IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA No. 14823 of 2023

Olisa Reality Pvt. Ltd. & Anr.
-Vs-
The Jute Commissioner & Ors.

For the Petitioners: Mr. Sabyasachi Chaudhury, Adv.,
Mr. Ajay Gaggar, Adv.,
Mr. Uttiyo Mallick, Adv.,
Mr. Trini Joardar, Adv.

For the Respondent No.1:-Mr. Anirudha Chatterjee, Adv.,
Mr. Rahul Karmakar, Adv.,
Mr. Surya Prasad Chattapadhay, Adv.

Heard on: 27 June, 2023.
Judgment on: 14 July, 2023.

BIBEK CHAUDHURI, J. : –

1. Olisa Reality Pvt. Ltd, a company incorporated under the Companies Act, 1956, carries on business of manufacturing and supplying of jute bags. The petitioner No.1- company has its jute mill at Manikpur within the P.S Sankrail in the district of Howrah. There are about 3000 workers employed in the said jute mill. It is the case of the petitioners that jute bag manufacturing business is one of the major industries in the eastern region particularly in West Bengal. It supports nearly four million farmer families, besides providing direct employment to 2.6 lakhs industrial workers and livelihood to another 1.4 lakhs persons in the tertiary sector and allied activities. The Government of India recognized the important of jute industry and has taken various

remedial measures to protect the jute industry. The Central Government enacted the Jute Packaging Materials (Compulsory Use in Packaging Commodities) Act, 1987 to provide for the compulsory use of jute packaging material in the supply and distribution of certain commodities in the interest of production of raw jute and jute packing materials and the persons engaged in the production thereof. From time to time the Ministry of Textile, Government of India have passed order under Section 3 of the said Act directing use of jute packaging materials by producers of certain commodities and or class of commodities. In exercise of the power conferred by Section 3 of the Essential Commodities Act, 1955, the Central Government made the Jute and Jute Textile Control Order, 2000 for the protection of jute farmers, the jute industry and control of the price of raw jute and jute products to boost up the industry. Subsequently, the Control Order of 2000 was replaced by the Jute and Jute Textile Control Order 2016. As per the provisions of the said Packaging Act of 1987 the jute commissioner is entitled to implement the Packaging Act and issue production control order on jute mills. Under the Control Order of 2000, the Jute Commissioner is empowered to take all steps necessary for implementation of the Packaging Act, 1987 or any other directive of the Central Government and may by order direct any manufacturer to produce such quantities of such classes or specifications or jute textiles as may prescribed in the order for such implementation. The said orders passed by the Jute Commissioner are commonly called as "Production Control Orders." The Jute Commissioner is also empowered to issue "Requisition Order" as supply order to the concerned jute mill which contains the terms and conditions of sale of jute bags under the Control Order, 2000. The procedure in respect of issuance of. Production Control and Supply Order (PCSO) in the Control Order of 2016 is almost identical to the control order of 2000. The proforma respondent, Delta Jute Mill Limited used to run the jute mill at Manikchak previously and the Jute Commissioner used to issue PCSO's in favour of the proforma respondent till 10th November, 2021.

2. Sometimes in the year 2018 there was a dispute between the proforma respondent and the Jute Commissioner in the matter of non issuance of PCSO's which had prompted the proforma respondent to file a writ petition being WP No.22091(W) of 2018. A Coordinate Bench of this Court by an order dated 5th November, 2018 disposed of the aforesaid writ petition giving liberty to the writ petitioner to make an application before the concerned authorities for issuance of the Production Control Orders in accordance with law. The respondent authorities were directed to consider and dispose of the said application by passing a reasoned order within a period of four weeks from the date of filing of the said application. As directed by the this Court, the proforma respondent made an application before the Jute Commissioner and the Jute Commissioner passed an order dated 10th December, 2018 commencing issuance of PCSO's in favour of proforma respondent in respect of the said jute mill.

3. By executing a deed of lease dated 9th January, 2023 the proforma respondent granted lease in favour of petitioner No.1 to run and operate

the jute mill at Manikchak from the factory premises for a period of 15 years with effect from 1st January, 2023 as against the monthly rent of Rs.10 lakhs or 10% of net profit whichever is higher. On the basis of the said lease, the petitioner No.1 is operating the jute mill at the said factory premises. The petitioner No.1 submitted a representation on 8th February, 2023 before the Jute Commissioner requesting him to incorporate the name of the petitioner No.1 and to issue PCSO's in favour of it from the month of February, 2023 in place and stead of the proforma respondent. The said representation was replied to by the respondent No.2 by a letter dated 20th February, 2023 requiring the petitioner No.1 to furnish certain information/document for taking further action on the issue. The petitioners forwarded all the required/desired documents to the respondent No.1 by a forwarding letter dated 26th May, 2023. In spite of receipt of all the documents, the respondent authorities failed and neglected to act on the basis of the petitioner's representation dated 8th February, 2023 with the petitioner's letter dated 26th May, 2023.

4. Therefore, the petitioners have prayed for issuance of a writ in the nature of mandamus commending the respondent authorities and each one of them to forthwith issue Production Control and Supply Order in favour of petitioner No.1 with other coordinate prayers.

5. It is submitted by Mr. Sabyasachi Chaudhury referring to the order dated 4th February, 2016 issued by the Ministry of Textiles that the Jute and Jute Textile Control Order, 2016 was issued in exercise of the powers conferred by Section 3 of the Essential Commodities Act. Clause 3 of the

said Order speaks of Jute Commissioner's power to fix prices at which any grade of raw jute may be purchased and sold. Sub-Clause 6 of Clause 3 empowers the Jute Commissioner issuing notification in the official gazette, to fix from time to time the maximum price or minimum price or nominal price or all of them at which any specification of jute textile may be purchased or sold for use under the Jute Packaging Materials (Compulsory Use in Packaging Commodities) Act, 1987. Clause 4 prescribes that the Jute Commissioner shall take all steps necessary for implementation of the Jute Packaging Materials (Compulsory Use in Packaging Commodities) Act, 1987 or any other productive of the Central Government and by order, direct any jute mill, to produce such quantities of such specifications of jute textile as may be specified in the Order for such implementation. Sub-Clause 2 of Clause 4 empowers the Jute Commissioner to take all steps necessary for the implementation of Jute Packaging Act, 1987 or any other directive of the Central Government and may by order direct any emperor, processor, trader of raw jute and jute textiles to mark or print or brand such quantities of such specification of jute textiles as may be specified in the year for such implementation. Mr. Chaudhury next takes me to an order dated 10th November, 2021 issued by the Deputy Director (Marketing) in the office of the Jute Commissioner issuing order in favour of the proforma respondent, Delta Jute Mill Ltd for production and deliver stores of jute bags. The petitioner No.1 has been running the mill and factory which was previously run by Delta Jute Mill Ltd on the basis of a deed of lease. It is the case of the petitioner that on the basis of the order dated 5th November, 2018 passed in WP No.22091 (W) of 2018 the Jute Commissioner passed an order in favour of Delta Jute Mill Ltd. that the mill company is entitled to PCSO's during pendency of proceedings and the department shall forthwith make arrangement to grant PCSO in accordance with law after fulfillment of requisite formalities which is practiced by the department in case of other jute mills seeking PCSO, by the petitioner mill company.

6. Mr. Anirudha Chatterjee, learned Advocate on behalf of the Jute Commissioner submits that the Assistant Director in the office of the Jute Commissioner by a letter dated 19th June, 2023 requested the petitioner No.2 to submit the following documents:- i) Statutory clearance relating to pollution control issued by competent authority ii) number of workers covered under provident fund and ESI duly certified by PF and ESI Authorities (iii) no dues certificate from PF and ESI authorities. According the Mr. Chatterjee the petitioner No.1 has not filed the statutory clearance relating to pollution control. It is stated by the petitioner No.1 by a letter dated 14th June, 2023 that 1577 workers are covered under Provident Fund and ESI but they failed to produce any document in respect of the said workers. They also failed to supply no dues certificate from PF and ESI authorities.

7. In reply it is submitted by the learned Advocate for the petitioner that the petitioner No.1 got the leasehold right to run the jute mill by the erstwhile company namely Delta Jute Mill Ltd. by an indenture of lease dated 9th January, 2023. After taking over the management of the

company in the month of January, 2023 the petitioner company is under obligation to make payment of employer's share of Provident Fund Contribution, ESI Contribution etc in respect of the workers who are covered under PF and ESI only after the mill becoming operational on the basis of the work order submitted by the Jute Commissioner. It is also submitted by Mr. Chaudhury that the petitioner No.1 has already obtained the pollution certificate which it will submit before the Jute Commissioner.

8. Having heard the Counsels for the petitioners and the Jute Commissioner, respondent No.1 herein this Court finds substance in the submission made by Mr. Chaudhury that the petitioner no.1 company is not in a position to submit no due certificate of PF and ESI contribution at this stage because it took over the operation of the mill and factory from proforma respondent No.4 on the basis of a deed of lease dated 9th January, 2023. It is the obligation of the profroma respondent to submit no due certificate of PF and ESI contribution of the workers of the said mill till 31st December, 2022.

9. Undisputedly the petitioner No.1 did not get any PCSO from the respondent No.1 till date. The factory remains without any operation for failure on the part of the respondent no.1 from issuing PCSO in favour of petitioner no.1. Considering the object and propose of Jute Packaging Act, 1987 and the Control Order of 2016 this Court find wide range of power has been given to the Jute Commissioner for ensuring the survival of jute industry. If a jute mill or factory is not supplied with ESCO entire

production of jute bags and jute textile will come to an end and this must not be the object of a welfare state and beneficial legislation. The petitioner no.1 company has submitted all the documents. It is submitted by Mr. Chaudhury that they will submit statutory clearance relating to pollution control before the Jute Commissioner. They have also informed the numbers of workers covered under PF and ESI scheme. The obligation of payment of PF and ESI dues comes only when a factory resumes it work and the workmen are paid their wages. Work in jute industry can only be commenced by on the strength on PSCO's issued by the Jute Commissioner.

10. For the reasons stated above, the instant writ petition is disposed of directing the respondent No.1 to dispose of petitioner's representation dated 8th February, 2023 along with letters dated 26th May, 2023, 1st June, 2023 and 19th June, 2023 without insisting upon no dues certificate of PF and ESI contribution by the petitioner No.1.

11. Of course the Jute Commissioner is at liberty to fix a future date after issuing PCSO in favour of petitioner No.1 and making the said mill and factory operational, for submission of no dues certificate in respect of PF and ESI contribution. With the above order the instant writ petition is disposed of on contest. There shall however, be no order as to costs.

(Bibek Chaudhuri, J.)