

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 571 of 2020

Judgment reserved on 24.02.2020

Judgment delivered on 20.03.2020

- M/s Kedia Trading Company Raipur, Through its Proprietor- Pravin Kumar Kedia, aged about 56 years, S/o Madan Prasad Kedia, R/o Kedia Lane Main Road Gopalganj, Police Station, Tahsil & District- Gopalganj Bihar 841428

-----Petitioner

VERSUS

1. State of Chhattisgarh, through the Secretary Co-operative Department Mantralaya, Mahanadi Bhawan Atal nagar, Raipur, District Raipur C.G.
2. Collector, Kawardha, District Kabirdham C.G.
3. General Manager (Administration) Lauh Purush Sardar Vallabh Bhai Patel, Co-operative Sugar Factory Limited, Pandariya, District Kabirdham C.G.

-----Respondents

For Petitioner	:	Mr. Ratnesh Kumar Agrawal, Advocate
For Respondent-State	:	Mr. Siddharth Dubey, Deputy G.A.
For Respondent No. 3	:	Mr. Vikram Sharma, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

CAV Order

Per Parth Prateem Sahu, J.

1. The petitioner has filed this petition alleging that respondent No. 3 is not providing molasses product for uplifting from its factory as per sale order dated 01-11-2019 and sought for following reliefs in this writ petition.

“10.1 That, this Hon'ble Court may kindly be pleased to call for entire records of the case, from the authorities.

10.2 That, this Hon'ble Court may kindly be pleased to direct to the respondent authority to provide molasses to the petitioner as per sale order.

10.3 That, this Hon'ble Court may kindly be pleased to direct to the respondent authority to released EMD furnished by the petitioner after completion of sale order.

10.4 That, any other relief/ order which may deem fit

and just in the facts and circumstances of the case including award of the costs of the petition may be given.”

2. Facts of the case are that respondent No. 3 issued a Tender notification No. 1375/ dt. 19-09-2019 (Annexure P-1) for sale/ purchase of molasses product. In pursuance to the aforementioned Tender notification, the petitioner submitted its bid and sale order (Annexure P-2) has been issued in its favour on 01-11-2019 for sale of molasses of a quantity of 2000 (Two Thousand) metric ton, at the rate of Rs. 4,045 (Rupees Four Thousand and Forty Five) per metric ton excluding GST. As per sale order, the tenderer has to deposit entire sale amount of the allotted quantity of molasses within a period of 30 days from the date of sale order; total quantity of molasses allotted to be lifted till 31-03-2020 and 25% of molasses of sale order is mandatorily required to be lifted per month. Apart from the aforementioned relevant clauses of the sale order, it also bears other conditions.
3. Respondent No. 3 issued show-cause notice on 28-01-2020 to the petitioner mentioning therein that, as per condition No. 2 of the sale order, the petitioner has not deposited the entire sale amount of the allotted quantity of molasses within a period of 30 days and that too, he had not lifted 25% of the molasses per month, as per condition No. 5 of the sale order and therefore, why not the sale letter of the molasses be cancelled/ terminated or to forfeit the E.M.D. and blacklisted, or all the three actions be not taken against him. The petitioner submitted its reply on 30-01-2020. Prior to issuance of show-cause notice, the respondent No. 3 had issued a fresh Tender notification on 15-01-2020 for approximate quantity of 6000 metric ton molasses for sale. Issuance of show-cause notice and also issuance of fresh Tender notification made the petitioner to approach this Court.
4. The learned counsel for the petitioner submits that respondent No. 3 had issued Tender notification for sale of about 6000 metric ton of molasses in which the petitioner has submitted its tender form for purchase of 2000 metric ton of molasses which was accepted and the petitioner was allotted 2000 metric ton of molasses at the rate of Rs. 4,045 per metric ton. The petitioner was uplifting the

molasses time to time, so also depositing the amount according to the uplifting quantity of molasses. It is also pointed out that respondent No. 3 *vide* publication dated 30-12-2019 has stopped loading of molasses from 03-01-2020 to 11-01-2020 and further *vide* notice dated 31-01-2020, the loading of molasses has been stopped to be supplied until further orders. He submits that respondent No. 3, after accepting the bid of the petitioner had issued sale order in his favour and the period prescribed in sale order for uplifting the total quantity of molasses allotted to him was up to 31-03-2020. As per sale order issued in favour of the petitioner, respondent No. 3 was under obligation to permit uplifting of the molasses to the extent of 2000 metric ton. He points out that on one hand, loading of the molasses had been stopped *vide* notice dated 31-01-2020 till further orders, on the other hand, respondent No. 3 had issued fresh Tender notification for the sale of same quantity of the molasses i.e. 6000 metric ton, as notified in the tender notification Annexure P-1 dated 19-09-2019. On the basis of the above factual submissions made by him, the learned counsel for the petitioner submits that respondent No. 3 be directed to provide the allotted quantity of molasses and permit the petitioner for uplifting of the same i.e. total 2000 metric ton of molasses, and till date respondent No. 3 has only supplied 350.620 metric ton of the molasses out of 2000 metric ton.

5. Per contra Mr. Vikram Sharma, learned counsel for respondent No. 3 submits that the petitioner has not complied with the conditions made in the sale order. He points out that the sale order Annexure P-2 issued on 01-11-2019 in favour of the petitioner bears some conditions for sale. Condition No. 2 provides for deposit of the entire amount of the allotted molasses within a period of 30 days which was mandatory, other condition provides that 25% of the allotted molasses was required to be lifted per month mandatorily and the period for uplifting of the allotted molasses was prescribed till 31-03-2020. It is pointed out that the petitioner has neither complied with condition No. 2 of depositing of entire sale amount of the allotted molasses to him nor he has complied with condition No. 5,

by not uplifting 25% of the total allotted quantity of molasses per month. He points out that as per the document annexed by the petitioner as Annexure P-3 mentions that the petitioner has lifted only 350.620 metric ton of molasses out of the total allotted quantity of molasses, up till 31st January 2020. He submits that during the pendency of the writ petition, the sale order issued in favour of the petitioner has been cancelled/ terminated *vide* order dated 12-02-2020, which has not been challenged and therefore, no relief can be granted to him. It is also pointed out that condition No. 5 of the sale order provides for automatic cancellation of the sale order, if the petitioner fails to lift 25% of the total quantity of molasses in a month, for that reason also, the petitioner is not entitled for any relief. Learned counsel also submits that *vide* letter dated 20-02-2020, the E.M.D. deposited by the petitioner as well as the balance amount towards the molasses has been returned to the petitioner, amounting to Rs. 16,19,629.89/-

6. We have heard learned counsel for the respective parties and perused the records of the case.
7. Perusal of the writ petition and the relief sought by the petitioner, it is apparent that the petitioner has not challenged the Tender notification dated 15-01-2020 and cancellation of the sale order on 12-02-2020. The petitioner has only sought relief for a direction to respondent No. 3 to provide molasses to the petitioner as per sale order and further direction to respondent-authority to release E.M.D. furnished by the petitioner after completion of sale order. Looking to the conditions made in the sale order, it has been made explicitly clear to the petitioner that he has to deposit the entire amount of the molasses allotted to him for sale within a period of 30 days. The petitioner, as per Annexure P-3 has lifted only 350.620 metric ton of molasses out of the total allotted quantity of 2000 metric ton of subject sale order.
8. Being this position, apparently, the petitioner has not complied with the conditions No. 2 and 5 of the sale order, which in very specific term mentions that if 25% of

molasses is not lifted per month of the total allotted molasses then the sale order will automatically be cancelled/ terminated. Admittedly, the petitioner has not lifted the specific quantity which was mentioned in the conditions of the sale order. On the other hand, the learned counsel for the petitioner admits the fact that respondent No. 3 has returned back the difference of the balance amount as deposited towards the molasses as well as amount of E.M.D.

9. The other aspect of the case is that, after filing of the writ petition, the sale order issued in favour of the petitioner has been cancelled by a letter dated 12-02-2020 and the said letter was for cancellation/ termination of the sale order dated 01-11-2019. In view of the above fact that sale letter on the basis of which Writ Petition is filed stands terminated, the reliefs sought by the petitioner could not be granted to him. Hence, we do not find any tenable grounds for granting relief as sought for by the petitioner.
10. Resultantly, the writ petition being devoid of any merit which is liable to be and is hereby dismissed accordingly. However, the petitioner will be at liberty to avail other appropriate remedies available to him under the conditions mentioned in the sale order Annexure P-2 dated 01-11-2019, if the petitioner-Company feels aggrieved by the action of respondent No. 3, in any manner.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge