

02.09.2024
SL No.45
Court No.24
Ali

WPA 21034 of 2024

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

Mr. Debabrata Saha Roy,
Mr. Pingal Bhattacharyya,
Mr. Subhankar Das

.....for the petitioners.

Mr. Biswabrata Basu Mallick,
Ms. Parna Roy Choudhury

.....for the State.

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

The present petitioner No. 1 is the Private
Limited Company run Flour Mill in the name and
style i.e. NPG Rice Mill PVT. Ltd. (Flour Mill Unit)
and the petitioner No. 2 is one of 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 the
PDS beneficiaries in this 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 distributed it to the beneficiaries.

The petitioner approached before this court
on the earlier occasion in WPA 15981 of 2024 when

the allotment by the Government was stopped from the month of December, 2023. This Court in order dated 24th of June, 2024 has directed the authority concerned to take a fresh decision for the purpose of renewal of earlier agreement of the Government with the petitioner. In pursuance of the said direction of this Court the concerned authority has given the reasonable opportunity of being heard to the petitioner and passed the impugned order on 9th of August, 2024. The said impugned order is subject-matter of this instant writ petition.

Mr. Debabrata Saha Roy, learned counsel appearing on behalf of the petitioner submits that the Principal Secretary has acted illegally in passing the impugned reasoned order. He submits that the direction of this Court was not properly complied with by the concerned authority. Thus, the impugned order is liable to be set aside. He further submits that the concerned authority has failed to take note of the proper direction of this Court vide order dated 24th June, 2024.

Mr. Saha Roy submits that the provision as mentioned by the concerned authority for not considering the prayer for renewal is not the proper provision for renewal of licence. He submits that the provision of Clause 3(5) of the Guidelines of Notification dated 6th September, 2017 deals with

the empanelment of new flour mill. The present petitioner comes under the provision of Chapter VI of the said Guidelines not within the Chapter III. Thus the order passed by the Principal Secretary is erroneous.

Learned counsel appearing on behalf of the State authority submits that the concerned authority has given the opportunity of the petitioner of being heard and it has been clearly depicted in Clause 3(5) of the provision that “any mill, which has defaulted in supplying of fortified atta/wholemeal atta to the 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.

Learned counsel for the State submits that a specific criminal case is pending against one of the Directors of the present petitioner company. Thus, the concerned authority has properly dismissed the prayer by passing the reasoned order. She further submits that there is no illegality in the impugned order. Thus, the instant writ petition has no merit to entertain.

Heard the learned advocates; perused the observation of the concerned authority in the impugned order dated 9th August, 2024. To consider the entire merit of this matter, it would be justified

to set out the direction of this Court passed in 24th of June, 2024 .

“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”.

This Court in passing the order dated 24th June, 2024 has taken note that the earlier agreement has already been expired. This Court has also taken note of the fact that an application was filed and pending for renewal of agreement by the petitioner. This Court has directed the concerned authority to take a fresh decision regarding the application of the petitioner for renewal of the agreement.

Clause 3 of Guidelines dated 6th September, 2017 is set out as follows:

“3. Empanelment of flour mill.-(1) With a view to controlling the distribution of fortified

atta/wholemeal atta through the public distribution system amongst different categories of ration card holders, the State Government may empanel four mills in the districts of West Bengal in the manner laid down hereinbelow.

(2) The State Government may, by notification, invite applications from eligible four mills for empanelment for the purposes of conversion of wheat into fortified atta/wholemeal atta meant for public distribution system for a particular district.

(3) There shall be no application fee for applications for empanelment of roller four mills for conversion of wheat into fortified atta/wholemeal atta but the selected four mill shall have to pay a non-refundable empanelment fee of Rs.5(five) lakh only before execution of agreement.

(4) No person holding a Distributor or Wholesaler or Dealer Licence under the provisions of Control Orders in the capacity of owner/Proprietor/Partner/Director shall be eligible to apply for selection of his flour mill in the above mentioned capacity under the scheme of conversion of wheat into fortified atta/wholemeal atta.

(5) Any mill, which has defaulted in supply of fortified atta/wholemeal atta to the 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”.

Clause 3 of the said Guidelines enumerated about the empanelment of new flour mill Sub-Clause 5 of Clause 3 of the said Guidelines has

enumerated the provisions that if “any mill, which has defaulted in supplying of fortified atta/wholemeal atta to the 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. The facts goes to show that the present petitioner is a company which is engaged in the business of conversion of wheat into Fortified Atta since the order 2010, there is no complain that the mill has defaulted in supply of fortified atta/wholemeal atta to the State Government.

Clause 6 of the said Guidelines enumerated about the renewal of the flour mill. Clause 6 is enumerated as follows-

“6. Validity, renewal etc. of empanelment.-(1) The selected flour mill shall enter into an agreement with respective District Controller of Food & Supplies or Joint Director of Rationing, as the case may be according to proforma prescribed by the State Government within 30 (thirty) days from the date of offer, clearly mentioning the duration of Agreement.
(2) Every agreement of empanelment made in accordance with these guidelines shall be valid for the period of one year, which may be extended on yearly basis for a maximum period of two years on satisfactory performance of the previous year. The selected flour mill shall have to pay annual renewal fee of Rs. 1 lakh only for each such extension.

(3) The agreement, unless an application for renewal is made within the period of validity, shall stand revoked after the expiry of the validity period.

(4) Every owner of the flour mill as may be emplaned hereinunder shall have to execute a contractual agreement and to abide by the terms and conditions of the agreement.

(5) The agreement, inter alia, shall specify clearly that-

(i) The flour mill must turn up in time and lift the allotted wheat from the concerned godowns;

(ii) The flour mill shall mill the wheat within the stipulated time frame;

(iii) It shall deliver the resultant fortified atta/wholemeal atta in time as per direction of the District Controller of Food & Supplies (DCF & S);

(iv) The wheat delivered must have the desired quantify at the prescribed out turn ration and conform to the requisite quality specifications; (6) Breach of any clause of contractual agreement of any directions as may be issued by the Director or State Government from time to time in this regard shall be deemed to be violation of Control Order and shall attract penal action accordingly”.

After careful perusal of Clause 3 and Clause 6 side by side, it appears to me that pendency of criminal proceedings are pending against any of the Owner/Proprietor/Partner/Director is a rider for empanelment of new flour mill, but in case of

renewal there is no such rider in the Guidelines dated 6th September, 2017.

It appears that the concerned authority in deciding the issue has misguided themselves by following the provisions of Clause 3(5) of the Guidelines. They must have concentrated upon the Clause 6 of the said Guidelines. In the case of renewal, I make it clear that this Court has specifically observed in the case of ***NPG Rice Mill Pvt. Ltd. & Ors. Vs. State of West Bengal & Ors.*** in WPA 15978 of 2024 regarding the vicarious liability of a company in respect of alleged criminal activities of any of the Partner/Director of the said Company.

In view of the above, I am of the clear view that the authority concerned has passed the impugned order by misguiding themselves in determining the issue by virtue of empanelment of new flour mill. Rather, they must have to consider the prayer of the petitioner by virtue of the Clause 6 of the said Guidelines.

Considering the above aspects, the impugned order passed by the concerned authority dated 9th August, 2024 appears to be not justified and legal in the proper perspective, accordingly the same is set aside.

The authority concerned is directed to take proper direction as per direction of this Court passed hereinabove for the purpose of renewal of agreement of the present petitioner.

Respondent authority shall take such decision within four weeks from the date of communication of this order after giving an opportunity of hearing to the petitioner.

The authority shall intimate their decision to the petitioner within two weeks thereafter.

Under the above observation, the application being **WPA 21034 of 2024** is disposed of.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)