the respondents have, in effect, imposed a penalty without any express contractual authorization and without adherence to the principles of natural justice. The respondents, however, characterize the impugned action not as a conventional penalty but as a recovery based upon the Cost Saving Amount and the Actual Utilization Basis formula approved by the High Level Committee.

34. The additional affidavit filed by the respondents discloses the methodology adopted for computing the recoverable amount. According to the respondents, the amount represents the financial advantage allegedly derived by the petitioner on account of non-execution of the black-topping work within the prescribed period, coupled with the time value of money. Whether such methodology can be treated as compensatory in nature or assumes the character of a penal consequence is one of the issues arising for consideration.

35. The Court also notices that the petitioner has raised a specific grievance that an amount of Rs.1,58,002/- had already been recovered earlier and that the subsequent communications have resulted in further recoveries in respect of the same default. The respondents, however, dispute the said characterization and maintain that the earlier recovery and the impugned recoveries

operate in distinct fields and originate from different decisions and audit observations. The true nature and effect of the recoveries, therefore, require careful scrutiny in the context of the material placed on record.

36. The maintainability of the writ petition has also been questioned by the respondents on the ground that the dispute arises out of contractual obligations and involves disputed questions of fact. At the same time, the petitioner has invoked the well-settled principle that where the action of a State instrumentality is alleged to be arbitrary, unreasonable or violative of constitutional guarantees, the existence of a contractual relationship does not, by itself, operate as an absolute bar to the exercise of writ jurisdiction.

37. The rival submissions advanced on behalf of the parties, therefore, give rise to questions touching upon the scope of judicial review in contractual matters involving State instrumentalities, the source and extent of the authority claimed by the respondents to effect the impugned recoveries, the legal effect of the decisions of the High Level Committee, the relevance of the circumstances relied upon by the petitioner to explain the delay, and the nature and character of the recoveries sought to be effected.

38. The respondent-Food Corporation of India invited tenders under Private Entrepreneur Guarantee (PEG) Scheme for the construction of godown for storage of foodgrains in the Union Territory of Jammu & Kashmir and the petitioner-firm

HIGH COURT JAMMU & KASHMIR AND LADAKH

participated in the tendering process and was awarded the work of construction of the godown having a storage capacity of 17,500 MT at Shilvat on Build, Own and Operate basis vide Letter of Memorandum dated 21.05.2013 for a guaranteed period of ten years and, consequently, a Lease and Service Agreement came to be executed between the parties on 17.06.2016, which was deemed to have commenced w.e.f. 26.02.2015 in terms of which the godown was taken over on Guaranteed Hiring Basis for the period commencing from 27.02.2015 to 20.05.2024 at the approved rate of Rs. 10.20 per quintal per month, subject to annual escalation in accordance with the Wholesale Price Index (WPI). The godown, thus, was made operational since February, 2015.

39. As per the agreement, the petitioner was to be paid monthly rentals on completion of the entire infrastructure, including drainage and black-topping of internal roads, however, the respondents pointed out that the petitioner had failed to complete the drainage and black-topping of internal works within the stipulated period, on which the petitioner-firm filed an undertaking on 24.02.2015 to complete the drainage work by March, 2015 and black-topping of internal roads by September, 2015. The petitioner was alleged to have failed to complete the work and, on its request, the period was further extended upto one year, i.e., 26.02.2016, however, the petitioner-firm even then failed to complete the black-topping of the internal roads.

40. The dispute essentially in this petition is with regard to penalty

HIGH COURT JAMMU & KASHMIR AND LADAKH

imposed by the respondent-Corporation for not completing the black-topping of the internal roads, despite receiving rentals on Guaranteed Hiring Basis. The respondent-Corporation, on the basis of the estimated costs saved by the petitioner by not undertaking the blacktopping of the work and the corresponding time value of money, calculated the recoverable amount and, as per this calculation, the cost of black-topping was assessed at Rs. 123.22 per square metre considering the area of the godown premises measuring 7,693.68 square metres, as such, the annual cost saving was computed at Rs. 9,48,015/-, translating into a monthly figure of Rs. 79,001/-, as such, the recovery of Rs. 1,58,002/- was worked out representing twice the monthly cost saving amount. These recoveries are traceable to the decisions of the High Level Committee which had directed that in cases where the black-topping was completed beyond the permissible period, rentals from the commencement of hiring till completion of the black-topping work would be regulated on Actual Utilization Basis with deduction of twice the Cost Saving Amount. The petitioner-firm has taken a stand that the respondents' impugned action was arbitrary and violative of the principles of natural justice and *dehors* the terms and conditions governing the contract between the parties.

41. Black-topping of the internal roads of the godown premises constituted an essential component of the infrastructure envisaged under the Model Tender Form and the failure to provide the same amounted to breach of contractual obligations. The impugned

HIGH COURT JAMMU & KASHMIR AND LADAKH

recoveries ordered by the respondent-Corporation, in view of the national phenomenon, have their genesis in the decision taken by the High Level Committee and the impugned action taken by the respondent-Corporation was consequential in nature and flows from the decision taken by the High Level Committee in its meetings. The petitioner had not challenged the decision taken in the High Level Committee and has challenged only the consequential orders/ actions passed/ taken by the respondent-Corporation.

42. Admittedly, the petitioner-firm, despite the terms and conditions of the agreement, had failed to provide the required infrastructure in full as it failed to complete the drainage as well as the black-topping of the internal roads within the stipulated period and the black-topping of the internal roads even within the extended period after filing of undertaking by the petitioner-firm to complete the same despite its extension as well. The respondents have justified their calculations of the penalty sought to be recovered from the petitioner-firm which is recoverable in view of Clause 5 of the Lease and Service Agreement, which empowered the lessee to even terminate the contract in the event of failure on the part of the lessor to fulfil its contractual obligations. Nevertheless, instead of terminating the agreement, the respondent-Corporation had taken a lenient view and recoveries were ordered in terms of the decisions taken by the High Level Committee.

43. The contention of the learned counsel for the petitioner that the

writ petition is maintainable as even in cases of contractual relationship, the disputes can be adjudicated under writ jurisdiction of the Court as laid down by the Apex Court in the **Noble Resources Ltd. judgment** (supra) and that the respondents, despite having accepted the infrastructure, operationalized the godown and continued to derive benefit therefrom could not subsequently alter the financial arrangement by effecting recoveries allegedly on the basis of subsequent policy decisions of the High Level Committee, when such recoveries were neither expressly contemplated under the Lease and Service Agreement nor preceded by any adjudicatory determination of breach, seems to be untenable in view of the fact that the petitioner-firm had not only admitted that the drainage and the black-topping of the internal roads was not complete when the agreement was executed between the parties and that despite filing an undertaking by the petitioner-firm, the needful of black-topping of the internal roads was not carried out even within the extended period of time.

44. The other contention of the learned counsel for the petitioner-firm that the petitioner could not carry out the work in view of the law and order disturbances in the Valley in the year 2016 also seems to be misplaced, as the petitioner was under an obligation to complete the work within the extended period of time before 26.02.2016, whereas, the disturbances in the Valley started in the month of July, 2016. The petitioner-firm, on filing of the undertaking, is estopped now from raising the plea that the

respondent-Corporation had taken over and utilized the premises, as a lenient view was stated to have been taken by the respondent-Corporation instead of terminating the contract as per contractual condition, to allow the petitioner-firm to complete the work which was not complete, though the same was an essential component of the required infrastructure to set up a godown under the PEG Scheme. The petitioner-firm, having accepted the terms and conditions of a contract and deriving benefits therefrom, cannot subsequently approbate and reprobate by disputing liabilities flowing from the same contractual arrangement in view of the doctrine of election and estoppel which precludes a contracting party from accepting benefits under an agreement, while simultaneously seeking to avoid obligations arising therefrom, as has been held by the Apex Court in **State of Punjab and Ors. judgment** (supra). In such a situation and keeping in view the facts and circumstances of the case, this Court is of the considered opinion that there is no merit and substance in this petition, which is liable to be rejected.

45. Viewed thus, the present petition is **dismissed**, along with connected CM(s). Interim direction(s), if any, shall stand vacated.

(M. A. CHOWDHARY)
JUDGE

SRINAGAR
06.06.2026
Manzoor

Whether the Judgement is approved for reporting? Yes

HIGH COURT JAMMU & KASHMIR AND LADAKH