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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6831/2017 and CM APPL. 27124/2018**

ALM FOOD PRODUCTS LIMITED

..... Petitioner

Through: Mr Darpan Wadhwa, Senior
Advocate with Mr Umang Gupta,
Advocate.

versus

UNION OF INDIA AND ANR

..... Respondents

Through: Mr Dev P. Bhardwaj, CGSC for UOI
with Mr Jatin Teotia, Advocate
alongwith Mr Girinder Joshi, Under
Secretary, MOFPI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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13.03.2019

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning the “Revised Operational Guidelines of the Scheme for Integrated Cold Chain and Value Addition Infrastructure (effective from 29.08.2016)” (hereafter ‘the Scheme’).

2. The petitioner further prays that a direction be issued to the respondent to grant subsidy for an amount of ₹10 crores, as per the aforementioned scheme.

3. The petitioner’s application for the grant of subsidy under the Scheme was rejected, *inter alia*, on the ground that the petitioner’s proposal did not include the minimum of two components as required under the

aforementioned scheme, and the term loan was sanctioned to the petitioner prior to the invitation of Expression of Interest (EOI), which was issued on 31.08.2016. The petitioner claims that it had availed of a loan prior to the amendment of the said guidelines and, therefore, would be entitled under the provisions of the scheme, as existing prior to 29.08.2016. The respondents claim that EOI were invited for the first time on 31.08.2016 and, therefore, the provisions of the Scheme as existing on that date would be inapplicable. It is stated that no EOI was issued for grant of subsidy under the Scheme, as existing prior to 31.08.2016.

Factual Background

4. The petitioner is a company and is, *inter alia*, engaged in the business of exporting frozen buffalo meat and allied meat products. The petitioner claims that it has planned to establish a state of art modern abattoir cum meat processing unit, and rendering plant at Village Behra, Tehsil DeraBassi, Dist. S.A.S. Nagar, Punjab.

5. In the year 2008, the respondent launched the scheme for Cold Chain and Value Addition and Preservation Infrastructure in the year 2008, to lend support for the establishment of such infrastructure. The guidelines for the implementation of the said scheme were notified on 18.03.2010. The said Guidelines were modified with effect from 20.11.2013.

6. The aforesaid guidelines were further revised and simplified in the year 2014 and the respondent published the “*Revised Operational Guidelines of the Scheme for Cold Chain, Value Addition and Preservation Infrastructure during the balance period of 12th Five Year Plan (August,*

2014 to March, 2017)”. The said Guidelines of the scheme were applicable for Expression of Interest (EOI) issued by the respondent after 08.08.2014. Paragraph 3 of the Guidelines of the scheme indicated the components of the scheme and further provided that to avail any financial assistance, the applicant would be required to set up at least two of the specified components. Paragraph 3.1 of the said Guidelines is relevant and is set out below:-

“3. Components of the Scheme

3.1 The scope of components of Cold Chain, Value Addition and Preservation Infrastructure has been broadened to allow flexibility in project planning. The Scheme will now have the following components:

- a. Minimal Processing Centre at the farm level. This centre may have facilities for weighing, sorting, grading, waxing, packing, pre-cooling, Controlled Atmosphere (CA)/ Modified Atmosphere (MA) cold storage, normal storage, Ripening Chamber and Individual Quick Freezing (IQF) etc.
- b. Mobile pre-cooling vans and reefer trucks.
- c. Distribution hubs with multi product and multi CA /MA chambers cold storage /Variable Humidity Chambers, Packing facility, grading and sorting facility, CIP Fog treatment, Ripening Chambers, IQF and Blast Freezing etc.
- d. Irradiation facility.

To avail financial assistance under this scheme, any two of the components, from (a), (b) and (c) above will have to be set-up by the units. Considering the functional nature of the facility, Irradiation facility will

betreated as a stand alone project for the purpose of availing grant.”

7. Paragraph 7 of the said guidelines of the Scheme expressly provided that an application under the said Guidelines of the scheme would be invited through the EOI by the respondent.

8. The petitioner filed an application dated 11.05.2016 for the grant of subsidy of ₹10 crores, under the aforementioned Guidelines of the scheme. The said application was rejected by the respondent on 16.05.2016, on the ground that the respondent had not invited any EOI and, therefore, the petitioner’s application could not be entertained.

9. The respondent issued the Revised Guidelines (the Guidelines impugned in this petition) on or about 29.08.2016. Thereafter, on 31.08.2016, the respondent invited proposals / expression of interest from potential promoters / entrepreneurs for setting up integrated cold chain projects in the country (100 in number).

10. The petitioner, once again, submitted its proposal for grant of subsidy, under the cover of its letter dated 13.10.2016.

11. On 27.03.2017, the respondent issued a public notice indicating that it had received 308 proposals, out of which it had approved 101 eligible proposals for setting up cold chain projects. The petitioner’s name did not feature in the list of the approved proposals. Thereafter, on 31.03.2017, the petitioner published the list of ineligible applicants, wherein the petitioner’s name was featured at Serial No. 8. The said notice also indicated that reasons for rejecting the petitioner’s proposal. The same are set out below:-

- “Minimum 2 components not proposed
- Term loan sanctioned prior to the date of issue of EoI i.e. 31.8.2016
- Loan disbursed also prior to date of issue of the EoI i.e. 31.08.2016”

12. Aggrieved by the same, the petitioner has filed the present petition.

Submissions

13. Mr Darpan Wadhwa, learned senior counsel appearing for the petitioner contended that the decision of the respondents to reject the petitioner’s proposal, on the ground that the term loan to the petitioner had been sanctioned prior to the date of EOI, is wholly arbitrary and unreasonable. He submitted that the petitioner had initially applied for grant of subsidy on 11.05.2016, and had clearly indicated that the project was likely to commence production, in the next three months. He submitted that since the respondent had placed the relevant guidelines in public domain, it was now estopped from not accepting the petitioner’s application under the said Guidelines (the Scheme as existing prior to the amendment in August, 2016). He submitted that the invitation of EOI was a mere ministerial act, and merely because the respondent had not invited EOIs, did not absolve the respondents from its obligation to disburse subsidy under the Guidelines. He relied upon the decision of the Supreme Court in *M/s Manuelsons Hotels Private Limited v. State of Kerala and Others: (2016) 6 SCC 766*, in support of his contention.

14. Next, he submitted that the respondent had also erred in observing

that the petitioner's proposal did not include two components, which were the minimum criteria. He stated that the project report submitted by the petitioner included proposed expenditure of ₹25 lacs on account of pre-cooling vans, which would qualify the criteria of establishing the component of a "Distribution Hub", as contemplated under paragraph 3.1(b) of the revised guidelines of the said Scheme (effective from 29.08.2016).

15. Mr Dev P. Bhardwaj, Central Government Standing Counsel appearing for Union of India countered the submissions made on behalf of the petitioner. He submitted that the respondents had not called for an EOI under the Guidelines as existing prior to August, 2016 and, therefore, the petitioner's application could not be entertained. He further submitted that the petitioner did not fulfil the criteria as specified under the Guidelines as applicable in August 2016 and, therefore, its application was rejected.

Reasons and Conclusion

16. At the outset, it is relevant to refer to Paragraph 7 of the relevant Guidelines as existing prior to August, 2016. The said paragraph is set out below:-

"7. Expression of Interest (EOI):

7.1 Applications under the scheme will be invited through EOI by the Ministry.

The proposals have to meet the following basic eligibility criteria under the scheme:

- (a) The net worth of the applicant should be at least 1.5 times of the grant applied for.

- (b) Availing term loan from the Bank/Financial Institution for an amount not less than 10% of the project cost. Final term loan sanction letter along with appraisal note should be submitted.
- (c) Minimum two components [from (a), (b) and (c) mentioned in para 3 above]
- (d) Irradiation facility can be treated as a stand alone project for the purpose of availing grant.
- (e) No second proposal from the same applicant / company.
- (j) Date of commercial production should not be prior to the date of submission of application.

7.2 The proposals found prima facie eligible based on the above mentioned criteria will be evaluated as per the assessment criteria at Annexure - IV of these guidelines.

7.3 The Criteria of maintaining regional balance may be taken into account by the Ministry while deciding the projects for sanction of grant under the scheme.”

17. It is clear from the above that the respondent had indicated that it would invite application under the Scheme through EOI and the proposals would have to meet the eligibility criteria indicated therein. Admittedly, the EOI was not invited under the said Guidelines of the scheme and, therefore, no right vested with the petitioner for claiming subsidy, under the said Guidelines.

18. The contention that the invitation of the EOI is only a ministerial act, is unmerited. The respondent would invite the EOI only when it has the necessary funds and budgetary sanctions, and the petitioner acquired no right to receive subsidy prior to the respondents inviting applications for the

same. The relevant Guidelines merely indicated the contours of the Scheme and had expressly indicated that applications would be invited only through EOI.

19. The decision in the case of *M/s Manuelsons Hotels Private Limited* (*supra*) is of little assistance to the petitioner. In that case, the Government order had been issued wherein the State Government had accepted the recommendations of Government of India that tourism be declared as an industry. Pursuant to the said Government order, the Kerala Building Tax Amendment Act, 1990 was passed, and relevant provisions were introduced to enable the State Government to provide exemption from payment of building tax under the Act. In the present case, no right had accrued in favour of the petitioner under the relevant Guidelines.

20. It was also contended that the “Revised Operational Guidelines of the Scheme for Integrated Cold Chain and Value Addition Infrastructure (effective from 29.08.2016)” is arbitrary and unreasonable, inasmuch as it provides that the date of sanction of the term loan should not be earlier than the date of issue of EOI.

21. Paragraph 8.2 of the revised guidelines of the said Scheme set out the eligibility criteria. Clause (e) expressly stipulates that the date of sanction of the term loan should not be earlier than the date of issue of EOI. It is apparent that the rationale for including this eligibility criteria, was to incentivise entrepreneurs to establish Cold Chain Projects, and not to grant assistance to those entrepreneurs who had already taken steps for establishing such units. The object of granting assistance was to encourage

entrepreneurs to look at new cold chain projects and not to grant assistance to entrepreneurs who had already decided to establish cold chain units without any such assistance.

22. In view of the above, it is not necessary to examine the petitioner's contention that the respondent had erred in observing that the petitioner's proposal did not include two components as required. However, for sake of completeness, this Court also considers it apposite to examine the said contention as well. Paragraph 3.1 of the "Revised Operational Guidelines of the Scheme for Integrated Cold Chain and Value Addition Infrastructure (effective from 29.08.2016)" is relevant and reads as under:-

“3. Components of the Scheme

3.1 The scheme allows flexibility in project planning with special emphasis on creation of cold chain infrastructure at farm level. The scheme will have the following project components:

- a) Farm Level infrastructure, which may include processing center, situated in the catchment area of the targeted produce. This shall have one or more of the facilities mentioned in sub-para 3.2 (i to x) below. In addition, it may also have one or more of the facilities mentioned in sub-para 3.2 (xiii to xxi) below.

For projects in the fruits & vegetables sector, farm level infrastructure shall include at least one of the facilities listed at sub-para 3.2 (i), (iii) & (xiii).

- b) Distribution hub - This shall have a modern multi-product, multi-temperature cold storage. It may also include one or more of the facilities mentioned in sub-para 3.2 below depending upon the business plan of the project.

c) Refrigerated vans/ refrigerated trucks/ insulated vans/mobile insulated tankers.

d) Irradiation facility.

To avail financial assistance under this scheme, the applicant will have to set up Farm Level infrastructure as mentioned at (a) above and any one or both of the components from (b) and (c) above.

Considering the functional nature of the facility, irradiation component will be treated as a standalone facility for the purpose of availing grant under the scheme.”

23. In the present case, the petitioner’s claim that its proposal also included establishing a distribution hub as contemplated under Clause (b) of Paragraph 3.1 of the revised guidelines of the said Scheme. Mr Wadhwa had referred to page 66 of the Project Report submitted by the petitioner along with his application in support of the aforesaid contention. The contents of the said page of the Report is set out below:-

“Misc Fixed Assets:

The unit will require following other Misc. assets which have been provided at the following costs:

Sl. No.	Particular	Amount in Lacs
1	Security with Electricity Deptt. @ Rs. 1000/- Per KVA on 4000 KVA	40.00
2	Office Furniture & Fixtures include A.C.’s Office Automation Equipment like computers, Photocopy Machines, Cars, Fire Fighting Equipments, Pre-cooling Vans etc.	25.00

	Total	65.00
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24. Mr Wadhwa had argued that since the fixed assets also included pre-cooling vans, the same would qualify the criteria of Clause 3.1(b) of the guidelines of the said Scheme.

25. The aforesaid contention is bereft of any merit. Admittedly, the Project Report did not mention establishing a “Distribution hub”. Merely indicating that the petitioner was required to procure certain miscellaneous fixed assets including “pre-cooling vans”, would hardly qualify as establishing a “Distribution hub” as a component of the Cold Chain Project. As indicated in clause (b) of paragraph 3.1 of the revised guidelines of the said scheme, “distribution hub” would require the setting up of a multi-project, multi-temperature cold storage unit, other than the unit at a farm level.

26. In view of the above, the petition is dismissed. The pending application is disposed of.

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VIBHU BAKHRU, J

MARCH 13, 2019

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