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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA 124/2016**

Date of Decision- 22nd August, 2016

SANDPLAST (INDIA) LTD

...Appellant

Through: Mr. Tasneem Ahmadi, Advocate

Versus

UNION OF INDIA & ANR.

...Respondents

Through: Mr. Kirtiman Singh, CGSC with Mr. Sumit Rajput, GP with Mr. Gyanesh Bhardwaj, Advocate for UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

: **Ms.G.ROHINI, CHIEF JUSTICE**

1. The Petitioner in W.P.(C) No.5477/2014 preferred this appeal against the order of the learned Single Judge dated 08.01.2016.
2. We have heard the learned counsel for both the parties.
3. The appellant herein/writ petitioner is a company engaged in the manufacture of Mechanised Autoclave Sand Lime Fly Ash (MASLFA) Bricks. The said bricks were included as an approved item in Delhi Schedule of Rates, 2007 (DSR) of Central Public Works Department (CPWD) and the same was continued till 2012. However, the said entry was deleted from DSR, 2013 on the ground that MASLFA Bricks did not conform to the IS:12894 due to their limited availability and excessive water absorption as compared to Fly Ash Lime Gypsum (FALG) Bricks. Aggrieved by the said deletion, W.P.(C) No.5477/2014 was filed contending inter alia that the assumption of the Respondents that MASLFA Bricks did

not conform to the water absorption standards as specified was not correct and that the initiation of action for deletion of MASLFA Bricks from DSR, 2013 was mala fide.

4. Though by the date of the filing of the writ petition, DSR-2014 contained an entry of 'Fly Ash Lime Bricks (FALG) conforming to IS:12894', pending the writ petition, the entries were modified deleting the reference to FALG Bricks. Thus, DSR-2014 mentions only 'Fly Ash Bricks' or 'Fly Ash Bricks conforming to IS:12894'. In the light of the said modification, it is contended by the Respondents that there was no difference between MASLFA Bricks and FALG Bricks and both variety of bricks have to conform to the standards published by Bureau of Indian Standards - IS:12894. It was also contended that since there was no difference between MASLFA Bricks and FALG Bricks, there was no requirement for DSR to contain separate entries. After hearing both the parties, the learned Single Judge was of the view that the issue regarding the entries in the DSR requires re-examination. It was observed:

"19. Respondent no.2 had asserted that there is no difference in MASLFA Bricks and FALG Bricks and, therefore, providing a separate entry of MASLFA Bricks would not be warranted. Further, a separate value for such bricks was also not required to be specified merely because the petitioner's cost to manufacture the same was higher. Clearly, if MASLFA Bricks and FALG Bricks are not materially different, there is much merit in the contention that a separate value need not be specified for MASLFA Bricks merely because the petitioner's cost to manufacture the same is higher. However, the principal controversy that needs to be resolved is whether MASLFA Bricks and FALG Bricks are indeed separate products which are materially different from each other. Although respondent no. 2 has

asserted that there is no difference between the two varieties of bricks, the fact is that over five years, respondent no.2 has specified a higher price for MASLFA Bricks. More importantly, neither the Technical Cell nor the Technical Board of respondent no.2 had examined whether the two products are materially different. The action for deleting the entry had been initiated pursuant to the Chief Engineer's (NDZ-II) letter dated 18th October, 2012 which had principally flagged only two issues; (a) that the petitioner was the only manufacturer of MASLFA Bricks and (b) that the petitioner's bricks had failed the water absorption specification. However, there was no material to indicate that both MASLFA Bricks and FALG Bricks were similar in all material aspects. The Technical Board also does not seem to have proceeded on the basis that both variety of bricks were similar.

20. The last reason provided by the respondent for omission of MASLFA Bricks from DSR is that the availability of MASLFA Bricks is limited. This too is disputed by the petitioner. It was suggested that MASLFA Bricks had been deleted from the DSR because the petitioner was the only manufacturer in NCR. Clearly, if the product manufactured by the petitioner is different as well as superior than FALG Bricks, the fact that the petitioner is the only manufacturer of such bricks cannot be the reason for deleting the product from the DSR.

21. Before concluding, it is also necessary to note that it had been pointed out by the Chief engineer (NDZ-II) in his letter dated 18th October, 2012 that FALG Bricks of the required specification were not available, therefore, he had suggested that CPWD specification regarding water absorption which was fixed at 20% may be raised to 30%. Admittedly, the said issue had not been resolved. Thus, the entry of FALG Bricks as it now stands in DSR is of little relevance as according to respondent no.2, FALG Bricks of the required specification as referred to in DSR – IS 12894

are not available. The respondents are therefore required to re-examine the issue regarding entries in the DSR."

5. Thus, the writ petition was disposed of with the following directions:

"22. In the circumstances, the writ petition is disposed of with the following directions:

(A) That respondent no.2 shall cause MASLFA Bricks manufactured by the petitioner to be tested for water absorption in a transparent manner and with due information to the petitioner.

(B) That respondent no.2 shall within a period of six months from today undertake a comparative study of MASLFA and FALG Bricks in order that an informed decision may be taken as to whether the said products are materially similar or different.

(C) That the report of the above comparative study shall be placed before the Technical Board of respondent no.2 no later than seven months from today in order for the Board to take an informed decision whether to include MASLFA Bricks as a separate entry in DSR."

6. The said order is under challenge in the appeal before us. We may at the outset mention that the Appellant is aggrieved only by the directions (B) and (C) of Para 22 of the order under appeal. It is contended by the learned counsel for the Appellant that the directions (B) and (C) are likely to be misused by the Respondents and the same would enable them to ensure that MASLFA Bricks are not placed on DSR. Thus, the learned counsel for the Appellant would submit that the implementation of the directions (B) and (C) of Para 22 of the order under appeal may be directed through an outside agency to meet the interest of justice.

7. Having regard to the apprehensions of the Appellant that a transparent process may not be followed by the Respondents while implementing the directions of the learned Single Judge, by order dated 24.02.2016, we directed the Respondents to file a short affidavit and accordingly, the Executive Engineer, CPWD filed a short affidavit dated 15.07.2016 stating that for *“implementation of the directions issued vide para 22 (B) and (C) by an outside agency, the matter was placed before the competent authority i.e. Additional Director General (TD), CPWD. After consideration of all the relevant factors which was decided by the competent authority that the testing of samples must take place in the CPWD lab only. However, the Appellant’s representatives can remain present during the testing”*. It was also submitted by the respondent in the counter affidavit that *“the report of the comparative study to be carried out in terms of Para 22 (B) is to be placed before the Technical Board of the CPWD that would then take an informed decision as to whether MASLFA Bricks are to be included in the DSR as a separate entity in the DSR.”*

8. In the facts and circumstances of the case, though we are not inclined to direct the implementation of the directions in Para-22(B) and (C) of the order under appeal by an outside agency, we consider it appropriate to issue the following additional directions in terms of the proposals made by the respondent No.2 in the short affidavit dated 15.07.2016:

- (i) The testing of samples of MASLFA Bricks manufactured by the appellant for water absorption shall be done in the presence of two representatives of the appellant. For the said purpose, the respondent No.2 shall inform in writing to the appellant the date and time fixed for conducting the tests one week in advance.

- (ii) The objections, if any with regard to the procedure followed for testing of samples shall be filed before the respondent No.2 within 2 days from the date of the testing.
 - (iii) Such objections, if any received from the appellant shall be placed before the Technical Board of CPWD and the same shall be taken into consideration while taking the decision in terms of the directions of the learned Single Judge in Para-22 of the order under appeal.
 - (iv) The Technical Board, CPWD shall assign reasons for either accepting or rejecting the objections raised by the appellant and the same shall reflect in the order that may be passed by the Technical Board, CPWD.
9. The appeal is accordingly disposed of.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL

AUGUST 22, 2016