

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT JAMMU**

Case: WP(C) No. 1109/2023

Reserved on: 06.06.2025.

Pronounced on : 30.06.2025

M/S Durga Enterprises

....Petitioner/Appellant(s)

Through :- Mr. P.N.Raina Sr. Advocate with
Mr. J. Hamal Advocate.

V/s

Food Corporation of India and others

.....Respondent(s)

Through :- Mr. R.K.Gupta Sr. Advocate with
Mr. Ravi Abrol Advocate.

CORAM:

HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

1 In this petition, the petitioner, herein, is seeking the following reliefs:

(i) A Writ of Certiorari quashing order dated 09.06.2022 issued by respondent No.1, insofar as it pertains to the petitioner, by virtue of which the prayer of the petitioner against unlawful recoveries made by the respondents pursuant to Road Transport Contracts for FSD New Godown Jammu to FSD Mirbazar, PEG Ramban, and RH Udhampur to PEG Doda has been rejected by the respondents.

(ii) A Writ of Certiorari quashing order dated 16.10.2019 issued by respondent No.3, insofar as the same has been made applicable to the pre-existing contracts i.e prior to 16.10.2019, for FSD New Godown Jammu to FSD Mirbazar, PEG Ramban and RH Udhampur to PEG Doda, by virtue of which arbitrary,

illegal and unwanted recoveries have been made by the respondents from the running bills and security deposits of the petitioner.

(iii) A Writ of Mandamus directing the respondents to release the entire amount of Rs.76,92,578, with interest @ 20% per month, from the date of deduction until the entire amount is released in favour of the petitioner which has been illegally, irrationally and arbitrarily deducted by the respondents while settling the claims of the petitioner pursuant to contract for FSD New Godown Jammu to PEG Ramban dated 16.03.2017, Rail Head Udhampur to PEG Doda, dated 02.02.2018 and for FSD New Godown Jammu to FSD Mirbazar, dated 02.08.2018 executed between the petitioner and the respondents.

(iv) Any other appropriate writ, direction, or relief as this Court may deem just and fit.

Factual matrix:

2 The petitioner is one of the partners in a registered partnership firm engaged in transport and carriage contracts, operating under the name and style of M/s Durga Enterprise, having its registered office at 45/5, Transport Nagar, Narwal, Jammu. The petitioner, being a partner in the aforementioned firm and duly holding a power of attorney on behalf of the other partners, is competent and authorized to file the present writ petition.

3 It is submitted that respondent No.1, through its official website, issued e-tender notices dated 26.12.2016, 13.11.2017 and 22.06.2018, inviting online tenders under the “two-bid system” for the appointment of road transport contractors for the movement of food stocks from FSD New Godown, Jammu to various destinations as detailed in the respective tender notices. Pursuant to

the issuance of the said e-tender notices, the petitioner submitted its bid and was awarded contracts for transportation of stocks from FSD New Godown, Jammu to PEG Ramban, Rail Head Udhampur to PEG Doda, and FSD New Godown, Jammu to FSD Mir Bazar. Consequent to the acceptance of the petitioner's bids, the petitioner was duly appointed as Road Transport Contractor (RTC) for the aforementioned routes. It is submitted that while issuing the said e-tenders, respondent No.2 had specified certain parameters including distance in kilometers, period of contract, estimated contract value, Earnest Money Deposit (EMD), security deposit, etc., which formed the basis for evaluating bids. Taking these parameters into consideration, the petitioner submitted its bid, which was accepted, and the petitioner accordingly commenced transportation work as per the work orders issued by the respondents.

4 The petitioner executed the awarded works and submitted freight bills from time to time, which were duly verified and cleared by the respondents in accordance with the distances mentioned in the tender documents and appointment orders. It is submitted that till July 2019, the respondents complied with all terms and conditions of the contracts. However, for the first time in July 2019 after the completion of the contract related to the route from FSD New Godown, Jammu to PEG Ramban, respondents raised certain claims and adjusted alleged recoveries against the running bills of the petitioner relating to the FSD Mir Bazar contract. As per the petitioner firm, these deductions were illegal, unwarranted, and arbitrary. It has been submitted that the Model Tender Form (MTF) governing the contracts did not contain any clause permitting remeasurement of distances during the currency of the contract. Moreover, the respondents neither informed the petitioner regarding any remeasurement

exercise nor disclosed the methodology adopted for the same. Despite this, the respondents, in a wholly arbitrary and unjustified manner, proceeded to deduct substantial amounts from the petitioner's freight bills on the alleged ground of remeasurement of distances. It is submitted that, the respondents deducted an amount of ₹76,92,578 from the petitioner's freight bills and security deposits, without providing any notice, opportunity of hearing, or explanation to the petitioner. These deductions were allegedly based on the remeasurement of distances for the following routes:

- (i) FSD New Godown, Jammu to PEG Ramban,
- (ii) FSD New Godown, Jammu to FSD Mir Bazar, and
- (iii) Rail Head Udhampur to PEG Doda.

5 It is stated that such action on the part of the respondents is arbitrary, violative of the principles of natural justice, and *dehors* the terms and conditions of the contract, particularly in the absence of any provision permitting unilateral remeasurement during the subsistence of the contracts. The petitioner, vide representation dated 23.12.2019, addressed to Respondent No.3, objected to the remeasurement of distances and its application to running contracts on the ground that such action was arbitrary and beyond the scope of the Model Tender Form (MTF). There exists no clause under the MTF that provides for the remeasurement of distances during the subsistence of a running contract. This objection was also brought to the notice of Respondent No.2 through a collective representation dated 13.06.2020 submitted by various Road Transport Contractors (RTCs), including the petitioner herein. In response to the said representation, respondent No.2, through a communication dated 05.06.2020 addressed to respondent No.1, categorically stated that tenderers quote rates based on distances specified in the tender enquiry, and that reduced

variations in distance are not to be applied to running contracts. It was further stated that even enhanced distances are not taken into consideration during the subsistence of the contract, except in cases of infrastructural development where the route change significantly impacts the distance. Respondent No.2 further recommended that changes in distance should not be implemented in general cases, and that such changes should be restricted to instances involving major variations due to infrastructural developments such as new tunnels or alternate routes. Despite this, respondent No.3, without seeking approval from the competent authority, arbitrarily and *suo motu* applied revised distances to ongoing contracts, effectively altering the terms of the Notice Inviting Tender (NIT), which is an integral part of the MTF. Any change in the NIT amounts to a modification of the MTF, which respondent No.3 was not competent to effect unilaterally. Moreover, the respondents themselves admitted before the Comptroller and Auditor General (CAG), in response to a query regarding remeasurement of distances, that there was no clause in the contract (MTF) or policy of FCI permitting remeasurement of distances during the term of the contract, and that any modification must be supported by mutual agreement between the parties. Despite this admission, the respondents subsequently introduced a fresh clause in the later NITs providing for remeasurement of distances in the last weeks of March and September each year clearly demonstrating that such a clause was not part of earlier contracts like the one in question. Therefore, it is evident that in the absence of such a clause in the present case, the respondents could not have resorted to remeasurement of distances.

6 It is further submitted that, under Section 62 of the Indian Contract Act, novation of a contract requires mutual agreement between the parties. In the present case, the petitioner was neither informed nor consulted regarding any such remeasurement, rendering the unilateral imposition of revised distances illegal. Consequently, the recoveries made on this basis are beyond the scope of the contract and unsustainable in law. The distance mentioned in the e-tender notice is a vital factor, as the estimated bid for transportation is based on the specified distance. The rates quoted by an RTC account for the entire transportation cost, including subcontractor charges, which are fixed based on volume and distance. Any change in distance during the contract period disrupts this arrangement, causing undue hardship to the contractor. Aggrieved by the conduct of respondent No.3, the petitioner approached the Grievance Redressal Cell (GRC) vide letter dated 26.05.2022. Although the GRC's decision dated 09.06.2022 acknowledged that distance is a critical factor in quoting rates, yet it failed to address the petitioner's core grievance i.e., the legality of remeasuring distances during the currency of a contract. It is stated that the action of respondent No.3 in imposing recovery is illegal, arbitrary, and violative of the principles of natural justice. No prior notice or communication was made to the petitioner either before or after the remeasurement. The GRC's finding is legally untenable, especially in light of categorical admissions made by respondents No.1 and 2 through communications dated 03.09.2020 and 05.05.2020 respectively, wherein they confirmed that distance could not be remeasured during the subsistence of a contract. Since there is no clause in the MTF permitting remeasurement during the contract period, any such act is *ultra vires* the contract and cannot form the basis of recovery. Section 62 of the

Indian Contract Act mandates that any amendment or novation of contract terms requires consent from both parties which condition is clearly absent in this case.

7 In support of the petitioner firm's case, Mr. P.N. Raina, learned Senior Counsel appearing for the petitioner, relying upon the judgment of the Supreme Court in **Suresh Kumar Wadhwa vs. State of Madhya Pradesh and others, (2017) 16 SCC 757**, submits that a party to a contract has no right to unilaterally alter the terms and conditions of the contract. He further submits that additional terms or conditions can be added only if both parties agree to such alterations or additions. In this context, he has referred to paragraphs 26 and 27 of the said judgment, which are reproduced hereunder:

“26. Equally well settled principle of law relating to contract is that a party to the contract can insist for performance of only those terms/conditions, which are part of the contract. Likewise, a party to the contract has no right to unilaterally “alter” the terms and conditions of the contract and nor they have a right to “add” any additional terms/conditions in the contract unless both the parties agree to add/alter any such terms/conditions in the contract.

27. Similarly, it is also a settled law that if any party adds any additional terms/conditions in the contract without the consent of the other contracting party then such addition is not binding on the other party. Similarly, a party, who adds any such term/condition, has no right to insist on the other party to comply with such additional terms/conditions and nor such party has a right to cancel the contract on the ground that the other party has failed to comply such additional terms/conditions”.

8 Vide order dated 01.05.2023, this Court granted liberty to the petitioner to submit a representation seeking review of the GRC's decision dated 09.06.2022 and the respondents were directed to consider the same.

9 The respondents have filed their objections/counter affidavit to the present writ petition and submitted that the impugned order dated 16.10.2019 was issued by the Divisional Office, Jammu, conveying revised distances as per the directions from the Regional Office, Jammu, vide communication dated 15.03.2019. The contracts awarded under the prevailing scheme of Road Transport Contracts of FCI are on Rs./MT/KM basis. Therefore, it is essential that distances are periodically reassessed to safeguard the financial interests of the Corporation.

10 It is submitted that Clause XVIII (a)(v) of the Model Tender Form (MTF) provides that distances will be reckoned as fixed by the Chief Engineer, PWD, or an officer nominated by him, or by the General Manager, or verified by an officer acting on his behalf, and rounded off to the nearest kilometer, which shall be final and binding on the contractor and that FCI Zonal Office (North), vide letter dated 23.01.2017, referring to FCI Headquarters' instructions dated 21.07.2016, advised that the shortest motorable road between the dispatch and receipt points should be regularly assessed at the time of awarding contracts. The distance mentioned in the NIT was based on the previous assessment.

11 It is further submitted that as per order issued by the FCI, the measurement of distance is required to be conducted biannually (twice a year) during the last weeks of March and September with the revised distances becoming applicable from 1st April and 1st October, respectively. In special circumstances, such as the opening of new tunnels or roads, revised distances become applicable from the date of such developments. It is submitted that the

petitioner's representation was considered by the Grievance Redressal Committee (GRC), Zonal Office (North), in its meeting held on 09.06.2022. The GRC noted that earlier, flat-rate contracts were floated irrespective of distance; that post the 2011 revision of the MTF, contracts are awarded on per MT/KM basis; that since rates are quoted per MT/KM, the distance is a critical component in determining freight charges; that once remeasured, it is incumbent upon the Corporation to regulate payments accordingly; and if documentary evidence of structural changes is produced, the corresponding revised distance may be applied from the date of such changes.

12 It is submitted by the respondents that the price bid under the MTF format contains a column for rate per MT/KM but does not mention distance. The contracts are awarded and accepted on that basis alone. The revised distances were adopted to reflect route changes, including new roads and tunnels, and not implementing them would have caused financial loss to the Corporation. According to the respondents, the total recovery of Rs. 5,75,322/- in respect of the contract from FSD New Godown Jammu to PEG Ramban (for the period 16.03.2017 to 15.03.2019) was made. This included Rs. 4,78,177/- in compliance with a CAG audit para; and Rs. 97,145/- on account of revised distances, which was recovered from the bills of another contract (FSD NG Jammu to FSD Mirbazar) as the original contract had expired. It is submitted that the FCI regularly measures distances through its internal committees to ensure compliance with MTF provisions and to prevent undue enrichment of contractors due to outdated distances. The measurement is carried out without the need for contractor involvement as per the terms of the contract. The communication dated 05.06.2023 merely apprised higher authorities of the

variance in distances. It also clarified that distances in the NIT were indicative, used solely for calculating the value of the contract and EMD/Security Deposit. This was not a recommendation to alter the Regional Office's decisions. It is further submitted that the communication dated 03.09.2022 from Zonal Office (North) regarding insertion of a clause in the NIT for six-monthly measurement did not nullify the decision of the Regional Office, Jammu. The GRC remained the competent authority for deciding such matters and that the decision of the GRC dated 09.06.2022 clearly held that revised distances would be applicable from the date of re-measurement, unless a structural change is documented for a prior period. In such case, the change in distance would apply from the date of the change itself.

13 It has been submitted that the petitioner was informed to submit claims, if any, in accordance with the GRC decision vide letter dated 12.01.2023, but no claim was filed by the petitioner thereafter and that the decision of the GRC was implemented uniformly for all contractors to safeguard public funds. No mala fide or arbitrary action was taken. Communication dated 16.10.2019 conveyed the revised distances to all concerned contractors. Clause XX(f) of the MTF provides the procedure for filing grievances, which the petitioner firm followed by filing representations dated 26.05.2022 and 13.05.2023. The same were duly considered and rejected by passing speaking orders. The order dated 25.05.2023 disposing of the petitioner's second representation has not been challenged in the present writ petition, rendering the petition infructuous. The respondents have submitted that the reliance on the NIT distances is misconceived. These distances are not binding for payment calculation but are only indicative. The actual payment is

determined on the Rs./MT/KM rate and the shortest motorable road, as per the MTF and FCI guidelines.

14 It is submitted that the operations of different FCI regions are not comparable. Jammu & Kashmir is a consuming region with limited dispatch centers, whereas Punjab is a procuring region with multiple dispatch centers. Consequently, the operational logistics and tendering procedures necessarily vary from region to region and that the decision to revise the distances was implemented uniformly across all contractors operating during the relevant period. No individual contractor, including the petitioner, was singled out for differential treatment. The allegations of arbitrariness or discrimination are misconceived and baseless. According to the respondents, the writ petition is liable to be dismissed, as it challenges a policy decision taken in public interest and in accordance with the terms of the contract. Furthermore, the petitioner has failed to assail the final order dated 25.05.2023, passed by the GRC in response to the petitioner's representation, rendering the petition legally untenable.

15 Learned counsel for the respondents, in support of their case, has relied upon a decision dated 06.03.2018 rendered by this Court in **OWP No. 1370/2017, titled M/s S. Surinder Singh & Another v. FCI & Others** and connected matters, which is squarely applicable to the present case. In the said case, a similar issue regarding the re-measurement and revision of transportation distances has been considered. This Court, while referring to the decisions of the Supreme Court in **Kerala SEB v. Kurien E. Kalathil, (2000) 6 SCC 293**, and **Central Bank of India v. Devi Ispat Ltd., (2010) 11 SCC 186**, has held that the interpretation and implementation of contractual clauses

cannot be the subject matter of a writ petition. The Supreme Court emphasized that disputes concerning the interpretation of the terms and conditions of a contract must be adjudicated by a civil court or through arbitration, if such a mechanism is provided under the contract. Further, the writ Court also relied upon the decision in ***Rajasthan State Industrial Development and Investment Corporation v. Diamond and Gem Development Corporation Ltd.***, (2013) 5 SCC 427, reiterating that contractual disputes fall outside the scope of writ jurisdiction. The Court observed that the impact of distance reduction could be better examined by an expert committee. It has been reported that the decision rendered in the aforesaid case has not been challenged before any forum and has, therefore, attained finality.

16 In ***Surinder Singh's case*** (*supra*), while dismissing the writ petition, this Court noted that the petitioners had the remedy of approaching the Grievance Redressal Committee (GRC). Paragraphs 17 and 18 are relevant to the context and are reproduced below:

“17) In view of the aforesaid order dated 04.08.2017, the meeting of the Grievance Redressal Committee was held on 13.11.2017 by which the claim of the petitioner was rejected by the respondents. However, the fact remains that the aforesaid order has been passed by the Grievance Redressal Committee without affording opportunity of hearing to the petitioners. The petitioners had a remedy to approach the Grievance Redressal Committee under Clause XX of the contract. However, instead of resorting to the aforesaid remedy, the petitioners have rushed to this Court. Therefore, it is not necessary to deal with other contentions made by the parties.”

18) In view of the preceding analysis, no interference is called for with the decision of the respondents. However, it would be open to the petitioners to approach the Grievance Redressal Committee, if they so advised in terms of Clause XX of the agreement. Needless to say that in case the petitioners approach the Grievance Redressal Committee, the aforesaid Committee shall decide the dispute by a speaking order within a period of three weeks from today”.

17 Pursuant to the order dated 22.05.2025, the respondents have filed an affidavit stating that the petitioner firm participated in the tendering process initiated through e-NIT dated 26.12.2016 for transportation of food grains from FSD New Godown, Jammu to PEG Ramban. The petitioner's bid was accepted vide order dated 17.03.2017, and the contract period was from 16.03.2017 to 15.03.2019. Initially, the distance from FSD New Godown, Jammu to PEG Ramban was shown as 170 km. However, this distance was revised to 139 km vide order dated 29.05.2017, which was accepted by the petitioner firm, and bills were raised accordingly. Subsequently, as per the Corporation's circulars, guidelines, and instructions, the distance to PEG Ramban was remeasured by a committee on 12.09.2018, in pursuance of the direction dated 10.09.2018. The revised distance was found to be 137 km due to road realignment, construction of flyovers, and new culverts caused by the ongoing construction of the four-lane National Highway. Thereafter, payment was made to the petitioner at the revised distance of 137 km. However, the petitioner had continued raising bills based on the earlier distance of 139 km. As a result, the Corporation recovered a total amount of ₹5,75,322 in two instalments, Rs.4,78,177 based on a CAG report and Rs.97,145 for the period from 12.09.2018 to 15.03.2019. As per the decision of the Grievance Redressal Committee (GRC), the revised distance

was to be applied from the date of remeasurement, not from the beginning of the contract. Therefore, the petitioner is entitled to a refund of ₹4,78,177 for transportation from FSD New Godown, Jammu to PEG Ramban. It is further submitted that the petitioner also participated in another e-NIT for transportation of food grains from FSD New Godown, Jammu to FSD Mir Bazar. Upon being declared successful, the petitioner was appointed as the regular RTC vide order dated 14.08.2018 for the contract period from 14.08.2018 to 13.08.2020. Initially, the distance was shown as 220 km. During the contract, the Corporation remeasured the distance as per applicable circulars, guidelines, and the MTF, and found it reduced to 211 km due to similar reasons i.e realignment, flyovers, and culverts related to highway expansion. The Corporation applied the revised distance of 211 km with effect from 01.04.2019 and continued till 16.06.2020. Consequently, it recovered ₹55,05,197 from the petitioner. However, as per the GRC's directions, the revised distance should have been implemented from the date of actual remeasurement, i.e., 19.05.2019. Therefore, the petitioner is entitled to a refund of ₹2,87,477 for the period from 01.04.2019 to 18.05.2019. Further, the petitioner also participated in the tender for transportation of food grains from Railhead Udampur to PEG Doda and was appointed as the RTC vide order dated 26.02.2018 for the contract period from 02.02.2018 to 01.02.2020. The original distance was recorded as 105 km. Upon remeasurement on 26.04.2019, the distance was found to be reduced to 102 km due to road changes. However, recoveries were made with effect from 01.04.2019, which is prior to the remeasurement date. It is submitted that in line with the GRC decision, the revised distance should be applicable from 26.04.2019. Hence, the petitioner is

entitled to a refund of Rs.27,802 for the period from 01.04.2019 to 25.04.2019. The total recovery affected by the Corporation from the petitioner's freight bills and security deposits is Rs.65,10,874. As per the order dated 16.10.2019, the Corporation recovered Rs.59,35,552 for revised distances concerning FSD Mir Bazar and PEG Doda with effect from 01.04.2019. However, as per the GRC's decision, the revised distances must be applied from the date of re-measurement and not from 01.04.2019. Accordingly, the petitioner is entitled to a total refund of Rs7,93,456. It is further submitted that the amount of ₹5,75,322 for PEG Ramban was recovered prior to the issuance of the order dated 16.10.2019, since the contract for Ramban had already expired on 15.03.2019.

18 Heard learned counsel for the parties and perused the material on record including the record produced by the respondents.

19 From the pleadings of the parties and upon perusal of the material on record, the following issues arise for consideration:

Issue No. (i): Whether the remeasurement of distances during the currency of the contracts was contrary to the terms of the contract (MTF)?

20 The petitioner's case rests heavily on the contention that there is no express clause in the Model Tender Form (MTF) permitting unilateral remeasurement of distances during the subsistence of a contract. However, the respondents have relied upon Clause XVIII(a)(v) of the MTF, which stipulates that the distance shall be reckoned as fixed by the Chief Engineer, PWD, or an officer nominated by him, or by the General Manager or an officer acting on his behalf, and that such measurement, once verified and rounded off to the nearest

kilometer, shall be final and binding on the contractor. Furthermore, the Grievance Redressal Committee (GRC), vide its decisions dated 09.06.2022 and 25.05.2023, has upheld the authority of the Food Corporation of India (FCI) to periodically reassess distances in view of infrastructural developments and relevant policy circulars. Therefore, when Clause XVII(a)(v), Note (2) of the tender document, and the applicable guidelines are read in conjunction, the remeasurement of distances is not outside the scope of the contract. Moreover, as per the order dated 16.10.2019 issued by the Divisional Office, Jammu, revised distances were conveyed pursuant to the Regional Office's directions dated 15.03.2019. For clarity, it is appropriate to reproduce the communication dated 15.03.2019 addressed by the General Manager, FCI to the Execution Director (North) FCI Zonal Office, Noida, which provided directions regarding the remesaurement of distances:

“The Executive Director (North)
Food Corporation of India
Zonal Office(North), Noida.

Subject: - Regular assessment of road distances for the purpose of payment of road freights to transport contractors- reg.

Ref: - 1. FCI ZO(N), letter no.S&C/15(6)/GRC/Cont/NZ/2017/27dated 17.10.2017.

2. FCI ZO(N), letter no. S&C/32(19)/Misc./Cont/NZ/14 dated 23.01.2017.

Madam,

Kindly refer to FCI ZO(N) communications cited under reference above in references to FCI Hqrs letter dated 21.07.2016 regarding enhancement/reduction in distances of road transport contracts where it has been mentioned that **“shortest motorable road between dispatch and receipt point is required to be assessed regularly while awarding the contracts”**. Further, vide letter dated 17.10.2017, it has been advised that concern of reduction/enhancement in distance of road transport contract may be finalized at RO level. However, no specific time period or interval has been specified for measuring the distances.

Due to on going process of development and re-alignment of highways, regular changes are observed in distances on fresh measurements due to which

need has been felt to fix some regular interval during contract period for measurement of distances in order to reduce the complexities and disputes.

Accordingly, the matter has been examined in this office in consultation with finance division and below guidelines have been issued to all D.Os in J&K region for strict compliance. The same note shall also be appended in all tender notices now onwards for clarity to bidders: -

“Under the provisions of clause XVIII.a.v. of the MTF, District Office concerned shall get the distances measured by committee of officers in the last weeks of March and September every year and the same shall be applicable for freight payments from the 1st April and 1st October resp. In case of special circumstances like opening of new tunnels of roads, the new distances shall be measured immediately and applicable from the date of opening of such roads/tunnels.”

Further, it is also suggested that similar procedure should be followed in other regions as well and Z.O/HQ may consider issuing necessary direction to this effect.

Dy. General Manager
For General Manager(J&K)

21 Under the current scheme of Road Transport Contracts awarded by the FCI, where contracts are executed and payments made on per Rs./MT/KM basis, periodic reassessment of distances is imperative to safeguard the financial interests of the Corporation and to ensure equitable payment corresponding to actual distances. On a plain reading of Clause XVIII(a)(v) of the MTF, the consistent decisions of the GRC, and the above authoritative circular, it is clear that the FCI is legally entitled and contractually authorized to remeasure and revise road distances during the contract period.

22 The original distance from FSD New Godown, Jammu to PEG Ramban was 170 kilometers. This was later revised to 139 kilometers due to road realignment. The petitioner accepted this revised distance without protest and submitted bills accordingly. This indicates the petitioner's acceptance of the revised measurement and reduced freight charges. Subsequently, the distance was again revised from 139 kilometers to 137 kilometers. Although the

petitioner objected to this second revision, the earlier conduct of accepting a similar revision without protest amounts to acceptance of FCI's authority under the contract to remeasure distances. The legal position is clear that a party cannot accept benefits under a contract and later challenge its terms. In **Rajasthan State Industrial Development and Investment Corporation v. Diamond & Gem Development Corporation Ltd.**, (2013) 5 SCC 470, and *in* **State of Maharashtra v. Digambar**, (1995) 4 SCC 683, the Supreme Court has held that once a party accepts the contractual terms and derives benefit, it is estopped from later challenging them. In **Union of India v. N.K. (P) Ltd.**, (1972) 1 SCC 858, the Supreme Court has held that the conduct of parties is significant in interpreting commercial contracts.

23 Accordingly, the petitioner's earlier conduct of accepting the revised distance and corresponding freight charges constitutes a waiver and legal estoppel. Therefore, the present challenge to the recovery orders, based on a similar revision in distance, is not sustainable. Since the contracts were awarded on a per MT/KM basis, the respondent-FCI was empowered to remeasure the distances. It was incumbent upon the respondent-FCI to do so in order to safeguard the public exchequer. Accordingly, the petitioner's challenge to the remeasurement of distances during the currency of the contracts is devoid of merit and is hereby rejected.

24 Regarding the judgment cited by Mr. P.N. Raina in **Suresh Kumar Wadhwa's** case (*supra*), there is no dispute about the legal proposition that a party to the contract can insist on performance only of those terms and conditions which are part of the contract. Likewise, a party has no right to

unilaterally alter or add terms or conditions without mutual agreement. However, in the present case, there is no alteration of the terms and conditions of the contract. Clause XVIII (a)(v) specifically states that the distance will be reckoned as fixed by the Chief Engineer, PWD, or an officer nominated by him, or by the General Manager, or verified by an officer acting on his behalf, and rounded off to the nearest kilometer, which shall be final and binding on the contractor. Moreover, the distance from FSD New Godown, Jammu to PEG Ramban was initially 170 kilometers and was subsequently revised to 139 kilometers due to road realignment. The petitioner accepted this revised distance without protest and submitted bills accordingly. This conduct clearly indicates the petitioner's acceptance of the revised measurement and the resultant reduced freight charges. Therefore, the legal proposition laid down in **Suresh Kumar Wadhwa's** case (supra) is not applicable to the present case.

Issue No. (ii): Whether the recoveries made retrospectively, i.e., for periods before the actual remeasurement, were legal and justified ?

25 The respondents, in their affidavit and counter submissions, have admitted that recoveries in certain cases were made from 01.04.2019, even though the remeasurement was carried out at later dates. The GRC, in both its decisions, has clearly held that revised distances should be applied only from the date of actual remeasurement, unless there is concrete evidence of earlier structural changes. Accordingly, the respondents have conceded that the following amounts were erroneously recovered prior to the remeasurement dates:

Route	Date of remeasurement	Period of contract	Period of excess recovery	Amount to be refunded
FSD Jammu to PEG Ramban	12.09.2018	16.03.2017 to 15.03.2019	12.09.2018 to 15.03.2019	Rs.4,78,177
FSD Jammu to FSD Mir Bazar	19.05.2019	14.08.2018 to 13.08.2020	01.04.2019 to 18.05.2019	Rs.2,87,477
Railhead Udhampur to PEG Doda	26.04.2019	02.02.2018 to 01.02.2020	01.04.2019 to 25.04.2019	Rs.27.802
Total refund				Rs.7,93,456

26 Since the recoveries made prior to the actual remeasurement dates are contrary to the GRC’s findings and policy guidelines, as such the petitioner is entitled to refund of Rs.7,93,456.

27 In view of the above findings, there is no perversity in the impugned orders. However, since it is established and admitted by the respondent-FCI that an excess amount of Rs. 7,93,456/- was recovered prior to the respective remeasurement dates, this Court deems it appropriate to dispose of the writ petition by directing the respondent-FCI to refund to the petitioner a sum of Rs. 7,93,456/- (Rupees Seven Lakh Ninety Three Thousand Four Hundred Fifty Six only), being the excess amount recovered. **Ordered accordingly.** The said amount shall be paid to the petitioner within a period of six (6) weeks from the date of this judgment. In case of failure, the amount shall carry interest at the rate of 6% per annum from the date of this judgment until actual payment.

Record produced by the respondents in terms of order dated 22.05.2025 be returned back.

(MOKSHA KHAJURIA KAZMI)
JUDGE

Jammu
30.06.2025.
Sanjeev

Whether order is reportable: Yes/No