



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.Nos.12838 & 12840 of 2021
and W.M.P.Nos.13632 & 13634 of 2021

M/s.S.K.A. Dairy Foods India Pvt. Ltd.,
Rep. By its Director,
Mr.S.Senthilnathan,
S/o.T.R.Somasundaram,
Factory 158/1, South Muthampatti Post,
Vallappady Taluk,
Salem 636 111.

...Petitioner in both W.Ps.

Vs.

1.The Tamil Nadu Co-operative Milk
Producers Federation Ltd. (Aavin)
No.36A, Pasumpon Muthuramalinga Thevar Road,
Nandanam, Chennai 600 035.
Rep. By its Managing Director.

2.The Coimbatore District Co-operative
Milk Producers Union Ltd., (Aavin)
Pachapalayam,
Kalambalayam Post,
Coimbatore 641 010.
Rep. By its General Manager.

...Respondents in both W.Ps.

Prayer in W.P.No.12838/2021: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents herein to forthwith refund the sum of Rs.40,00,000/- (Rupees Forty Lakhs Only) being the performance security deposit payable to the petitioner under the agreement dated 19.05.2018 between the petitioner and the second respondent, with interest @ 18% per annum from 19.11.2019 till date of full payment.

Prayer in W.P.No.12840/2021: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents herein to forthwith refund the sum of Rs.40,00,000/- (Rupees Forty Lakhs



Only) being the performance security deposit payable to the petitioner under the agreement dated 01.06.2019 between the petitioner and the second respondent, with interest @ 18% per annum from 01.12.2020 till date of full payment.

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For Petitioner : Mr.AR.Karthik Lakshmanan
for M/s.AL.Ganthimathi

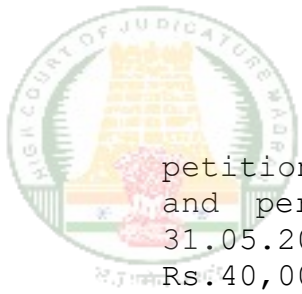
For RR1 & 2 : Mr.Harsha Raj
Additional Government Pleader

C O M M O N O R D E R

These Writ Petitions are filed for a direction to the respondents to forthwith refund the sum of Rs.40,00,000/- (Rupees Forty Lakhs Only) each being the performance security deposit payable to the petitioner under the agreements dated 19.05.2018 and 01.06.2019 between the petitioner and the 2nd respondent, with interest @ 18% per annum from 19.11.2019 and 01.12.2020 respectively, till date of full payment.

2.Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the respondents and perused the entire materials available on record.

3.The petitioner is one of the Directors of M/s.S.K.A.Dairy Foods India Pvt. Ltd., incorporated under the Companies Act, carrying on business in conversion of raw chilled milk into butter & skimmed milk powder and skimmed milk into skimmed milk powder. According to the petitioner, the 2nd respondent awarded the contract for conversion of raw chilled milk into butter & skimmed milk powder and conversion of skimmed milk into skimmed milk powder to the petitioner. The petitioner entered into an agreement, for a period of one year, with the 2nd respondent on 19.05.2018. Subsequently, the 2nd respondent, pursuant to the tender, entered into another agreement on 01.06.2019 with the petitioner for a period of one year for conversion of raw chilled milk into butter & skimmed milk powder and conversion of skimmed milk into skimmed milk powder and called the petitioner to furnish security deposit of Rs.40,00,000/-. As per the terms of contract, the petitioner deposited a sum of Rs.40,00,000/- each as security deposit for performance of both the agreements of contract. As per the terms of contract, the respondents have to refund the security deposit after completion of the contract within a period of six months from the date of completion of the contract. According to the



petitioner, he has performed the contract without any blemish and period of contract was also expired on 18.05.2019 and 31.05.2020 respectively. The petitioner is entitled to refund of Rs.40,00,000/- each deposited towards both the agreements dated 19.05.2018 and 01.06.2019 respectively, totaling Rs.80,00,000/-. The petitioner sent an e-mail communication attaching letter dated 28.12.2019, demanding return of security deposit. The respondents failed to refund the amount. Hence, the petitioner has come out with the present Writ Petitions.

4.The respondents filed separate counter affidavit in both the Writ Petitions. In the counter affidavit, the respondents have extracted various conditions imposed on a convertor like petitioner. After extracting various conditions, the respondents have stated that due to Audit Objection, the security deposit of the petitioner is withheld and the learned Additional Government Pleader appearing for the respondents submitted that due to Audit Objection, the amount was not refunded and prayed for dismissal of the Writ petitions.

5.From the materials on record, it is seen that the petitioner was awarded two contracts in the years 2018 and 2019 respectively. The petitioner has deposited Rs.40,00,000/- each for the said two contracts. Each of the contract period is for one year. As per the terms of contract, the 2nd respondent has to return the security deposit to the petitioner within six months of expiry of contract. According to the petitioner, he has completed both the contracts to the satisfaction of the respondents, but the 2nd respondent has not refunded the said amount. The learned counsel appearing for the petitioner contended that no objection was raised by the 2nd respondent with regard to quality and quantity of work done by the petitioner regarding conversion. The 2nd respondent was satisfied with the work done by the petitioner. Hence, the 2nd respondent is liable to return the security deposit as terms of contract with regard to refund of security deposit is binding on the 2nd respondent.

6.From the counter affidavit filed by the 2nd respondent, it is seen that various irregularities were pointed out by the Audit Department and none of the irregularities relate to the work done by the petitioner. All the irregularities were on the part of the 2nd respondent in employing the staff in execution of contract. The Audit Objection has not pointed out any fault on the part of the petitioner. In the counter affidavit, the 2nd respondent has not stated that execution of work done by the petitioner is not as per the terms of contract or there is shortage of products after conversion or quality of converted



products was poor. In so far as the petitioner has executed the contract without any blemish to the satisfaction of the 2nd respondent, the 2nd respondent is not entitled to withhold the amounts deposited by the petitioner as security for performance of the contracts.

7. For the above reasons, the respondents are directed to refund Rs.40,00,000/- each being the performance security deposit under the agreements dated 19.05.2018 and 01.06.2019 entered between the petitioner and 2nd respondent, within a period of two weeks from the date of receipt of a copy of this order.

8. In the result, both the Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Managing Director,
Tamil Nadu Co-operative Milk
Producers Federation Ltd. (Aavin)
No.36A, Pasumpon Muthuramalinga Thevar Road,
Nandanam, Chennai 600 035.

2. The General Manager,
Coimbatore District Co-operative
Milk Producers Union Ltd., (Aavin)
Pachapalayam,
Kalambalayam Post,
Coimbatore 641 010.

+2 Ccs to M/s.AL. Gandhimathi, Advocate sr 19826 & 19827.

W.P.Nos.12838 & 12840 of 2021

BR(CO)
SP(08/04/2022)