IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

Before:
The Hon'ble The Chief Justice T. S. Sivagnanam
and
The Hon'ble Justice Hiranmay Bhattacharyya

APOT/130/2024
IA No: GA/2/2024
NATIONAL JUTE BOARD
VS.
AMBICA JUTE MILLS LIMITED & ANR.
APOT/131/2024
IA No: GA/2/2024
NATIONAL JUTE BOARD
VS.
BALLYFABS INTERNATIONAL LIMITED & ORS.
APOT/132/2024
IA No: GA/2/2024
NATIONAL JUTE BOARD
VS. KELVIN JUTE LIMITED & ANR.
APOT/133/2024
IA No: GA/2/2024
NATIONAL JUTE BOARD
VS.
BALLY JUTE COMPANY LIMITED & ANR.

For the Appellant : Mr. J.K. Mitra, Sr. Adv.
Mr. Debasish Basu,
Mr. Joy Banerjee,
Mr. Surya Prosad Chattopadhyay,
Mr. Rahul Karmakar,
Mr. Arjun Samanta
.....advocates

For the Respondents : Mr. Suddha Satva Banerjee,
Mr. Pradip Kumar Sarawgi,
Ms. Debolina Dey
.....advocates

Reserved on : 10.05.2024

Judgment on : 21.05.2024

Hiranmay Bhattacharyya, J.:-

1. These intra Court appeals are at the instance of National Jute Board and are directed against a common judgment and order dated 16.10.2023 passed by a learned Single Judge in WPO 2222 of 2022 heard analogously with WPO 2250 of 2022, WPO 2252 of 2022 and WPA 2255 of 2022.

2. Since these appeals arise out of the common judgment and order passed in a batch of writ petitions and common questions of law and fact are involved therein, these appeals were heard analogously and are being decided by this judgment and order.

3. The appellant herein floated an Incentive Scheme for acquisition of plants and machinery pertaining to jute industry and jute diversified products manufacturing units. The said scheme came into effect on 01.04.2017 and continued up to 31.03.2020. The respondent no. 1 claims to be eligible for an incentive of 20% of the cost of identified plants and machineries procured by it. The respondent/ writ petitioner claims to have submitted two separate Letters of Intent (for short "LOI") to the appellant for grant of incentive of 20% under the said scheme. The said LOI's were dated 21.08.2018 and 24.01.2019 respectively.

4. Pursuant to the LOI's dated 21.08.2018 and 24.01.2019, respondents/writ petitioners claim to have submitted two separate claim applications on 20.08.2019 and 23.01.2020 respectively. Alleging that the appellant has illegally withheld the incentive under the said scheme to the extent of 20% in respect of the first and the second claim, the respondents herein approached the writ court with a prayer for releasing the incentive in their favour.

5. The learned Single Judge, by a judgment and order dated 16.10.2023, allowed the writ petitions by directing the appellant herein to disburse the sums due to the writ petitioners/respondents in each of the writ petitions within the time limit mentioned in the said order.

6. Being aggrieved by the said order, National Jute Board has approached this Court.

7. Mr. Mitra, learned Senior Counsel representing the appellant referred to Clause 5 of the Incentive Scheme and contended that the appellant herein is only the operating agency. By referring to Clause 11 of the said scheme he contended that the entire funding is made by the Ministry of Textiles, Government of India. He, therefore, contended that the Government of India is a necessary party to the writ petitions and the learned Single Judge ought to have dismissed the writ petitions for non-joinder of necessary party. He, further contended that presence of Government of India is necessary for proper adjudication of the dispute raised in the writ petitions. He further submitted that the respondents/writ petitioners are group companies of Kankaria Group and the PAC had recommended legal action including recovery of amounts found to be defalcated by the Kankaria Group of Companies. He further contended that since the respondents/ writ petitioners are the alter egos of other companies which have been involved in defalcation of public money, the respondents are not entitled to any equitable remedy.

8. The learned advocate for the respondent/writ petitioners submitted that the schemes have been floated by the National Jute Board. The applications for getting the benefit under the said scheme were also submitted to the appellant herein. The examination of the claim of the respondents was also done by the appellant herein. He further contended that the disbursal of funds under the schemes to the eligible candidates is also to be made by the appellant. He, therefore, submitted that the Union of India is not a necessary party to this writ petition. He submitted that the respondents/writ petitioners are separate juristic entities and the appellant cannot deny the benefits of the incentive schemes on the allegation that investigations are going on against the certain group companies. He submitted that the judgment and order passed by the learned Single Judge should not be interfered with by this Court.

9. Heard the learned advocates for the parties and perused the materials placed.

10. After going through the Incentive Scheme, this Court finds that the said scheme was floated by the appellant Board. The appellant Board is a statutory authority constituted under the National Jute Board Act, 2008. As per the said scheme the appellant Board is the operating agency. All applications claiming incentive under the said scheme were to be made before the appellant Board and sanction and disbursal of funds to the eligible candidates are also to be made by the appellant Board. This Court is, therefore, of the considered view that merely because of the fact that the Ministry of Textiles shall provide funds to the National Jute Board, in view of Clause 11 of the said scheme, the Government of India cannot be said to be a necessary party in these writ petitions. This Court, therefore, holds that the learned Single Judge was right in holding that the writ petitions cannot be said to be bad for non-joinder of the Government of India as a party to the writ petitions. The presence of the Government of India is also not necessary for the purpose of adjudication of the disputes involved in the writ petitions.

11. The learned Single Judge noted that the inspection team upon holding due inspection under the purview of the schemes held that the writ petitioners/respondents herein to be eligible for the schemes. The learned Single Judge further proceeded to observe that the appellant herein has virtually admitted the entitlement of the writ petitioners/ respondents herein to get the subsidies under the schemes by alleging that the subsidy amounts were adjusted with claims against a purported group company. The learned Single Judge was right in holding that there cannot be any “adjustment” unless the subsidy was payable in the first place to the writ petitioners/respondents.

12. The only reason for withholding the release of incentive in favour of the respondent company, as it appears from the affidavit-in-opposition of the

appellant herein filed before the Writ Court, is that major irregularities were found in the companies under the Kankaria Group and investigations are going on. No specific allegation against the respondent company has been brought to the notice of this Court at the time of hearing of this appeal so as to disentitle them from the benefits of the Incentive Scheme. Pending investigations against sister concerns or group companies cannot be the ground for withholding release of incentives to the respondent company which is a separate juristic entity. This Court, therefore, holds that the appellant acted in an arbitrary manner by withholding release of incentives in favour of the respondent companies to which they are entitled to as per the present Incentive Scheme.

13. The learned Single Judge rightly observed that the recommendation of black listing by CBI in respect of other companies is irrelevant for the purpose of deciding the instant writ petitions.

14. The learned Single Judge after arriving at a finding that the writ petitioners are entitled to the entire amount of subsidies under the incentive scheme directed the appellant herein to disburse the amounts within the time limit specified thereunder. This Court does not find any reasons to interfere with the impugned judgment and order. The appeals accordingly stand dismissed. There shall be, however, no order as to costs. All pending applications stand disposed of.

15. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(T.S. Sivagnanam, CJ.) **(Hiranmay Bhattacharyya, J.)**