
1

□ □

□ □

1

-
-
-
-
-
-

ORDER:-

This writ petition is filed for the following substantive relief:

“....to declare the impugned action of the respondents in not taking steps to settle due amount of Rs.11,25,890/- being the cost of supply of red-gram dal for the month of July, 2014 and to return Rs.4.00 lakhs EMD, as illegal and arbitrary.”

The petitioner and the respondents entered into an agreement dated 01.08.2013 whereby the petitioner had agreed to supply one kilogram of Red-gram Dal and

½ kilogram of Laminated Pouches labelled as “For ICDS supply - Not for sale” as per the indent packed in new Hessian gunny bag of 50 kgs. capacity with stenciling “for ICDS supply - Not for sale”. This agreement was for one year, however, the petitioner, vide communication dated 07.08.2014, informed the 4th respondent - Project Director-Convener stating as under:

“With reference to the above subject, we have received your notice on 06.08.2014 in this regard and we want to bring the following for your kind consideration.

With reference to our above referred (ii) and (iii) letters, we requested that we will supply in 25 Kg packing instead of 1 Kg packing and we have supplied

accordingly. In the above reference (iv) we also requested your goodself that rate of Red-gram Dal is abnormally increased in the market and we are suffering loss in supply of Dal and requested you to increase the rate of the Red-gram Dal.

Even though there is an abnormal rate increased in the market we have successfully executed the orders without any food gaps.

As a Government organization, we are requesting your goodself not to recover any amounts for not supplying in 1 Kg packing as we already suffered loss in execution of these orders. Keeping in view of good relations, we have supplied Red-gram Dal in 25 Kg packing to avoid food gaps.”

The petitioner received no response from the respondents who continued to accept the delivery supplied by the petitioner in 25 Kg pouches. After completion of the total delivery, the respondents were supposed to pay the amount towards cost of supply of Red-gram Dal and refund EMD of Rs.4.00 lakhs. However, the respondents have not paid the amount. At last, the petitioner was compelled to send a legal notice dated 28.09.2015 whereby the respondents were asked to pay an amount of Rs.11,25,980/- towards cost of supply of Red-gram Dal for the month of July, 2014 and also to return EMD of Rs.4.00 lakhs within a period of one week. Since the respondents have not paid the amount due to the petitioner, the petitioner was compelled to file the present writ petition.

The respondents have filed counter affidavit

inter alia stating that the petitioner had submitted a letter dated 27.12.2013 to the 3rd respondent - Joint Collector - Chairman with a request to allow them to supply in 25 Kg packing and they are facing problems in printing of Logo etc. in 1 Kg. laminated pouches. Thereafter, the petitioner sent a letter dated 09.01.2014 to the District Collector, Nalgonda District requesting to enhance the rate of Red-gram Dal to Rs.8.60/- per Kg. The 4th respondent-Project Director gave a reply on 18.01.2014 to the above letter duly permitting them to supply in 25 Kg packing for that instance only and also informed that the District Collector has not agreed to enhance the rate of Red-gram Dal. Moreover, the 4th respondent had informed the petitioner in the letter that the District Collector clearly clarified that if the petitioner wants to supply as per tender rate of Rs.60.37 per kg, they should supply immediately, otherwise the tender will be cancelled duly forfeiting the E.M.D., but the petitioner supplied the Red-gram Dal in 25 Kg packing instead of 1 Kg packing during his entire tenure of tender period. Accordingly, the respondents have not paid the amount, rather imposed penalty of Rs.9,93,500/- for violation of

the terms of the agreement.

Heard the learned counsel for both the parties.

On perusal of the agreement dated 01.08.2013, Term No.14 states as under:

“A penalty of Rs.25/- (Rupees Twenty Five Only) will be imposed per MT per day subject to maximum of Rs.500/- per MT for the quantity of Red-gram Dal supplied after the date fixed at the time of payment.”

In Term No.10, it is stated that the supplier shall supply the entire ordered quantity of Red-gram Dal (Good Quality) within the stipulated time i.e. one week from the receipt of the indent. Term No.11 discloses that in case of failure or refusal or inordinate delay leading to withdrawal of the contract, the Security Deposit of the supplier will be forfeited. The approved rate of Red-gram Dal is exclusive of A.P.VAT.

In the agreement, it is nowhere stated that if the petitioner would not supply 1 Kg or half a kilogram of laminated pouches, they shall be entitled to penalty. Moreover, it is the admitted case of the respondents that they received the total supply in time without delay and in proper quantity and quality. If this is the case of the petitioner and there is no violation of the terms of the agreement, the respondents are liable to

pay the due amount including E.M.D. of Rs.4.00 lakhs. The petitioner is a Government institution under the Central Government and the respondents are Departments of the State Government of Telangana. In such a situation, the respondents were supposed to insist on the packing if they had some difficulty, however, there is no communication to the petitioner about the supply.

In view of the above, I find force in the submission of the learned counsel for the petitioner. Therefore, this Court is inclined to dispose of the writ petition with the following direction:

“The respondents are directed to pay the due amount and E.M.D. together with interest at the rate of 9% per annum from the due date till the date of payment. It is made clear that the payment shall be made within a period of four weeks from the date of receipt of a copy of this order, failing which, the respondents shall be liable to pay interest at the rate of 12% per annum on delayed payment.”

Subject to the above direction, this writ petition is disposed of. No order as to costs.

As a sequel to the disposal of the Writ Petition, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

SURESH KUMAR

KAIT, J

16.06.2016

bcj