IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 12264 of 2022

Kartick Chandra Pal & Ors.

Versus

State of West Bengal & others

For the petitioner	: Mr. Kalyan Kr. Bandopadhyay Mr. Ramesh Dhara Ms. Mousumi Choudhury .....Advocates
For the State	: Mr. T.M. Siddiqui Mr. Arijit Chakrabarti .....Advocates
Heard lastly on	: 16.09.2022
Judgment on	: 10.11.2022

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India praying for direction upon the respondents authorities to withdraw and/or to rescind and/or cancel the impugned order dated 31.05.2022 of the respondent no. 2 rejecting the petitioners' candidature for empanelment of his flour mill.

2. Mr. Kalyan Kr. Bandopadhyay, learned senior counsel representing the petitioner, submitted as follows. The petitioners are the partners of M/s. Ma Fullara Flour Mill which is engaged in the business of conversion of wheat into fortified atta/wholemeal atta in the district of Birbhum. Between 2009 and 2017 the petitioners' firm was selected as an empanelled flour mill of the respondent in the district of Birbhum by virtue of agreements executed with the concerned respondent authorities. In 2018, in terms of the Guidelines of 2017, the Food and Supplies Department, Government of West Bengal, issued a notice inviting application from the roller flour mill/chakki mill for all districts except Kolkata. The petitioner submitted application in the name of the partnership firm in the prescribed format. The concerned authority issued an inspection notice. But, the petitioners' mill was not selected for which the petitioners made several representations. On 02.12.2021 the Food and Supplies Department, Government of West Bengal, invited online applications from the roller flour mills for all districts except Kolkata. On 28.12.2021, the petitioners submitted an application in the name of the firm on-line in Form 'K'. The concerned authority thereafter forwarded the same to the District Inspection Committee to cause necessary inspection. On 07.01.2002 the Head, District Inspection Team issued a notice informing one of the petitioners that an inspection team would conduct a physical inspection in the flour mill of the petitioner. On 19.01.2022 at 11 a.m., an officer of Food and Supplies Department along with the District Controller, Birbhum visited the flour mill of the petitioners. However, thereafter no communication was received by the petitioner. On 28.02.2002 the representative of the petitioner made a representation in person before the District Controller who refused to disclose the status of the petitioners' application. On 04.03.2022 the petitioners came to know that the respondent published names of the successful empanelled flour mills wherein the petitioners' firm was not included. The petitioners filed a writ petition being WPO 1447/2022 in this regard. On 12.05.2022 this Court finally passed an order directing the respondents to inspect the petitioners' flour mill, which they did. However, finally the authorities rejected the prayer of the petitioners. In spite of a direction passed by this Court earlier, the petitioners' case was not at all considered. Representations had to be made. The impugned order suffered from serious irregularities. Although it was mentioned in an earlier report that the installed machineries were found to be in running condition, yet it was held that the flour mill was not fully functional as on the date of application. Furthermore, it was inferred that the land which was offered belonged to individuals was not registered in a name of the firm in question. It was purportedly found that the machineries were running below capacity. The General Manager, District Industries Centre, Birbhum arrived at such conclusions not only on inspection of the unit but also after considering the last six months' electricity bills. First, the land offered belonged to the partners. Since it was a case of a partnership firm, the said land could fairly be considered as belonging to the firm. It was apparent from the face of the record that the respondent authorities considered the electricity bills for last six months, which was after the date of application of the petitioners. Even if these bills were considered one could not get an idea about how much electricity was consumed at the date of the petitioners' application. It was thus an absolutely irrelevant consideration. In fact, the petitioners' flour mill was operating in full swing for all those years between 2009 and 2017. After the notification was made and the petitioner was made to wait for getting empanelled, it did not run in full swing as there was lack of demand. Quite naturally, in the subsequent months electricity bills were less. However, what was more important was the finding of the authority itself that the installed machinery was found in running condition. That made the unit functional at the date of application, which was the relevant consideration for deciding whether to empanel the petitioner or not. The list of documents placed before the authorities like the deed, the balance-sheet, the net worth certificate, the land parcha and the schedule were all on record till the same were placed before this Court in the earlier writ petition. Therefore, now the respondent authorities could not object regarding the veracity of the same. It was true that the merits of the petitioners' claims were not gone into in the first writ proceeding, as recorded by this Court therein, it was evident that the respondent authorities were only to consider whether the factory was in functional condition as per requirement. What was directed was only an inspection. In that sense, the respondent authorities travelled beyond the order passed by the High Court and proceeded in a fault finding mode in order to somehow deny the petitioners their right to get empanelled. Reliance was placed on the decision of the Hon'ble Apex Court reported at 1986 (2) SCC 679 on the point that this Court had the power to directly order empanelment instead of sending the matter for fresh consideration.

3. Mr. T.M. Siddiqui, learned Additional Government Pleader representing the State, submitted as follows. As would be evident from the order passed by this Court in the earlier writ proceeding, this Court had not gone into the merits of the case. Therefore, it was open to the respondent authorities to find out whether the petitioners actually satisfied all the criteria for getting empanelled and not just rely on the inspection to be done. The unit was running at a lower output capacity and this coupled with the fact that the last six months' electricity bills showed very low consumption made it evident that the mill was not running in fully functional state. Moreover, the condition that the land had to be in the name of the entity or the mill had not been satisfied in the present case. In fact, the petitioners could produce documents showing that only 0.33 out of 0.41 acres satisfied the criteria in the improved stand taken by them. Reliance was placed on the decision of the Hon'ble Apex Court reported at 2022 6 SCC 127.

4. In reply, Mr. Bandopadhyay, appearing on behalf of the petitioners, submitted as follows. The order passed by this Court in the earlier writ petition was not challenged by the respondent authorities. The petitioners made their application for empanelment in December, 2021. Documents like electricity bills produced for the relevant period were not considered by the petitioners. There is no condition that the output had to be of a particular minimum rate.

5. I heard the learned counsels appearing on behalf of the parties and perused the writ petition.

6. First, from the inspection report dated 10.05.2022 issued by the General Manager, District Industries Centre, Birbhum, it appears that the machinery was found in running condition. This is in direct contradiction with the inference drawn by the Joint Secretary, Food and Supplies in the impugned order that one out of two packaging machines was not running on the date of inspection of the District Inspection Committee as well as on the date inspection by the GMDIC.

7. Secondly, the conclusion that the flour mill was not functional on the date of application in terms of production was not borne out from the records. It does not appear that the impugned order took into consideration the functionality of the flour mill vis-a-vis the two inspections. As rightly pointed out by the learned senior counsel for the petitioners, looking into electricity records of the last six months would not give a conclusive view of the functionality of the flour mill. The lack of demand leading to subsequent non-user of the whole of the facility might have resulted in such electricity requirement for a particular period. However, no other cogent or convincing evidence or material has been referred to in order to conclude that the mill was not functional on the date of application.

8. The impugned order lacks clarity on the question of conversion certificate of the factory land. First, had that been an issue, one wonders whether the same could have been raised earlier. Secondly, the petitioners contend that conversion certificates are available for all the land, but in the name of the respective owners. In fact, the impugned order lacks clarity even on the other issues that were discussed earlier.

9. Therefore, it is abundantly clear that the impugned order suffers from serious irregularities as discussed above.

10. It is true that this Court can pass a direction upon the respondents to empanel the petitioners' flour mill without referring the matter back again for reconsideration. Yet, as the relevant documents and the issues involved are yet to be properly considered by the concerned authorities, this Court is not willing to embark upon such an exercise.

11. However, there is no doubt that the impugned order cannot be sustained in the eye of law.

12. In view of the above, the impugned order, is set aside. The respondent no. 2 is directed to consider the petitioners' case afresh after giving an opportunity of hearing to the petitioner, within four weeks from the date of communication of this order.

13. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)

S.M