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WPO/132/2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

AUCKLAND INTERNATIONAL LIMITED AND ANR
VS
NATIONAL JUTE BOARD

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date: 4th April, 2024.

Appearance:
Mr. Suddha Satva Banerjee, Adv.,
Mr. Pradip Kumar Sarawagi, Adv.
...for the petitioners.

Mr. Rahul Karmakar, Adv.,
Mr. Surya Prasad Chatterjee, Adv.,
...for the respondent

The Court:

1. The petitioners have moved this Court against the refusal of the respondent-Authority to grant to the petitioners the benefit of Incentive Scheme for acquisition of plant and machinery floated by the respondent.
2. The Scheme related to the period between April 1, 2017 and March 31, 2020. Under the Scheme, incentive to be granted was twenty per cent.
3. Learned counsel for the petitioners argues that the benefits of the Scheme were refused on erroneous principles by the respondent.
4. At the outset, dealing with the objection taken by the respondent that the Union of India is a necessary party to the writ petition, it is contended that the Scheme has been floated and issued by the National Jute Board that is

the respondent. The application for getting benefit of the same was submitted to the respondent. The examination, processing and disposal of the application under the Scheme, was also to be done by the respondent.

5. In the present case, the inspection was to be conducted by the respondent or its duly authorised representative or any other agency to be identified by the technical committee. The disbursal of funds under the Schemes to the eligible candidates is also by the respondent.
6. In fact, if the incentive is found to have been falsely obtained, the applicants are liable to refund the incentive availed of along with interest to the respondent itself, as per the clauses of the scheme.
7. Thus, the Union of India has no role to play. The respondent is a body corporate created under the National Jute Board Act, 2008 (hereinafter referred to as, "the 2008 Act") and may sue or be sued in its own name under the said Act.
8. The respondent by a letter dated June 3, 2022 claims to have adjusted the amount payable under the Scheme to the petitioner with disbursal made to a different company. Thus, the Union of India is not a necessary party merely because the respondent pleads that the funding is done by it.
9. As per the Scheme, an application for making claims under the Scheme is to be submitted within one year from the date of issue of in-principle approval, only after installation and completion of modernization process. The date of installation is taken as the cut-off date for such claims.
10. On completion of purchase and installation, the unit is to approach with its claim application.

11. It is evident from the inspection report of the respondent that the date of LOI was July 31, 2018 and the date of claim was May 31, 2019, which is within the stipulated time.
12. Thus, the application is not beyond the scope of the Scheme.
13. Addressing the question whether the petitioners are disentitled to disbursal of funds on the basis of recommendation made by the Public Accounts Committee (PAC) of the Parliament, learned counsel for the petitioners contends that the plea of the respondent on such score, is not tenable.
14. It is contended that the respondent has forwarded by its letter dated August 25, 2020 some cases for being taken up for investigation by the CBI-ACB, *inter alia*, involving two companies, namely Ambica Jute Mills Limited and Bally Jute Company Limited. In any event, Auckland International Limited, the petitioner, is not mentioned in the list. Secondly, no FIR, criminal case and/or criminal investigation has been initiated by the CBI even against Ambica Jute Mills Limited or Bally Jute Company Limited, although the recommendation was made three years back.
15. It is stated that the only CBI case initiated is against one MFL Corporation Limited and Awanti Kumar Kankaria. The investigation in the said case was stayed by this Court by an order dated September 22, 2022.
16. It is argued that there is no order of blacklisting against the petitioner which might have any bearing on the eligibility of the petitioners to claim under the present Scheme.
17. It is stated that the respondent has filed a money suit against Usha (formerly MFL Corporation Limited) for recovery of an amount which was alleged to be

fraudulently obtained by MFL/Usha Corporation in respect of a different Scheme. The recommendation of the committee is to blacklist all involved in the irregularity from availing any benefit under any Scheme of the Government in future.

18. The petitioner claims incentive in respect of a Scheme in regard to which they were found eligible on inspection. Hence, subsequent blacklisting, even if any, cannot prevent the petitioners from getting the benefit of the present Scheme.

19. It is argued that no suit has been filed against the petitioners for recovery of any amount. Further, it is contended that a company is a separate juristic entity and the respondent cannot withhold the benefits of the present Scheme by deeming the same to be adjusted against the amounts recoverable against a different company.

20. It is acknowledged by the respondent that the only legally valid process of recovery is institution of a suit; yet, it contends that the amounts that the petitioner is entitled to under the present Scheme stand adjusted by extra-legal means.

21. The respondent, it is argued, is not entitled to withhold disbursal under the Scheme on grounds extraneous to the Scheme. In support of such contention, learned counsel for the petitioner cites *Venkateshwara Wires (P) Ltd. v. District Level Committee,* reported at *1991 SCC OnLine Raj 395*.

22. All decisions on behalf of the Union of India, it is argued, are to be taken in accordance with Article 77 of the Constitution of India in the name of the President of India. Inter-departmental recommendations or communications are not justiciable nor can be the basis for grant or refusal of any legitimate claim in law. In such context, learned counsel for the petitioner cites *Shanti Sports Club and Another v. Union of India and others*, reported at *(2009) 15 SCC 705.*

23. Learned counsel for the respondent argues that the Government of India is a necessary party. Even if orders were passed in favour of the petitioners, the same could not be carried out in the absence of the Government. The Scheme-in-question contemplates the respondent to be only an operating agency. The Scheme stipulates that the entire funding is to be made by the Ministry of Textiles, Government of India.

24. The National Jute Board (respondent) is governed by the 2008 Act as framed by the Ministry and enacted by the Parliament on February 12, 2009. The Board engages in research and human resources development programmes to explore innovative use of jute to enable both the organised as well as the decentralised sector to compete and increase the global share of Indian jute goods' consumption and, to augment such position of strength, the Board implements programmes. The constitution of the Board is such that the entire decision-making process lies with the Government of India. Although the respondent is an autonomous body, it does not have self- revenue generation system but is basically a disbursal agency of the Government of India.

25. Hence, the disbursal of the funds on account of subsidy provided under the Scheme rests with the Ministry of Textiles, Government of India, as admitted by the writ petitioners in their representations.

26. The PAC, it is argued, had issued a recommendation indicating the involvement of the Kankaria Group of Companies in fraud perpetrated on the

Government of India for obtaining subsidies under the Mini Mission-IV Scheme (MM-IV Scheme). The disparities were galore and the office of the Principal Director of Commercial Audit and *ex officio* member had approved such allegations to be included in the Audit Report (Civil), 2017. The petitioners are group companies of the Kankaria Group as per declarations made before their own banker to obtain subsidy under the present Scheme. Extracts of the report of the PAC shows that the PAC, in its 39th report, had recommended legal actions including recovery of amounts found to be defalcated by the Kankaria Group of Companies. Pursuant to such recommendation of the PAC and as per the direction of Ministry of Textiles, Government of India, steps were taken against the writ petitioners as they are companies under the Directorship of the promoters of Bally Jute and Ambica Jute Mills, to recover money by adjusting the subsidy.

27. The Rules of Procedures and Conduct of Business in Lok Sabha, along with the 5th report of the PAC, are relied on to substantiate the powers of the PAC. The same is not only a recommendatory body but has a substantive say to check and balance the operations of the Government. Thus, the entire action taken by the respondent is in consonance with the directions issued by the Government of India to whom the funds belong. As such, it is reiterated that the writ petition ought to fail for non-joinder of the Government of India, which is a necessary party.

28. The writ petitioners are the alter egos of the other companies, it is argued, which have been involved in defalcation of public money and no equitable remedy can be granted to the petitioners on the ground of separate juristic

entities. Lifting of corporate veil in such matters is a mandate as nobody can be permitted to defalcate public money using different names in the garb of a company.

29. Thus, it is argued that the writ petition should be dismissed.

30. Heard learned counsel for the parties. Insofar as the issue of non-joinder is concerned, a perusal of the Scheme indicates that it was floated entirely by the respondent-Board. The respondent, National Jute Board, is a statutory authority constituted under the 2008 Act. In the Scheme itself, it is indicated that the same was floated by the National Jute Board, the respondent. The respondent was to operate the Scheme. The subsidy was to be disbursed by the respondent and in case the incentive was found to be availed by false information, the amount of subsidy was to be refunded to the respondent itself along with interest. The rate of interest, as per the Scheme, shall be the prime lending rate of the respondent's banker at the time of invoking penal clause. All applications were to be made before the respondent and the respondent was to sanction the same and disburse funds to the eligible candidates under both the Schemes.

31. Thus, merely on the ground that funding was to be provided by the Government, it cannot be said that the writ petition is bad for non-joinder of the Government of India as a party.

32. All along, the impugned decision was communicated by the respondent to the petitioner. Hence, the respondent cannot now shy away by citing the Government of India as the necessary party. Thus, the objection as to non-joinder of party is turned down.

33. Insofar as Scheme is concerned, the same was to operate between April 1, 2017 and March 31, 2020. The Letter of Interest (LOI) was presented on July 31, 2018, that is, within the period of the Scheme. The claim was made on May 31, 2019, that is, within twelve months from the date of LOI, also in terms of the clauses of the Scheme.
34. The eligibility of the petitioners under the Scheme is admitted. The inspection team, upon holding due inspection under the purview of the Scheme, held the petitioners to be eligible for the Scheme.
35. Insofar as the Scheme is concerned, there is no dispute regarding the period of the Scheme having expired.
36. In fact, the respondent has virtually admitted the entitlement of the petitioners to get the subsidies under the Scheme by alleging that the subsidy amounts were adjusted with claims against a purported group company. The moment such allegation is made, it is implicit that the petitioners were otherwise entitled to the subsidy, since there cannot be any 'adjustment' unless the subsidy was payable in the first place to the petitioners. Only an amount which is payable to the petitioners could be adjusted against other claims. Thus, the objection of the respondent as to the entitlement of the petitioners to get the subsidy under the Schemes is misplaced and not tenable.
37. The *modus operandi* by which the respondent seeks to 'adjust' the subsidy amounts payable to the petitioners with different and separate claims is not sanctioned anywhere in the Scheme or in the scheme of things as such.

38. Even if the respondent or the Government of India has a claim against a third party, be it a sister concern of the petitioners, a group company of the petitioners or otherwise, the respondent does not have a lien on the subsidy amount vis-à-vis the claim made against such third party.
39. The respondent had to establish duly before a competent court of law, following due process of law, its entitlement and only after obtaining a decree from the Civil Court in its money suit against the third party, could the entitlement of the respondent to the said sum arise. Since the claim against the third party is sub judice, it cannot be said that the respondent is entitled at all to the said sum, at this juncture let alone to adjust it from the subsidy amount payable to the petitioners under different Schemes.
40. Hence, the adjustment of the subsidy of the petitioners under a specific Scheme in lieu of an inchoate claim of the respondent against a third party, group company or otherwise, is palpably illegal and *de hors* the Scheme as well as the law.
41. The respondent has also cited the purported recommendations made by the PAC.
42. Nothing has been produced to indicate that the PAC recommendation has a binding effect to override the specific liability of the respondent under the Scheme-in-question. If it were to be so, all public authorities would cite PAC recommendations to avoid their liabilities under specific Schemes and contracts.
43. The PAC "recommendations", as suggested by the name, are mere recommendations for blacklisting companies of a certain group. Such general

recommendations do not have any bearing whatsoever upon the specific claims of the petitioners under a specific Scheme, for which they were accepted as eligible by the respondent itself. Recommendations, unless fructified in orders passed by competent legal forums/courts, do not have any bearing on the claims of the petitioners under an unrelated subsidy Scheme, for which the petitioners have already been accepted as eligible by the respondent itself and on the basis of which the petitioners have already acted and invested resources.

44. Once the petitioners are found eligible and having made valid claims, the respondent could not resile from its position and refuse to disburse the amount. The position might have been otherwise if the petitioner had not participated and/or acted upon the subsidy or had not been found eligible, in which case the respondent might have argued that nobody has any right to assert against a public authority, compelling the public authority to float a scheme or to act upon a scheme.

45. Contrary to such hypothetical situation, in the present case the petitioners have been found eligible by the respondent under the Scheme, have specifically invested huge amounts under the Scheme and have made valid claims.

46. The respondent implicitly accepted the entitlement of the petitioners to get such subsidy by saying that the amounts were adjusted with a third party claim.

47. Hence, at this belated juncture, the respondent cannot plead vague PAC recommendations to deny their liability to disburse the amounts under the

Scheme. The recommendation of blacklisting by CBI in respect of other companies, not being the petitioners, is utterly irrelevant for the present purpose. Recommendations by the CBI are not convictions. The CBI is merely an investigating agency and its recommendations do not have any binding effect to negate specific terms of Schemes floated by the respondent, which is an autonomous body, particularly after the Scheme has been accepted and acted upon by eligible participants.

48. In such view of the matter, the petitioners are entitled to the entire amounts of subsidies which are due to the respective petitioners in terms of the subject Scheme.

49. Accordingly, WPO/132/2024 is allowed, thereby directing the respondent therein to disburse the sums due under the Scheme-in-question to the petitioners at the earliest, positively within a month from date.

50. It is made clear, however, that the observations made herein are restricted to the entitlement of the petitioners to the subsidies under the scheme-in-question and shall not create any special legal right, equity or immunity in favour of the petitioners which the petitioners do not otherwise have in law.

51. There will be no order as to costs.

52. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(SABYASACHI BHATTACHARYYA, J.)

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