

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

FMA 861 of 2019
With
CAN 1 of 2019
(Old No. CAN 4637 of 2019)

Reserved on: 10.03.2022
Pronounced on: 23.03.2022

(Through Video Conference)

Dhaspara SKUS Ltd. & Anr.

...Appellants

-Vs-

The State of West Bengal & Ors.

...Respondents

Present:-

Mr. Bikash Ranjan Bhattacharya, Senior Advocate
Mr. Pradip Kumar Roy, Advocates
... for the appellants

Mr. Susovan Sengupta,
Mr. Sanjay Saha, Advocates
... for the respondent Nos.3 to 8

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. This appeal is at the instance of the writ petitioner challenging the order of the learned Single Judge dated 01.04.2019 whereby the learned Single Judge has refused to entertain W.P. No. 15941 (W) of 2015 and has accordingly disposed of the petition.

2. Appellant had filed the petition with the plea that the tripartite written agreement dated 17.11.2014 was entered into between the respondent No. 8, West Bengal Essential Commodities Supply Corporation Limited (WBECS), the appellant (referred to in the agreement as paddy procuring society) and Hasina Banu Rice Mill. As per stipulation in the agreement, WBECS was appointed by the Food and Supplies Department, Government of West Bengal as state agent for procurement of fair average quality of paddy by minimum support price and delivery of custom milled rice under the decentralized procurement scheme for the kharif marketing season 2014-15 and the appellant was appointed to procure fair average quality paddy from the farmer and to deliver the same to the Hasina Banu Rice Mill. According to the petitioner in pursuance to the said agreement the supplies were made by the appellant and bills were raised but the full amount was not paid, hence in the writ petition a prayer was made to direct the respondent to make payment of the outstanding bill amount of supplies of rice to the appellant to the tune of Rs. 1,52,79,600/- and delivery transportation cost for the year 2013-14 to the tune of Rs. 26, 99,752/-.
3. Learned Single Judge by order dated 01.04.2019 has refused to entertain the petition on reaching to the conclusion that the appellant was seeking money decree in the writ petition and the claim was disputed by the respondent and it has further been found that the petition involved disputed questions of fact which will require further evidence, hence the writ petition is not an appropriate remedy.
4. Submission of learned Counsel for the appellant is that the Division Bench had earlier by order dated 23.07.2019 directed the WBECS to provide a platform to the appellant to carry out the negotiation on the basis of the record of WBECS and that in the negotiation proceedings it was

found that the fund for the said bills were received by the corporation, therefore, there was no justification to deny payment to the appellant. His further submission is that once TDS has been deduced then the amount cannot be withheld and also in pursuance to the earlier direction of the Single Bench dated 30th of March, 2017 and 04.04.2017 the payments were made, hence now the payment should not be withheld.

5. Learned Counsel for the respondent has opposed the appeal by submitting that no statutory contract exists between the parties and that admitted amount has already been paid and the appellant had supplied inferior quality of paddy to Hasina Banu Rice Mill, hence the balance amount has been disputed.

6. Having heard the Counsel for the parties and on perusal of the record, it is noticed that the tripartite agreement dated 17th of December, 2013 itself provides that the stock of rice not in conformity with the specification will be liable to be rejected. It further provides that even any reduction in quality cut shortage or nature by FCI or F&S Department, State Government, the same shall be accordingly deducted / recovered from the society and the deduction was permissible at any subsequent period even after completion of KMS. The appellant was provided a platform for negotiation in pursuance to the order of this Court dated 23.07.2019 and the negotiation clearly indicate that some amount has been found payable by the appellant on account of supply of inferior quality of rice.

7. The facts on record further reveal that undisputed amount has already been paid to the appellant and the rest of the amount is disputed.

8. In the aforesaid circumstances, learned Single Judge has not committed any error in holding that the petition involves disputed questions of fact which cannot be decided in writ jurisdiction. Hence, we do not find

any error in the order of the learned Single Judge. No case for interference is made out. Petition is accordingly dismissed. CAN 1 of 2019 (Old. No. CAN 4637 of 2019) is disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
23.03.2022

PA(SS)

(A.F.R. / N.A.F.R.)