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WPO/119/2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

NIVEDAN FOODS AND BEVERAGE LLP
VS
THE STATE OF WEST BENGAL AND ORS

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 22nd March, 2024.

Appearance:
Ms. Pooja Jewrajka, Adv.
. . .for the petitioner.

Mr. Somnath Ganguli, Ld. AGP
Mr. Priyamvada Singh, Adv.
Mr. Paritosh Sinha, Adv.
. . .for the State.

The Court: The report filed by the State today be kept on record.

It transpires from the same that as per the extant rules, online filing of application for the subsidy scheme was mandatory. However, with regard to the second query which was raised by the Court on the last occasion, the State admits that the online portal was not operating at the relevant juncture.

Certain facts are relevant in the present context. The scheme in question that is the WBIS- 2013 was operative between April 1, 2013 and March 31, 2018. The petitioner applied for such subsidy on March 28, 2017.

Subsequently, there were communications and correspondence between the parties. One of the issues raised by the State was apparently that there was

a gap in the commencement of commercial production by the petitioner and the consent of operation being obtained.

By a letter dated July 6, 2022 annexed at page 95 of the writ petition, the petitioner had replied to the said query, giving certain explanations which were never dealt with by the respondents. Subsequently on October 21, 2022, the respondents communicated to the petitioner. Such communication, annexed at page 96 of the writ petition, was cryptic and requested the petitioner to apply for the petitioner's claim in online portal as per the WBIS-2013 and submit "the hard copy" within seven working days to the office of the General Manager, District Industries Centre, Hooghly who was the author of the communication.

On October 28, 2022, the petitioner wrote to the respondents, which was received by the respondents on November 1, 2022, to the effect that during the relevant period no online portal facility was officially available under the WBIS-2013.

Insofar as hard copy is concerned, the petitioner clarified in the communication that the original hard copy of the application along with relevant documents had already been filed on March 28, 2017 and enclosed the copy of the same with the petitioner's communication dated October 28, 2022.

Subsequently, there was further communication between the parties. However, without any resolution on the issue of the purported gap between the date of commencement and the consent of operation, the respondent authorities, by a communication dated June 12, 2023, intimated the petitioner that the portal of WBIS-2013 had already been closed and there is no scope of new

registration in the portal, for which it was not possible to process the petitioner's offline application.

Such abrupt closure of the negotiations between the parties over a prolonged period is not only absurd but also irrational.

It is not the case of the respondents that the petitioner had not applied for the subsidy scheme at all. On March 28, 2017, when the petitioner made its application for the subsidy, not only was the scheme operative but there was no online portal available. As such, the filing of the offline application for the scheme offline was perfectly legitimate at that juncture.

Subsequently, certain issues were raised by the respondents regarding which correspondence was going on between the parties. The petitioner had in fact given an explanation from the petitioner's end explaining such purported discrepancy as perceived by the respondents.

The respondents in all fairness ought to have resolved the issues, if necessary by giving an opportunity of hearing to the petitioner.

In fact, by the communication dated October 21, 2022, the respondents had merely asked the petitioner to make an online application on the online portal and submit the hard copy consequential thereto within seven days. In view of no online portal being open at that juncture as per the WBIS-2013, such request itself was not only absurd but palpably irrational.

Thus, there was no scope of the petitioner to comply with the same. The petitioner did the next best thing possible, that is to write a communication, which might have been a few days beyond the stipulated seven days, indicating

that the online portal was not available and also indicating that the hard copy had been filed and a copy thereof was enclosed with the communication.

It was the incumbent duty of the respondents, thus, to consider the petitioner's application, submitted on offline mode initially, along with all the subsequent communications and the documents furnished by the petitioner as well as the explanations furnished by the petitioner in its written communications. For such purpose, since the respondents had kept the channel of dialogue open with the petitioner all through, the respondents were to give an opportunity of hearing to the petitioner and to decide on whether the discrepancies perceived by the respondents could be resolved in order to grant the benefit of the scheme in favour of the petitioner.

Seen from such perspective, the impugned rejection of the petitioner's claim under the WBIS-2013 scheme was unlawful and blatantly arbitrary. Accordingly, the said impugned rejection is hereby set aside.

WPO 119 of 2024 is, accordingly, disposed of by rejecting the said communication of the respondents setting aside the petitioner's application for getting the subsidy under the WBIS-2013 scheme. The respondents shall now give an opportunity of hearing to the petitioner within a fortnight from date. The petitioner will be entitled to produce all documents and communications between the parties and to convince the respondents as to the entitlement of the petitioner under the said scheme.

Such entire exercise shall be concluded within a fortnight. Upon such hearing being given, the respondents shall decide on the entitlement of the petitioner afresh in the light of the documents produced and the discussions

made and intimate the outcome of such decision to the petitioner. Such exercise shall be concluded within a further four weeks from the date of hearing.

No order as to costs.

Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

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