NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.C.C. No. 490 of 2017

- National Federation of Farmer Procurement Processing and Retailing Cooperative of India Limited (NACOF)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary, Department of Food, Civil Supplies and Consumer Protection, Mahanadi Bhawan, Mantralaya, Post and PS Mandir Hasaud, Raipur, Chhattisgarh
2. Chhattisgarh State Civil Supplies Corporation (CSCSC), Through Managing Director, Head Office at Hitvada Parisar, Avanti Vihar, Telibandha, Raipur, Chhattisgarh 492001

---- Respondents

And

M.C.C. No. 491 of 2017

- National Federation of Farmer Procurement Processing and Retailing Cooperative of India Limited (NACOF)

---- Petitioner

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2. Chhattisgarh State Civil Supplies Corporation (CSCSC), Through Managing Director, Head Office at Hitvada Parisar, Avanti Vihar, Telibandha, Raipur, Chhattisgarh 492001

---- Respondents

For Petitioner	:	Shri Kishore Bhaduri and Shri Abhinav Kardekar, Advocates
For Respondents No.1/State	:	Shri Ashish Surana, Panel Lawyer
For Respondent No.2	:	Shri Saurabh Dangi and Shri Animesh Tiwari, Advocates

Hon'ble Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Thottathil B. Radhakrishnan, Chief Justice

12.07.2017

1. We have heard the learned counsel for the Petitioner in these two matters and the learned counsel for the Respondents.

2. The Petitioner is the National Federation of Farmer Procurement Processing and Retailing Cooperative of India Limited and the Respondents are the State of Chhattisgarh and Chhattisgarh State Civil Supplies Corporation.

3. The Petitioner was entrusted with the contract to supply *Chana*. That Institution was ultimately blacklisted after terminating its contract. Through the judgment delivered on 27.06.2017, the writ petitions, WP(C) No.1606 of 2017 and WP(C) No.1608 of 2017, filed by the Petitioner were ordered as follows :

> "22. In the result, these writ petitions are ordered as follows:
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> (I) The orders impugned in both the writ petitions are quashed paving way for the Petitioner effecting the supply on the basis of supply orders issued for the month of May and June, 2017 and also for the subsequent periods in terms of the contracts between the parties on the following conditions:
>
>> (i) The entire supplies due in terms of the supply orders for the months of May and June, 2017 shall be effected within 14 days from today, that is to say before 10.07.2017 and the Corporation shall receive those supplies if they are made promptly within such time limit and on the further condition that the Corporation shall impose penalty of 2% in terms of clause 24 of the supply conditions based on the date of the supply order and also on the further condition that the Petitioner pays the Corporation within ten days from today, an amount of Rs. 10,00,000/- (Rupees Ten Lakhs) as costs of these two writ petitions.
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>> (ii) If supplies aforedirected are made in accordance with the contract, as regards quality, quantity, destination etc. the Corporation will permit the Petitioner to discharge the obligations in terms of the contracts for the remaining periods by issuing supply orders and all such supply orders shall be satisfied within the time limits as per the tender conditions. The period of time for performance of any

such supply order shall not be extended merely by reason of the extension of period of time granted as per this judgment for complying with the supply obligations as per the supply orders dated 03.04.2017.

(iii) The time limits fixed herein shall be treated as peremptory.

(II) Any invitation for offers or consideration of offers in terms of any invitation issued as a consequence of the impugned order will not be processed or effectuated for the time being awaiting due performance of the directions in this judgment by the Petitioner.

(III) If the aforesaid conditions as to supply, penalty and costs in relation to supply orders dated 03.04.2017 are not obeyed by the Petitioner in relation to the contracts which are the subject matter of these writ petitions, the quashment of the impugned decisions of the Corporation will stand automatically withdrawn and the impugned orders will operate and bind the Petitioner; and all directions and orders contained in this judgment insofar as it is in favour of the Petitioner will stand vacated and the writ petitions will stand dismissed with costs fixed at Rs.10,00,000/- (Rupees Ten Lakhs) and the Corporation will be entitled to further proceed with the tenders which have already been received in terms of the tender invitations extended after issuance of the impugned orders. This will be without prejudice to the eligibility of the Corporation to recover the costs as ordered in this clause."

4. On 10.07.2017, the Petitioner filed a writ petition as Writ Petition (C) No.1877 of 2017 seeking an order that the materials dispatched by the Petitioner uptill 10.07.2017 may be directed to be received in obedience to the judgment dated 27.06.2017. It was then noticed by the Bench that the said writ petition is not an appropriate remedy in lieu of applications for modification of the common judgment in Writ Petition (C) No.1606 of 2017 and Writ Petition (C) No.1608 of 2017 or for enlargement of time fixed as per that common judgment. Therefore, that Writ Petition (C) No. 1877 of 2017 was disposed of leaving it open to the Petitioner to re-register that matter as MCC which is the nomenclature for application seeking modification of order, enlargement of time etc. It was also clarified that it would be open to the 2nd Respondent to accept the goods if the supply is otherwise in order except as regards the time factor. That order issued on 11.07.2017 was to continue for a period of 48 hours and the MCC, if any filed, was directed to be posted on 12.07.2017 at 2.15 P.M. This is how the two captioned MCCs are now before us.

5. The judgment rendered on 27.06.2017 in Writ Petition (C) No. 1606 of 2017 and connection contained the clear requirement of a time bound supply and to perform the financial commitments including by way of the order of costs imposed thereby. While it is not a matter in dispute that as of now i.e. 12.07.2017, the entire truck loads of the supplies have reached the premises of the 2nd Respondent Chhattisgarh State Civil Supplies Corporation, the said Establishment points out that the supplies were not effected within the time limit fixed. The submission is that the goods ought to have been delivered before 10.07.2017.

6. Scanning the pleadings in the MCC and the return filed by the 2nd Respondent, it appears that there are allegations thrown at each other which are apparently more in the realm of matters which could be treated as those which surge in the context of heated accusations at each other on different allegations regarding the conduct of the parties.

7. Be that as it may, having regard to the approach adopted in the judgment dated 27.06.2017 and the directions contained therein, the clear indication is that the attempt of this Court was to ensure that the supplies are effected in the larger interest of the Exchequer and the end consumers to whom the *Chana* has to be supplied through the Public Distribution System of the State of Chhattisgarh.

8. The learned counsel for the 2nd Respondent Chhattisgarh State Civil Supplies Corporation is justified in arguing that the use of the word 'peremptory' while prescribing the time limits through the judgment dated 27.06.2017 and the default clause imposed through that judgment are sufficient indicators to the fact that with passage of time the said judgment has worked itself out. However, bearing the peculiar facts and factors of the case in hand and the contents of the common judgment dated 27.06.2017, we are inclined to think that there is fair room for a deeper consideration of the concept of the term 'Supply' which is repeatedly used in that judgment vis-a-vis the concept of 'Sale' in relation to goods. Though in a different context, the Apex Court in ***Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector and E.T.I.O. & Ors., AIR 2007 SC 1984*** has stated that 'supply' does not mean 'sale'. The context in which that statement was made is in relation to electricity and levy of taxes. Yet, the concept of supply and the treatment of electricity as goods were deliberated upon. Therefore, the said precedent stating that 'supply' does not mean 'sale' can be understood to give the clear distinguishing feature of the concept of 'supply' from a pure and simple contract of 'sale'. An agreement for sale and a contract of sale of goods are two different concepts; the latter among which is the fructification of the sale by delivery of goods, unless of course a transaction falls under any other limb of contract which could be treated as having resulted in a concluded sale, going by the provisions of the Sale of Goods Act, 1930. In the context of the judgment dated 27.06.2017, in relation to which these MCCs are filed, we are inclined to take the view that the direction to receive supplies, if made before 10.07.2017, takes within its sweep the activity of the Petitioner making available the materials for supply, loading them for supply and moving the supplies in vehicles to the ultimate destination, leading to the delivery of such goods in the premises duly authorised by the Corporation for such purpose. We take this view having regard to the totality of the facts and circumstances of the entire transactions which have been considered in depth, to the extent required, for rendering the judgment dated 27.06.2017.

9. The learned counsel for the Corporation may be justified to some extent in pointing out that the time schedule could not be extended except on the volition of the buyer having regard to the terms of the contract. On the whole, we are of the view that any loss or additional expenditure that the 2nd Respondent Chhattisgarh State Civil Supplies Corporation would have incurred for engaging its officers during the holidays and towards other incidentals, can be appropriately compensated through an appropriate order for costs.

10. For the aforesaid reasons, these MCCs are ordered directing that if supplies are effected by making the goods available for delivery in the premises of the Corporation as of today, the same shall be received in obedience to the directions contained in the judgment dated 27.06.2017 and all terms of that judgment will continue to find the parties on the further condition that the Petitioner pays the 2nd Respondent Chhattisgarh State Civil Supplies Corporation a further amount of Rs. 1,00,000/- (Rupees One Lac) as costs, over and above the amount of costs fixed as per the common judgment dated 27.06.2017.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge

Chandra