In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO/2222/2022
BALLYFABS INTERNATIONAL LIMITED & ANR.
VERSUS
NATIONAL JUTE BOARD

WPO/2250/2022
KELVIN JUTE LIMITED & ANR.
VERSUS
NATIONAL JUTE BOARD

WPO/2252/2022
BALLY JUTE COMPANY LIMITED & ANR.
VERSUS
NATIONAL JUTE BOARD

WPO/2255/2022
AMBICA JUTE MILLS LIMITED & ANR.
VERSUS
NATIONAL JUTE BOARD

For the petitioners	:	Mr. Suddha Satva Banerjee, Adv., Mr. Pradip Kumer Sarawgi, Adv.
For the respondent no.2	:	Mr. Aniruddha Chatterjee, Adv., Mr. Joydip Banerjee, Adv., Mr. Rahul Karmakar, Adv., Mr. Surya Prasad Chattopadhyay, Adv.,
Hearing concluded on	:	25.09.2023
Judgment on	:	16.10.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioners have moved this Court against the refusal of the respondent-Authority to grant to the petitioners the benefit of two

Incentive Schemes for acquisition of plant and machinery floated by the respondent.

2. The first Scheme related to the period between October 1, 2013 and March 31, 2017 and the second between April 1, 2017 and March 31, 2020. Under Scheme 1, the incentive to be granted was twenty per cent and under Scheme 2, thirty per cent of the costs for acquisition for MSME units. The petitioners are MSME units.

3. Learned counsel for the petitioners argues that the benefits of the Schemes were refused on erroneous principles by the respondent.

4. At the outset, dealing with the objection taken by the respondent that the Union of India is a necessary party to the writ petitions, it is contended that the Schemes have been floated and issued by the National Jute Board that is the respondent. The applications for getting benefit of the same were submitted to the respondent. The examination, processing and disposal of the applications, under the Schemes, was also to be done by the respondent.

5. In the present case, the inspection was to be conducted by the respondent or its duly authorised representative or any other agency to be identified by the technical committee. The disbursal of funds under the Schemes to the eligible candidates is also by the respondent.

6. In fact, if the incentive is found to have been falsely obtained, the applicants are liable to refund the incentive availed of along with interest to the respondent itself, as per the clauses of the schemes.

7. Thus, the Union of India has no role to play. The respondent is a body corporate created under the National Jute Board Act, 2008 (hereinafter referred to as, "the 2008 Act") and may sue or be sued in its own name under the said Act.

8. It is further contended that suits have been filed by the respondent and the respondent claims to have adjusted the amount payable under the Scheme to the petitioner with disbursal made to a different company. Thus, the Union of India is not a necessary party merely because the respondent pleads that the funding is done by it.

9. With regard to the question of limitation, also raised by the respondent, it is argued that such objection is restricted only to Scheme 1. The applications of the petitioners under the Scheme 2 have been made within the period stipulated therein. The second Scheme ranged from the period between April 1, 2017 and March 31, 2020, whereas the second application of the petitioners, which is the relevant application, was made on February 22, 2018. Insofar as the first Scheme is concerned, learned counsel distinguishes between the dates of submission of application for getting benefit of the Scheme and the dates of submission of the actual claims under the Scheme.

10. As per the Scheme, an application for making claims under the Scheme is to be submitted within one year from the date of issue of in-principle approval, only after installation and completion of modernisation process. The date of installation is taken as the cut-off date for such claims.

11. The revised guidelines, it is argued, for own-source funding, as is the case of the petitioners under Scheme 1, clearly provides the procedure to be followed for making an application and for making claims and permit a unit to approach with LOI (Letter of Interest) and complete the purchase within nine months from the date of the LOI.

12. Thereafter, on completion of purchase and installation, the unit is to approach with its claim application.

13. It is evident from the inspection report of the respondent that the date of LOI was December 1, 2016 and the date of claim was August 21, 2017, which is within the stipulated time. It is contended that the initial application for the Scheme was made during pendency of the Scheme itself.

14. Thus, the applications are not barred by limitation, or beyond the scope of the Scheme.

15. Addressing the third question, whether the petitioners are disentitled to disbursal of funds on the basis of recommendation made by the Public Accounts Committee (PAC) of the Parliament, learned counsel for the petitioners contends that the plea of the respondent on such score, on the basis of the documents disclosed in the respondent's supplementary affidavit dated June 23, 2023, are not tenable. Those are extracts of documents, the veracity of which cannot be ascertained. In fact, from the letter dated May 2, 2022 and the previous letter dated March 24, 2022, it appears that observations from the respondent were awaited.

16. Secondly, CBI appears to have recommended blacklisting of one of the companies and the documents and communications annexed to the supplementary affidavit of the respondent appears to be internal notes and letters issued by the respondent on October 20, 2020 and October 13, 2020.

17. It is contended that the respondent has forwarded by its letter dated August 25, 2020, some cases for being taken up for investigation by the CBI-ACB, *inter alia*, involving two of the petitioner-companies, namely Ambica Jute Mills Limited and Bally Jute Company Limited which are part of the group companies. In any event, Ballyfabs International Limited, the petitioner no.1 in WPO No. 2222 of 2022, is not mentioned in the list. Secondly, no FIR, criminal case and/or criminal investigation has been initiated by the CBI even against Ambica Jute Mills Limited or Bally Jute Company Limited, although the recommendation was made three years back.

18. The only CBI case initiated is against one MPL Corporation Limited and Awanti Kumar Kancaia. The investigation in the said case was stayed by this Court by an order dated September 22, 2022.

19. It is argued that there is no order of blacklisting against any of the group companies or the promoters or directors of Ballyfabs or the other petitioners, which have any bearing on the eligibility of the petitioners to claim under the present two Schemes.

20. The respondent has filed a money-suit against Usha (formerly MFL Corporation Limited) for recovery of an amount which was alleged to be fraudulently obtained by MFL/Usha Corporation in respect of a different Scheme. The recommendation of the committee is to blacklist all involved in the irregularity from availing any benefit under any Scheme of Government in future, as per the Annexure dated April

21, 2022 at page 7 of the supplementary affidavit.

21. The petitioners claim incentive in respect of Schemes in regard to which they were found eligible on inspection. Hence, the future blacklisting, even if any, cannot prevent the petitioners from getting the benefit of the present Schemes.

22. It is argued that no suit has been filed against the petitioners for recovery of any amount. Further, it is contended that a company is a separate juristic entity and the respondent cannot withhold the benefits of the present Schemes by deeming the same to be adjusted against the amounts recoverable against a different company.

23. It is acknowledged by the respondent that the only legally valid process of recovery is institution of a suit; yet, it contends that the amounts that the petitioner is entitled to under the present Scheme stand adjusted by extra-legal means and the claim made in the suit against MFL stands reduced. Such action is *de hors* the law, it is argued.

24. The respondent, it is argued, is not entitled to withhold disbursal under the Schemes on grounds extraneous to the Schemes. In support of such contention, learned counsel for the petitioner cites *Venkateshwara Wires (P) Ltd. v. District Level Committee*, reported at *1991 SCC OnLine Raj 395*.

25. All decisions on behalf of the Union of India, it is argued, are to be taken in accordance with Article 77 of the Constitution of India in the name of the President of India. Inter-departmental recommendations or communications are not justiciable nor can be the basis for grant or refusal of any legitimate claim in law. In such context, learned counsel for the petitioner cites *Shanti Sports Club and Another v. Union of India and others*, reported at *(2009) 15 SCC 705*.

26. Learned counsel for the respondent argues that the Government of India is a necessary party. Even if orders were passed in favour of the petitioners, the same could not be carried out in the absence of the Government. Both the Schemes-in-question contemplate the respondent to be only an operating agency in Clause 5 of each of the same. Clause 11 of the Scheme stipulates that the entire funding is made by the Ministry of Textiles, Government of India.

27. The National Jute Board (respondent) is governed by the 2008 Act as framed by the Ministry and enacted by the Parliament on February 12, 2009. The Board engages in research and human resources development programmes to explore innovative use of jute to enable both the organised as well as the decentralised sector to compete and increase the global share of Indian jute goods' consumption and, to augment such position of strength, the Board implement programmes. The constitution of the Board is such that the entire decision-making process lies with the Government of India. Although the respondent is an autonomous body, it does not have self-revenue generation system but is basically a disbursal agency of the Government of India.

28. Hence, the disbursal of the funds on account of subsidy provided under the Schemes rests with the Ministry of Textiles, Government of India, as admitted by the writ petitioners in their representations.

29. The PAC, it is argued, had issued a recommendation indicating the involvement of the Kankaria Group of Companies in fraud perpetrated on the Government of India for obtaining subsidies under the Mini Mission-IV Scheme (MM-IV Scheme). The disparities were galore and the office of the Principal Director of Commercial Audit and *ex officio* member had approved such allegations to be included in the Audit Report (Civil), 2017. The petitioners are group companies of the Kankaria Group as per declarations made before their own banker to obtain subsidy under the present Schemes. Extracts of the report of the PAC shows that the PAC, in its 39th report, had recommended legal actions including recovery of amounts found to be defalcated by the Kankaria Group of Companies. Pursuant to such recommendation from PAC and as per the direction of Ministry of Textiles, Government of India, steps were taken against the writ petitioners as they are companies under the Directorship of the promoters of Bally Jute and Ambica Jute Mills, to recover money by adjusting the subsidy.

30. The Rules of Procedures and Conduct of Business in Lok Sabha, along with the 5th report of the PAC, are relied on to substantiate the powers of the PAC. The same is not only a recommendatory body but has a substantive say to check and balance the operation of the Government. Thus, the entire action taken by the respondent is in consonance with the directions issued by the Government of India to whom the funds belong. As such, it is reiterated that the writ petition ought to fail for non-joinder of the Government of India, which is a necessary party.

31. The writ petitioners are the alter egos of the other companies, it is argued, which have been involved in defalcated public money and no equitable remedy can be granted to the petitioners on the ground of separate juristic entities. Lifting of corporate veil in such matters is a mandate as nobody can be permitted to defalcate public money using different names in the garb of a company.

32. Moreover, it is argued that the writ petition seeks to include claims under two Schemes in a single writ petition. The claim under the first Scheme is time-barred since the application for the same was made after March, 2017 and hence, the application with respect to Scheme 1 was incurably defective. Thus, it is argued that the writ petitions should be dismissed.

33. Heard learned counsel for the parties. Insofar as the issue of non-joinder is concerned, a perusal of the Schemes indicates that those were floated entirely by the respondent-Board. The respondent, National Jute Board, is a statutory authority constituted under the 2008 Act. In the Scheme itself, it is indicated that the same was floated by the National Jute Board, the respondent. The respondent was to operate the Scheme. The subsidy was to be disbursed by the respondent and in case the incentive was found to be availed by false information, the amount of subsidy was to be refunded to the respondent itself along with interest. The rate of interest, as per the Scheme, shall be the prime lending rate of the respondent's banker at the time of invoking penal clause. All applications were to be made before the respondent and the respondent was to sanction the same and disburse funds to the eligible candidates under both the Schemes.

34. Thus, merely on the ground that funding was to be provided by the Government, it cannot be said that the writ petitions are bad for non-joinder of the Government of India as a party.

35. All along, the impugned decision was communicated by the respondent to the petitioner. Hence, the respondent cannot now shy away by citing the Government of India as the necessary party. Thus, the objection as to non-joinder of party is turned down.

36. Insofar as Scheme 1 is concerned, the same was to operate between October 1, 2013 and March 31, 2017. The Letter of Interest (LOI) was presented on December 1, 2016, that is, within the period of the Scheme. The claim was made on August 21, 2017, that is, within nine months from the date of LOI, also in terms of the clauses of the Scheme.

37. Clause 9(b) of Scheme 1 provides that for own source of finance (as in the case of the petitioners), the applicant was required to submit claims within one year (to be extended to 18 months under special circumstances) from the date of issue of the In-Principle Approval, which was done in the present case.

38. Clause 3(e) stipulates that the claims can be made only after installation and completion of modernisation process and accordingly the date of installation shall be taken as the cut-off date for the claims, provided other eligible criteria are fulfilled.

39. The eligibility of the petitioners under both the Schemes is admitted. The inspection team, upon holding due inspection under the purview of the Schemes, held the petitioners to be eligible for the Schemes.

40. Clause 3(l) of Scheme 1 stipulates that the claim application shall be submitted within one year from the date of issue of In-Principle Approval to the upgradation/modernisation proposal or during continuation of the Scheme, whichever is earlier. Read in conjunction with Clause 9(b), for own source of finance, a line of distinction has to be drawn between submission of an application under the Scheme and submission of claims. Taking into consideration the time-lines in the present case, particularly since the date of claim was within nine months from the date of LOI, there cannot be any reason for the petitioners being deprived of the benefits of the Scheme.

41. Insofar as Scheme 2 is concerned, there is no such dispute regarding the period of the Scheme having expired.

42. In fact, the respondent has virtually admitted the entitlement of the petitioners to get the subsidies under the Schemes by alleging that the subsidy amounts were adjusted with claims against a purported group company. The moment such allegation is made, it is implicit that the petitioners were otherwise entitled to the subsidy, since there cannot be any 'adjustment' unless the subsidy was payable in the first place to the petitioners. Only an amount which is payable to the petitioners could be adjusted against other claims. Thus, the objection of the respondent as to the entitlement of the petitioners to get the subsidy under the Schemes is misplaced and not tenable.

43. The *modus operandi* in which the respondent seeks to 'adjust' the subsidy amounts payable to the petitioners with different and separate claims is not sanctioned anywhere in the Schemes or in the scheme of things as such.

44. Even if the respondent or the Government of India has a claim against a third party, be it a sister concern of the petitioners, a group company of the petitioners or otherwise, the respondent does not have a lien on the subsidy amount vis-a-vis the claim made against such third party.

45. The respondent had to establish duly before a competent court of law, following due process of law, its entitlement and only after obtaining a decree from the Civil Court in its money suit against the third party, could the entitlement of the respondent to the said sum arise. Since the claim against the third party is sub judice, it cannot be said that the respondent is entitled at all to the said sum, let alone to adjust it from the subsidy amount payable to the petitioners under different Schemes.

46. Hence, the adjustment of the subsidy of the petitioners under two specific Schemes in lieu of an inchoate claim of the respondent against a third party, group company or otherwise, is palpably illegal and *de hors* the Schemes as well as the law.

47. The respondent has also cited the purported recommendations made by the PAC.

48. Nothing has been produced to indicate that the PAC recommendation has a binding effect to override the specific liability of the respondent under the Schemes-in-question. If it were to be so, all public authorities would cite PAC recommendations to avoid their liabilities under specific Schemes and contracts.

49. The PAC "recommendations", as suggested by the name, are mere recommendations for blacklisting companies of a certain group. Such general recommendations do not have any bearing whatsoever upon the specific claims of the petitioners under specific Schemes, for which they were accepted as eligible by the respondent itself. Recommendations, unless fructified in orders passed by competent legal forums/courts, do not have any bearing on the claims of the petitioners under unrelated subsidy Schemes, for which the petitioners have already been accepted as eligible by the respondent itself and on the basis of which the petitioners have already acted and invested resources.

50. Once found eligible and having made valid claims, the respondent could not resile from its position and refuse to disburse the amount. The position might have been otherwise if the petitioner had not participated and/or acted upon the subsidy or had not been found eligible, in which case the respondent might have argued that nobody has any right to assert against a public authority, compelling the public authority to float a scheme or to act upon a scheme.

51. Contrary to such hypothetical situation, in the present case the petitioners have been found eligible by the respondent under the Schemes and have specifically invested huge amounts under the Scheme and have made valid claims.

52. The respondent implicitly accepted the entitlement of the petitioners to get such subsidy by saying that the amounts were adjusted with a third party claim.

53. Hence, at this juncture, the respondents cannot plead vague PAC recommendations to deny their liability to disburse the amounts under the Schemes. The recommendation of blacklisting by CBI in respect of other companies, not being the petitioners, is utterly irrelevant for the present purpose. Recommendations by the CBI are not convictions. The CBI is merely an investigating agency and its recommendations do not have any binding effect to negate specific terms of Schemes floated by the respondent, which is an autonomous body, particularly after the Scheme has been accepted and acted upon by eligible participants.

54. In such view of the matter, the petitioners are entitled to the entire amounts of subsidies which are due to the respective petitioners in terms of Scheme 1 and Scheme 2.

55. Accordingly, WPO/2222/2022, WPO/2250/2022, WPO/2252/2022 and WPO/2255/2022 are allowed, thereby directing the respondent therein to disburse the sums respectively due under the two Schemes-in-question to the petitioners in each of the writ petitions at the earliest, positively within December 31, 2023.

56. It is made clear, however, that the observations made herein are restricted to the entitlement of the petitioners to the subsidies under the schemes-in-question and shall not create any special legal right, equity or immunity in favour of the petitioners which the petitioners do not otherwise have in law.

57. There will be no order as to costs.

58. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)