

24.6. 2024
item No.6
n.b.
ct. no. 24

WPA 15983 of 2024

**NPG Rice Mill Pvt.(Flour Mill Unit) Ltd. & Anr.
Vs.
The State of West Bengal & Ors.**

Mr. Debraqta Saha Roy,
Mr. Pingal Bhattacharya,
.....for the petitioners.
Mr. Sk. Md. Galib,
Ms. Sujata Mukherjee,
.... For the State.

The present petitioner no.1 is the Private Limited Company run Flower Mill in the name and style i.e. NPG Rice Mill Pvt. Ltd.(Flour Mill Unit) and the petitioner no.2 is the Directors of the said Rice Mill. The petitioners were empanelled under an agreement with the state as Roller Flour Mill/Chakki Mill for conversion of NFSA Wheat into Fortified Atta for the purpose of distribution to PDS beneficiaries in the district. It is the function of the present petitioner to receive allotment quota of wheat from the government and prepare it as fortified Atta and distribute it to the beneficiaries.

It was the case of the petitioner that without any reason his allotment was stopped from the month of December 2023.

He approached this Court in a writ petition no.4759 of 2024 wherein a coordinate bench of this Court on

27.2.2024 directed the concerned authority to take appropriate decision on the basis of representation of the petitioner.

The authority has passed impugned decision on 9.5.2024 and finally they have taken a stand that disconnection of allocation of wheat by the department to the petitioners' Flower Mill is bona fide.

Bering aggrieved by the said order of the concerned authority, the instant writ petition was filed.

Mr. Saha Roy, learned advocate appearing on behalf of the petitioner submits that performance of the present petitioner for the purpose of conversion of NFSA Wheat into Fortified Atta was all along, satisfactory. The mill is running since year 2011 for which agreement was renewed time and again, till the date they have stopped the quota. He submits the decision of the concerned authority is not at all proper. He further submits the grounds for decision is not applicable in this case. He specifically argued that the concerned authority is of view that as a criminal case against the one of the director of this company have been started by the ED, accordingly, the quota has been stopped. He further submits that the petitioner has approached to the concerned trial court wherein the case is pending; the public prosecutor on behalf of the investigating agency has specifically asserted before the learned criminal court that no direction

regarding stop of allotment has been passed by the ED to the government.

It is further case of the petitioner that he undertake to deposit the 100% bank guarantee of the allotted wheat, So, that the respondent authority cannot be any way afraid of any confiscation if the seizure of wheat being made during the pendency of the proposed investigation. He submits that at least 500/600 employees are working and they are became jobless; in this situation, appropriate order may be passed so that, the mill may be continued to function.

Learned advocate appearing on behalf of the State submits that the reasoned decision has been obtained by virtue of the statute. He cited section 3(5), Section 5 and Section 6(3) of the West Bengal Public Distribution System(Empanelment of Flower Mill and Milling of fortified Atta/wholemeal Atta) guideline, 2017. It is submitted on behalf of the State that the agreement between the petitioners and the State has already been expired by efflux of time. So, at this juncture, the allotment on the basis of the non-existent agreement cannot be made.

Heard the learned advocates and perused the entire decision taken by the concerned authority, which is quoted below:

“As directed in the Order No. 1, dated 12.4.2024, the DDP&S have submitted his report in the prespective of reason of discontinuation of allocation of wheat to the petitioner’s Flour Mill in perspective of Paragraph 5(2) and 5(3) of the agreement read with clause 3(5) of the guidelines

of empanelment of the Flour mill. The matter is now taken into consideration for final disposal.

The DDP&S in his report stated that the Clause 3(5) of West Bengal Public Distribution System (Empanelment of Flour Mill and Milling of Fortified Atta/Whole Mill Atta) Guidelines, 2017 says, “any Mill, which has defaulted in supply of Fortified Atta/Whole Meal Atta to State Government or its agency or any Criminal Proceedings are pending against its Owner/Proprietor/Partner/Director shall not be eligible to apply for empanelment”. It is also mentioned at paragraph 5(2) of the Agreement “the State Government and/or the Director shall have the right to reduce and enhance the allocation of wheat of existing Mills any time depending upon inclusion of new Mills in the scheme and exclusion of existing Mills or charges in the demand/requirement or any other reasons as deemed fit by the State Government and/or the Director.” The paragraph 5(3) of the Agreement says. “the Flour Mill agrees that the allocation of the quota of wheat into Fortified Atta is the prerogative of the State Government and /or Director and the Flour Mill cannot claim or demand the allocation of wheat as a matter of right.

Therefore, on the basis of the clauses/paragraphs mentioned above, the Department has every right to exclude any Flour Mill from the Scheme i.e. discontinuation of wheat allocation to a particular Flour Mill or reduce the allocation, if any Criminal Proceedings are pending against its Owner/Proprietor/Partner/Director.

In the instant case, it was apprehended by the authority that by-chance the petitioner Flour Mill is sealed or wheat/atta is seized or confiscated for the investigation being carried out by the law enforcing agency, the Government’s wheat/atta lying in the mill/godown may decay due to the perishable nature of such foodgrains, Moreover, huge public money is involved in purchasing the wheat,. In the given situation, it would become hardly possible to run the PDS smoothly and the Government cannot take such a huge risk. It is also observed that Miller himself is none other than the Owner/Proprietor/Partner/Director of the Flour Mill and as such the Flour Mill and the Miller are factually same for general understanding of Milling Contract.

From the extract of the reports submitted by the DDP&S, it is reasonably perceived by the undersigned that in the present circumstances and facts, the Government should always consider the risk of PDS system being in jeopardy by the incident. In the instant case also, it is reasonable apprehended by the Government that there is every possibility of its godown being sealed or the wheat/atta of PDS being seized or confiscated by the Law Enforcing Agency at any point of time. Hence, if the allocation of wheat is continued to be supplied to them for milling, then due to the sealing of the mill and its godown or seizure, the Government’s wheat/atta lying in the flour

mill/godown may perish and huge public money involving in purchase of the same, may be at stake. In that situation it would become hardly possible to run the PDS smoothly. The Government can never take such a huge risk in the interest of the public.

Hence, considering the above facts and circumstances, the undersigned is of the view that the decision for discontinuation of allocation of wheat by the Department to the petitioner's flour mill is bona-fide in present situation."

It appears that the agreement for the purpose of performance for conversation of NFSA Wheat into Fortified Atta by the present petitioner with the government was ended in 7.3.2024. It can be understand that when the present petitioner approached before this court on the earlier occasion, the agreement was valid. The decision was taken by the concerned authority on 9.5.2024 i.e. after the date of expiry of the agreement. Now, at present, there is no valid agreement between the government and the present petitioner. It further appears to me that the concerned authority has decided the issue only for disconnection of allocation of wheat by the department to the petitioner. The concerned authority has not taken any decision regarding the renewal of agreement. I am clear view that without any proper existing or right, the present petitioner cannot claim for allotment of NFSA wheat. However, the issue of renewal of agreement was not decided by the concerned authority, though in the representation, petitioners have specifically pointed out regarding the renewal of the agreement.

Considering the entire aspect, the respondent authority is directed to take a fresh decision for the purpose of renewal of earlier agreement with the petitioners for conversion of NFSA Wheat into Fortified Atta according to law by taking into account of the fact that the petitioner has given a specific undertaking for providing 100% bank guarantee of allotted wheat.

The respondent no.2 shall take such decision within three weeks from the date of communication of this order with a fresh representation by the petitioner after giving an opportunity to the hearing to the all concerned. After taking such decision the respondent no.2 shall inform the petitioner within two weeks thereafter.

On the above decision, the writ petition is disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)