

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

W.A.No.1416 of 2015
and
M.P.Nos.1 and 2 of 2015

G.Baskaran

... Appellant

Vs.

1. The Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12,Tambusamy Road, Kilpauk,
Chennai-600 010.
2. The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Thanjavur Region,
Thanjavur.
3. The Manager,
(Quality Control),
Tamil Nadu Civil Supplies Corporation,
Thanjavur.

... Respondents

This writ appeal is preferred under Clause 15 of Letters Patent against the order dated 28.07.2015 passed in W.P.No.2806 of 2015.

W.P.No.2806 of 2015 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus to Call for the entire records of the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.MH4/75383/2013 dated 07.01.2015 and quash the same and consequently directing the respondents to supply the paddy to the petitioner rice mill viz. M/s.Baskar Modern Rice Mill at No.1130/9-B-2, Aadakara Street M.Chavady, Thanjavur.

For Appellant : Mr.C.Prakasam

JUDGMENT

(The Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

Assailing the legality and validity of the proceedings dated 7th January, 2015 of the first respondent herein, the writ petitioner / appellant herein has preferred the instant writ petition, seeking for a direction to quash the same and consequently to direct the respondents to supply the paddy to the petitioner's rice mill, namely, M/s.Baskar Modern Rice Mill.

2. On the earlier occasion, impugning the show cause notice dated 21st June, 2013, whereunder the petitioner along with other four hulling agents was served with a show cause notice as to why reported stock of rice be not confiscated and the due may not be recovered either from them from the security deposit / bank guarantee / hulling bills. Challenging the said notice, the appellant herein has filed a writ petition being W.P.(MD)No.11795 of 2013 and one Thavakkal Matcha, Manager Partner of M/s.Star Modern Rice Mill has filed a writ petition being W.P.(MD)No.12749 of 2013 before the Madurai Bench and the other hulling agents have also filed separate writ petitions. Those writ petitions were allowed by separate orders of this court.

3. While allowing the writ petition, being W.P.(MD)No.12749 of 2013, the learned Single Judge, vide order dated 30th August, 2013, observed as under:

"20.Moreover, the erring officials, as observed earlier, have been committing mistakes / wrongs deliberately only to cheat the Government and also to give unjustified help to the erring hulling agents. Therefore, Secretary, Department of Food and Co-operation, State of Tamil Nadu, Chennai (R-5) and Managing Director, Tamil Nadu Civil Supplies Corporation (R1) are directed to take appropriate proceedings against the erring officials in all cases, at least in the past five years, wherever samples have been sent belatedly and negligently contrary to the rules and not doing the analysis in time. The action taken report is directed to be filed by the respondents within six months from the date of receipt of a copy of this order. Accordingly, the writ petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

21.It is made clear that by allowing the writ

petition, this court does not certify that the petitioner is innocent and he has not committed any irregularity or misdeeds. Only for violation of procedure, the impugned order is quashed. The petitioner is made to succeed in this case because of the deliberate fraudulent, illegal acts of the erring officials."

4 Thereagainst, writ appeals were preferred by the Tamil Nadu Civil Supplies Corporation, being W.A.(MD)Nos.1123 and 1174 to 1177 of 2013. A Division Bench, vide order dated 2nd July, 2014, has set aside the order passed by the learned Single Judge, observing as under :

"10.Taking into account, the report of the Collector and without prejudice to the rival contentions, we are of the view that the writ appeals could be disposed of, so that a huge quantity of rice is not spoiled and both parties are put back to their original position, even while awaiting further orders. Hence, the writ appeals are allowed to the following extent:

1)The orders of the learned Judge passed in the writ petitions are set aside.

2)The first respondent is permitted to make any additional representation to the impugned show cause notices, within two weeks from the date of receipt of a copy of this Judgment.

3)Upon receipt of the additional representation from the first respondent, the appellants shall pass orders within two weeks. Thereafter, depending upon the outcome, the first respondent may work out his remedies.

4)In the meantime, the rice found by the District Collector to be fit for consumption, shall be sent for processing, for eventual distribution through the Public Distribution System. The rice found by the District Collector to be unfit for distribution, shall be sold in an auction, as animal feed after putting the first respondent on notice of the terms and conditions of auction as well as the actual conduct of the auction.

5)In case, the first respondent succeeds in the adjudication, then it is natural that the first respondent cannot be imposed with any liability. But in case, the adjudication goes against the first respondent, it will be open to the Corporation to recover the losses arising out of these exercise. No costs. Consequently, connected Miscellaneous Petitions are closed."

5. The learned counsel for the writ petitioner submits that they have submitted a reply to the show cause notice on 24th July, 2014. The respondent Corporation, by order dated 5th August, 2014, noticing that the rice supplied by the writ petitioner was old rice, musty smell with moisture, not the one which was given to him for hulling, terminated the licence with a direction to recover the loss caused to the Corporation. The petitioner preferred an appeal on 26th November, 2014 against the order dated 5th August, 2014. The appellate authority analysed the appeal extensively and passed an order vide proceedings dated 7th January, 2015, as under :

"The appellant submitted in his appeal that he never mixed the PDS rice along with resultant rice and whatever quality and quantity paddy supplied by the corporation, the same has been hulled and tendered the resultant rice.

The appeal has been properly scrutinized, but the explanation not accepted and also it is revealed in the District Collector's report, the hulling agent tendered poor quality rice and not fit for human consumption and it is hereby confirmed the order of the Senior Regional Manager, TNCSC, Tanjore for cancellation of the hulling agent and blacklisting the appellant's rice mill and also it is ordered to recover Rs.15,14,042/- from the appellant."

6. Feeling aggrieved, the petitioner has preferred the instant writ petition. The principle grounds raised by the appellant is that before imposition of penalty, proper show cause notice was not given and so-called opportunity of hearing was not given. The appellate authority has not considered all points raised by the appellant and the order of the appellate authority is not a reasoned one. It was further contended that the procedure adopted by the Corporation for drawal of samples was not in accordance with the procedure prescribed under the manual.

7. The learned Single Judge, recording the finding that the aforesaid submissions were made before the division bench in W.A. (MD)Nos.1123 and 1174 to 1177 of 2013 and were rejected and as such, the petitioner is estopped from raising the same grounds, which were duly considered and negatived by the division bench of this court, dismissed the writ petition.

8. The appellant reiterates the same points of contention, which fell for consideration in the earlier writ appeals, being W.A.

(MD)Nos.1123 and 1174 to 1177 of 2013. The said Coordinate division bench has observed as under :

"8.As can be seen from paragraph No.5 of Chapter IV, the sample should be taken in four sealed bags. Two sealed samples are to be tied together and sent to the Regional Laboratories with sample dispatch statements containing all particulars on the next day. In other words, the time limit stipulated is for sending the samples and not for completing the analysis itself. In this case, the appellants have produced the calendar in the year 2013. From the calendar, the appellants have been able to demonstrate that there was no delay in drawing and sending the samples. Therefore, the delay in analysing the samples, cannot be put against the appellants. Naturally, analysis of samples would take a longer time and the appellants cannot be held responsible for the same. But, the learned Judge has come to the conclusion that the taking of samples as well as analysis should take place within one day. But, this is not the requirement of the Manual. Therefore, the impugned orders cannot be sustained.

9.There is one more fact to be taken note of before we dispose of the writ appeals. After the order of the learned Judge quashing the show cause notices, several tons of rice handed over by the first respondent to the appellants Corporation, has been kept in their custody and the rice is getting spoiled. Therefore, on previous occasion, we directed the District Collector to examine the rice and file a report regarding its quality and stability for re-use. The Collector has filed the report indicating that there was a stock of 239 metric tons of rice. The quality is found to be as follows:-

"TNCSC. N.T.T. (Godown) Thanjavur

Out of 53.200 MT of Rice in TNCSC. NTT (G) Thanjavur in Stack No.2/1-252 23.200 MT are unfit. Balance 30.000 MT can be distributed after repolishing at Modern Rice Mill.

In Stack No.2/3-257 20.950 MT of rice in TNCSC NTT (G) all the 20.950 MT of rice are unfit.

In Stack No.2/13-252 all the available quantity of rice 28.500 MT are unfit.

In Stack No.2/6 - 170 All the stocks of 25.000 MT. of rice may be issued after repolishing at Modern Rice Mill.

TNCSC (Godown) Orathanad

All the Stock in Stack No.2/6A-56 Boiled Rice Grade - A of 15.000 MT. may be issued after repolishing at Modern Rice Mill.

TNCSC (Godown) Peravurani

All the Stock in Stack No.2/12-36 Boiled Rice Grade - A and common of 39.050 MT. may be issued after repolishing at Modern Rice Mill.

All the Stock in Stack No.1/10-35 Boiled Rice Grade - A of 57.250 MT. may be issued after repolishing at Modern Rice Mill.

In total out of 239 MT stock, 72.650 MT Rice are not fit for distribution and the balance quantity of 166.300 MT of Rice can be issued after proper repolishing in Modern Rice Mill."

9. As aforesated, all contentions advanced by the writ petitioner before the writ court as well as before us have been duly considered by the Coordinate division bench on the earlier point of time in respect of the same incident and the cause of action. There is no reason to re-appreciate the same to reach to any other conclusion, which is impermissible.

10. We have examined all facts very carefully and also considered the submissions, as aforesated. The impugned order rendered by the learned Single Judge is unexceptionable, fair and proper, warranting no interference.

11. Resultantly, the writ appeal is dismissed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12,Tambusamy Road, Kilpauk,
Chennai-600 010.
2. The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Thanjavur Region,
Thanjavur.
3. The Manager,
(Quality Control),
Tamil Nadu Civil Supplies Corporation,
Thanjavur.

+1cc to Mr.C.Prakasam, Advocate, S.R.No.52516

W.A.No.1416 of 2015

VSN(CO)
CA(07/10/2015)



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