

AD-07
Ct No.09
08.02.2024
TN

WPA No. 15992 of 2021

M/s Haragouri Rice Mill
Vs.
The State of West Bengal and others

Mr. Debapriya Gupta,
Mr. Bhaskar Dutta Gupta,
Mr. Rudra Prasad Sinha

.... for the petitioner

- 1.** At the outset, it is recorded that despite previous appearance, none appears for the respondents at the time of final hearing.
- 2.** At the inception, an objection as to maintainability of the writ petition was raised. This court is aware of the limitations of a writ court, inasmuch as disputed questions of fact requiring adduction of evidence cannot be gone into under normal circumstances. However, even in contractual matters, the respondent-authorities who come within the broader purview of 'State' under Article 12 of the Constitution of India are expected to act on a higher footing of fairness and reasonableness than an ordinary operator. In view of the alleged violation of such norms, the writ petition is entertained on such limited aspect of the matter.
- 3.** The petitioner, under an agreement with the respondent-authorities, used to procure rice from

the concerned centres as envisaged in the agreement and thereafter processed the paddy by converting it into Custom Milled Rice (CMR). Thereafter, the same was transported to the designated places. The petitioner claims to have done such work under the contract for substantial amounts of paddy but upon placement of bills, was not paid its dues.

4. The defence taken by the respondent(s) in their affidavit(s)-in-opposition is primarily that with regard to a substantial amount of the paddy, the same was procured by the petitioner from the open market in connivance with respondent no.4, who was the Purchase Officer of the respondent-authorities. A departmental proceeding was initiated and the said Purchase Officer was indicted for such offence. Thus, the quantum covered by such open market purchase is not payable to the petitioner, being *de hors* the agreement.
5. Although certain amounts of the bills have been admitted, it is the stand of the respondent-authorities that regarding some other amounts, bills have not been furnished by the petitioner.
6. Learned counsel for the petitioner places reliance on the annexures to the pleadings of the petitioner in the present writ petition to reiterate

that all bills have been annexed and placed before the authorities.

- 7.** Insofar as the disputed amount is concerned, learned counsel for the petitioner submits that even if the said paddy, which acted as the raw material for processing the same, was procured from the open market, at the end of the day the petitioner had converted the same into CMR and supplied it to the respondent-authorities and the same was utilized by the respondent-authorities without demur. Hence, the respondents cannot now resile from such position and dispute the claims of the petitioner for such work.
- 8.** A consideration of the affidavit-in-opposition filed by the respondent-authorities indicates that the respondents have admitted the claim of the petitioner insofar as the amount of Rs.27,95,425/- is concerned but merely say that the same has been intimated to the F&S department vide a memo dated October 14, 2020 and approval is pending.
- 9.** With regard to an amount of Rs. 11,09,742/-, the same has been pleaded to be withheld as no bills were allegedly submitted for the same to the DCFS Hooghly Office.
- 10.** Insofar as the admitted amount of Rs. 27,95,425/- is concerned, there cannot be

any impediment or disputed questions involved in disbursal of the same in favour of the petitioner immediately. As regards the quantum of Rs. 11,09,742/-, a scrutiny of the bills furnished by the petitioner and those annexed to the pleadings of the writ petition is sufficient for the authorities to disburse the said amount since the payability of the same has not been disputed on merits.

- 11.** The crux of the dispute lies regarding Rs. 65,98,616/-. The respondents are justified in taking a stand that the said amount was due in respect of CMR supplied by the petitioner by processing paddy procured from the open market, which was *de hors* the provisions of the agreement between the parties. The agreement clearly stipulated that the paddy for such purpose had to be procured from particular centres, which was not done by the petitioner.
- 12.** However, the petitioner has a point in contending that even if the said CMR was supplied from paddy procured from the open market *de hors* the agreement, ultimately the respondents utilized the same and used the same, for which the respondents are liable to pay the petitioner's dues. Particularly considering the fact that the respondents had accepted and utilized the said

CMR without any demur at the relevant juncture, *post facto* refusal of the same cannot be sustained as such. Yet, since with regard to the said quantum, the petitioner's claim traverses the boundaries of the agreement between the parties and becomes an independent claim, primarily based on quantum meruit, it is for the petitioner to establish by evidence the said claim. The same can only be the subject-matter of consideration before a competent civil court, to be adjudicated by appreciation of evidence.

- 13.** Accordingly, in the light of the above observations, WPA No. 15992 of 2021 is disposed of by directing the respondent no.1 to ensure that the due funds for disbursement of the amount of Rs. 27,95,425/- is released to the respondent no.2, that is, the District Controller (Food & Supplies) within three weeks from the date of communication of this order to the respondent no.1 for the purpose of onward disbursement to the petitioner. Upon receipt of such amount, positively within a week thereafter, the respondent no.2 shall disburse the amount in favour of the petitioner.
- 14.** The amount of Rs. 11,09,742/- shall also be disbursed in favour of the petitioner upon giving an opportunity of hearing to the petitioner to

place the relevant bills with regard to such claim, whether those are annexed to the pleadings of the present writ petition or otherwise presented by the petitioner before the authorities. Such hearing shall be given upon a prior notice to the petitioner within a fortnight from the date of communication of this order to the respondent no.2. Upon such hearing being given, within a fortnight thereafter, the due amounts on the said bills to the tune of Rs. 11,09,742/- shall also be disbursed in favour of the petitioner.

- 15.** Liberty is given to the petitioner to approach the appropriate competent authority, be it the competent civil court or the Arbitrator, as the case may be and/or before any other forum, including the Debts Recovery Tribunal since measures have been initiated under Section 13 of the SARFAESI Act, 2002, with the claim of Rs. 65,98,616/- along with interest, if any. If such a claim is made by the petitioner before the appropriate forum/court/tribunal, the said court/forum/tribunal shall decide the same independently and in accordance with law and adjudicate on the same as expeditiously as possible, without being influenced in any manner by any of the observations made herein.

- 16.** There will be no order as to costs.

- 17.** Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)