

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.415 of 2024

Irrity Spices, represented by its Manager, Shri Kripesh Debnath, S/o Late Narendra Debnath, having office at Suryamaninagar, Agartala-Udaipur Road, P.O. Tripura University, West Tripura

.....Petitioner(s);

Versus

1. Tripura Rehabilitation & Plantation Corporation Limited (A Government of Tripura undertaking) represented by its Managing Director, having office at 1st floor of Humkhry Nubyung Complex, Pundit Nehru Complex, Pin-799006, Agartala, West Tripura

2. Assistant Manager (Marketing), Tripura Rehabilitation & Plantation Corporation Limited having office at 1st floor of Humkhry Nubyung Complex, Pundit Nehru Complex, Pin-799006, Agartala, West Tripura

3. State of Tripura represented by Secretary to the Government of Tripura, Forest Department, having its office at Civil Secretariat, Agartala, P.O. Kunjaban, District-West Tripura

.....Respondent(s).

For Petitioner(s) : Mr. Somik Deb, Sr. Advocate,
Ms. A. Chakraborty, Advocate,
Mr. Tapas Halam, Advocate.

For Respondent(s) : Mr. D. Sharma, Addl. G.A.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

Order

18/09/2024

Heard Mr. Somik Deb, learned senior counsel for the petitioner and Mr. D. Sharma, learned Additional Government Advocate for the respondents-State.

2. This is the second round of writ petition at the behest of the writ petitioner with a prayer to command the respondents No.1 & 2 to reissue delivery challan for lifting remaining quantity of rubber sheets of various grades pursuant to sale order dated 22.12.2023 relying upon the order dated 13.03.2024 passed in WP(C) No.10 of 2024 and the interim order dated 10.01.2024 passed therein.

3. Petitioner, in this writ petition, has alleged violation of interim order dated 10.01.2024 and deliberate suppression of fact relating to refund of Rs.86,39,100/- said to have been made on 05.01.2024 before passing of the interim order on 10.01.2024 whereby the respondents were restrained from issuing delivery orders in respect of the remaining quantum of the specified category of graded rubber sheets as per the sale order dated 22.12.2023. Writ petitioner has filed copy of the bank transaction for the month of January, 2024 to show that the remittance of the amount of Rs.86,39,100/- actually took place on 11.01.2024.

4. Respondents No.1 & 2 have filed a Counter Affidavit in order to traverse the allegations made. The relevant stand of the respondents is at paragraphs 9, 11, 12 & 14 which are being extracted hereunder:

“9. That, in regards to the statement made in paragraph 7 of the writ Petition it is stated that averments are denied and disputed by the answering respondents. A Copy of sale order cancellation dated 28-12-2023 was received by the petitioner on 05-01-2024. And a copy of the same was also sent through registered post on 06-01-2024, token no.EE437621088IN IVR:6969437621088 to the petitioner.

A Copy of the cancellation letter dated 28-12-2023 and postal receipt dated 06-01-2024 is annexed and marked as Annexure R/1.

11. That, in regard to the statements made in paragraph 12 of the writ petition, it is stated that averments are denied and disputed. For remaining lots of rubber re-tendered on 29-12-23, which was opened on 06-01-2024 and sale order for which was issued on 08-01-2024. This happened before Hon'ble high court passed interim stay of delivery of remaining quantity and it was required to be disposed immediately to safeguard corporation's financial loss considering the perishable nature of rubber sheet.

It was already proposed and approved on 30-12-2023 to refund the balance amount of Rs.86,39,100/- vide file no. F.No.8(6)/RPC and MU/TRPC-22/Part-B, page no. 9 and note no. 11.

Accordingly, Assistant Manager (Marketing), TRPC Ltd. issued a letter to Deputy Manager (HQ), TRPC Ltd. on 05.01.2024 to refund the balance amount of Rs.86,39,100/- and on 10.01.2024 Deputy Manager (HQ) send the application form for fund transfer (including a Cheque bearing No.001471 dt. 10.01.2024) to Bandhan Bank, Agartala and Bandhan Bank transferred amounting to Rs. 86,39,100/- to M/s. Irity Spices on 11.01.2024.

Therefore, there is neither any intention to frustrate effect of interim order nor did Corporation took the shelter of falsehood.

A Copy of the sale order dated 08-01-2024 is annexed and marked as Annexure R/2.

A Copy of the letter dated 05-01-2024 is annexed and marked as Annexure R/3.

A Copy of the approval dated 30-12-2023 is annexed and marked as Annexure R/4.

A Copy of the RTGS Form and Cheque dated 10-01-2024 is annexed and marked as Annexure R/5.

12. That, in regard to the statements made in paragraph 13, 14 & 17 of the writ petition, it is stated that it was already proposed and approved on 30-12-2023 to refund the balance amount Rs.86,39,100/- vide file no. F.No.8(6)/RPC and MU/TRPC-22/Part-B, page no. 9 and note no.11.

Accordingly. Assistant Manager (Marketing), TRPC Ltd. issued a letter to Deputy Manager (HQ), TRPC Ltd. on 05.01.2024 to refund the balance amount Rs.86,39,100/- and on 10.01.2024 Deputy Manager (HQ) send the application form for fund transfer (including a Cheque bearing No. 001471 dt. 10.01.2024) to Bandhan Bank, Agartala and Bank transferred amounting to Rs.86,39,100/- to M/s. Irity Spices on 11.01.2024.

14. That, in regard to the statements made in paragraph 16 of the writ petition, it is stated that for remaining lots of rubber which were re-tendered on 29-12-23 and tender opened on 06-01-2024 and sale order for this was issued on 08-01-2024. This is before Hon'ble High court passed interim stay order dated 10-01-2024 for lifting of the remaining quantity of rubber sheet and it was required to be disposed immediately to safeguard corporation's financial loss considering the perishable nature of rubber.”

5. On behalf of the petitioner, learned senior counsel Mr. Somik Deb, while drawing our attention to the judgment dated 13.03.2024, contended that the ultimate observations made by this Court relating to refund of the balance amount in the name of the petitioner to the tune of Rs.86,39,100/- on 05.01.2024 and asking the respondents to allow the petitioner to lift remaining lots of graded rubber sheets under the sale order dated 22.12.2023 upon deposit of the requisite amount of money refunded to him were recorded on the basis of suppression of facts to this Court which has surfaced later on. Therefore, respondents No.1 & 2 are guilty of not only misleading this Court, but also attempting to evade the specific directions of this Court to allow the petitioner to lift the remaining lots of graded rubber sheets upon deposit of requisite amount of money refunded to him.

6. Mr. D. Sharma, learned Additional Government Advocate for the respondents, on the other hand has sought to persuade this Court that the attendant facts, on which the final judgment was passed on 13.03.2024, were

not any attempt on the part of the respondents to mislead the Court by suppression of fact. It is submitted that after cancellation of the sale order dated 22.12.2023 on 28.12.2023, re-tender issued on 29.12.2023 led to issuance of a sale order on 08.01.2024 before passing of the interim order on 10.01.2024. Though a formal communication was made on behalf of respondents No.2 to the Deputy Manager, HQ, TRPC Ltd. on 05.01.2024, apart from information to the petitioner, but the act of processing of the RTGS Form for such transfer was made on 10.01.2024 by the Deputy Manager (HQ), TRPC Limited while the remittance was made on 11.01.2024 in favour of the petitioner. Learned counsel for the respondents submits that the interim order dated 10.01.2024 was passed by this Court in the presence of the learned State counsel who was only representing respondent No.3. This Court had directed the learned State counsel to receive instructions from respondents No.1 & 2-Corporation within a short time while directing the respondents not to issue delivery orders in respect of the remaining quantum of the specified category of graded rubber sheets as per sale order dated 22.12.2023. It is only thereafter that the respondents No.1 & 2 appeared before this Court and filed their Counter Affidavit. The writ petition was thereafter disposed of vide judgment dated 13.03.2024.

7. Learned senior counsel for the petitioner Mr. Deb has, in reply, however also drawn the attention of this Court to certain statements recorded in the judgment dated 13.03.2024 that a re-tender was done by the Corporation which however was again recalled. As such, issuance of re-tender on 29.12.2023 and sale order on 08.01.2024 in favour of another person was not

duly brought to the notice of the Court when the writ petition was being disposed of.

8. We have given anxious consideration to the submission of learned counsel for the parties. We find from perusal of the records that when the matter was taken up for the first time on 10.01.2024, the respondent No.1 herein-Tripura Rehabilitation & Plantation Corporation Limited was not represented. Respondent No.3 herein i.e. The State of Tripura was only represented by the learned Government Advocate. After recording the submission of learned counsel for the petitioner, this Court directed the State counsel to seek instruction from respondents No.1 & 2-Corporation within a short time. An interim order was also passed that in the meantime, the respondents should not issue delivery orders in respect of the remaining quantum of specified category of graded rubber sheets as per the sale order dated 22.12.2023 issued in favour of the petitioner. Affidavits were filed thereafter by the Corporation; the contents of which have been referred to in the judgment dated 13.03.2024. This Court, after consideration of rival submission of the parties, interfered in the cancellation of the sale order as being arbitrary and in violation of principles of natural justice. Since the affidavits on behalf of the parties were not clear on the question whether the remaining amount of graded rubber sheet had been lifted before passing of the interim order dated 10.01.2024 or not, a conditional order was passed in the following manner:

“It however appears that after cancellation of the sale order the balance amount remaining in the name of the petitioner to the tune of Rs.86,39,100/- has been refunded on 05.01.2024. We are not informed as to whether the interim stay on the lifting of the remaining amount of graded sheet rubber had been adhered to or not. In case, the remaining lots of graded sheet rubber under the sale order dated 22.12.2023 has not been lifted, the respondents could allow the petitioner to lift it upon deposit of the requisite amount of money refunded to him. Otherwise, respondents could undertake fresh calculation of the amount which requires to be

refunded to the petitioner if any, over and above the amount of Rs.86,39,100/- earlier refunded on 05.01.2024.

However, the cancellation of the sale order cannot be upheld in the eye of law for the aforesaid reasons. It is accordingly set aside.”

Petitioner later on approached this Court in contempt jurisdiction which was however disposed of by order dated 15.05.2024 with an observation that the interim order dated 10.01.2024 had merged in the final judgment and if the remaining amount of Rs.86,39,100/- had already been refunded to the petitioner on 05.01.2024, a fact which was also not brought to the notice of this Court when the interim order was passed, proceedings for contempt would not lie for deliberate violations of the order of this Court. Thereafter, the present writ petition has been filed.

9. From the narration of facts recorded above and scrutiny of the records, two things emerge:

(i) On 10.01.2024, the respondents No.1 & 2 had on their part processed the RTGS Form relating to remittance of the amount, of Rs.86,39,100/- in favour of the petitioner with the Bandhan Bank consequent upon the cancellation of the sale order dated 22.12.2023 on 28.12.2023. The respondents No.1 & 2 were not before this Court on the date of interim order i.e. 10.01.2024. Therefore, the remission of that amount on their part on 11.01.2024 by the Bank, could not be treated as an act of deliberate violation of the interim order.

(ii) The second aspect thereafter which needs scrutiny is whether the remaining lots of graded rubber sheets under sale order dated 22.12.2023 had been lifted or not before passing of the interim order dated 10.01.2024? Since it could not be clear at the time of passing of the judgment dated

13.03.2024 whether the remaining sheets of graded rubber had been disbursed in favour of another person, this court passed a conditional order that if the same had not been lifted, petitioners would be allowed to lift it upon deposit of the requisite amount of money refunded to him. This Court also observed that otherwise respondents could undertake fresh calculation of the amount which was required to be refunded to the petitioner if any, over and above the amount of Rs.86,39,100/- earlier refunded.

10. Though it seems that the actual date of remittance of refund amount do not tally with the date i.e. 05.01.2024 as recorded in the judgment dated 13.03.2024, but it appears now that such act of remittance had been made on the part of the respondents on 10.01.2024 through RTGS to the Bandhan Bank when the interim order was being passed in their absence. The question, therefore, falls for consideration is whether the difference of date i.e. 05.01.2024, which is a communication for refund of the amount by the respondent No.2 to the Deputy Manager (HQ) TRPC Ltd. and also to the petitioner and the actual act of remittance through RTGS on the part of the respondents on 10.01.2024 could make any difference so far as the operative part of the judgment dated 13.03.2024 in WP(C)10 of 2024.

11. We are of the view that since the interim order had been passed in the absence of the respondents-Corporation on 10.01.2024 and that act of remittance on the part of the Corporation of the refund amount of Rs.86,39,100/- had been made on 10.01.2024 by filling up of the RTGS Form with the Bandhan Bank and that on 08.01.2024 itself sale order had been issued for lifting of the remaining amount of graded rubber sheet in favour of another

party pursuant to the re-tender undertaken on 29.12.2023, this Court is unable to come to a conclusion that there was a deliberate suppression of fact on behalf of the respondents-Corporation regarding refund of the amount in favour of the petitioner or lifting of the remaining lots of graded rubber sheets in favour of another party while the judgment was passed on 13.03.2024 in WP(C)10 of 2024 by this Court. It is also seen that the communication dated 05.01.2024 [Annexure-R/3] though was also sent to the petitioner relating to the refund of the balance amount of Rs.86,39,100/-, but the same was not brought to the notice of this Court when the interim order was passed on 10.01.2024. In such circumstances, after due scrutiny of the attendant facts and circumstances, we do not find a case made out on behalf of the petitioner for directing the respondent Corporation to issue delivery challan of remaining quantity of rubber sheets of various grades pursuant to the sale order dated 22.12.2024 by holding that the respondent had misled the Court deliberately and disobeyed the order of this Court.

12. The writ petition is accordingly dismissed. Pending application(s), if any, shall stand disposed of.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ

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