IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 27513 of 2022
Indian Jute Mills Association & Another
Versus
Union of India & Another

For the petitioner	:	Mr. Abhrajit Mitra Ms. Rajshree Kajaria Mr. Satadeep Bhattacharyya .....Advocates
For the UOI	:	Mr. Dibashis Basu Mr. Arun Bandopadhyay .....Advocates
Heard lastly on	:	08.05.2023
Judgment on	:	18.10.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India praying for directions upon the respondent authorities, especially the respondent nos. 1 and 2, to make payment for the jute bags manufactured and inspected in terms of the PCSOs at the rates specified therein irrespective of when the delivery is taken by the named consignees and upon the respondent no. 2 to make payment of differential amount to the numbers of the petitioner no. 1, the loss which has been suffered by the members due to jute bells being lifted at the price prevailing on the date of such lifting and not at the rate of which was prevailing at the time of issuance of PCSOs.

2. Learned senior counsel appearing on behalf of the petitioner submitted as follows. Raw jute was a controller item. Jute bags made from raw jute used for packing of food grains were also controlled items. The present writ petition concerned the power, if any, of the Jute Commissioner [In short 'JC'] to alter the agreed price specified in the individual Production, Control and Supply Orders [In short, 'PCSOs']. PCSOs were issued on a monthly basis by the JC under Regulation 4(i) of the Jute and Jute Textile Control Order, 2016 [In short 'JTCO, 2016'] for production and supply of jute bags to the consignees specified in the concerned PCSOs. PCSOs being bilateral contracts between JC and Jute Mill owners specify the ex-factory price of the jute bags which was payable by the JC as per Clause 8 of each PCSO which was also set out hereinbelow: -

"8. Payment Terms: -

(a) 90% payment on proof on inspection and dispatch. Balance 10% will be released on expiry of 60 days if no quality or other complaints is raised by the consignee within this period.

(b) In case of dispatch beyond Original/Refixed DP after obtaining DP extension, 2% payment for every month of delay or part thereof subject to maximum of 5% will be withheld till regulation of DP.

(c) Paying Authority will be the office of the Jute Commisisoner, Kolkata."

Clause – 8 which stipulates 90% payment by JC to the Jute Mills on proof of inspection and dispatch had to be read in conjunction with Clauses 7(c) and (d) which specified the date of inspection and the date of despatch. As would be evident from Clause 7(a), lifting and transportation of the goods was not the seller's (jute mill's) obligation. A jute mill had to manufacture the jute bags and cause the same to be inspected before the specified date Clause 7 (c) by the Inspecting Agency specified in the PCSO Clause-12. As stated earlier, the lifting and transportation thereafter by the named consignee was not within the control of the jute mill. It was just that the first 90% payment was to be received by the jute mill on inspection and despatch [Clause 8(a)]. Thus, as per the contract terms, receipt of 90% payment was dependant not only on the manufacture and inspection of the jute bags, but also on the lifting of the jute bags by the named consignees over which the jute mill had no control. To that extent, the jute mill could not complain even though they were very often victims of delayed lifting by the consignees, even Clause 8(a) was binding on the jute mills. The present case concerned the penalization of jute mills for delayed lifting of jute bags by the named consignee. If there was a provision to that effect, or there was any breach of the terms of the contract (PCSO) by the jute mills then it would have been a different matter. However, none the same, the JC, on a regular basis, by unilateral amendments to the PCSOs was altering the agreed the price of jute bags i.e. the PCSO price. Instead of the agreed price mentioned in the PCSOs, by these unilateral amendments, JC is prescribing a different price the jute bags, i.e. "lowest of the prices during the period starting from the month of placement of PCSO, and upto the month of supply, both the months inclusive." For example, the contractual price of jute bags in PCSO dated 20th September, 2022 was Rs. 6084.61 per 100 bags. As per the PCSOs the last date of inspection was 30th September, 2022, and last date of dispatch was 12th October, 2022. Now, if the jute mills have manufactured the jute bags in time and these were inspected and passed before 30th September, 2022, the jute mills became entitled to receive 90% payment of the contractual price at Rs. 6084.61 per 100 bags immediately on dispatch, and the balance 10% on expiry of 60 days thereafter. Now, if the named consignee, namely, Telengana State Civil Supplies Corporation delayed lifting of the jute bags beyond the last specified date, i.e. beyond 12th October, 2022, then and in that case, the contract/PCSO did not stipulate any alteration of the price. However, as per the unilateral amendment, the price would be the lower of the price given in the PCSO i.e. Rs. 6084.61 per 100 bags, and the price for the month in which delivery was taken. Say for example, that delivery was taken in the month of November, 2022 and the notified price for November, 2022 was Rs. 5903.70, then and in that case, the jute mills, as per the unilateral amendment by the JC would be receiving not the contractual price of Rs. 6084.61 per 100 bags, but only Rs. 5903.70. Thus, for no fault of the jute mill, it would be receiving Rs. 180.91 per 100 bags less. This was apart from the delayed payment, it would be receiving as per Clause 8(a) of the PCSO, which, of course, being a contractual term, the jute mills concerned had to accept. There was a chart at page 73 showing three several instances of jute mills' suffering loss of Rs. 180.91 per 100 bags against the PCSO for the month of September, 2022. Factually, the case was admitted in the Affidavit-in-Opposition of the respondent, where it had been admitted that the jute mills are suffering penalty (unilaterally lowering the price) for the failure of the named consignee to lift the jute bags in time Para 3(ix) of A/O of the respondent. The respondents had also not shown any statutory provision empowering the Jute Commissioner to unilaterally amend the PCSO, and, in fact, JTCO, 2016 did not have any such provision. The judgments for the proposition that State could not unilaterally alter the contract terms by way of policy decision or executive action, were – **MANU/GJ/1760/202**1 – Cube Construction Engineering Limited Versus State of Gujrat; **(2020) 2 Cal Law Times 383** – Rupa & Co. Ltd. and Another versus State of West Bengal and Others; **(2008) 2 SCC 672** – Delhi Development Authority and Another versus Joint Action Committee, Allottee of SFS Flats and Others.

3. Learned counsel for the Union of India submitted as follows. The writ petitioner had deliberately not made the State Procurement Agency (herein after referred to as SPA) as party to this writ petition. As a matter of act, the grievances agitated in this instant writ petition was technically against the said SPA and for which the fall clause of the production control and supply order has been attracted against the petitioner and therefore, the concerned SPA were the necessary parties in the writ petition. Paragraph 12, 17, 20, 21 and 30 of the writ petition are the most relevant paragraphs wherein the writ petitioner had admitted that for the fault on the part of the SPA the fall clause had been attracted against the writ petitioner. From Annexure 'P/7' appearing from page 74 to 80 it could be seen that clause number 3 practically described the period of delivery and not in compliance of the same the clause 8 was attracted against the particular jute mill which actually referred the fall clause as above. Even more than 70% of the jute industry was dependent on Government purchase of B-Twill bags, and if Government support went, then the jute industry would not able to survive on their own and for that Government had to maintain certain checks and balances within the system, so that neither any malpractice took place nor any unscrupulous mills got undue benefit from public exchequer. As a matter of policy implementation and putting the statute, Jute & Jute Textiles Control Order, 2016 had come into effect and accordingly the Jute Commissioner issued Production Control cum Supply Order (in short herein after referred as PCSO) in consonance with the indents and other instructions/advice placed by different State Procurement Agencies. The PCSO issued was a contract, which binded the consignee and the consignor both into a specific system which if not followed would jeopardies the entire supply chain mechanism. The order being given to the manufactures through this PCSO which required to be completed in schedule time, otherwise any manufacturer might take secured order from Government and supply to different private purchaser at higher price and this Government order might never get completed at any point of time. Then the Government order would become a security key for the manufactured and on the other hand different State procurement agencies would suffer from shortage of supply of B-twill bags. The foodgrain supply throughout the nation might collapse like pack of cards. Therefore, there was a penalty provision imposed through this PCSO that, in case of delayed supply time, 'fall clause' inbuilt in PCSO, was applied and lowest rate for the month of supply and issue of PCSO and other intervening months were paid alleged failure of single consignee as an accident could not give a cause of action to the writ petitioner to alter whole Government policy which was being followed for more than three decades. The Jute and Jute Textile Control Order 2016 was an outcome of Section 3 of the Essential Commodities Act, 1955 and being empowered of the aforesaid statutory provision the Jute Commissioner issued PCSO which bound parties in the contract and therefore unless the named consignee which was evident from clause 7 of PCSO was impleaded as party, no effective adjudication could be administered. It was the Government policy and if the said policy was altered then unscrupulous traders and manufacturers might take the advantages and might make illegal profit if there was nothing specified in the PCSO and for which the inbuilt fall clause had been inserted in clause 8 of the PCSO. From the affidavit in opposition it was also important that the office of the Jute Commissioner had taken lawful steps against non-lifting of jute bags by the transporters engaged by the concerned consignee.

4. I heard the learned counsels for the parties and perused the writ petition and the written notes of submissions.

5. Following are the facts relevant for adjudication of this lis. Raw jute is a controlled item. Jute bags made of raw jute and used for packing a foodgrains are also a controlled items. PCSOs are bilateral contracts between the Jute Commissioners (JC for short) and the jute mill owners specifying the ex factory price of jute bags payable by the JC as per Clause 8 of each PCSO. Clause 8 has to be read in conjunction with Clauses 7 (c) and (d), which specify the date of inspection and the date of dispatch. The lifting and transportation by the name consignee after an inspection is done is not within the control of the jute mill. But, 90% payment is to be received by a jute mill on inspection and dispatch. Therefore, such payment is dependant not only on the manufacture and inspection of jute bags, but also on the lifting of jute bags by the name consignees. The JC, on a regular basis, by unilateral change in the PCSOs is altering agreed price of jute bags. Instead of the with price mentioned in the PCSOs, the JC is prescribing a different price for the jute bags that is, "lowest of the prices during the starting from the manufacture of placement of PCSOs and up to the manufacture of supply, both the months inclusive." This is causing an undue hardship can loss to the millers.

6. First, the contention of the respondents that the State Procurement Agency (SPA, for short) should actually be the necessary parties is not quite tenable as the price fixation in respect of the PCSOs is being unilaterally altered by the JC.

7. The respondents further contended that more than 70% of the jute industry is dependent on Government projects of B-12 bags and if the government supports goes then the jute industry will not survive on their own. This is hardly a ground for which the jute mill owner has to bear an unspecified and unforeseen loss for no fault of its own. A government cannot act arbitrarily or be seen to act as an exploiter.

8. It is indeed very surprising that instead of ushering in a stipulation upon the consignees to lift the bags within a particular time of inspection, the instant unilateral change had to be made by the JC. Such arbitrary and unreasonable condition cannot be imposed by a statutory functionary on an agreement or understanding, that too unilaterally.

9. This Court also fails to find any condition in the PCSOs that gives such right to any of the parties to unilaterally alter the terms agreed to.

10. In view of the above, the term imposed unilaterally by the JC on the jute millers in respect of the PCSOs that the price to be paid was the lowest for the period between the date of inspection and the date of delivery is quashed and set aside for being arbitrary and unjust.

11. However, the JC shall be at liberty to negotiate and/or enter into fresh terms in respect of the PCSOs to be executed in future.

12. With these observations, the writ petition is disposed of.

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.)

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