

HIGH COURT OF TRIPURA
AGARTALA

WP(C) 686 OF 2023

Smt. Namita Paul,

Wife of Sri Swapan Kumar Paul, resident of B.K.Road,
Banamalipur, Agartala, P.S. East Agartala,
District-West Tripura.

.....**Petitioner.**

Vrs.

- 1. Food Corporation of India,** represented by its
Managing Director, having its Head Office at 16-20 Barkhamba Lane,
New Delhi-110001.
- 2. The General Manager,** Food Corporation of India NEF Region,
Mawlai, Mawroh, Shillong-793008.
- 3. Assistant General Manager (Cont.),**
Food Corporation of India (RO:NEF), Mawlai, Mawroh,
Shillong-793008.
- 4. The Area Manager/Divisional Manager,**
Food Corporation of India, Agartala Branch, Agartala,
West Tripura-799001.

..... **Respondents.**

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Shillong-793008.
- 4. The Area Manager/Divisional Manager,**
Food Corporation of India, District office Aizawl,
Tuikhuahtlang Road, Aizawl, Mizoram-796001.

5. The Area Manager/Divisional Manager,
Food Corporation of India, Agartala Branch, Agartala,
West Tripura-799001.

6. Manager (S/M), Food Corporation of India, NEF Region,
Changsari, Guwahati, Assam-781101.

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..... Respondents.

WP(C) 689 OF 2023

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5. The Area Manager/Divisional Manager,
Food Corporation of India, Agartala Branch, Agartala,
West Tripura-799001.

..... Respondents.

WP(C) 691 OF 2023

Smt. Namita Paul,
Wife of Sri Swapan Kumar Paul, resident of B.K.Road,
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District-West Tripura.

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2. The General Manager, Food Corporation of India NEF Region,
Mawlai, Mawroh, Shillong-793008.

3. Assistant General Manager (Cont.),
Food Corporation of India (RO:NEF), Mawlai, Mawroh,
Shillong-793008.

4. The Area Manager/Divisional Manager,
Food Corporation of India, Agartala Branch, Agartala,
West Tripura-799001.

..... Respondents.

WP(C) 692 OF 2023

Smt. Namita Paul,
Wife of Sri Swapan Kumar Paul, resident of B.K.Road,
Banamalipur, Agartala, P.S. East Agartala,
District-West Tripura.

.....Petitioner.

Vrs.

1. Food Corporation of India, represented by its
Managing Director, having its Head Office at 16-20 Barkhamba Lane,
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Shillong-793008.
4. **The Area Manager/Divisional Manager**,
Food Corporation of India, District office Aizawl,
Tuikhuahtlang Road, Aizawl, Mizoram-796001.
5. **The Area Manager/Divisional Manager**,
Food Corporation of India, Agartala Branch, Agartala,
West Tripura-799001.
6. **Manager (S/M)**, Food Corporation of India, NEF Region,
Changsari, Guwahati, Assam-781101.

..... Respondents.

WP(C) 693 OF 2023

Smt. Namita Paul,
Wife of Sri Swapan Kumar Paul, resident of B.K.Road,
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District-West Tripura.

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4. **The Area Manager/Divisional Manager**,
Food Corporation of India, Agartala Branch, Agartala,
West Tripura-799001.

..... Respondents.

Present:

For the petitioner (s) : Mr. Raju Datta, Advocate.

For the respondent (s) : Mr. Ratan Datta, Advocate.

Date of hearing : **14.05.2024**

Date of delivery of
Judgment & Order : **31.05.2024**

Whether fit for
reporting : **Yes**

HON'BLE MR.JUSTICE ARINDAM LODH

Judgment & Order

Since common questions of law and facts are involved, all the writ petitions are taken up together for disposal by this common judgment on the consent of learned counsels appearing for the parties.

2. The facts, in a nut shell, as enumerated in WP(C) No. 686 of 2023, being taken as lead case, are set out separately here-in-below for convenience:

WP(C) No.686 of 2023:

The petitioner being a Government Contractor and Supplier for the last 20 years has been executing various transportation contracts successfully for carrying food grains/allied materials within and outside the State of Tripura under the Food Corporation of India, the respondents herein. In response to a Notice Inviting Tender, issued by the respondents-FCI she was awarded transport contract for two years for loading/unloading & handling contract at FSD Dharmanagar, Tripura on the basis of agreement executed by the petitioner under appointment letter No. CONT.9/NEFR/HANDLING-DMR/2006, dated 31.08.2006 issued by the respondent no.2. It is averred that the petitioner had successfully completed

the contract with full satisfaction of the respondents and on satisfaction, the respondents-FCI had issued a 'No-Demand Certificate' dated 24.02.2009 in favour of the petitioner. The petitioner, on receipt of the said 'No-Demand Certificate' by a communication dated 25.02.2009 demanded the respondent no.4 for releasing Rs.1,10,000/- being the security deposit of the aforesaid contract dated 31.08.2006. But, the respondents did not refund the said security deposit to the petitioner till date rather, vide letter No. RO NEF-21/13/2023-Contract-RO NEF/21806 dated 05.09.2023 issued by the respondent no.3 the claim of the petitioner for refund of Security Deposit amounting to Rs.1,10,000/- was illegally set off on the plea that they suffered losses due to the fault of the petitioner in connection with other contracts i.e. Contract No.CONT.9/NEFT/TC/CBZ-CDR/09 dated 29.04.2009 and Contract No. CONT.9/NEFR/TC/CBZ-ADNR/09 dated 12.11.2009. It is contended by the petitioner that the alleged Contract dated 29.04.2009 has already been decided by this High Court in a proceeding wherein it has been held that the respondents did not suffer any loss due to fault of the petitioner and in regard to the Contract dated 12.11.2009 there is an appeal filed by the respondents before this High Court which is pending.

3. Being aggrieved by non-refund of security deposit after repeated persuasions, the petitioner filed a writ petition being WP(C) No.247 of 2022 before this Court to refund the said security deposit of Rs. 1,10,000/- along with interest at the rate of 12% per annum w.e.f. 25.02.2009. During the pendency of the writ petition the respondents-FCI vide communication dated 22.07.2022 informed the petitioner that the security deposit amounting to Rs.1,10,000/- was set off under Clause XII(e) of the contract agreement for the loss suffered by the respondents-FCI. Learned Co-ordinate Bench of this

Court vide judgment and order dated 02.05.2023 disposed the said writ petition directing the petitioner to represent the matter before the respondents along with all relevant documents in support of her claim. It is further contended by the petitioner that on receipt of the copy of the said judgment and order, she submitted a detailed representation for consideration of her claim, but, she did not get any redress from the side of the respondents-FCI.

Hence, the petitioner by filing the instant writ petition has prayed for following reliefs:

- (i) *As to why a Writ in the nature of Certiorari quashing the letter vide No.RO NEF-21/13/2023-Contract-RO NEF/21806 dated 05.09.2023 issued by the respondent no.3 whereby the claim of the petitioner for refund of Security Deposit amounting to Rs.1,10,000/- was not considered and the amount of security deposit was illegally set off by the respondents.*
- (ii) *As to why a Writ in the nature of Mandamus should not be issued directing the Respondents to refund Security Deposit amounting to Rs.1,10,000/- along with interest at the rate of 12% per annum w.e.f. 25.02.2009 till the date of payment in respect of loading/unloading & handling contract at FSD Dharmanagar, Tripura on the basis of agreement executed by the Petitioner under appointment letter No.CONT.9/NEFR/HANDLING-DMR/2006 dated 31.08.2006 issued by the Respondent No.2 (Annexure-1).*

4. On similar background of facts, however, on different transportation contract works, the petitioner has filed the connected writ petitions referred to in the cause title here-in-above claiming refund of Security Deposits with interest and the reliefs claimed for against different writ petitions are given below in a tabular form.

Case No.	Reliefs sought for
WP(C) No. 687 of 2023	(i) <i>As to why a Writ in the nature of Certiorari should not be issued quashing the Order vide No.RO NEF-21/13/2023-Contract-RO NEF/21809 dated 05.09.2023 issued by the respondent no.3 whereby the claim of the petitioner for refund of Security Deposit amounting to Rs.2,85,000/- was not considered and the amount of security deposit was illegally set off by the respondents.</i> (ii) <i>As to why a Writ in the nature of Mandamus should not be</i>

	issued directing the Respondents to refund Security Deposit amounting to Rs.2,85,000/- along with interest at the rate of 12% per annum w.e.f. 08.07.2013 till the date of payment in respect of loading/unloading & handling contract at FSD Nandannagar, Agartala on the basis of agreement executed by the Petitioner under appointment letter No.CONT.9/NEFR/HANDLING-NGR/2009 dated 22.03.2010 issued by the Respondent No.2.
WP(C) No. 688 of 2023	(i) As to why a Writ in the nature of Certiorari quashing the Letter vide No.RO NEF-21/13/2023-Contract-RO NEF/21804 dated 05.09.2023 issued by the respondent no.3 whereby the claim of the petitioner for refund of Security Deposit amounting to Rs.2,50,000/- was not considered and the amount of security deposit was illegally set off by the respondents. (ii) As to why a Writ in the nature of Mandamus should not be issued directing the Respondents to refund Security Deposit amounting to Rs.2,50,000/- along with interest at the rate of 12% per annum w.e.f. 25.02.2009 till the date of payment transportation of food grains/sugar/allied materials from Railway siding Changasari/CWC Amingaon/RH.FSD Guwahati to FSD Dharmanagar on the basis of agreement executed by the Petitioner under appointment letter No.CONT.7/NEFR/TC/CHNG-DMR/08-Adhoc dated 18.06.2008 (Annexure-I).
WP(C) 689 of 2023	(i) As to why a Writ in the nature of Certiorari should not be issued quashing the Order vide No.RO NEF-21/13/2023-Contract-RO NEF/21808 dated 05.09.2023 issued by the respondent no.3 whereby the claim of the petitioner for refund of Security Deposit amounting to Rs.2,50,000/- was not considered and the amount of security deposit was arbitrarily and illegally set off by the respondents. (ii) As to why a Writ in the nature of Mandamus should not be issued directing the Respondents to refund Security Deposit amounting to Rs.2,50,000/- along with interest at the rate of 12% per annum w.e.f. 10.07.2013 till the date of payment in respect of transportation of food grains/sugar/allied material from Railway siding Changasari/CWC Godown, Amingaon/RH.FSD Guwahati to Godown Complex Agartala on the basis of agreement executed by the Petitioner under appointment letter No.F.1(14)/DO-SH/HTC/CORRES/2010 (Agartala) dated 31.08.2010.
WP(C) 691 of 2023	(i) As to why a Writ in the nature of Certiorari quashing the letter Vide No.RO NEF-21/13/2023-Contract-RO NEF/21803 dated 05.09.2023 issued by the respondent no.3 whereby the claim of the petitioner for refund of Security Deposit amounting to Rs.3,03,080/- was not considered and the amount of security deposit was arbitrarily and illegally set off by the respondents. (ii) As to why a Writ in the nature of Mandamus should not

	<i>be issued directing the Respondents to refund Security Deposit amounting to Rs.3,03,080/- along with interest at the rate of 12% per annum w.e.f. 23.03.2011 till the date of payment in respect of loading/unloading & handling contract at FSD Nandannagar, Agartala on the basis of agreement executed by the Petitioner under appointment letter No.CONT.9/NEFR/HANDLING-NGR/07 dated 14.03.2008 issued by the Respondent No.2 (Annexure-1).</i>
WP(C) 692 of 2023	<i>(i) As to why a Writ in the nature of Certiorari should not be issued quashing the Order vide No.RO NEF-21/13/2023-Contract-RO NEF/21807 dated 05.09.2023 issued by the respondent no.3 whereby the claim of the petitioner for refund of Security Deposit amounting to Rs.24,95,132/- was not considered and the amount of security deposit was arbitrarily and illegally set off by the respondents.</i> <i>(ii) As to why a Writ in the nature of Mandamus should not be issued directing the Respondents to refund Security Deposit amounting to Rs.24,95,132/- along with interest at the rate of 12% per annum w.e.f. 08.07.2013 till the date of payment in respect of transportation of food grains/sugar/allied material from Railway siding Changasari/CWC Godown, Amingaon/RH.FSD Guwahati to FSD Bualpui on the basis of agreement executed by the Petitioner under appointment letter No.CONT.7/NEFR/TC/CHNG-BPI/2008/4429 dated 10.07.2008 issued by the Respondent no.2.</i>
WP(C) 693 of 2023	<i>(i)As to why a Writ in the nature of Certiorari quashing the letter vide No.RO NEF-21/13/2023-Contract-RO NEF/21804 dated 05.09.2023 issued by the respondent no.3 whereby the claim of the petitioner for refund of Security Deposit amounting to Rs.2,50,000/- was not considered and the amount of security deposit was arbitrarily and illegally set off by the respondents.</i> <i>(ii) As to why a Writ in the nature of Mandamus should not be issued directing the Respondents to refund Security Deposit amounting to Rs.2,50,000/- along with interest at the rate of 12% per annum w.e.f. 25.02.2009 till the date of payment transportation of food grains/sugar/allied materials from Railway siding Changasari/CWC Amingaon/RH.FSD Guwahati to FSD Dharmanagar on the basis of agreement executed by the Petitioner under appointment letter No.CONT.7/NEFR/TC/CHNG-DMR/08-Adhoc dated 18.06.2008 (Annexure-1).</i>

5. Heard Mr. Raju Datta, learned counsel appearing for the petitioner and Mr. Ratan Datta, learned counsel appearing for the respondents- FCI.

6. Mr. Datta, learned counsel appearing for the petitioner in all the writ petitions, at the very outset, has submitted that the petitioner had successfully completed the contract works within the stipulated period of the respective agreements mentioned in each of the writ petitions. The respondents had issued 'No Demand Certificates' in respect of all the work contracts executed by the petitioner and, therefore, the respondents cannot withhold the respective security deposits as claimed by the petitioner in the instant writ petitions after full satisfaction of their work contracts. Mr. Datta, learned counsel agitated that there is no scope of demanding demurrage charges from the petitioner without any fault of the petitioner. The petitioner never violated any terms and conditions of the agreements made with the respondents-FCI and no public distribution was disrupted. Thus, Mr. Datta, learned counsel for the petitioner has urged before this court to refund the respective security deposits as claimed for in each of the writ petitions to the petitioner as per clauses in the contract whereby the petitioner is not liable to pay any demurrage charges.

7. On the other hand, Mr. Ratan Datta, learned counsel appearing for the respondents-FCI has submitted that the respondents-FCI had suffered huge loss because of the petitioner in execution of various transportation contracts in terms of demurrage charges. Mr. Datta, learned counsel appearing for the respondents-FCI further contended that the Corporation has a right to recovery the losses sustained by them and the security deposit of the contractor is refundable only if the contractor successfully executes the work. It is the further contention of Mr. Datta, learned counsel for the respondents-FCI that since the Clauses No. XI(b), XII(b) and XII(e) of the said Tender Agreement had been accepted and agreed to abide by the petitioner, the

respondents are not liable to refund the respective security deposits to the petitioner.

8. According to the respondents, quashing of letter dated 05.09.2023 issued by the respondents-Corporation is not tenable in law and facts and the security deposits as claimed for in each of the writ petitions were rightly set off/appropriated by the respondents-Corporation as per Tender Agreement Clause No. XI(b), XII(b) and XII(e) which have been duly agreed and accepted by the petitioner.

9. From the written arguments submitted by Mr. Raju Datta, learned counsel appearing for the petitioner in the instant writ petitions, it is revealed that the subject matter of the cases i.e. WP(C) No.686 of 2023, WP(C) No.687 of 2023 and WP(C) No.691 of 2023 are related with handling contract i.e. supply of labourers for loading and unloading of food grains and on the other hand, subject matter of the cases i.e. WP(C) No.688 of 2023, WP(C) No.689 of 2023, WP(C) No.692 of 2023 and WP(C) No. 693 of 2023 are all related with transportation contract for carrying food grains for which the respective security deposits as claimed in the instant writ petitions had been kept with the respondents-FCI.

10. It is revealed from the records that all the works awarded to the petitioner had been successfully completed. No sorts of complaint/objection are found against the petitioner as regards the proper execution of the awarded works. Therefore, on successful completion of the execution of the awarded work, the respondents-FCI had issued 'No-Demand Certificate' (*Annexure-2* to the writ petitions) to the petitioner and accordingly, the petitioner had claimed the respective security deposits which were kept with the respondents-FCI for the alleged contract agreements as mentioned in the

instant writ petitions. But the respondents-Corporation in their pleadings contended that they had suffered huge losses i.e. in crores in terms of demurrage, risk and cost because of negligence and unworkman like performance of the petitioner in executing transport contracts awarded by the respondents-Corporation in regard to (i) Appointment Letter No.Cont.9/NEFR/TC/CBZ-AND/09 dated 12.11.2009 Ex-Railway siding/FSD Churaibari to FSD Arundhutinagar, Agartala with losses of Rs.1,89,86,602/- and (ii) Appointment Letter No. No.Cont.9/NEFR/TC/CBZ-CDR/2009 dated 29.04.2009 Ex-Railhead/FSD Churaibari to FSD Chandrapur with losses of Rs.1,23,11,613/-.

11. It is further contended by Mr. Datta, learned counsel appearing for the petitioner that in connection with Contract dated 12.11.2009, the respondents had filed Commercial Suit No.4 of 2016 for alleged recovery of losses suffered by FCI, but learned Commercial Judge dismissed the suit by an Order dated 06.07.2022 which was subsequently affirmed vide judgment and order dated 19.10.2023 passed by the Division Bench of this Court in RFA 25 of 2022 and RFA 26 of 2022. Mr. Datta, learned counsel for the petitioner has also reiterated that the Hon'ble Apex Court has also affirmed the said judgment dated 19.10.2023 and according to him, the plea taken by FCI is not sustainable in the eye of law.

12. Having considered the submissions of Mr. Datta, learned counsel appearing for the petitioner that the petitioner had successfully completed all the alleged contract works as mentioned in each of the writ petitions with utmost satisfaction of the respondents and the respondents-Corporation issued 'No Demand Certificates'(Anneure-2 to the writ petitions) in each of the contracts which are the subject matters in each of the writ petitions, let me

reproduce here-under one of the said 'No Demand Certificates' submitted in WP(C) No. 686 of 2023, for convenience:

"1.(a) That there is no breach of contract by the contractor of any of the terms and condition of the contract and no damage, loss and expenses where suffered by the corporation due to contractor's negligence of unwork men like performance by M/s. Namita Paul, FCI contractor, B.K. Road, Banamalipur, Agartala, Tripura (w).

(b) The Contractor has not been held responsible for any loss wastage or damage of grains loading/unloading, shortage etc. and no recovery is the due to him on that account.

(c) No demurrage was incurred due to delay or negligence on the part of the contractor in loading/unloading and removal of corporation goods within the freetime allowed by the F.C.I. authority at Shillong.

(d) The Contractor has not been responsible for any loss or damage to articles of the dead stock including gunnies and any other Govt. property.

(e) All claims of the contractor's have since been settled and none is pending with the F.C.I. except refund of the deducted value of transit loss etc.

2. The security deposit is free from claims so far as this office is concerned and can be refunded to the contractor or there are no other outstanding claims under audit objection against the contractor.

Certified that there is no outstanding lying at the depot as per records available against M/S Namita Paul, FCI contractor for the year from 2006 to 31st August, 2008.

*Sd/-
Sudhamoy Sarma
Manager (D)
FCI, FSD,
Dharmanagar,"*

13. Obviously, after getting 'No Demand Certificate' from the respondents-Corporation, the petitioner claimed for releasing her security deposits kept against the respective contract agreements as mentioned in the instant writ petitions, but, the respondents-Corporation did not release the same rather, they adjusted the respective security deposits alleging the negligent and unworthy man like performance of the petitioner in execution of some "other transport contract."

14. Therefore, the principal question centers around whether the respondents-Corporation can adjust the security deposits submitted in connection with a particular work by the Contractor for the alleged loss suffered by them in relation to other works.

15. In considering this issue, it leads me to peruse the Clause No.XI(b), XII(b) and XII(e) of the tender document [Annexure-4 to the WP(C) No.686 of 2023] postulating the terms and conditions which are reproduced here-in-below:

“Clause XI. Security Deposit:

(a) ****

(b) *The security deposit will be refunded to the contractors on due and satisfactory performance of the services and on completion of all obligations by the contractors under the terms of the contract and on submission of a No Demand Certificate, subject to such deduction from the security as may be necessary for making up of the Corporations claims against the contractor.*

Clause XII. Liability of Contractors for losses etc. suffered by Corporation:

(a) ****

(b) *The Corporation shall be at liberty to reimburse themselves of any damages, losses, charges, costs or expenses suffered or incurred by them due to contractors negligence and un-workmanlike performance of service under the contract or breach of any terms thereof. The total sum claimed shall be deducted from any sum than due or which at any time hereafter may become due to the contractors under this or any other contract with the Corporation. In the event of the sum which may be due from the Corporation as aforesaid being insufficient the balance of the total sum claimed and recoverable from the contractors as aforesaid shall be deducted from the security deposit furnished by the contractors as specified in Para XI. Should this sum also be not sufficient to cover the full amount claimed by the Corporation, the contractors shall pay to the Corporation on demand the remaining balance of the aforesaid sum claimed.*

(c) ****

(d) ****

(e) *A set off any sum of money due and payable to the contractors (including security deposit returnable to them) under this contract may be appropriated by the Corporation and set-off against any claim of the Corporation for the payment of any sum of money arising of this or under any other contract made by the contractors with the Corporation.”*

16. On careful reading of the provisions of Clause No. XI(b), XII(b) and XII(e) of the tender document as quoted above, in the opinion of this Court, before invoking set-off Clause under Clause XII(e), it must be proved that the Corporation suffered loss due to negligence or un-workman like

performance of the contractor in execution of any work under any contract. There is no material or details of breakup how the respondents-Corporation suffered loss in execution of any other contract works. Negligence or un-workman like performance being a matter of fact is to be established by laying evidence where all materials and records are to be placed and this only can be considered by a Civil Court.

17. On the aforesaid context, this Court had passed a judgment on 02.06.2023 in **WP(C) No.113 of 2021** titled as **Shri Abhijit Paul Vrs. FCI & 3 Ors.** wherein at para 17 & 18 of the judgment this Court had observed thus:

*“17. I have also taken into consideration the decisions cited by learned counsel appearing for the respondents-FCI. His submission was that a dispute emerged out of a contract cannot be agitated or resolved in a writ proceeding invoking this court’s extra-ordinary and discretionary jurisdiction under Article 226 of the Constitution. Mr. Bhaumik, learned counsel appearing for the respondents urged that it was open to the respondents to approach the court of appropriate jurisdiction for appropriate relief for breach of contract. In support of his submissions, learned counsel had placed reliance upon the case of (i) **Joshi Technologies International inc. Vrs. Union of India & Ors.**,[(2015) 7 SCC 728, para 69], (ii) **Barreily Development Authority & Anr. Vrs. Ajai Pal Singh & Ors.**,[(1989) 2 SCC 116, paras 21 & 22].*

18. Observance of procedural fairness and fair play is the soul of all administrative actions. According to this court, negligence or poor work-manship on the part of the Contractor is to be established first. The expression that “any sum of money due and payable to the contractor (including security deposit) refundable to the contractor under this contract may be set-off against any claim of the Corporation for the payment of any sum of money arising out of “any other contract” made by the contractor with the Corporation”, in my opinion, is a punitive clause and being it imposed upon the Contractor as a punitive measure, it cannot be invoked by an administrative/State authority mechanically without following the due process of law. In addition, such punitive measure can be taken against the Contractor only when the fact of “negligence” or “poor work-manship” is proved by an appropriate statutory adjudicating body under the Corporation having authority to decide such issues, which is to be discerned from the related contract document itself. However, in absence of such statutory adjudicating body, the remedy lies with the Corporation to approach the civil court of competent jurisdiction, where the Corporation would get the opportunity of leading relevant evidence to substantiate its loss due to the negligence or poor-workmanship of the

Contractor. Pertinent to mention here-in that, admittedly, there is no statutory adjudicating body to determine issues relating to “negligence” or “poor-workmanship” attributed to the Contractor during the performance of works under different contracts entered upon between the Contractor and the Corporation.”

18. Further, in the case of **Abhijit Paul** (supra), this Court had also referred to a decision dated 27.02.2015, passed by a Co-ordinate Bench of this Court in **WP(C) No.366 of 2012** along with other connected writ petitions titled as **Sri Abhijit Paul Vrs. the FCI & 2 Ors.** wherein learned Co-ordinate Bench had dealt with similar submissions regarding the exercise of discretionary power of judicial review of this court in contractual matters and observed thus:

“8. Even though the dispute has emerged from the contract, this court have the limited jurisdiction to judicially review the action of the respondents, inasmuch as, it has been enunciated by the apex court in **Kumari Shrilekha Vidyarthi Vs. State of U.P. & Ors.**, reported in **AIR 1991 SC 537** that the State activity in contractual matters also may fall within the purview of judicial review. Every State action must survive the test against arbitrariness and abuse of power. Non-arbitrariness, being a necessary concomitant of the rule of law, is imperative that all actions of every public functionary, in whatever sphere, must be guided by reasons and not whim, caprice or personal predilections of the persons entrusted with the task on behalf of the State. Exercise of all powers must be for public good, instead of being abuse of the power.”

19. In the case of **Sri Abhijit Paul** (supra), this court being encountered with almost similar facts, set aside the impugned order of adjustment/set-off issued by the respondents-Corporation, which was affirmed and approved by the Hon’ble Apex Court in **Food Corporation of India & Ors. Vrs. Abhijit Paul**, reported in **2022 Online SC 1605**.

20. In the instant case, record speaks that the petitioner was not given any reasonable opportunity to explain and defend herself before forfeiture of the security deposits in question. No adjudication was made by any statutory adjudicating authority under the corporation before such punitive action. Such

unilateral action, needless to say, is illegal and arbitrary and violative of the principles of natural justice.

21. Natural justice is the essence of fair adjudication, which is to be ranked fundamental. The purpose of observance of the *doctrine of natural justice* is the prevention of miscarriage of justice. Here, I may gainfully refer a three-Judge Bench judgment in the case of ***Food Corporation of India vs. Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71*** held that every state action must conform Article 14 of the Constitution of India. The relevant portion may be set out hereunder:

“7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law : A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is ‘fairplay in action’. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.”

22. Moreso, the respondent-FCI has not brought on record anything as regards the sum of money they suffered or incurred due to negligence or otherwise in performance or execution of the other contract works; or such sum of money out of loss as alleged was determined by any competent Courts of Law or arbitration, and such determination, if any, attained its finality by way of decree or award. Therefore, the forfeiture of security deposits furnished in relation to other contract works is liable to be quashed and set aside.

23. In addition to what have been stated here-in-above, it has also come to fore that the FCI-Corporation instituted Money suit against the petitioner for recovery of alleged loss. On consideration of the evidence on record, the learned Commercial Court dismissed the suit. FCI-Corporation preferred appeal before this Court as stated above, which upon hearing were dismissed and lateron, SLPs preferred by the FCI-respondent also have been dismissed by the Supreme Court. On this score also, the impugned action of the FCI-respondent is unsustainable.

24. Having regard to the aforesaid facts and the principles of law, in the context of the present writ petitions, this Court is of the considered view that the impugned order(s) dated **05.09.2023** issued by the respondents-FCI in relation to setting off forfeiture of the respective security deposits furnished in connection with the respective contract works questioned in the present writ petitions, stand set aside and quashed.

25. In the result, the above bunch of writ petitions are allowed and disposed of accordingly. The respondents-Corporation are directed to release/refund the security deposits as claimed in each of the writ petitions within a period of 30(thirty) days from today.

Pending application(s), if any, shall also stand disposed.

JUDGE