



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WA/12/2024

The State of AP and 2 Ors
represented by the Secretary, Food and Civil Supplies Department, Govt of Arunachal Pradesh, Itanagar

2: The Director
Age: 0
Occupation :
Address: Food and Civil Supplies Department
Govt. of Arunachal Pradesh
Naharlagun.

3: The Deputy Commissioner
Age: 0
Occupation :
Address: West Siang District
Aalo
Arunachal Pradesh

VERSUS

M/s Donyi Polo Multi Purpose Cooperative Society Ltd and Anr
Aalo, West Siang District, Arunachal Pradesh represented by its power of Attorney Holder Shri Jarkar Gamlin.

2: The Food Corporation of India
Age: 0
Occupation :
Address: Represented by the General Manager
(Sr. Regional Manager)
Food Corporation of India
Regional Office

G.S Road
Ulubari, Guwahati, Assam

Advocate for the Petitioner : Mr. S. Tapin, GA (AP)

Advocate for the Respondent : Tony Pertin, B. K. Singh

BEFORE
HONBLE MR. JUSTICE ARUN DEV CHOUDHURY
HONBLE MR. JUSTICE KARDAK ETE

ORDER

Date : 13-08-2024

(Kardak Ete, J.)

Heard Mr. S. Tapin, learned Senior Government Advocate for the appellants. Also heard T. Pertin, learned counsel for the respondent No. 1 and Mr. B. K. Singh, learned counsel for the respondent No. 2.

2. This intra court appeal is directed against the order dated 09.05.2023 passed in IA (C) No. 79 of 2023, arising out of the judgment and order dated 09.06.2022 passed in WP(C) No. 101/(AP)2022, whereby, the learned Single Judge on the interlocutory application filed by the respondent no. 1, has clarified and observed that the interest has to be reckoned from the date of expiry of the time for making the balance payment i.e., 6 (six) months from the date of receipt of the certified copy of the order. Therefore, the interest would accrue from 11.12.2022 and the rate of interest would be the current lending rate of the nationalised bank.

3. Short facts leading to the present appeal, are that the respondent No. 1 had filed writ petition which was registered and numbered as WP(C) No.

101/(AP)2022, praying for a direction for release of the contractual bill for carriage of PDS package for the years 2010-2011 and 2011-2012 in the District of West Siang. The respondent No. 1 had contended that out of the total amount of Rs. 15,24,88,680.00/, an amount of Rs. 5 crores have been paid to him. Therefore, the outstanding amount is of Rs. 10,24,88,680/-.

4. The appellant/Government has not opposed the claim of the petitioner in principle, however, submitted that due to lack of funds, the amount has not been paid to the petitioner. The State had contended that as and when the funds would be available, the outstanding bill claimed by the petitioner would be cleared.

5. The learned Single Judge, vide order dated 09.06.2022, considering the undisputed position, has held that the petitioner is entitled to a direction for release of the aforesaid outstanding amount. Accordingly, the writ petition was disposed of by directing the State respondents to take immediate steps for release of the outstanding bill of Rs. 10,24,88,680/- and to release the same as expeditiously as possible and in any case, within an outer limit of 6 (six) months from the date of receipt of the certified copy of the order. It has further observed that failure on the part of the State respondents to make the payment within the time framed, would entitle the petitioner to approach the appropriate forum for payment of interest.

6. The respondent No. 1 filed an interlocutory application, being IA No. 79/(AP)2023, seeking clarification of the order dated 09.06.2022, passed by the learned Single Judge in the writ petition (supra). In the interlocutory application, the respondent No. 1 has contended that till that time, the

amount has not been paid, as directed by the learned Single Judge, therefore, the observation towards payment of interest would be effective. However, according to the respondent No. 1, there was a confusion regarding from which date the interest is to be reckoned. On consideration of the submissions, the learned Single Judge, vide the impugned order dated 09.05.2023 has clarified that direction for payment of the interest was itself done in the said order as further interest. In other words, the interest has to be reckoned from the date of expiry of the time for making the balance payment i.e., 6 (six) months from the date of receipt of the certified copy of the order. The learned Single Judge having considered the submission that the respondent no. 1 had submitted the certified copy on 10.06.2022, has further held that the interest would accrue from 11.12.2022 and the rate of interest would be the current lending rate of a nationalized bank.

7. Mr. Tapin, learned Senior Government Advocate for the appellants, submits that the respondent no. 1 has filed a Money Suit being Money Suit No. 104/2022, before the learned Civil Judge (Sr. Division), Yupia, for grant of interest upon the pending bills. During the pendency of the said Money Suit, the petitioner had filed the interlocutory application (supra).

8. Assailing the impugned order dated 09.05.2023, the learned Senior Government Advocate, submits that the respondent no. 1 had not claimed for interest above 6%, whereas the learned Single Judge has granted interest above 6% without assigning any reason. Since the respondent no. 1 has instituted a Money Suit for grant of interest before the competent Civil Court, which is in terms with the order of the learned Single Judge, dated 09.06.2022, whereby, it has provided that failure on the part of the State

respondents to make the payment within the time framed, would entitle the petitioner to approach the appropriate forum for payment of further interest, the impugned order dated 09.05.2023 providing the rate of interest would be the current lending rate of a nationalized bank, is not sustainable as it amounts to review of its own order without there being any proceedings for review.

9. Mr. T. Pertin, learned counsel for the respondent no. 1, submits that the interlocutory application was filed only for clarification before the learned Single Judge as there was a confusion with regard to the order dated 09.06.2022 passed in writ petition (supra). Accordingly, the learned Single Judge has clarified the same. However, after arguing the matter at some length, Mr. Pertin, learned counsel has fairly submitted that no order is permissible in an interlocutory application, which is in effect, reviewing the earlier order unless any application is filed for review of the order which has attained finality. Therefore, he submits that he would not have any objection for setting aside of the impugned order dated 09.05.2023. However, he submits that a direction may be given to the appropriate Civil Court to consider and dispose of the pending Money Suit within a time bound period.

10. Having considered that the learned counsel for the respondent no. 1 has no objection for setting aside of the impugned order dated 09.05.2023 passed in IA(C)No.79/(AP)2023 and that the impugned order passed by the learned Single Judge would not be permissible under the law, as the same has not been rendered in the review proceedings, we are of the view that the impugned order is liable to be interfered with. Thus, the impugned order dated 09.05.2023, passed by the learned Single Judge in IA(C)No.79/

(AP)2023 stands set aside.

11. Needless to observed that since, the Money Suit claiming interest in respect of the said bill is stated to be pending before the jurisdictional Civil Court, it is expected that the learned Civil Judge shall take up the matter in accordance with law.

12. The writ appeal stands disposed of.

JUDGE

JUDGE

Comparing Assistant