HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA No. 131/2026
CM No. 5643/2026

Reserved on 05.11.2026
Pronounced 17.11.2026
Uploaded : 17.11.2026

Whether the operative part or full judgment is pronounced: Full

M/S ALPINE AGRO SERVICES ..... Appellant (s)

Through :- Mr. Syed Faisal Qadri Sr. Advocate
with Mr. Numan Zargar Advocate
Mr. Mohd. Shafi Bhat Advocate.

V/s

Union of India and others .....Respondent(s)

Through :- Ms.Rehana Advocate vice
Mr. T.M.Shamsi DSGI for R-1
Mr. Jehangir Iqbal Ganai Sr. Advocate with
Mr. Omais Kawoosa Advocate for R-2 to 4

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

JUDGMENT

Sanjeev Kumar-J

1. This intra-Court appeal is directed against an order and judgment dated 06.06.2026 passed by a learned Single Judge of this Court (hereinafter referred to as the "writ Court") in WP(C) No.2490/2021, titled *M/s Alpine Agro Services v. Union of India and others*, whereby the writ petition filed by the appellant has been dismissed.

Brief facts

2. The facts, in brief, are that the respondent-Food Corporation of India (FCI) invited tenders for construction of godowns for storage of foodgrains in the Union Territory of Jammu and Kashmir under the Private Entrepreneur Guarantee (PEG) Scheme. The appellant-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 Shilvat on Build, Own and Operate basis, vide Letter of Memorandum dated 21.05.2013, for a guaranteed period of ten years.**.** 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. In terms of the first agreement, the godown was taken over on Guaranteed Hiring Basis (GHB) for the period commencing from 27.02.2015 up 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).

3. The appellant's case is that, despite the godown having remained 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 on the approach road leading to the godown. It is asserted that the said communication was never served upon the appellant and that knowledge thereof was acquired only in November, 2017. Upon coming to know of the proposed action, the appellant submitted a representation seeking reconsideration of the matter, which came to be rejected vide communication dated 07.11.2017.

4. The appellant relies 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 appellant, the delay in completion of the black-topping work was attributable to circumstances beyond its control. It is, however, admitted that the black-topping work was ultimately completed during May-June, 2017.

5. It is the specific grievance of the appellant that, notwithstanding the recovery of an amount of Rs.1,58,002/- on account of delayed completion of the black-topping work, the respondents proceeded to impose further recoveries through the impugned communications dated 03.09.2021 and 15.11.2021, purportedly in implementation of the decisions taken by the High Level Committee (HLC).

Grounds of challenge before the writ Court

6. The appellant assailed the action of the respondents, *inter alia*, on the ground that the impugned recoveries were arbitrary, without authority of law and de hors the terms and conditions of the contract executed between the parties. It was contended that neither the Tender notice nor the Lease and Service Agreement authorised the respondents to unilaterally alter the agreed Guaranteed Hiring arrangement or impose financial recoveries on the basis of a unilateral decision of the High Level Committee. It was further urged that the respondent-Corporation, having taken over possession of the godown, operationalised the same and continuously utilised it for storage of foodgrains, could not subsequently question the adequacy of the infrastructure so as to impose liabilities which were not contemplated under the contract. Reference was made to Clauses 31 and 53 of the Tender Notice to contend that possession of the godown was to be taken over only after the Corporation had satisfied itself regarding completion of the construction in accordance with the prescribed specifications and terms and conditions.

7. Another ground urged was that the contract itself provided a mechanism for dealing with deficiencies in the godown premises. Reference was made to Clause 4 of the Lease and Service Agreement, which, according to the appellant, provided for notification of deficiencies, an opportunity to rectify the same and, in the event of failure, recovery of actual expenditure incurred by the respondents in undertaking the necessary repairs. It was contended that the respondents had neither invoked the said contractual provision nor alleged that the godown had become unstorage-worthy. The appellant also questioned the applicability of the decision of the High Level Committee dated 13.04.2017 and the subsequent decisions taken by the FCI, contending that the same could not be applied retrospectively to a contractual arrangement which had already commenced and was being acted upon with effect from February, 2015. It was urged that the said decisions were neither incorporated into the existing agreement by way of an amendment nor accepted by the appellant and, therefore, could not constitute a lawful basis for altering the financial obligations of the parties.**.** It was further contended that the issue relating to delayed completion of the black-topping work had already been considered by the competent authority of the respondent-Corporation, which, vide Office order dated 17.01.2018, had sanctioned recovery of Rs.1,58,002/-. Having taken a conscious decision in the matter and quantified the financial consequence of the alleged default, the respondents could not reopen the same issue and impose an altogether different and enhanced financial liability on the basis of a subsequent administrative decision.

8. The appellant also pleaded that the impugned recoveries were founded upon a purely notional and artificial formula and were not relatable to any actual loss suffered by the respondents. It was contended that the amount had been calculated on the assumption that the appellant had effected a cost saving by not undertaking the black-topping work within the stipulated period, though it was

without establishing any corresponding financial loss to the respondent-Corporation**.** Lastly, the appellant challenged the impugned action on the ground of violation of the principles of natural justice, contending that no show-cause notice or effective opportunity of hearing had been afforded before determining the alleged liability and effecting the recoveries.

9. In support of his submissions before the writ Court, the appellant placed reliance upon the judgments of the Hon'ble Supreme Court in **Noble Resources Ltd. v. State of Orissa, (2006) 10 SCC 236; M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703; and Kailash Nath Associates v. Delhi Development Authority, (2015) 4 SCC 136.**

10. The respondents contested the writ petition, contending that the same was not maintainable, as the controversy arose out of contractual obligations and involved disputed questions of fact. It was further contended that the impugned communications merely implemented the decisions taken by the High Level Committee in its meetings held on 09.11.2016, 28.03.2017 and 16.11.2017, and that the petitioner had challenged only the consequential communications without assailing the decisions of the Committee which constituted the foundation of the impugned action. It was submitted that, at the time of inspection conducted before taking over the godown, it was noticed that the drainage work and black-topping of the internal roads had not been completed. The petitioner had 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, despite extension of time up to 26.02.2016, the petitioner failed to complete the black-topping work within the extended period and, thus, committed a breach of the undertaking furnished by it.

11. It was contended that black-topping of the internal roads was an essential part of the infrastructure envisaged under the Model Tender Form and that its non-completion amounted to a breach of contractual obligations. Learned counsel referred to Clause 5 of the Lease and Service Agreement to submit that the respondents were entitled to terminate the contract if the lessor failed to fulfil its contractual obligations. However, instead of terminating the contract, the respondents took a lenient view and ordered recovery in terms of the decisions of the High Level Committee. It was further submitted that the petitioner's explanation regarding the law and order disturbances in the Valley was not acceptable, as the extended deadline for completion of the black-topping work had expired on 26.02.2016, whereas the disturbances relied upon by the petitioner started only in July, 2016. It was submitted that the High Level Committee had considered the issue of non-completion of black-topping work by PEG investors across the country and had formulated a uniform policy for regulating the hiring charges in such cases.. It was also submitted that the amount of recovery was calculated on the basis of the estimated cost saved by the petitioner by not completing the black-topping work within the stipulated period, along with the corresponding time value of money. The cost of black-topping was assessed at Rs.123.22 per square metre. Considering the total area of the godown premises, measuring 7,693.68 square metres, the annual cost saving was calculated at Rs.9,48,015/-, which worked out to Rs.79,001/- per month. Accordingly, the recovery, equivalent to twice the monthly cost saving, was fixed at Rs.1,58,002/-. The respondents relied upon a judgment of the Hon'ble Supreme Court in **State of Punjab and others v. Dhanjit Singh Sandhu, (2014) 15 SCC 14**4, to submit that a party who has accepted the terms and conditions of a contract and enjoyed the

benefits arising therefrom cannot subsequently take a contrary stand and dispute the liabilities arising out of the same contract.

Conclusion arrived at by the writ Court

12. The writ Court, upon consideration of the rival submissions and the material available on record, noticed that the controversy essentially revolved around the legality and validity of the recoveries sought to be effected by the respondent-Corporation on account of delayed completion of black-topping of the internal roads of the godown established by the appellant/petitioner under the PEG Scheme. The writ Court found that the petitioner had failed to complete the black-topping work within the stipulated period, notwithstanding the undertaking furnished by it and the extension granted by the respondents up to 26.02.2016. It also noticed that black-topping of the internal roads constituted an essential component of the infrastructure envisaged under the Model Tender Form and that the impugned recoveries had their genesis in the decisions taken by the High Level Committee, which were applicable uniformly to similarly situated PEG investors. The writ Court further observed that the petitioner had admitted that the drainage and black-topping work had not been completed at the time of execution of the agreement and that, despite furnishing an undertaking, the black-topping work had not been completed even within the extended period. It, therefore, held that the respondents were justified in taking action in terms of the decisions of the High Level Committee. The writ Court also rejected the explanation furnished by the petitioner regarding the law and order disturbances in the Valley, observing that the extended period for completion of the work had expired on 26.02.2016, whereas the disturbances commenced in July, 2016. It further held that the petitioner, having furnished an undertaking and accepted the terms and conditions of the contract while deriving benefits therefrom, was estopped from disputing the consequential liabilities**..** Placing reliance upon the doctrine of election and

estoppel, as explained by the Hon'ble Supreme Court in **State of Punjab and others v. Dhanjit Singh Sandhu, (2014) 15 SCC 144**, the writ Court concluded that the appellant/petitioner could not accept the benefits flowing from the contractual arrangement and, at the same time, dispute the liabilities arising therefrom**..** Viewed thus, the writ Court found no merit or substance in the petition and, accordingly, dismissed the same vide an order and judgment dated 06.05.2026.

Submissions before us:

13. Aggrieved of the judgment passed by the writ Court, the appellant has preferred the present intra-Court appeal, contending that the writ Court has erred in upholding the recoveries, which are not supported by the terms of the contract. Learned counsel appearing for the appelalnt would submit that the rights and liabilities of the parties must be governed by the contractual terms and cannot be altered by subsequent administrative decisions. It is submitted that the respondent-Corporation, after taking over possession of the godown and operationalising it with effect from 26.02.2015, continuously utilised the same for storage of foodgrains on Guaranteed Hiring Basis. It is contended that the Corporation could not thereafter impose additional financial liabilities beyond the terms of the contract. Reference is made to Clauses 31 and 53 of the Tender Notice in support of this submission.. It is further submitted that Clause 4 of the Lease and Service Agreement provides a mechanism for dealing with deficiencies in the godown premises. In the absence of any finding that the godown had become unfit for storage, the respondents could not have imposed the impugned recoveries.. Learned counsel would contend that the decisions of the High Level Committee dated 13.04.2017 and subsequent dates could not be applied retrospectively to a contract already in operation, particularly when the same had neither been incorporated into the agreement nor accepted by the appellant.. It is also submitted

that the issue of delayed completion of black-topping had already been considered and recovery of Rs.1,58,002/- sanctioned vide Office order dated 17.01.2018. The respondents could not reopen the matter and impose an additional financial liability on the basis of subsequent decisions of the High Level Committee. Learned counsel would submit that the impugned recoveries are based on hypothetical calculations and not on any actual loss suffered by the respondents. It is contended that such recoveries, without any contractual or legal basis, cannot be sustained. Learned counsel would also submit that the appellant has never disputed its contractual obligations but has only questioned the additional liability imposed beyond the terms of the agreement. The doctrine of approbation and reprobation, therefore, has no application. Lastly, it is contended that the impugned recoveries were ordered without affording the appellant an effective opportunity of hearing. Learned counsel, accordingly, prays for setting aside the judgment passed by the writ Court.

14. *Per contra*, learned counsel for the respondents would support the judgment passed by the writ Court and submit that the appellant, despite furnishing an undertaking and being granted sufficient time, failed to complete the black-topping work within the stipulated period. It is contended that black-topping was an essential requirement under the Model Tender Form and its non-completion entitled the respondents to regulate the hiring charges in terms of the decisions of the High Level Committee.. Learned counsel would further submit that the High Level Committee had formulated a uniform policy to deal with cases of non-completion of black-topping by PEG investors across the country. Instead of terminating the agreement under Clause 5 thereof, the respondents adopted a lenient approach by allowing the appellant to continue under the contractual arrangement, subject to the recoveries ordered. It is submitted that the appellant,

having availed the benefits of the contractual arrangement, cannot now dispute the liabilities arising from its failure to fulfil the contractual obligations. The doctrine of unjust enrichment is sought to be invoked to justify the recoveries made by the respondent-Corporation. It is contended that, by not effecting the black-topping of the approach road to the godown, the appellant saved a substantial amount and thereby unjustly enriched itself. It is further submitted that the appellant, admittedly, received the full contractual rentals for the period in question, despite having failed to complete the black-topping work. On this basis, it is urged that the writ Court was justified in dismissing the writ petition and that the present appeal, therefore, deserves to be dismissed.

15. Having heard learned counsel for the parties and perused the record, we find that the primary issue which arises for consideration before us is whether the respondent-Corporation was justified in effecting recoveries from the appellant for failure to complete the black-topping work within the stipulated period, on the basis of the decisions of the High Level Committee. There is no dispute that the appellant had undertaken to complete the drainage and black-topping work within the stipulated period. It is also not disputed that the work remained incomplete despite extension of time. The appellant cannot, therefore, avoid its obligation merely because the Corporation had taken over the godown and started using it. However, such failure, by itself, would not authorise the respondents to impose financial liability without any contractual or legal basis. The action of the respondents is, therefore, required to be examined in the light of the terms of the Lease and Service Agreement. The decisions of the High Level Committee, even if intended to ensure uniformity in the matter of hiring charges payable to PEG investors, cannot automatically become part of an existing contract. Unless the

agreement permits such a change or the parties have agreed to it, an administrative decision cannot, by itself, create additional financial liabilities.

16. It is well settled that the jurisdiction of this Court under Article 226 of the Constitution of India is not excluded merely because the dispute arises out of a contract. State instrumentalities are required to act fairly and reasonably even in contractual matters. In **Noble Resources Ltd. v. State of Orissa,** ***(2006) 10 SCC 236, and*** **M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd.,** ***(2023) 2 SCC 703,*** the Hon'ble Supreme Court has recognised the scope of judicial review in contractual matters where the action complained of is arbitrary or unreasonable.

17. The above principles, however, do not imply that every dispute arising from a contractual relationship calls for interference under Article 226 of the Constitution. The Court is required to examine whether the impugned action is arbitrary, unreasonable or otherwise contrary to law. In the present case, the appellant had furnished an undertaking dated 24.02.2015 to complete the drainage work by March, 2015 and the black-topping work by September, 2015. On its request, further time was granted up to 26.02.2016. The appellant was, therefore, fully aware of its obligation. The takeover of the godown cannot be treated as a waiver of the said obligation.

18. We are unable to accept the contention that the respondent-Corporation, having continuously used the godown, had lost its right to insist upon completion of the black-topping work. Black-topping of the internal roads was an essential requirement under the Model Tender Form. The appellant was, therefore, bound to complete the work within the stipulated period. Clauses 31 and 53 of the Tender Notice and Clause 4 of the Lease and Service Agreement, relied upon by the appellant, have to be read along with the specific undertaking furnished by it.

The appellant cannot rely upon the general provisions relating to deficiencies to avoid its specific obligation to complete the black-topping work.

19. We may now consider the contention that the decision of the High Level Committee could not be applied retrospectively to the contracts which were already in operation. The High Level Committee, as is gatherable from its decision, examined the issue of non-completion of black-topping work by PEG investors and formulated a uniform policy to deal with such cases. The decision of the Committee was not specific to the case of the appellant. Indisputably, the contract between the appellant and the respondent-Corporation was governed and regulated by the Lease Agreement executed between the parties, and there is no clause in the said agreement providing for the High Level Committee of the FCI to take a unilateral decision having the effect of altering the terms and conditions of the Lease Agreement. In the absence of any such power reserved to the FCI or its High Level Committee to take such a decision, the parties to the Lease Agreement would be bound strictly by the terms and conditions laid down therein.

20. It is true that Clause 4 and Clause 5 of the Lease and Service Agreement dated 17th June, 2016, executed between the appellant and the FCI, did provide for termination/cancellation of the agreement on the occurrence of any breach of the terms and conditions by the appellant. Nothing stopped the respondent-Corporation from invoking Clause 4 or Clause 5 of the Lease and Service Agreement and terminating the Lease Agreement if it was of the opinion that, by not black-topping the road within the stipulated period, the appellant had breached an essential condition of the Lease Agreement/contract. Notwithstanding that the appellant could not complete the black-topping work within the stipulated period, the respondent-Corporation took over possession of the godown and put it to use without suffering a loss of even a penny. At least, it is not the case of the

respondent-Corporation that it suffered any financial loss due to the failure of the appellant to complete the black-topping work. It is in this background, the appellant was granted an extension for completing the black-topping work till 26th February 2016. The respondent-Corporation was well within its right to take note of the failure of the appellant to complete the black-topping work within the extended period when it drafted and executed the new Lease and Service Agreement with the appellant, though retrospectively from the date on which the earlier Lease Agreement with the son of the appellant had been executed. Obviously, the respondent-Corporation did not seriously insist upon completion of the black-topping work, for, the absence of black-topping of the road was not substantially affecting the utilisation of the godown taken on lease by the respondent-Corporation. It is also noteworthy that there is a clear stipulation in the Lease and Service Agreement dealing with such a contingency. Clause 4 and Clause 5 of the Lease and Service Agreement clearly provides that in case there is any deficiency or failure in completion of any allied work required for putting the godown to its optimum use, the respondent-Corporation is well within its right to complete the said work and charge the same against the rent amount payable to the appellant-lessor.

21. In the given facts and circumstances, the respondent-Corporation could have invoked the said clause and effected black-topping at its own cost and then recovered the amount from the rentals payable to the appellant. This was not resorted to by the respondent-Corporation for the simple reason that non-black-topping of the approach road to the godown was not acting as a hindrance in the optimum utilization of the godown and, perhaps, for this reason, sufficient latitude was given to the appellant to complete the black-topping work.

22. As regards the earlier recovery of Rs.1,58,002/- imposed vide Office Order dated 17.01.2018, the respondent-corporation has explained that the same was effected pursuant to audit objections raised by the Comptroller and Auditor General of India, whereas the subsequent recoveries were ordered in implementation of the decisions of the High Level Committee regarding regulation of hiring charges on Actual Utilization Basis and deduction equivalent to twice the Cost Saving Amount. Suffice it to say that the earlier recovery, too, was not in consonance with the terms and conditions of the Lease Agreement governing the rights and liabilities of the parties. The said recovery was also unilaterally worked out by the respondent-Corporation and imposed upon the appellant.

23. Be that as it may, the appellant did not contest the penalty and deposited the amount without any protest or demur, probably for the reason that the appellant knew that a default had been committed by him in completing the black-topping of the road within the stipulated period.

24. From a reading of order dated 17.01.2018, it is abundantly clear that this was a one-time penalty imposed for delayed black-topping of the road and, therefore, should have been treated to have put a quietus on the issue. The afterthought plea taken by the respondent-Corporation that the amount of Rs.1,58,002/- charged by way of penalty was only for a period of one year does not appeal to us. We do not find the afterthought explanation tendered by the respondent-Corporation at all plausible. We hasten to say that even this recovery could not have been made without associating the appellant in the process of calculation/determination of the penalty, more particularly when there is no specific clause in the Lease and Service Agreement providing for the imposition and mode of calculation of damages/penalty.

25. We appreciate the argument of Mr. Jhangir Ganai, learned Senior Counsel appearing for the respondent-Corporation, that the respondent-Corporation has not invoked any penalty clause contained in the Lease and Service Agreement but has called upon the appellant to pay the amount to the Corporation for depriving the latter of the use of the black-topped approach road to the godown and also to prevent unjust enrichment by the appellant.

26. Unjust enrichment is an equitable legal principle which prevents one person from retaining a benefit at the expense of another when, in the circumstances, it would be unjust or inequitable to retain that benefit without making restitution. Sections 68 to 72 of the Contract Act, 1872, deal with certain relations resembling those created by contract and provide for restitution in cases of unjust enrichment. Section 70 of the Contract Act is relevant for our purpose and is set out below:

> " 70. Obligation of person enjoying benefit of non-gratuitous act Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such another person enjoys the benefit thereof, the letter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

27. From a reading of Section 70 (supra), it clearly transpires that where a person lawfully does something for another person or delivers something to him, not intending to act gratuitously, and the other person enjoys the benefit thereof, the latter is bound to make compensation or restore the benefit/thing. For invoking the doctrine of unjust enrichment envisaged under Section 70 of the Act, the following three essential conditions must be satisfied: (i) the person must lawfully do something for another or deliver something to him; (ii) he must not intend to act gratuitously; and (iii) the other person must enjoy the benefit of the act or delivery.

28. Considering the facts and circumstances of the instant case in the light of the provisions of Section 70 reproduced above, it is abundantly clear that the respondent-Corporation has not lawfully done anything for or delivered anything to the appellant which was not intended to be done or delivered gratuitously.

29. It is true that the contractual rental qua the utilization of the godown belonging to the appellant was dependent upon the completion of all the works required for the optimum utilization of the godown, including the provision of a black-topped approach road. However, the respondent-Corporation took over possession of the godown and put it to optimum use, notwithstanding that the appellant was yet to effect black-topping of the approach road. As a matter of fact, after considering the difficulties pointed out by the appellant, the respondent-Corporation gave him time to complete the black-topping, subject, of course, to the execution of an undertaking. The extension of time was up to February 2016 and, notwithstanding that the appellant breached the undertaking and could not complete the black-topping work till the extended period, the respondent-Corporation consciously decided to ignore it and did not make any stipulation or take any corrective course while executing the fresh Lease and Service Agreement with the present appellant.

30. We have already highlighted hereinabove that the black-topping of the road was neither seriously insisted upon by the respondent-Corporation nor did it invoke Clause 4 of the Agreement and execute the black-topping work itself, because the absence of a black-topped road had not acted as any hindrance in the optimum utilization of the godown or caused any financial loss to the respondent-Corporation. Viewed thus, the doctrine of unjust enrichment invoked by the respondent-Corporation is not attracted to the facts and circumstances of the case, more particularly when, for the breach committed by the appellant, the respondent-

Corporation had recovered an amount of Rs.1,58,002/- by way of penalty. The fact that the option available to the respondent-Corporation to terminate the contract by invoking Clause 4 of the Agreement was not exercised goes a long way to show that the non-completion of the black-topping of the approach road by the appellant was never viewed seriously by the respondent-Corporation, nor did it have the effect of preventing the Corporation from making optimum utilization of the godown. The breach by the appellant in the matter of constructing the black-topped approach road did not cause any financial loss to the respondent-Corporation.

31. True it is that, by not executing the work of black-topping of the approach road, the appellant may have saved money for a year or so, but it cannot be lost sight of that the cost of material required for black-topping would also have increased with the passage of time. That apart, the Corporation, on the basis of some observations made by the CAG, recovered an amount of Rs.1,58,002/- by way of a penalty, which, too, was imposed unilaterally and had no sanction under the terms and conditions of the Lease Agreement.

32. At this juncture, we would like to refer to the provisions of Sections 73 to 75 of the Contract Act, which deal with the consequences of breach of contract. Sections 73 to 75 are reproduced hereunder:

> "73. **Compensation of loss or damage caused by breach of contract:-**
>
> When a contract has been broken, the party who suffers by such breach is entitled to receive, form the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss of damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract: When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation : In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by non-performance of the contract must be taken into account.

74. **Compensation of breach of contract where penalty stipulated for:**

When a contract has been broken, if a sum is named in the contract as the amount be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss or proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation : A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Explanation : When any person enters into any bail bond, recognisance or other instrument of the same nature or, under the provisions of any law, or under the orders of the Central Government or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum

75. Party rightfully rescinding contract, entitled to compensation A person who rightfully rescinds a contract is entitled to consideration for any damage which he has sustained through the no fulfillment of the contract".

33. From a plain reading of Section 73, it is abundantly clear that when a contract has been broken, the party who suffers from such breach is entitled to receive, from the party who has committed the breach, compensation for any loss or damage caused to him, though such compensation cannot be claimed for any remote and indirect loss or damage sustained by any reason of the breach.

34. Indisputably, the breach of contract committed by the appellant by not completing the black-topping work of the approach road within the stipulated period has not caused any loss or damage to the respondent-Corporation, and at least no such loss or damage has been pleaded before the writ Court or even before us.

35. Similarly, Section 74 provides that when a contract has been broken and a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled to such sum, whether or not actual damage or loss is proved. Admittedly, such is not the case at hand. We have already said, and reiterate, that the contract agreement does not contain any clause naming the sum to be paid by a party for any breach committed by such party of the contract or any of its terms and conditions.

36. Section 75, of course, is not applicable to the instant case, as, in the case at hand, the respondent-Corporation did not exercise its right to rescind the contract for non-fulfillment of the terms and conditions thereof by the appellant.

37. To sum up, suffice it to say that, in the absence of any specific clause in the terms and conditions of the Lease and Service Agreement executed between the appellant and the respondent-Corporation, the respondent-Corporation could not have unilaterally imposed a penalty, that too on the basis of calculations made at its own level. Neither the respondent-Corporation, nor the High Level Committee constituted by it had the mandate of altering, superseding or adding to the terms and conditions of the Lease Agreement, that too unilaterally and without the consent of the appellant. The decision taken by the High Level Committee of the respondent-Corporation could very well form the basis of a new Lease and Service Agreement executed in future governing the hiring of godowns by the

respondent-Corporation, but certainly the aforesaid decision cannot be made part of the Lease Agreement executed by the respondent-Corporation with the appellant. Otherwise also, having imposed the penalty of Rs.1,58,002/- for the same breach, the respondent-Corporation was estopped from coming up with a fresh penalty not traceable to any of the terms and conditions of the contract but to a general decision taken by the High Level Committee of the respondent-Corporation dealing with the situation. The decision of the High Level Committee to alter the lease was, thus, foreign to the contract and, therefore, totally inapplicable to the case of the appellant. The absence of a challenge to the decision of the High Level Committee, which, in any case, was general in nature and was not specific to the case at hand, would not render the writ petition filed by the appellant, seeking to avoid the unauthorised levy of penalty, liable to be thrown out.

38. In the premises, we hold that the writ Court erred in law in upholding the recoveries despite the fact that the Lease and Service Agreement executed between the parties did not authorize the respondent-Corporation to impose a monetary penalty or convert guaranteed hiring charges into actual utilization charges on account of delayed completion of the black-topping work.

39. We have no doubt in our mind that the writ Court failed to appreciate that the rights and liabilities of the parties were governed exclusively by the Lease and Service Agreement executed between them and that the respondent-Corporation or, for that matter, the High Level Committee constituted by it had no authority or competence to alter, enlarge or supplement the Lease Agreement by taking executive action or administrative decision. The writ Court also did not appreciate that, in the absence of any specific loss or damage pleaded and

established by the respondent-Corporation, the appellant could not have been subjected to a huge financial penalty, that too twice for the same breach.

40. Once it is not in dispute that the godown provided by the appellant was put to optimum use by the respondent-Corporation, notwithstanding that the approach road was not completed within the stipulated period, there was no reason or justification to impose the penalty on the basis of some decision taken by the High Level Committee of the respondent-Corporation, more particularly when a reasonable penalty had been imposed earlier and accepted by the appellant.

41. We have already examined the doctrine of unjust enrichment invoked by the respondent-Corporation. Needless to reiterate that, in the given facts and circumstances, the doctrine of unjust enrichment envisaged under Section 70 of the Contract Act, 1872, was not attracted. The rentals, as per the agreed terms and conditions of the Lease and Service Agreement, were paid by the respondent-Corporation in lieu of optimum utilization of the godown without suffering any financial loss and, therefore, cannot be said to constitute a delivery of any thing or money to the appellant gratuitously.

42. Viewed from any angle, we do not find the judgment of the writ Court impugned in the appeal sustainable in law. The appellant had made out a case for quashment of the recovery notices impugned in the writ petition and, therefore, the writ Court ought to have come to the appellant's rescue.

43. For all these reasons, we allow this appeal. The writ petition is allowed, the judgment impugned is set aside, and the impugned recovery notices are quashed. The rentals, if any, due to the appellant and which have remained unpaid shall be released by the respondent-Corporation without any further delay, preferably within a period of two months from today.

CM, if any, shall stand disposed of accordingly.

(MOHD YOUSUF WANI)
JUDGE

(SANJEEV KUMAR)
JUDGE

Srinagar
17.11.2026
Sanjeev

Whether the order is speaking: Yes
Whether the order is reportable: No