HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.18327 OF 2011

ORDER:

The case of the petitioner-M/s.Krishna Agencies, is that the 2nd respondent-A.P.Backward Classes Cooperative Finance Corporation Limited, came into existence to cater the needs of downtrodden viz., the members of backward classes including their respective avocations. It has identified the petitioner agency for supply of Oil Engines for the benefit of the members of the backward classes in Guntur District and that the District Collector is the chairman of the said Corporation. The said Corporation through its Chairman has placed orders for supply of Oil Engines and in pursuance to the said purchase orders, the petitioner concern supplied Oil Engines by raising invoices. After the Oil Engines are supplied and installed, the concerned Mandal Development Officer makes a group inspection and reports to the 2nd respondent Corporation. In respect of 32 Oil Engines that have been supplied and installed by the petitioner concern, the concerned Mandal Development Officer inspected the same and reported compliance in favour of the petitioner to the District Collector who is incidentally the Chairman of BC Corporation. Thereafter, the Chairman, BC Corporation as District Collector has paid a sum of Rs.3,73,536/- out of the total amount of Rs.5,60,000/- payable to the petitioner and the remaining amount has not yet been released inspite of several correspondence made by the petitioner. Despite the supplies made in the year 1999, till today, the balance amount due to the petitioner has not been paid. The petitioner made several representations for release of the said balance amount and the 3rd respondent also issued proceedings dated 02.09.2009 to the 6th respondent to release the un disbursed subsidy amount of Rs.1,86,464/- towards supply of 32 Oil Engines by the petitioner concern to BC beneficiaries in Gurazala Mandal. Subsequently, on the representation of the petitioner the 3rd respondent addressed letter dated 12.03.2010 to the petitioner stating that an amount of Rs.1,86,464/- is to be released by the DRDA. A perusal of proceedings dated 02.09.2009 and letter dated 12.03.2010 of the 3rd respondent, shows that the petitioner is entitled for a balance amount of Rs.1,86,464/-. Challenging the inaction of the respondents in paying the amount of Rs.1,86,464/-, present writ petition is filed.

The respondents 2 and 3 filed counter affidavit stating that purchase order has been placed to M/s.Usha International Limited, Secunderabad, vide Rc.No.921/95-BC-B, dated 22.05.1999 informing to supply 32 number of oil engines 5HP HSD of USHA brand to MPDO, Gurazala; that proceedings were issued by the District Collector and Chairman as part of implementation of BC Action Plan 1998-99 with tie up with NBCFDC and SFPP/IRDP; and that the funding pattern was clearly specified in the orders placed for supply of the engines. Further the writ petitioner was informed in Rc.No.911/95-BC-B, dated 22.05.1999, to send one set of acknowledged invoices given by MPDO, Mandal Parishad, Gurazala and Chief beneficiary to the District Backward Classes Service Cooperative Society Limited, Guntur for arranging payment of the amounts related to margin money component and NBCFDC term loan component and another set of acknowledged invoices to the Project Director, DRDA, Guntur for release of the subsidy portion, direct to the suppliers. It is also submitted that the portion of amount payable towards the cost of engines supplied was paid to the petitioner, once the engines were acknowledged by the concerned MPDO; that the release of the amount was issued in proceedings dated 26.08.1999 vide cheque No.0049788, dated 26.08.1999 for Rs.3,73,536/- and it was once again stated in the proceedings that the balance amount of Rs.1,86,464/- as IRDP subsidy has to be paid by the Project Director, DRDA, Guntur. It is further stated that in pursuance to the representation made by the petitioner to the District Collector, Guntur on 25.02.2010, it has been informed to the petitioner that the portion of amount as per the sanction orders was already paid by BC Corporation and the balance has to be recovered from DRDA, Guntur; and that no amounts are due to be payable by the respondents 2 and 3 and sought to dismissal of writ petition against respondents 2 and 3.

The 6th respondent filed counter stating that as per the Integrated Rural Development Programme (IRDP) the 3rd respondent issued orders dated 22.05.1999; that as per order of the 3rd respondent the petitioner supplied 32 oil engines to the down trodden members of backward classes/beneficiaries in Guntur District under IRDP subsidy scheme and that after completion of work, the BC Corporation, Guntur paid an amount of Rs.3,73,536/- i.e., NBC, FDC Term Loan and BC Corporation Contribution, vide proceedings dated 26.08.1999, leaving the balance portion of Rs.1,86,464/- i.e. IRDP subsidy, out of the total amount of Rs.5,60,000/-, to the petitioner; and that thereafter the 3rd respondent issued proceedings dated 03.03.2000 requesting the 6th respondent to release the subsidy amount. In pursuance to the same the 6th respondent put up note to the 5th respondent for release of IRDP subsidy; that the 5th respondent ordered inspection on 24.03.2000 and appointed Credit Planning Officer as Enquiry Officer for verification of units personally; that the Enquiry Officer conducted enquiry and submitted a report on 04.11.2000 and that the same was placed before the 5th respondent for sanction of balance amount of Rs.1,86,464/- to BC SCS Limited wherein, the verification Officer reported that the beneficiaries without generating income as per the IRDP scheme, sold away 20 Oil Engines supplied by the petitioner; and that therefore, the Collector has not released the subsidy amount. It is also stated that the 6th respondent received a letter from the 3rd respondent dated 02.09.2009 with a request to release IRDP subsidy portion to the Executive Director, BCSCS Limited, Guntur. It is also stated that the petitioner made representation dated 25.08.2009 for release of Subsidy amount of Rs.1,86,464/-; and that in the year 2000 itself the 5th respondent passed order dated 13.12.2000 stating that "No money to be released", as such, question of payment of IRDP subsidy does not arise. It is further submitted that as per the Government orders vide G.O.Ms.No.83, dated 21.03.2005 there is no provision to release the subsidy to these minor irrigation units; that the agreement between the beneficiary and Mandal Development Officer, Gurazala with that of Project Director, DRDA, Guntur is to develop the weaker sections through Financial Assistance. It is submitted that as per condition 4 Sub condition 5 of the agreement deed the beneficiary will not sell or pledge or replace the asset acquired for a minimum period of four years and without prior approval of the DRDA before the loan is fully repaid, failing which the beneficiary will be liable to refund the subsidy with interest @ 18% p.a. to the DRDA. It is also admitted that the 3rd respondent issued proceedings dated 12.03.2010 stating that an amount of Rs.1,86,464/- is to be released by the Project Director, DRDA, Guntur and that as per the enquiry report, the beneficiaries have sold away engines in the year 2000, and that the selling of engines by the beneficiaries is contrary to the Agreement Condition 4 Sub condition 5, therefore the release of the subsidy amount does not arise and the petitioner has to recover subsidy amount from the beneficiaries. It is further submitted that the Government abolished IRDP scheme on 31.03.1999 and on 01.04.1999 the Swarnjayanti Gram Swarozgar Yojana (SGSY) scheme was introduced by the Government of India, as such payment of subsidy does not arise and finally sought for dismissal of writ petition.

Heard learned counsel for the petitioner who submits that the petitioner has supplied 32 oil engines and the same have been accepted and beneficiaries are using the same.

On the other hand learned counsel for respondents 2 and 3 submits that as per the scheme 20% margin money has to be paid by the 2nd respondent Corporation and 36.7% of the amount has to be treated as term loan and 10% of the amount has to be treated as beneficiary contribution and the remaining 33.3% of the amount is treated as subsidy under IRDP which has to be paid by the 6th respondent; and that in terms of the same, the 2nd and 3rd respondents paid an amount of Rs.3.73 lakhs to the petitioner and the balance amount of Rs.1,86,464/- has to be paid by the 6th respondent.

Heard learned counsel for the 6th respondent who submits that since beneficiaries sold the oil engines, petitioner has to recover the same from the beneficiaries as per the agreement.

In this case it is to be seen that the 3rd respondent addressed letter dated 02.09.2009 to the 6th respondent wherein it is admitted that the petitioner supplied 32 oil engines to the B.C.Beneficiaries on the indent placed by the 2nd respondent. In the said letter the 3rd respondent stated that it has paid an amount of Rs.3,73,536/- towards his share amount comprising of three components i.e., Margin Money, Term Loan and Beneficiary Contribution and also requested to take action for release of the subsidy amount of Rs.1,86,464/- to the petitioner agency. The said proceedings were not disputed in the counter affidavit filed by the 6th respondent. But, the 6th respondent in its counter stated that since some of the beneficiaries sold oil engines, the 6th respondent cannot release the subsidy amount and petitioner has to recover the same from the beneficiaries. It is also stated that as per Condition 4 Sub condition 5 of the agreement the beneficiary should not sell or pledge or replace the asset acquired for minimum period of four years without prior approval of the DRDA before the loan is fully repaid, failing which the beneficiary will be liable to refund the subsidy with interest @ 18% p.a. to the DRDA. When once the petitioner supplied the oil engines to the beneficiaries it is the responsibility of the respondents to pay the amounts and in fact the 2nd and 3rd respondents addressed letter to the 6th respondent to take action for release of subsidy component of Rs.1,86,464/-.

When beneficiary has sold the oil engines, petitioner is not at fault and in case any violation of terms and conditions of the scheme by any beneficiary, the concerned authority shall recover the same from the beneficiary but not the supplying agency (petitioner) as stated by the 6th respondent in its counter. The petitioner cannot be deprived of the said amounts for which he has supplied.

In view of the aforesaid facts and circumstances, the writ petition is allowed and the respondents are directed to release the balance amount of Rs.1,86,464/- as mentioned in proceedings vide Rc.No.921/95/BC-B, dated 02.09.2009, in favour of petitioner. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

19.06.2017
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