

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

WP(C).No. 2199 of 2007 (J)

PETITIONER(S):

**M/S.SAJ AGRO FOOD INDUSTRIES,
REPRESENTED BY ITS MANAGING PARTNER, MR.AJAY KUMAR,
KINFRA PARK, NELLAD, MUVATTUPUZHA.**

BY ADV. SRI.ZAKEER HUSSAIN

RESPONDENT(S):

- 1. KERALA STATE CIVIL SUPPLIES
CORPORATION LTD., REPRESENTED BY ITS
MANAGING DIRECTOR, GANDHI NAGAR, COCHIN - 682 020.**
- 2. THE MANAGING DIRECTOR,
THE KERALA STATE CIVIL SUPPLIES CORPORATION LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR, GANDHI NAGAR,
COCHIN - 682 020.**
- 3. THE ADDITIONAL GENERAL MANAGER
(MARKETING), THE KERALA STATE CIVIL SUPPLIES
CORPORATION LTD., REPRESENTED BY ITS MANAGING
DIRECTOR, GANDHI NAGAR, COCHIN - 682 020.**

**BY ADVS. SRI N.D.PREMACHANDRAN, SC
SRI.S.SHARAN (ADV. COMMISSIONER)**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

J U D G M E N T

None appears for the petitioner.

The above writ petition is dismissed as infructuous.

20.-07-2015

SD/- K.VINOD CHANDRAN, JUDGE

//TRUE COPY//

P.S. TO JUDGE

msv/

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.2199 OF 2007-J

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Dated this the 15th day of February, 2007.

ORDER

This matter is mentioned today by the learned counsel for parties on either side. Advocate Commissioner is also present.

2. Certain practical difficulties have been pointed out in working out the order issued on 14-2-2007 appointing Commissioner and ordering trial run of the mill. It is pointed out that there will be some delay in the Food Corporation of India releasing the wheat since certain price confirmation communications have to be obtained from the Trivandrum Office of the FCI and the parties will have to make payment in the form of Demand Draft after the banking hours commence. It is also pointed out that the product cannot be put into packets because the polythene sheets to be used for such purpose are custom-made and come in bulk and the same are

not readily available in the open market.

3. Having heard the learned counsel for parties, the following directions are issued in modification and in furtherance of the order issued on 14-2-2007:

a. It is sufficient that the trial run of the mill commences by 1 p.m. to 1.30 p.m. today.

b. The product need not be packed.

c. The en-product can be examined by the Civil Supplies Corporation.

d. The Advocate Commissioner will take note of the work memo that has been served by the learned standing counsel for the Civil Supplies Corporation and also send such samples, as may be required, for examination by the Public Analyst as regards the quality content of the product.

e. The officer/inspector who will accompany the Commissioner from the Office of the Factories and Boilers Department will make an inspection of the machinery to ascertain whether the mill has the

capacity and facility to pack the en-product in polythene packets and whether such facility is in a functioning state. The said officer will also take note of the fact that the requirement is of 1000 MT a month. The opinion of the said officer will also form part of the report of the Advocate Commissioner.

Hand over copy of this order to counsel for both parties and also to the learned standing counsel for the FCI immediately.

**THOTTATHIL B. RADHAKRISHNAN,
JUDGE.**

Sha/-

This matter relates to a contract of the Civil Supplies Corporation.

2. The Union of India proposed to release subsidised wheat for being converted into Fortified (value added) "Atta" for distribution in the State of Kerala through the Civil Supplies Corporation to augment the nutritional status of the people, particularly the pregnant women and children since such Fortified "Atta" is expected to contain a prescribed percentage of folic acid and other additives. The Civil Supplies Corporation issued Ext.P1 tender notice inviting tenders from contractors to convert the wheat into "Atta". The petitioner was found to be the tenderer who quoted the lowest and his tender was accepted subject to conditions prescribed in Ext.P2. Ext.P1 tender notice contained no condition that the tenderer should have a roller flour mill and Ext.P2 was, therefore, made giving the petitioner time to instal a roller flour mill. The petitioner contends that he spent about Rs.70-75 lakhs for installing a roller flour mill within the extended

period of time granted by the Civil Supplies Corporation. He has also placed Ext.P5 whereby he intends to evidence that the work of installation of the roller flour mill and its commissioning has been completed after a trial run on 4-1-2007, a day before the time granted by the Civil Supplies Corporation was to expire.

3. This writ petition is filed challenging the decision of the Civil Supplies Corporation to go for re-tendering after discharging the tender with the petitioner. It is note-worthy that the second tender proposal is confined to those who have roller flour mills.

4. On the materials on record, it appears to be apparent that the petitioner undertook the conversion of his unit into a roller flour mill unit, acting on Ext.P2. It was, obviously, therefore that this Court, while admitting this writ petition, granted an interim order on 18-1-2007 directing a fresh inspection to be conducted by the Civil Supplies Corporation and a report to be filed before this Court. The parties were left with liberty to go ahead with the new tender

procedures, however, that no allotment was to be made on the basis of the fresh tender.

5. Ext.R1(a) inspection report has been placed on record along with an affidavit, following the inspection conducted by some officers of the Civil Supplies Corporation. That report, which is on record on 8-2-2007, shows, among other things, that the petitioner has different equipments which are enumerated therein, including two numbers of roller, which is recorded as "body fixed" but installation work is not completed. The reason for that view is that four main connecting pipes are to be connected to the screw conveyor. It is also noted that the chemical feeder is not connected. The quality of existing process, like hygiene, cleanliness etc. is recorded as hygienic and the packing capability is not reckoned by stating that machinery is not installed. The said report has been severely criticised by the learned senior counsel appearing for the petitioner by contending that the visit and the report have been made by incompetent persons. It is urged that the Training Co-ordinator, the Junior Manager, the Assistant Manager and the Vigilance Officer are

incompetent to assess the capabilities of a roller flour mill unit.

6. If the petitioner was the lowest quoted tenderer in terms of Ext.P1 leading to Ext.P2 and if the petitioner has the necessary facilities to carry on the activities, it would be only in the interest of the Civil Supplies Corporation, dealing with public funds, to consider his case, if he is able to show his abilities in the matter of discharging his obligations under the contract.

7. Under the aforesaid circumstances, this matter was taken up on three occasions today on the basis of different suggestions being made at the bar based on the consultation with the respective clients and with the suggestions of this Court and accordingly, after hearing, also, the learned standing counsel for the Food Corporation of India, Sri.P.Jacob Varghese, the following directions are issued:

- i. The Food Corporation of India shall issue to the petitioner one tonne of wheat from the depot nearest to the petitioner's unit, against

payment, on production of a copy of this order.

ii. The petitioner shall utilise that wheat to conduct a trial run of the unit to commence at 12 noon tomorrow, the 15th February, 2007.

iii. At the time of trial run, one of the officers of the Civil Supplies Corporation shall be present.

iv. The Senior Joint Director of Factories and Boilers, Kakkanad will depute a competent officer/inspector to supervise the trial run.

v. Adv.Sri.S.Sharan is appointed as Commissioner, who will also be present. He will file a report in consultation with the officer deputed by the Senior Joint Director of Factories and Boilers and such report shall be placed before this Court by 3.30 p.m. tomorrow. The petitioner will pay an amount of Rs.10,000/- as batta to the Commissioner directly.

vi. The parties will be entitled to request the Commissioner to note down such further details as may be sought for in the form of work memos.

This order is passed without prejudice to the contentions.

Post tomorrow at 3.30 p.m.

Hand over copy of this order to counsel for both parties and also to the learned standing counsel for the FCI, today itself.

**THOTTATHIL B. RADHAKRISHNAN,
JUDGE.**

Sha/-