

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 08.01.2016

+ **W.P.(C) 5477/2014**

SANDPLAST (INDIA) LTD.

..... Petitioners

versus

UNION OF INDIA AND ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms Tasmeen Ahmadi with Mr Pramod Kumar.
For the Respondents : Mr Kirtiman Singh, CGSC with Mr Gyanesh
Bhardwaj for R-2.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner is a company engaged in the manufacture of Mechanised Autoclave Sand Lime Fly Ash (hereafter 'MASLFA') Bricks and has filed the present petition under Article 226 of the Constitution of India, *inter alia*, praying as under:-

“(a) Issue a Writ of Mandamus or any other Writ in the nature of Mandamus directing the Respondents CPWD to include the Mechanised Autoclave Sand Lime Fly Ash Brick in the DSR of 2014 and subsequent DSRs.”

2. The petitioner impugns the action of respondent no.2 in removing

MASLFA Bricks as an approved item from the Delhi Schedule of Rates (hereafter 'DSR'), 2013 published by it.

3. The petitioner asserts that there are two major kinds of Fly Ash Bricks that are available, one being MASLFA Bricks which is manufactured by the petitioner and the other being Fly Ash Lime Gypsum (hereafter 'FALG') Bricks.

4. According to the petitioner, MASLFA Bricks are manufactured by an automated process and are superior in relative strength and other parameters such as water absorption, in comparison to FALG Bricks which are manufactured by manual processes. MASLFA Bricks were included in the DSR published by CPWD in 2007 as an item bearing Code No.8658. MASLFA Bricks and FALG Bricks continued to be shown as separate items in the DSR till 2012. The relevant entries with respect to FALG Bricks and MASLFA Bricks in the DSR, 2012 read as under:-

Code No.	Description	Unit	Rate (₹)
xxxx	Xxxx	xxxx	xxxx
7737	Fly ash lime bricks(FALG Bricks) conforming to IS: 12894	1000 nos.	3,300.00
xxxx	Xxxx	xxxx	xxxx
8658	Mechanised Autoclaved fly ash sand lime non modular bricks	1000 nos.	4,300.00

5. However, the DSR published in 2013 only mentioned FALG Bricks and the entry relating to MASLFA Bricks was omitted. Since the DSR is used extensively for preparation of budgets and for inviting tenders for civil works, the petitioner is aggrieved by the deletion of the entry relating to MASLFA Bricks and this has led the petitioner to file the present petition.

6. The petitioner placed on record DSR 2014 which now recorded the entry relating to fly ash bricks as under:-

Code No.	Description	Unit	Rate (₹)
XXXX	XXXX	XXXX	XXXX
7737	Fly ash lime bricks(FALG Bricks) conforming to IS: 12894	1000 nos.	5,800.00

7. According to respondent no.2, the said entry would cover all fly ash bricks including MASLFA Bricks manufactured by the petitioner. This was disputed by the petitioner who pointed out that the value of MASLFA Bricks was higher than FALG Bricks. In the circumstances, on 14th October, 2014, this Court passed an order directing respondent no.2 to file an affidavit indicating the rationale of placing fly ash bricks under a single entry as well as the manner in which the price differentiation between two variety of bricks was addressed. Pursuant to the aforesaid direction,

respondent no.2 filed an additional affidavit dated 8th December, 2014 which also enclosed an office memorandum issued by respondent no.2 whereby various entries in DSR 2014 were modified to delete references to FALG Bricks and merely mention 'fly ash bricks' or 'fly ash bricks conforming to IS 12894'.

Reasons provided for omission of MASLFA Bricks from DSR 2013.

8. The respondents state that there is no difference between MASLFA Bricks and FALG Bricks and both variety of bricks have to conform to the standard of 'pulverized fuel ash lime bricks' as published by the Bureau of Indian Standards - IS 12894: 2002. However, the respondents admit that whilst MASLFA Bricks are manufactured by automated processes, FALG Bricks are produced manually. According to respondent no.2, MASLFA Bricks were included in the DSR in the hope that other manufacturers would also start manufacturing autoclaved bricks and there would be corresponding improvement in the quality as well as the cost of bricks. However, the respondents contend that other manufacturers have not adopted the mechanized process for manufacturing autoclaved bricks and, consequently, the petitioner continues to be the only manufacturer of MASLFA Bricks in the National Capital Region (NCR).

9. According to respondent no.2, MASLFA Bricks manufactured by the petitioner were being used in construction of Type V and Type VI flats in Pocket 6 at Deen Dayal Upadhyay Marg, New Delhi and were found to have a high degree of water absorption which was much beyond the acceptable limit. IS 12894 provides that the water absorption in bricks after immersion in water for 24 hours shall not be more than 20%. Contrary to the above Standard, MASLFA Bricks were found to have water absorption as high as 34% to 45%. Respondent no.2 also produced copies of two letters dated 18.08.2012 and 22.08.2012 addressed to the petitioner which indicates that samples of bricks supplied by the petitioner – 5 in number on one occasion and 10 on another – had been selected at random and on testing the same, it was found that water absorption was extremely high in the vicinity of 34% to 45%. Copies of the aforesaid letters were also marked to other officers as well as the contractor engaged in the construction of the flats in question.

10. By a letter dated 18.10.2012, the Chief Engineer (NDZ-II) of respondent no.2 had informed the Chief Engineer (CSQ) that the average water absorption of the bricks supplied for the construction of Type V and Type VI flats at Deen Dayal Upadhyay Marg, New Delhi was found to be

higher than the specified average of 20%. The said letter further pointed out that other FALG Bricks available around Delhi also did not conform to the Standard specified in respect of water absorption. In the circumstances, the Chief Engineer (NDZ-II) had observed as under:-

“Whereas the issue regarding procurement of suitable bricks/best possible fly ash bricks for use in the work under this zone is being taken, the following 2 issues are referred to you for examination and suitable action thereof.

- (a) Since for Auto-claved mechanized FALG bricks there is only one manufacturer (in NCR) viz. Sand Plast (India) Ltd. and their bricks not better than the FALG bricks made available by other manufacturers; at least in terms of water absorption, which is a critical and relevant characteristic for non-load-bearing applications, we are inadvertently abating the monopolistic practices and losing advantage of competitive rates, that too without any added merit/advantage to CPWD works.

This needs to be reviewed carefully as this is a serious matter being in contravention of applicable CVC instructions as well as the law of the land.

- (b) Increasing the maximum allowable water absorption for fly ash bricks from 20% to a suitable figure, say 30% as a general specification applicable in CPWD needs to be examined seriously, so that maximum number of manufacturer can specify the given criteria.

The higher water absorption thus allowed can be made good by increasing the thickness of plaster alternatively mixing the water proofing compound and/or other such suitable measures.”

11. Apparently, on the basis of the aforesaid letter, the Technical Cell of CPWD had recommended as under:-

“6.1.3.5 Water Absorption: However the average water absorption of Fly Ash Lime Bricks (FALG Bricks), and Mechanized autoclaved flyash sand lime bricks when tested in accordance with the procedure laid down in Appendix C of Chapter 6 found to be not more than 20% by weight.

The reference can be made to BIS and CBRI for revision of water absorption limit.

The item of Mechanized autoclaved flyash sand lime bricks may be deleted from the DSR due to limited availability and water absorption more than the prescribed limit in the BIS.”

12. The aforesaid recommendation for deletion of MASLFA Bricks from DSR was accepted at the meeting of the Technical Board of CPWD chaired by Director General CPWD on 18.04.2013.

Submissions

13. Ms Ahmadi, Advocate appearing for the petitioner contended that the fundamental premise that MASLFA Bricks did not conform to the water absorption standards as specified was not correct and the initiation of action for deletion of MASLFA Bricks was *malafide*. She contended that the letters dated 18th August, 2012 and 22nd August, 2012 produced by respondent no.2 had never been received by the petitioner and, in fact, no

tests as mentioned therein had been carried out. She further referred to a report dated 24th March, 2012 on the comparative study of FALG Bricks and MASLFA Bricks carried out by CPWD which indicated that the water absorption of MASLFA Bricks was found to be approximately 19% while that of FALG Bricks was found to be approximately 35%. The report also indicated that MASLFA Bricks were manufactured under controlled conditions with better quality control. It was also noticed that the cost of MASLFA Bricks was higher than the FALG Bricks. Ms Ahmadi submitted that in the circumstances, the omission of a specific entry in the DSR regarding MASLFA Bricks was unreasonable and arbitrary. She further contended that merely mentioning fly ash bricks as an entry in the DSR without specifically mentioning MASLFA Bricks or FALG Bricks was also arbitrary since the rate specified therein was that of FALG Bricks and that would unfairly prejudice the petitioner since the cost of MASLFA bricks was 30% to 35% higher than the FALG Bricks.

14. Mr Kirtiman Singh, Central Government Standing Counsel appearing for the respondents pointed out that the respondents had omitted reference to either MASLFA Bricks or FALG Bricks and had simply modified the relevant entries to read as fly ash bricks conforming to IS

12894. Thus, all fly ash bricks that conform to the Indian Standards are approved. He also referred to the additional affidavit filed on behalf of the respondent no.2 which indicated that other entries in DSR had also been correspondingly modified to remove any reference to FALG Bricks. He contended that since there was no difference between FALG Bricks and MASLFA bricks, there was no requirement for DSR to contain separate entries. He contended that there was also no reason to reflect a higher rate for MASLFA Bricks only because the petitioner charged a higher price. Mr Singh further contended that reflecting MASLFA Bricks as a separate item had resulted into creating a monopoly in favour of the petitioner since the petitioner was the only manufacturer of such bricks in NCR.

Reasoning and Conclusion

15. At the outset, it must be observed that subsequent to the filing of the present petition, the respondent has modified the entry relating to fly ash bricks and the entries in the DSR now no longer make any differentiation between fly ash bricks that are manufactured by an autoclaved process (MASLFA) or otherwise. Thus, the petitioner's grievance that its product - MASLFA Bricks is not included in the DSR does not survive as according to the petitioner, MASLFA Bricks fully conform to IS 12894: 2002.

However, the limited grievance that would remain is that the rates fixed by the respondent may not be feasible as MASLFA Bricks cost 30% to 35% more than other fly ash bricks. DSR 2014 specifies the rate of fly ash lime bricks conforming to IS 12894 to be Rs.5,800 for 1000 pieces. It is not disputed that the rate so specified does not pertain to MASLFA bricks which are priced higher. It is relevant to note that in DSR 2012, the rate of FALG Bricks was Rs.3,300/- per 1000 pieces while that of MASLFA Bricks was Rs.4,300/-. In the aforesaid circumstances, it is apparent that the entry regarding fly ash bricks i.e. Code No. 7737 described as 'fly ash lime bricks (FALG Bricks) conforming to IS 12894' effectively excludes MASLFA Bricks as the same are valued higher.

16. The decision to omit the entry relating to MASLFA Bricks was taken pursuant to the Chief Engineer (NDZ-II)'s letter dated 18th October, 2012 wherein he had made observations to the effect that (i) MASLFA Bricks did not conform to the water absorption specification as specified in IS 12894; and (ii) the petitioner was the only manufacturer of the bricks in question. The Technical Cell of respondent no.2 had recommended that MASLFA Bricks be deleted from DSR due to *"limited availability and water absorption more than the prescribed limit in BIS"*. The Technical

Board of respondent no.2 had accepted the above recommendation. The respondents also do not dispute that the genesis of the above recommendation was the letter dated 18th October, 2012 sent by the Chief Engineer (NDZ-II).

17. It is well settled that the scope of judicial review under Article 226 of the Constitution of India is very limited and this Court would not interfere in administrative decisions of the authorities unless it is found to be arbitrary and unreasonable. In the circumstances, the only issue to be addressed is whether the reasons provided by the respondent no.2 for deletion of MASLFA Bricks from DSR, are sustainable.

18. The first and foremost reason provided by respondent no.2 is that MASLFA Bricks produced by the petitioner do not conform to IS 12894. This is seriously disputed by the petitioner. Whilst according to respondent no.2, the bricks manufactured by the petitioner had failed the test of water absorption, the petitioner contests the aforesaid finding. The petitioner has disputed the receipt of the letters dated 18th August, 2012 and 22nd August, 2012 and has further disputed that any valid tests were conducted on the bricks manufactured by the petitioner. It is not disputed that the deletion of MASLFA Bricks in the DSR would seriously prejudice the petitioner.

Since one of the principal reason to delete the said product is its alleged failure to conform to the water absorption standards, it was necessary to ensure that such tests are conducted in a transparent manner with due information to the petitioner. More so because the comparative study conducted by respondent no.2 in March 2012 had indicated that the water absorption for MASLFA Bricks was approximately 19% which was lower than the FALG Bricks. Mr Singh appearing for respondent no.2 also could not dispute the fact that the petitioner had not participated in any tests conducted on MASLFA Bricks. Thus, in my view it would be necessary that such tests be reconducted in a transparent manner.

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.

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.

23. The parties are left to bear their own costs.

JANUARY 08, 2016
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VIBHU BAKHRU, J