IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.01.2019

CORAM

THE HON'BLE MR.JUSTICE T. RAJA

W.P.No.17444 of 2016 and

WMP.No.14913/2016

M/s.Krishna Modern Rice Mill
R.S.No.138, 1&2 Andiyarpalayam,
Gengarampalayam Post,
Pondicherry-605 108. ...Petitioner

Vs

1. Puducherry Agro Products,
Food and Civil Supplies Corporation Limited,
Represented by its Managing Director,
Agricultural Complex, Thattanchavady,
Puducherry-605 009.

2. The Department of Civil Supplies
and Consumer Affairs, Puducherry,
Represented by its Director,
Thattanchavady,
Puducherry-605 009. .. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the1st respondent to pay its pending dues as on 26.06.2016 amounting to Rs.5,30,45,271/- with interest thereon.

For Petitioner : Mr.V.Raghavachari

For R1 : Mr.T.M.Naveen

For R2 : Mr.Gandhiraj,
Govt.Pleader(Pondy)
Mr.C.T.Ramesh,
Additional Govt Pleader(Pondy)

O R D E R

This Writ Petition has been filed seeking to issue a Writ of Mandamus, directing the 1st respondent herein, namely, the Managing Director, Puducherry Agro Products, Food and Civil

Supplies Corporation Ltd., Puducherry to pay the pending dues as on 26.06.2016 amounting to Rs.5,30,45,271/- with interest thereon to the petitioner.

2. Learned Counsel appearing for the petitioner submitted that the Puducherry Agro Products, Food and Civil Supplies Corporation Limited (PAPSCO), one of the Government of Puducherry Undertakings had floated an e-tender on 28.05.2015 for supply of white single boiled rice in Puducherry and Karaikal regions of the Union Territory of Puducherry. The tender was invited so as to provide over 2,50,000 family card holders in Puducherry and 57,000 family card holders in Karaikal with rice as under Government schemes and cost price shops.

3. The learned Counsel for the Petitioner further submitted that the petitioner has submitted a bid of Rs.25.95 per kilo. Therefore, he was declared as a successful bidder and subsequently, he was directed to supply variety of White Colour Single Boiled Rice in 50 kg polypropylene bags with an assurance that he would be paid Rs.25.95/- per Kg. He was also directed to make a Security Deposit of Rs.38,92,500/-. After compiling with the said conditions promptly, he was awarded with a tender. When the payments were regularly being made until September, 2015, the respondents, all of a sudden, stopped further payments.

4. The learned Counsel for the petitioner also submitted that as per Clause 20 of the tender agreement, payment of cost at the accepted rate at the net quantity supplied was to be made within 30 days on submission of bills in triplicate along with acknowledgment from the official in charge at fair price shops. As against the said Clause 20 of the tender agreement, the first respondent has not come forward to make the payment. Therefore, the petitioner has given a letter on 11.01.2015 to the Managing Director of the 1st respondent to release the EMD amount, but there was no response forthcoming. Again the petitioner brought to the notice of the 2nd respondent on 01.04.2016 mentioning that the 1st respondent has not cleared the dues. But the 1st respondent has confirmed the outstanding of Rs.3,87,27,956/-. The petitioner also has given a representation to the Chief Secretary of Puducherry and the Secretary, Civil Supplies Department on 14.04.2016 stating that the 1^{st} respondent had issued a false Utilization Certificate to the 2nd respondent.

5. The learned Counsel for the petitioner further submitted that again on 16.04.2016, one more representation was given to the Managing Director of the 1st respondent to disburse the outstanding amount and it was also informed that the petitioner would be able to supply part of the order made by the Cost price shop on 08.04.2016 subject to the clearance of the outstanding. In the mean while, the petitioner's bank also

started charging the penal interest. Later on, the 1st respondent issued yet another confirmation of balance admitting the further outstanding of Rs.1,22,53,950/- on 19.4.2016. In the mean while, the bank also issued an Ultimatum that the loan should be completely paid by the petitioner on or before 10.05.2016.

6. The learned Counsel for the petitioner also submitted that when it is an admitted case of the petitioner that the outstanding liability accrued against the 1st respondent has to be cleared, they kept quite, while the petitioner is facing dire consequences from their bank. At any time, they can take action under SARFEASI Proceedings. Therefore, the prayer made in the Writ Petition be allowed, thereby directing the 1st respondent to pay the entire amount of Rs.5,30,45,271 with interest thereon.

7. A detailed Counter Affidavit has been filed by the 1st respondent.

8. Learned Counsel appearing for the 1st respondent reinstating the stand taken in the counter affidavit submitted that as stated in Paragraph 7 of the counter affidavit, the 1st respondent admits the claim of the petitioner. When there was a total value of rice to the tune of Rs.55,02,23,040/- supplied by the petitioner, the 1st respondent has made payment to the petitioner on various dates to the extent of Rs.32,82,12,044/-. It is also stated that the 2nd respondent, namely, the Department of Civil Supplies & Consumer Affairs, Government of Puducherry has made payments directly to the petitioner to the extent of Rs.18,32,90,040/-. Therefore, the balance payable to the petitioner is Rs.3,87,20,956/-. That apart, in Paragraph 8 (C) also, they admitted another amount of Rs.35,57,538/- payable to the petitioner.

9. The learned Counsel for the 1st respondent further submitted that as per the letter dated 08.04.2017, the amount payable to the petitioner is Rs.4,49,71,153.75p. Since the 2nd respondent is not releasing the amount to the 1st respondent, the 1st respondent is unable to clear the outstanding dues to the petitioner.

10. At this stage, the learned counsel for the petitioner has submitted that so far as the liability for disbursement of the outstanding amount to the petitioner is concerned, even the 2nd respondent has made full payment to the 1st respondent, but, only the 1st respondent, on receipt of the amount sanctioned by the 2nd respondent to the 1st respondent has not cleared the outstanding amount. Out of the said amount, they have diverted Rs.5 Crores towards the payment of EPF and

salary to the employees. Therefore, it is a mistake committed openly by the 1st respondent in not clearing the outstanding amount payable to the petitioner.

11. I also find merits on the submission made by the learned Counsel for the petitioner. The reason being that the petitioner, being a Partnership Concern dealing with supply of various varieties of rice, became successful bidder for supply of White Colour Single Boiled Rice in Puducherry and Karaikal Region of Union Territory of Puducherry. Since the Puducherry Government had to provide ration rice to 2,50,000 family card holders in Puducherry and 57,000 family card holders in Karaikal as under Government schemes and cost price shops at the rate of Rs.25.95 per Kilo, the petitioner was supplying the rice and other Dhals etc. But the 1st respondent has not made any payment towards supply of rice, as a result, huge outstanding amount of payment had occurred and after making several representations to the respondents, the present Writ Petition has been filed to direct the 1st respondent to make the entire arrears of payment, failing which, the petitioner's company would be attached by the bank from whom heavy loans have been borrowed.

12. A perusal of the letter dated 22.12.2016 clearly shows that when the Government of Puducherry released 80% advance amount of Rs.12,66,80,132/- on 5.11.2015, the then Managing Director of PAPSCO had a discussion with the approved supplier and the Director (CS & CA), Puducherry and with their oral and mutual consent, utilised the 80% advance amount working capital requirements for immediate settlement of EPF statutory obligation to avoid attachment on bank accounts of the Corporation, as a result, the petitioner's payment could not be released. Since the 1st respondent Corporation had not paid salary and wages to its employees for the past six months along with EPF, ESI and other statutory dues, the amount released by the 2nd respondent has been utilised completely by the 1st respondent, therefore, the 1st respondent Corporation was not able to release the outstanding amount payable to the petitioner. When the 1st respondent has received the supply of rice to the card holders, they have legal responsibility to repay the dues to the petitioner. When the 2nd respondent has already considered the request of the 1st respondent and released all the money, only the 1st respondent diverting the same has failed to disburse the outstanding dues payable to the petitioner, consequently, in the last 3 years, the petitioner is unable to get back the cost of the rice supplied to the 1st respondent.

13. Even the terms and conditions of the Tender dated 28.5.2015 shows that in the event of failure by the petitioner to supply the ordered quantity within the stipulated time, the Managing Director has got a right to cancel the orders for the

unsupplied quantity and a penalty of Rs.50/- will be imposed per Quintal per day subject to a maximum of Rs.500/- per MT. One another Condition No.19 says that in the event of failure by the tenderers at any stage of tender process, the Earnest Money Deposit or Security Deposit or Bills of Supply will be forfeited apart from cancellation of award of contract and blacklisting. When the petitioner has been put to serious unreasonable strict conditions for their failure to supply the ordered quantity of rice, the 1st respondent also should be made liable to pay the outstanding amount on the delivery of the ordered quantity of rice. The Condition No.20 says that the payment of cost at the rate accepted will be made to the supplier for a net quantity of White Colour Single Boiled Rice supplied within 30 days on submission of the bills in triplicate along with acknowledgment from the official in charge at fair price shops. As against the said terms and conditions, for more than three years, the 1st respondent has neglected to pay the costs of the rice supplied, as a result, the petitioner has been put to huge financial loss and unnecessary interest accrued which are payable to the banks. Therefore, this Court is inclined to impose an exemplary cost of Rs.5,00,000/- for non-payment of the balance amount because one of the letters issued by the State Bank of India, Pondicherry also speaks that the loan amount of the petitioner has become irregular. Therefore, even in the year 2016, the State Bank of India cautioned the petitioner to face SARFAESI Proceedings against the properties mortgaged to them. That also shows that the petitioner has been put to huge financial loss.

14. In view of all the above, while allowing this Writ Petition, this Court has no hesitation to direct the 1st respondent to release a sum of Rs.4,49,71,153.75p (Rupees Four Crores Forty Nine Lakhs Seventy One Thousand One Hundred and Fifty Three and paise Seventy Five Only) towards arrears of balance amount to the petitioner for the rice supplied by them along with an exemplary cost of Rs.5,00,000/- (Rupees Five Lakhs Only) and also with the usual rate of interest thereon, within a period of two weeks from the date of receipt of a copy of this Order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

tsi/rri

To

1. The Managing Director,
   Puducherry Agro Products,
   Food and Civil Supplies Corporation Limited,
   Agricultural Complex, Thattanchavady,
   Puducherry-605 009.

2. The Director,
   Department of Civil Supplies
   and Consumer Affairs, Puducherry,
   Thattanchavady, Puducherry-605 009.

+1cc to Mr.K.P.Jotheeswaran, Advocate, S.R.No.753
+1cc to Mr.V.Raghavachari, Advocate, S.R.No. 689
+1cc to the Government Pleader(P), S.R.No. 715

W.P.No.17444 of 2016

MR(CO)
GN(05/02/2019)