

ML- 10.04.2024
659 Ct.15
rkd

W.P.A. 12905 of 2019

The West Bengal State Co-operative Marketing
Federation Ltd. & Anr.

-vs-

The State of West Bengal & Ors.

Mr. Malay Kumar Roy

....for the petitioners.

Mr. Rajat Dutta

....for the respondent no.4.

Mr. P. K. Roy,
Mr. Joydeep Roy

....for the State.

In spite of service of notice upon the respondent no.3 on repeated occasions the said respondent is not represented today.

Affidavit-of-service filed on behalf of the petitioners is taken on record.

In the writ petition the award dated 8th March, 2016 passed in Dispute Case No.11/RCS of 2012 and the order of the Tribunal dated 16th August, 2018 passed in Appeal No. 2 of 2017 have been assailed by the West Bengal State Cooperative Marketing Federation Limited (hereinafter referred to as "BENFED").

Based on submissions made by the learned advocate representing BENFED as well as the learned advocate representing the respondent no.4, it appears that a contract was made by and between BENFED and Sundarban Development

Board (for short “SDB”) to supply a particular quantity of Moong seeds within certain time. As a consequence thereto, respondent no.4 was selected by the BENFED to supply Moong seeds to SDB but the payment was scheduled to be made by the SDB to respondent no.4 for supplying Moong seeds through BENFED.

It is also submitted that BENFED was permitted to realise margin while transmitting payment to the respondent no.4 after the payment is made by SDB. In support of such contention reliance is placed on a letter dated 28th December, 2001 issued by the Manager of BENFED addressed to the respondent no.4 wherefrom it appears that in reference to the order dated 21st December, 2001 which was placed by the SDB in favour of BENFED the order was placed upon the respondent no.4 for supply of 69.321 MT certified Moong seeds at the rate of Rs.29.85 per KG to the different growth centres in the required number of seed packets noted against each growth centre as specified in the order within 15th January, 2002.

It is also stipulated in the letter dated 28th December, 2001 that the payment against supply of Moong seeds would be released in favour of respondent no.4 only after the receipt of payment

from SDB to BENFED after deducting BENFED's margin as communicated vide letter No. GAHN/37/2001-2002 dated 21st September, 2001. Therefore, it has been contended on behalf of the petitioners that the direction as contained in the award dated 8th March, 2016 directing the concerned authority of SDB to make direct payment of Rs.20,66,315/- to the respondent no.4 is based on wrong consideration since in terms of the contract the payment needs to be routed through BENFED.

In addition thereto, it is also submitted that awarding 4% interest on the principal amount of Rs.20,66,315/- to the respondent no.4 as directed vide award dated 8th March, 2016 is misconceived direction since the delay caused in releasing payment in favour of respondent no.4 is not attributable to BENFED. According to BENFED due to failure to make payment by the SDB in favour of BENFED the payment could not be made to the respondent no.4.

While questioning the award dated 8th March, 2016 and the order of the Tribunal dated 16th August, 2018 on behalf of the BENFED attention of this Court has been drawn to paragraph VI of the award dated 8th March, 2016

wherein the Arbitrator on applying Section 70 of the Indian Contract Act, 1872 decided that it is obligatory so far SDB is concerned which enjoyed the benefit of non-gratuitous act to compensate the respondent no.4 since the seeds were supplied by the respondent no.4 to SDB.

It is submitted that application of Section 70 of the Indian Contract Act, 1872 was not required since parties were bound to follow terms of contract existed in between BENFED and respondent no.4 as corroborated by document dated 28th December, 2001. Therefore the situation does not attract Section 70 of the Indian Contract Act, 1872. It is also contended that since without interfering with such findings relating to Section 70 of the Indian Contract Act, 1872 of the Arbitrator as made in the award dated 8th March, 2016 Tribunal affirmed the said award vide order dated 16th August, 2018; the order of the Tribunal suffers from same vice.

It has been submitted by Mr. Dutta, learned advocate representing the respondent no.4 that due to pendency of lis the payment which was required to be made in favour of respondent no.4 till date has not been released as a result whereof respondent no.4 is lamenting. It has been

submitted that respondent no.4 is required to be paid at once upon disposal of this writ petition on awarding suitable interest for the delay caused in making such payment.

Having considered the submissions made on behalf of the parties present before this Court it does appear that there was contractual obligation subsists in between BENFED and respondent no.4 as it emanates from the document which is at page 27 of the writ petition dated 28th December, 2001 where it has been specifically stipulated that the payment is to be made by SDB through BENFED to the respondent no.4 and while doing so BENFED was permitted to realise its margin. This aspect was not considered by the Arbitrator while passing award dated 8th March, 2016 and wrongly section 70 of the Indian Contract Act, 1872 was applied leading to form an opinion that there is requirement to make direct payment by SDB to respondent no.4. Had there been consideration of this document dated 28th December, 2001 by the Arbitrator this Court believes a different view could have been possible.

Considering the issue involved in this case in the backdrop of the document dated 28th December, 2001 contractual obligation permits

BENFED to realise its margin while making payment to respondent no.4 after getting the payment from SDB. This fact clearly depicts a situation where application of Section 70 of the Indian Contract Act, 1872 is not warranted.

In view of aforesaid anomaly as found in the award dated 8th March, 2016 the said award stands set aside. Consequently the order of the Tribunal dated 16th August, 2018 affirming the award dated 8th March, 2016 also stands quashed.

The concerned authority of SDB being the respondent no.3 is directed to make payment of Rs.20,66,315/- to BENFED within four weeks from the date of communication of this order and on receipt of such payment BENFED shall realise its margin which it is entitled to and make payment within a period of fortnight thereafter in favour of respondent no.4.

On consideration of the aforesaid facts, it appears that it has been rightly pointed out on behalf of the respondent no.4 that due to pendency of the lis the respondent no.4 has been deprived of from getting payment in spite of supply of requisite quantity of Moong seeds to SDB within the specified time.

Accordingly SDB is directed to make

payment of interest @ 6% P.A. on the principal amount of Rs.20,66,315/- directly to the respondent no.4 from the date of award dated 8th March, 2016 till the date of making payment to BENFED and such interest shall be paid within a period of eight weeks from the date of communication of this order.

With the aforesaid observations and directions the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)