

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

W.P.A. 308 of 2023

Kartick Chandra Pal & ors.
Vs.
The State of West Bengal & Ors.

For the petitioners

Mr. Kalyan Bandopadhyay
Mr. Ramesh Dhara
Ms. Mousumi Choudhury

For the State

Mr. T. M. Siddiqui
Mr. Nilotpal Chatterjee
Mr. Amrita Lal Chatterjee

Heard on : 10.04.2023

Judgment on : 10.04.2023

Jay Sengupta, J.

This is an application under Article 226 of the Constitution of India, *inter alia*, praying for cancellation of the impugned order dated 22.12.2022 passed by the respondent no.2 and the notice dated 02.01.2023 issued thereafter and for directing the respondent

authorities to empanel the petitioners Flour Mill and enter into an agreement with petitioners for the district of Birbhum, forthwith.

A report filed on behalf of the BL & LRO, Labpur Block, Birbhum, as filed in Court, is taken on record.

A copy of the same is handed over to the learned counsel for the petitioners.

Learned counsel for the petitioners submits that there is no need to file an exception and he would be advancing verbal submissions in this regard.

Mr. Bandopadhyay, learned senior counsel appearing on behalf of the petitioners, further submits 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 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 mills for all districts except Kolkata. The petitioner submitted application in the name of the partnership firm. 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. The concerned authority thereafter forwarded the same to cause necessary inspection. On 07.01.2022 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. 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. By an order dated 10.11.2022, passed in WPA 12264 of 2022, this Court directed the respondent no.2 therein to consider the petitioners' case afresh after giving an opportunity of hearing to the petitioners, within four weeks from the date of communication of the order. However, the date for hearing was fixed on 06.12.2022. This is a clear case of an administrative malafide that the concerned respondent went on a nitpicking spree to fish out one pretext or the other to delay the inevitable i.e., to delay the empanelment of the petitioner as a Four Mill in particular District. Another inquiry was directed. But, in it's garb, the same issues were revisited. It is the unambiguous case of the petitioners that they were owning 41 decimals of land out of which conversion had taken place in respect of 33 decimals of land and the factory is situated within the said 33 decimals of land. In fact, this has been vindicated by a prior report of the General Manager, District Industries Centre, Birbhum dated 10.05.2022 . However, surprisingly a purported inspection notice dated 02.01.2023 was issued and the petitioner was asked to keep the Flour Mills in running condition for a physical inspection. According to the last report filed by the respondent authorities, it appears that the respondents have finally accepted that the said flour mill building covering an area of 0.22 acre on the said plot of land is situated within the aforesaid converted land of 0.33 acre on the said

LR Plot No. 276. All the other issues had been successfully dealt with in the earlier writ petitions. Therefore, there is no doubt that the petitioners complied with all the terms and hence, should be empanelled as a Flour Mill for the said District. Reliance is placed on a decision of the Hon'ble Apex Court reported in 1986 (2) SCC 679.

Mr. Chatterjee, learned counsel appearing on behalf of the State submits as follows. Earlier there were some doubts about whether the Flour Mill Building stood exactly on the converted portion of the said plot of 0.33 acres of land or it went beyond the said area into the non-converted portion. Now, it has been made clear by the inspection report of the concerned BL & LRO that the building is situated within the converted area as claimed by the petitioners. Therefore, the petitioners would be entitled to empanelment provided all the other criteria are satisfied.

I have heard the submissions of the learned counsels for the parties and have perused the writ petition and the Report filed by the Block Land and Land Reforms Officer, Labpur Block.

It appears that by an order dated 06.01.2023 passed by this Court, the respondent authority was directed to file the report. Thereafter, by an order dated 03.03.2023, it was recorded by this Court that a surveyor empanelled with this Court may not be in the best position to analyze the land records and make measurement of

land as required in this case, that too in a short time. Therefore, the concerned BL & LRO was directed to file a fresh report after measurement of the land properly in the presence of the interested parties. It was further recorded that the whole issue arose out of an Inspection Report dated 11.01.2023 appended to the Report dated 20.01.2023 which stated that "...the area of the Flour Mill Covers entire area of plot no. 276 and the measurement of the plot is 41 decimal...". It was held that such an expression again left the question open to different interpretations as to whether it was the premises of the Flour Mill or more specifically, the building of the flour mill that stood on 41 decimals of land.

However, the Report filed in this regard today states as under:-

"x.) In the light of the aforesaid records/documents vis-à-vis the said inspection dated 22nd March, 2023 made in presence of the petitioner and the respondent no.5, it is respectfully submitted that the said flour mill building covering an area of 0.22 acre on the said plot of land is situated within the aforesaid converted land of 0.33 acre on the said LR Plot No. 276".

Therefore, the only contentious issue that had remained unresolved has now been answered. It is clarified that the Flour Mill Building is situated on the converted area, as claimed by the petitioners, which was not beyond 0.33 decimals of land.

The other issues regarding the entitlement of the petitioners to such empanelment had earlier been dealt with by this Court in the writ petitions being WPA 1447 of 2022 and WPA 12264 of 2022.

Thus, it appears that the petitioners were needlessly compelled to move this Court several times over the same issue. It is also clear that the respondent authorities were not making the actual position clear in their earlier version of the report filed in this regard.

Therefore, in the interest of justice, it would be appropriate to rely on the decision of the Hon'ble Apex Court passed in K.S. Jagannathan and another (supra) and grant the petitioners a final relief instead of relegating them again to the respondent authorities who might again make them run from pillar to post with some convoluted logic or clever but evasive choice of words.

In view of the above and in the interest of justice, the impugned order dated 22.12.2022 passed by the respondent no.2 and the notice dated 02.01.2023 and consequential order, if any, are quashed and set aside and the respondents, particularly the respondent no.5, are directed to empanel the petitioners' Flour Mill for the district of Birbhum and enter into an agreement for such purpose. The same shall be done by the respondent authorities within four weeks from the date of communication of this order.

With these observations, the writ petition is disposed of.

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

(Jay Sengupta, J.)