

28.08.2024

Sl no. 47

Ct no. 24

P.M.

WPA 21063 OF 2024

Olisa Reality Private Limited & Anr.

- Vs -

Union of India & Ors.

Mr. Saptansu Basu,
Mr. Kumar Gupta,
Mr. Deepak Jain

... for the Petitioners

Mr. Dhruv Surana,
Ms. Smita Pal

... for Union of India.

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

Learned counsel Mr. Dhruv Surana and Ms. Smita Pal appears on behalf the respondent authority virtually.

Petitioner No. 1 is a company within the meaning of Companies Act 2013 and petitioner No. 2 is a director of petitioner No. 1.

Petitioner No. 1 is carrying on business of manufacturing and sale of various jute products including B-Twill jute bags on the basis of an agreement entered between the petitioner No. 1 and the owner of the jute mill M/s. Delta Limited dated January 9, 2023. Respondent No. 2 is the statutory authority constituted under Jute and Jute Textile

Control Order, 2016 under the Essential Commodities Act, 1955.

It is the case of the present petitioner that an inspection was carried out at the mill premises of the petitioner on 05.12.2023 and 06.12.2023 in presence of the representative of the petitioner, and on the basis of such inspection one show-cause notice was served on the petitioner on 15.12.2023. It is the submission of the present petitioner that the basis of the show-cause notice is illegal in the eye of law.

Mr. Saptansu Basu, learned senior advocate for the petitioner submits that the show-cause notice was issued by the present respondent in terms of paragraph 2(h) of the Control Order 2016 on the allegation of “unfair practices” being allegedly undertaken by the petitioner.

Mr. Basu submits that the petitioners have not supplied any defective or illegible, unbranded jute bags to the consignee. Referring the paragraph 2(h) of the said order 2016, he submits that until and unless the supply of defective jute bag is made, the act of the petitioners of having defective jute/ illegible/ unbranded bags in their possession within their premises cannot be termed as “unfair practices” under the said Order. Further even though there is

admission by the petitioners of defective/illegible/tampering of sheet of jute bags, yet such act also does not come under the ambit of definition of unfair practices.

He submits that the orders holding “unfair practices” of the petitioners by Jute Commissioner in issuing the show-cause notice in consonance with paragraph 2(h) of the Control Order 2016 is illegal in the eye of law.

Mr. Basu further submits that from the show-cause notice it would be appear that out of a lot of 150 bales, 46 bales were found tampered seals/stickers, out of which three bales were opened at random by the inspection team and found some discrepancies.

It is the submission of Mr. Basu that the present petitioners had replied to the show-cause notice but till today no decision has been taken by the concerned authority.

It is the submission of Mr. Basu that till the decision being taken by the concerned authority the undisputed 104 bales amongst 150 bales be released.

Mr. Surana, learned advocate submits that the proceeding has already been initiated by issuance

of show-cause notice. The petitioners have replied to the show-cause notice wherein it has been admitted by the petitioners that there are some admitted disputes and mistakes and lapses on the part of the present petitioner.

He further submits that by virtue of the provision of Section 7 of the said Control Order, 2016 the authority concerned has the power to inspect before supplying the jute materials to the end users.

He further submits that the instant proceeding is under progress, so the writ Court cannot interfere with the proceeding by issuing specific order to release the undisputed bales.

He further submits that till the decision has been taken by the concerned authority the instant writ petition is not maintainable as the writ Court cannot pass any order in a subjudice matter.

Refuting the contention of Mr. Surana, Mr. Basu further submits that the initiation of show-cause by the concerned authority regarding the interpretation of Section 2(h) of the said Order, 2016, is erroneous unless and until an offence has been committed, by supplying the alleged jute, the said cannot be termed as “unfair practices”.

He further submits that a Co-ordinate Bench of this Court in WPA 26028 of 2023 has obtained the similar view.

Heard the learned advocate, perused the impugned show-cause notice.

It appears that the show-cause notice was issued in terms of paragraph 2(h) of the Control Order 2016.

Paragraph 2(h) reads as follows : -

2(h). "unfair practices" in relation to an order made under paragraph 4 shall include misappropriation of jute bags, non-supply or default in supply of jute bags, supply of used or old jute bags or underweight jute bags or imported jute bags, jute bags manufactured with imported raw jute or jute yarn or fabric, unbranded or incompletely branded or wrongly branded jute bags or jute bags which do not conform to the BIS standards or the specifications mentioned in the production control order.

I have also perused the observation of a Co-ordinate Bench of this Court regarding an order dated 28.11.2023 wherein the Co-ordinate Bench in passing the interim order is of opinion that the supply of jute materials/jute bags is the relevant factor to determine an offence under Section 2(h) of

Control Order, 2016. However, on plain perusal of definition of “unfair practice” under Section 2(h), I am of the view that supply of old, underweight jute bags or imported jute bags, the manufactured of imported/ raw jute/ or jute yarn or fabric, unbranded or incompletely branded or wrongly branded jute bags or the jute bags which do not conform the BIS standard or the specification mentioned in the Control Order can come under the definition of unfair practices.

However, the instant proceeding was initiated by the Deputy Jute Commissioner by issuing a show cause.

It appears that the show-cause notice was issued on 15th December, 2023, reply of the said show-cause notice was given by the petitioner on 19th December, 2023. The hearing was concluded on 1st April, 2024. The learned Counsel appearing on behalf of the respondent affirms that no order has yet been passed by the concerned authority in respect of the show-cause notice and the hearing conducted by them on 1st April, 2024. The Jute Commissioner has not taken a decision yet.

Considering the situation it appears to me that, whether the alleged act of the petitioner

regarding tampering seals/stickers of the bales or unbranded B-Twill bags will come under the purview of the definition of “unfair practices” is to be determined by the authority concerned.

At these prevailing situation, it appears to me justified to direct the authority concerned to take the proper decision in respect of the show-cause notice and the reply of the petitioner within a fortnight from the date of communication of this order.

In respect of prayer of release of 104 bales of jute bags are concerned, it appears to me that the proceeding has been initiated by the Jute Commissioner by virtue of Control Order 2016. Till the decision has been taken the order of release of jute bags would tantamount to be the unjustified interference and would otherwise affect the proceeding itself, reasons thereof, I refrain myself from passing any interim order in respect of the release of jute bags.

I make it clear that proceeding initiated by virtue of the show-cause notice issued by the Deputy Jute Commissioner and the reply by the petitioner has to be concluded by passing an order according to the Control Order, 2016 within the time frame as mentioned above. The order has to be communicated

to the petitioner within a week after passing of that order.

The observation passed by this Court in the instant order regarding the merit of the definition of Section 2(h) of the Control order, 2016 is prima facie in nature and it shall not operate as a bar to raise the issue by the parties in any later stage of the proceeding.

Under the above observation the instant writ petition is disposed of.

As the affidavits are not exchanged, all allegations made in the writ petition shall deemed to have been not admitted.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Subhendu Samanta, J.)