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W.P.No.9991 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.9991 of 2023

and

W.M.P.Nos.10050 & 10051 of 2023

M/s.Gopi Krishna Warehousing,
Represented by Y.Naveen Kumar Reddy,
Flat No.402, Anjani castle behind
KDPM High school, East point colony,
Vishakhapatnam – 630 017.

... Petitioner

Vs.

1.The Chairman cum Managing Director,
Food Corporation of India,
Head Quarters-Khadyasadan,
No.16-20, Barakhanba Lane,
New Delhi – 110 001.

2.The Executive Director (Storage),
Food Corporation of India,
Head Quarters-Khadyasadan,
No.16-20, Barakhanba Lane,
New Delhi – 110 001.

3.The Executive Director (South),
Food Corporation of India,
Zonal Office, Haddows Road,
Chennai – 600 006.

4.The General Manager (Storage),
Food Corporation of India,



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Zonal Office, Haddows Road,
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5.The General Manager (TN),
Regional Office,
No.8, Sathyamurthy Road,
Chennai – 600 031.

6.The Divisional Manager (TN),
Food Corporation of India,
District Office, Puducherry.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned show cause notice issued by the 6th respondent dated 28.01.2023 and the impugned sanction order dated 30.01.2023 issued by the 6th respondent and quash the same and direct the 6th respondent to continue to pay the monthly rents as per the agreement without fail.

For Petitioner : Mr.G.V.Mohan Kumar

For Respondents : Mr.Su.Srinivasan

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorarified Mandamus, to call the records of the impugned show cause notice issued by the sixth respondent dated 28.01.2023 and the impugned sanction order dated 30.01.2023 issued by the sixth respondent and quash the same and to direct the sixth respondent to continue to pay the monthly rents as per the agreement without fail.



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2. The case of the petitioner is that the Food Corporation of India had planned the monthly rakes/wagons to Mundiabakkam Railway Goods – shed and the food grain bags will be unloaded and transported and stacked inside the godown by the handling and transport contractor appointed by the General Manager (Tamil Nadu) under the supervision of Food Corporation of India official deputed along with petitioner's officials. On receipt of food grain stocks, every effort is taken to maintain the food grains free from infestation as per the terms and conditions of the tender. The stocks deposited by Food Corporation of India on day-to-day basis, the storage bills have been prepared and submitted to Divisional Manager Puducherry for payment at the rate of Rs.5.76/- per quintal per month on actual utilization basis on agreed terms.

2.1. The petitioner mortgaged the land with Andhra Bank and obtained a loan for a sum of Rs.15 crores for construction of the 20000 Mts of storage capacity at Villupuram, for which, the Food Corporation of India has agreed to pay the storage bills amount directly to the Andhra Bank. Accordingly, the storage bills claimed has been cleared by the District office of Food Corporation of India, Puducherry, and directly deposited to the Bank every month. An agreement of Lease and Service Agreement has been entered into between Food Corporation of India and the petitioner on 28.09.2020 on



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guarantee basis in pursuant to the offer of ten years guaranteed hiring given by the lessee for using the godown to be constructed with private participation and after acceptance of tender, a valid letter of Memorandum issued vide No.S.&C.6(2)/PEG/2008/2011/PhaseVII Villupuram dated 19.04.2012 and the said lease agreement was to remain in force with effect from 09.07.2019 to 18.04.2023. Storage bills for the months of June, July 2022 were submitted by the petitioner to Divisional Manager, which had not been processed for payment. Several correspondences were sent to the fifth respondent to advise the sixth respondent to make payment to the petitioner since all functions were discharged by the petitioner in accordance with the contract. Thereafter, the bills for the months of June and July 2022 had been released with certain recoveries made vide No.S&C.6(1)/PEGVPM/2022 dated 18.10.2022 without calling for explanation/justification from the petitioner after a lapse of nearly about three months.

2.2. The Manager of the petitioner's Warehouse had made several correspondences to release the pending storage bills from August 2022 to December 2022 vide communications dated 19.09.2022, 28.09.2022, 03.10.2022, 05.12.2022 and on 04.01.2023 in detail expressing financial difficulties faced. However, the sixth respondent did not bother to release the



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storage rent payment from August 2022 to December 2022, instead stating that

CAG has raised objection for recovery in non-utilization of wooden crates while stacking the food grain stocks. However, the sixth respondent failed to forward the objection raised by the CAG to get proper reply from warehouse. Thereafter, the respondents have issued a show cause notice dated 28.01.2023 seeking the petitioner to submit an explanation within an extremely short period of three days which is grossly insufficient to peruse all the stock and dunnage material related details to provide a detailed explanation and have further issued a sanction order dated 30.01.2023 whereby an arbitrary sum of Rs.32,99,791/- has been declared to be recovered based on the Committee recommendation and the balance has been arbitrarily withheld citing that clarification is pending. Challenging the same, the above writ petition is filed before this Court for appropriate directions.

3. The learned counsel for the petitioner submits that, show cause notice dated 28.01.2023 was issued to the petitioner for not providing wooden crates in order to protect the foodgrains in a safe manner. However, prior to the show cause notice dated 28.01.2023 signed on 31.01.2023, the sanction order was issued after deducting the entire amount payable to the petitioner on 30.01.2023, one day prior to the signed show cause notice. Such a method



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adopted by the respondents is bad in law. Accordingly, he prayed for appropriate orders.

4. The learned counsel appearing for the respondents placing reliance on the counter affidavit filed on behalf of the sixth respondent submits that though the show cause notice was issued on 28.01.2023, the sanction order was passed every month, accordingly, the sanction was passed on 30.01.2023. The sanction order has nothing to do with the show cause notice issued to the petitioner. If the petitioner replies to the show cause notice and further, if the petitioner is entitled for any amount, the same will be released in favour of the petitioner upon consideration of the explanation submitted.

5. This Court gave its anxious consideration to the submissions made on behalf of the parties and perused the materials available on record.

6. It is the case of the petitioner that though show cause notice has been issued, however, the time granted for the reply is very short, which would not be sufficient to give the reply as voluminous materials have to be perused to submit the reply. Further, it is the stand of the petitioner that the necessary documents like the CAG report, etc., have not been given to the petitioner so as to enable the petitioner to file a comprehensive reply.



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7. It is trite that the Courts shall not necessarily interfere at the stage of show cause notice so long as there is perversity and illegality in the said action.

However, in the case on hand, the necessity for the show cause notice is on the basis of the report of the CAG. Therefore, the said act of the respondents to act on the basis of CAG report cannot be found fault with.

8. Equally, when the respondents seek the reply of the petitioner upon show cause notice, it is of necessity that all the materials, which form the basis for the show cause notice, should be provided to the petitioner so as to enable the petitioner to file his explanation. However, it is an admitted fact that the CAG report, which is the basis for initiating the show cause notice has not been provided to the petitioner. Therefore, necessarily to that extent the petitioner should be provided relief so that the petitioner would be in a position to submit its detailed reply.

9. In the above circumstances, this Court, without expressing any opinion on the merits of the case, directs the respondents to furnish all the necessary documents including the CAG report within a period of two weeks from the date of receipt of a copy of this order and on receipt of the said documents from the respondents, the petitioner is directed to send a reply to the



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show cause notice issued by the sixth respondent, within a period of two weeks thereafter. On such reply being filed, the respondents are directed to conduct enquiry and pass appropriate orders within a period of four weeks thereafter. Further, if the petitioner is entitled to any amount, the respondents are directed to release the same in favour of the petitioner as expeditiously as possible.

10. With the above observations and directions, this Writ Petition is disposed of. No Costs. Consequently, connected Miscellaneous petitions are closed.

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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