

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20/01/2020

DATED : 24.01.2020

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.26211 of 2018

And

W.M.P.No.30428 of 2018

M/s. Sri Krishna Modern Rice Mill

Represented by its Proprietor

Mr.R.Yuvaraaj

Gengarampalayam Post

Puducherry - 605 108.

... Petitioner

Versus

The Managing Director

Puducherry Agro Products Food and

Civil Supplies Corporation Limited

(A Government of Puducherry undertaking)

Agricultural Complex, Thattanchavady,

Puducherry - 605 009.

... Respondent

PRAYER:

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records of the proceedings bearing No.10-1/SBR/PAPSCO/PDY/GEN/RICE & WHEAT/2018-2019 dated 22.09.2018 on the file of the respondent and to quash the same as illegal and without jurisdiction.

*** सत्यमेव जयते

For Petitioner :: Mr.V.Raghavachari

For Respondent :: Mr.T.M.Naveen

Standing Counsel

ORDER

The Writ Petition had been filed by the petitioner, in the nature of a Writ of Certiorari calling for the records of the proceedings bearing No.10-1/SBR/PAPSCO/PDY/GEN/RICE & WHEAT/2018-19 dated 22.09.2018 on the file of the respondent, Managing Director, Puducherry Agro Products Food and Civil Supplies Corporation Limited and quash the same.

2. In the affidavit filed in support of the Writ Petition, it is stated that the writ petitioner M/s.Sri Krishna Modern Rice Mill is a reputed supplier of RICE in Puducherry. They have been in business for the past 28 years. They have been supplying RICE and other products to Government Agencies and more particularly to the respondent from the year 2003-04. They have done business for over 150 crores. It has been stated that since there were dues payable, the petitioner had earlier filed a writ petition and this Court had directed the respondent to pay a sum of Rs.4.53 crores. It is stated that the impugned order questioned in this Writ Petition had been passed owing to the respondent being aggrieved with the step taken by the petitioner in seeking legal remedy for the dues payable. It is also stated that even on an earlier occasion, the Civil Supply Corporation had seized the RICE of the petitioner, but that act was found to be illegal by the Principal Sessions Court, Puducherry in Crl.A.No.6 of 2013 and a direction was issued to return the RICE seized. The petitioner had also filed a further application to direct the respondent to make good the loss due to that seizure. It is further stated in the affidavit that in May 2018, the RICE products of the petitioner were checked and out of 323 tonnes, 93 tonnes were found to suffer from quality. The petitioner claims that the intention of the respondent was mala fide. On 02.08.2018, the petitioner was served with a show cause notice stating that out of 9 trucks carrying 132.500 mt of RICE, one truck bearing registration No. TN-19-T-0519 contained rice which did not confirm to the specifications as set out in the Food Safety and Standards Act 2006. The petitioner claims that thereafter the respondent had issued notice to blacklist the petitioner. Aggrieved by such steps taken by the respondent, the present Writ Petition had been filed.

3. In the counter filed by the respondent, it had been stated that the petitioner had transported RICE through 7 trucks and when the RICE contained in one of the truck were examined it was found that the quality was substandard and living insects and worms were found. The RICE did not confirm to the norms stipulated under the Food Safety and Standards Act 2006 and the Food Safety and Standards (Food Products Standards and Food Additives) Regulations 2011 and unfit for human consumption. It is under these circumstances that notice dated 27.07.2018 had been issued to the petitioner. The petitioner was directed to explain why the security deposit amount need not be forfeited and the petitioner need not be blacklisted. It had also been stated that the petitioner had not questioned the laboratory reports and the action taken in the notices dated 27.07.2018, 02.08.2018 and 06.08.2018. It was stated that the impugned order dated 22.09.2018 was only a consequential order pursuant to the laboratory reports. The respondent justified the

impugned order and further stated that the Writ Petition should be dismissed.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent. During the course of hearing, this Court had also directed the respondent to give the following details:-

"(i) the list of suppliers of Rice to PAPSCO to distribution;

(ii) the tests conducted by the department of FSSAI, Government of India in respect of the consignments on a random basis of the Rice supplied by the Public Distribution System; and

(iii) Whether an uniform policy of black listing is being undertaken and if so any specific adverse report is received in the test in respect of the suppliers, or whether the petitioner alone has been selectively chosen for being blacklisted."

5. Accordingly, an additional affidavit had been filed by the respondent wherein the entire procedure had been stated. It was also stated that the tests of Public Health Laboratory of the Department of Food & Drugs Testing, Puducherry, is conducted on the following:-

- "1. Physical Appearance
2. Label
3. Sample on Analysis:
 - (i) Moisture
 - (ii) Foreign Matter (Extraneous Matter):
 - (a) Mineral Matter
 - (b) Animal Impurities
 - (c) Others
 - (iii) Damaged Grains
 - (iv) Weevilled Grains
 - (v) Uric Acid
 - (vi) Aflatoxin"

6. It was stated that after analysing each sample of every consignment, the Public Health Laboratory, Puducherry, would give a laboratory report together with an opinion whether the sample confirmed to Food Safety and Standards Act 2006 and the Food Safety and Standards (Food Products Standards and Food Additives) Regulations 2011 and whether it was fit for human

consumption. It was stated that therefore, the procedure had been followed in accordance with the rules and it was once again sought that the Writ Petition should be dismissed.

7. A perusal of the impugned order issued to the petitioner shows that the petitioner had been blacklisted with immediate effect and that the petitioner was not permitted to participate in any tender of the respondent for a period of one year from the date of issue of the order. Moreover, the cost of the poor quantity of RICE which had been distributed to the card holder was also required to be collected and the contract for the month June 2018 should be cancelled. Clause 19(a) of the tender condition is as follows:-

"In the event of failure by the tenderers at any stage of tender process/supply the Earnest Money Deposit or Security Deposit or Bills of supply will be forfeited by PAPSCO apart from cancellation of award of contract and blacklisting."

8. Clause 3(K) of the agreement is as follows:-

"If the lab report confirms that the Chemical test of quality of the food grains fails to the specifications apart from being considered the consignment as rejected, bills will not be accepted and payment will not be made to the rejected goods. Further for breach of condition, codal facilities will be taken as per law against any default."

9. It is thus seen that if the laboratory report confirms that the chemical test of quality of the food grains does not confirm to the specifications, the agreements would be rejected, the bills would not be accepted and the payment would not be made. It was stated that in any breach of condition, action will be taken in accordance with law.

10. In the present case, in reply to the show cause notice dated 27.07.2018, 02.08.2018 and 06.08.2018, the petitioner had given an explanation on 10.08.2018. Even though the said explanation which is referred in the reference column alone in the order impugned before this Court, very unfortunately, in the order, the respondent had not given any reasons for rejecting the explanations given. As a matter of fact, the explanations have not even been referred in the main portion of the order. The order challenged naturally suffers owing to that fact. However, at this stage, since the period of blacklisting had also expired by September 2019, keeping in view the fact that

the petitioner and the respondent have had a continuous relationship for several years and the petitioner is also supplying not only RICE but also other items including raw-rice and jagger, I hold, it would be in the interest of both the petitioner and the respondent that they move forward with their existing commercial relationship. Any order passed with respect to the correctness or otherwise of the impugned order would only be an order on paper. After the period of one year which had expired in September 2019, the respondent cannot legitimately to take any further action against the petitioner. Therefore, this Court is not adverting to the correctness of the said order but would rather rest by stating that the blacklisting of the petitioner by the impugned order should not stand in the way of the respondents inviting the petitioner for supply of rice in future and the petitioner should also not be prevented or prohibited from participating in any tender in future. The petitioner cannot be continuously put to scrutiny merely because by the impugned order, they had been blacklisted for a period of one year. On the expiry of the said year which term had expired in September 2019 itself, nothing further survives and it is again made clear that the respondent should not hold that fact as against the petitioner whenever tenders are called for or invited in the future.

11. With these observations, the Writ Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsg

To

The Managing Director
Puducherry Agro Products Food and
Civil Supplies Corporation Limited
(A Government of Puducherry undertaking)
Agricultural Complex, Thattanchavady, Puducherry - 605 009.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.4980

W.P.No.26211 of 2018
And W.M.P.No. 30428 of 2018

PP(CO)
CS/02/03/2020