

LPA No. 419 of 2015. [O&M]
Date of Decision: 18th March, 2015.

State of Haryana & Ors. Respondents

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This Letters Patent Appeal is directed against the order dated 05.02.2015 whereby learned Single Judge has dismissed the appellant's writ petition challenging the communication dated 05.04.2013 of the Food Corporation of India, stopping the delivery of rice from the appellant firm till the replacement of Beyond Rejection Limit [BRL] stock.

[3]. Vide the impugned communication dated 05.402013 the District Office of the FCI at Karnal informed its Manager [Quality Control] that during inspection of rice at HAFED Pasinakalan on 12.03.2013 by Dr. O.P.Singh, DGM[QC], Noida, one Stack No. 2/26 having 162 MT of appellant firm was found 'BRL', i.e., damaged grain

were to the extent of 3.25% against the permissible limit of 3.00%. It

was further mentioned that the BRL stack had not been replaced by the appellant and till such replacement takes place, further delivery of rice of the appellant be stopped.

[4]. The principal grievance of the appellant before the learned Single Judge was that the sample of its rice was got analysed in violation of the principles of natural justice. It, thus, sought a *mandamus* to direct the HAFED and FCI to get the sample of rice from Stack No. 2/26 re-checked/re-analysed in the presence of representative of the appellant firm.

[5]. It may be mentioned here that the appellant was allotted 65245.95 quintals paddy out of which the rice to be milled was 43,714.79 quintals. The appellant supplied the quantity of 32,118.41 quintals between the period from 5.11.2012 to 05.04.2013.

[6]. It is self-evident from the order passed by learned Single Judge that the appellant's contention re: violation of principles of natural justice was acceded to by the Court at the out-set and while issuing notice to the respondents for 22.05.2013, a direction was issued to seek fresh analysis of the Stack in dispute from the Food Laboratory, Gurgaon, within seven days.

[7]. The analysis report received on 04.06.2013 reiterated that the sample drawn from Stack No. 2/26 was of BRL quality.

[8]. The appellant was still aggrieved and moved application before the learned Single Judge stating that it was not aware of the fact that there is a Central Government Laboratory known as Central Grain Analysis Laboratory [CGAL] and that the authorities be directed to send the sample of Stack 2/26 for re-analysis by CGAL.

[9]. Learned Single Judge vide order dated 15.07.2014 called upon as to why the second sample be not sent to CGAL and then vide order dated 09.12.2014 directed to send one more sample to CGAL.

[10]. The respondents then moved an application to recall that order pointing out that [i] there are no further samples available from Stack No. 2/26 as the Rule required only six months time for its retention and that time had expired and [ii] there was hardly any justification for sending the sample to CGAL as all the requisite standards were observed while testing the earlier samples.

[11]. Learned Single Judge has vide the impugned order finally accepted the above noticed contention raised on behalf of the respondent-authorities.

[12]. As regard to the appellant's complaint against non-observance of the principles of natural justice, the learned Single Judge has observed that another sample having been sent at the instance of the appellant which was got re-checked and re-analysed in the presence of their representative, the appellant can not re-agitate the matter time and again as the rice supplied by it was found to be BRL.

[13]. We have heard learned counsel for the appellant at a considerable length and gone through the record.

[14]. Shri Yadav vehemently urged that the *ex-parte* analysis report on sample checking has caused grave prrejudice to the appellant and that the respondents ought to have complied with the subsequent directions issued by learned Single Judge for drawing

second sample for analysis by the CGAL. He heavily relied upon DO letter dated 25.07.2012 of Shri Sudhir Kumar, the then Secretary, Government of India, Ministry of Consumer Affairs wherein it was stated that there was a wide variation in analysis result of the samples drawn by the team of Ministry analysed in CGAL as compared to the samples drawn and analysed by FCI team. The DO letter claims only one sample out of the 9 samples was found exceeding the limit of uniform specifications in respect of broken grains and all other samples were found within specifications as per the analysis results of CGAL, whereas all the samples were declared as exceeding the limit of uniform specifications in respect of damaged/slightly damaged grains in the samples drawn/analysed by the FCI team. The officer further observed that such a wide variation in analysis results *"is a cause of concern"*.

[15]. Having given our thoughtful consideration to the submissions, we do not find any merit in this appeal. The order passed by learned Single Judge has to be seen in the context of the prayer made by the appellant in its writ petition. It is clear from the averments made by the appellant that while questioning the credentials of the *ex-parte* report referred to in the impugned communication dated 05.04.2013, the appellant sought a direction to the authorities to draw another sample from Stack No. 2/26 and get the same re-checked/re-analysed in the presence of its representative.

[16]. The above stated relief was eventually granted by the learned Single Judge but unfortunately, the sample out of the subject

stack failed second time also and it was found to be of BRL quality. It was only with a view to wriggle out of the second analysis report that the appellant sought to draw another sample and send the same to CGAL. The learned Single Judge was inclined to do so that also but had to modify his order as no sample was available with the authorities due to expiry of time period.

[17]. It may be true that at the time of analysis of the first sample the appellant through its representative was not heard and conclusions were drawn behind its back but that procedural flaw was duly rectified by the learned Single Judge while sending second sample to the Government Laboratory at Gurgaon. The appellant was fully aware of the fact that sample could be retained only for a period of six months. It never approached the learned Single Judge at the initial stage or within that time period to draw yet another sample and send it to CGAL.

[18]. There are no allegations of *mala-fide* or motive against any officer of the FCI. In these circumstances, learned Single Judge has rightly accepted the official version that no sample was left after the expiry of six months which could be sent for third analysis to CGAL. Suffice it to observe that the principles of natural justice are required to be observed to an extent such observance is possible. These principles can not be stretched to absurdity.

[19]. Similarly, the view point of an officer of the Government of India in his DO letter of 2012 can not be accepted as a general principle. It is not known as to in what circumstances and in reference to which samples the officer expressed his concern. The

observations made in that DO letter can not be invoked as a policy decision.

[20]. For the reasons aforementioned, we do not find any merit in this appeal, which is accordingly dismissed.

(SURYA KANT)
JUDGE

18th March,2015.
dinesh

(P.B.BAJANTHRI)
JUDGE