IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE ELEVENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SMT JUSTICE T.MADHAVI DEVI

WRIT PETITION NOs: 23698 OF 2016 & 23705 OF 2016

W.P.No.23698 OF 2016

Between:

M/s. Shirdi Sai Baba Transport, a Partnership Firm at D.No.7-513, Bangarigadda, Miryalaguda - 508 207, Nalgonda District Rep. by its Managing Partner P.Chandra Reddy.

...PETITIONER

AND

1. State of Telangana, Rep. by its Ex-Officio Secretary-cum, Commissioner of Civil Supplies Civil Supplies Bhavan, Somajiguda, Hyderabad - 500 082.
2. The Telangana State Civil Supplies Corporation Limited, Telangana Unit, Civil Supplies Bhavan, Somajiguda, Hyderabad - 500 082, rep. by its Managing Director.
3. The Joint Collector & Ex-Officio Executive Director, Telangana State Civil Supplies Corporation Ltd., Nalgonda - 508 001, Nalgonda District
4. The District Manager, Telangana State Civil Supplies Corporation Ltd., Nalgonda - 508 001, Nalgonda District

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to Issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the proceedings of the 3rd respondent bearing No.PDS.Movt.5(1)/Stage-II/2015-16, dated 05.03.2016 as illegal, arbitrary and in violation of the principles of natural justice and for a consequential

direction directing the Respondents to continue the transport contract agreement of the petitioner.

I.A. NO: 1 OF 2016(WPMP. NO: 29195 OF 2016)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased suspend the operation of the proceedings bearing No.PDS.Movt.5(1)/Stage-II/2015-16, dated 05.03.2016 of the 3rd respondent.

W.P.No.23705 OF 2016

Between:

M/s. Shirdi Sai Baba Transport, a Partnership Firm at D.No.7-513, Bangarigadda, Miryalaguda - 508 207, Nalgonda District, Rep. by its Managing Partner P.Chandra Reddy.

...PETITIONER

AND

1. State of Telangana, Rep. by its Ex-Officio Secretary-cum Commissioner of Civil Supplies Civil Supplies Bhavan, Somajiguda, Hyderabad - 500 082.
2. The Telangana State Civil Supplies Corporation, Limited, Telangana Unit, Civil Supplies Bhavan, Somajiguda, Hyderabad - 500 082, rep. by its Managing Director.
3. The Joint Collector & Ex-Officio Executive, Director, Telangana State Civil Supplies Corporation Ltd., Nalgonda - 508 001, Nalgonda District.
4. The District Manager, Telangana State Civil Supplies Corporation Ltd., Nalgonda - 508 001, Nalgonda District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 3rd respondent in blacklisting the petitioner from participating in the tenders as illegal, arbitrary and in violation of the principles of natural justice and for a consequential direction directing the Respondents to drop all further proceedings against the petitioner in this regard.

I.A. NO: 1 OF 2016(WPMP. NO: 29202 OF 2016)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings relating to the blacklisting of the petitioner from participating in the tenders to be floated by the 2nd respondent Corporation.

Counsel for the Petitioner in W.Ps : SRI N.SIVA REDDY

Counsel for the Respondent No.1 in both W.Ps : GP FOR CIVIL SUPPLIES

Counsel for the Respondents No.2to4 in both WPs : SRI T.P.ACHARYA, SC FOR CIVIL SUPPLIES CORPORATION

The Court made the following: COMMON ORDER

THE HONOURABLE SMT. JUSTICE T. MADHAVI DEVI

WRIT PETITION NO.23698 OF 2016

AND

WRIT PETITION NO.23705 OF 2016

COMMON ORDER

In both these Writ Petitions, the petitioner is a contractor who entered into an agreement with the 2nd respondent Corporation for Stage-II Transportation of essential commodities by road from Huzurnagar Mandal Level Stock (MLS) Point to various Fair Price Shops attached to the said MLS Point for the period commencing from 02.04.2015 to 31.03.2016. Consequent to being the successful bidder in the tender, the contract was awarded to the petitioner *vide* orders dt.02.04.2015 and the petitioner has commenced the contract accordingly. The petitioner has paid an amount of Rs.2,50,000/- towards security deposit and a bank guarantee of Rs.3,50,000/- at the time of entering into the agreement.

2. While the petitioner was executing the contract, on 02.03.2016, the police intercepted the lorry bearing registration No.AP 16 TY 8055 with 510 bags of rice containing 256 quintals and found that the said

stock was loaded at IMG godown, Huzurnagar and were proceeding to Gardipally Mandal and on suspicion, the driver was asked to produce the documents in support of the said stock, but he produced wrong truck chits and therefore, the police came to the conclusion that PDS rice was being diverted illegally and informed the same to the Tahsildar, who in turn, lodged a police complaint before the Huzurnagar police and FIR No.51 of 2016 was registered against four persons under Sections 406, 409, 468, 471 and 420 IPC read with Section 7 of the Essential Commodities Act, 1955. The petitioner was arrayed as A4 in the said case, while the Godown In-charge, the Manager of the petitioner and the Driver of the seized vehicle were arrayed as A1 to A3 in the said case. In view of the above incident, the 3rd respondent issued proceedings bearing No.PDS.Movt.5(1)/Stage-II/2015-16, dt.05.03.2016 terminating the contract agreement of the petitioner dt.02.04.2015 and forfeited the security deposit amount of Rs.2,50,000/- and the bank guarantee amount of Rs.3,50,000/-. Challenging the same, the petitioner filed W.P.No.23698 of 2016 alleging that the said proceedings are *ex facie* illegal and are in violation of principles of natural justice. It is submitted that no show-cause notice was given to the petitioner as to why the proposed action of termination of the agreement should not be initiated.

The petitioner submitted that the petitioner has not committed any irregularities nor has indulged in diversion of PDS rice and it was due to the act of the driver of the vehicle in failing to show the correct truck chits to the police authorities that the entire episode had happened and there is no illegality or impropriety on the part of the petitioner in respect of the alleged incident. Thus alleging, W.P.No.23698 of 2016 has been filed.

3. Thereafter, the respondents have issued fresh tender notification for the subsequent period from October, 2021 to 30.09.2023 enclosing the list of blacklisted contractors and the name of the petitioner is also mentioned therein along with the proceedings dt.05.03.2016. Challenging the same, W.P.No.23705 of 2016 has been filed.

4. In both these Writ Petitions, no interim orders were granted by this Court. In due course of time, counter affidavits have been filed in both the Writ Petitions on behalf of respondent No.4 and also written instructions on the latest position of the case.

5. Learned counsel for the petitioner submitted that only on the ground that an FIR has been registered against the petitioner, the respondents have terminated the contract without issuing any notice to

the petitioner and therefore, it is in clear violation of principles of natural justice. He submitted that the respondents have referred to Conditions No.9(ii), 13(ii), 13(v) and 13(vi) of the agreement, justifying the termination of the contract and forfeiture of the security deposit and the bank guarantee *vide* proceedings dt.05.03.2016. He further submitted that without passing any order of blacklisting, i.e., without issuing any notice to the petitioner and thereafter without conducting any enquiry, the name of the petitioner has been mentioned as blacklisted contractor in the subsequent tender notifications. Therefore, according to him, the blacklisting of the petitioner is also in violation of principles of natural justice and is thus bad in law.

6. Learned Standing Counsel for the Corporation, however, obtained written instructions and also placed reliance upon the averments in the counter affidavit and submitted that the petitioner was involved in a criminal case as well as has violated the conditions of the contract and therefore, the contract has rightly been cancelled. However, with regard to the blacklisting of the contractor, the written instructions mentioned that the office has not issued any order for blacklisting the contract.

7. Having regard to the rival contentions and the material on record, this Court finds that under the contract agreement, Condition No.9 refers to the responsibility of the contractor for safety of the food grains, pulses, etc., while in his custody; and to take all possible measures to maintain the quantity and quality of the food grains, pulses, etc., till they are finally delivered at the destination as per the movement orders issued by the District Manager/ MLS Point Incharge; and Condition No.13 refers to termination of the contract. The relevant Clauses of Condition No.13 are reproduced as under:

> *"(ii) In the event of the contractor being adjudged insolvent or going into liquidation or winding up his business or making arrangements with his / their creditors or failing to observe any of the provision of this contract or is convicted by the Court of Law in a criminal case or punished under the provisions of the Essential Commodities Act or State/Central Orders issued under the said Act, or violation of any of the terms and conditions as governing the contract, the Joint Collector & Ex.Officio Executive Director of the Andhra Pradesh State Civil Supplies Corporation Limited shall be at liberty to terminate the contract forthwith without prejudice to any other rights or remedies under the contract and to get the work done for the unexpired period of the contract at the risk and cost of the contractor and to claim from the contractor any resultant loss sustained or costs incurred."*
>
> *(v) Since the Transport Contractor or his representatives are responsible for the quantity and quality of the stocks while in his*

custody, the Contractor shall ensure delivery of stocks at destination as specified by the MLS Point Incharge concerned in the event of failure or diversion of trucks with stocks or even misappropriation of stocks, the Joint Collector & Ex.Officio Executive Director shall have absolute right to terminate the contract without any notice and forfeit the Security Deposit and Bank Guarantee and even pending bills and the Contractor will be blacklisted along with his representatives. The action of the Joint collector & Ex.Officio Executive Director, Andhra Pradesh State Civil Supplies Corporation Limited in this regard is final and cannot be called into question.

(vi) The Joint Collector & Ex.Officio Executive Director, A.P.State Civil Supplies Corporation Ltd., shall have the right to terminate the contract forthwith without prejudice to other rights and remedies in the event of breach by the contractor of any of the terms and conditions of the contract to terminate the contract forthwith and to get the work done for the unexpired period of the contract at the risk and cost of the contractors and / or forfeit the Security Deposit or any part thereof and also claim from the Bankers who gives Bank Guarantee for the sum or sums due for any damages, losses, charges, expenses or costs that may be suffered or incurred by the Corporation due to the contractor's negligence or un-workman like performance of any of the services under the contract. The Vice-Chairman and Managing Director, A.P.State Civil Supplies Corporation Limited shall also have the right to claim from the contractors or to invoke Security Deposit and Bank Guarantee to recover any dues from the contractor."

On a literal reading of the above Conditions, it is seen that the contractor is responsible for the safe custody and also maintenance of quality and quantity of food grains given to him until the same are delivered at the

destination point and where the contractor is adjudged insolvent or has been convicted by Court of Law in a criminal case or punished under the provisions of the Essential Commodities Act, the Corporation shall be at liberty to terminate the contract forthwith without prejudice to the rights and remedies of any other contract. Clause (vi) of Condition No.13 also empowers the Joint Collector and Ex-Officio Executive Director, A.P. State Civil Supplies Corporation Limited to terminate the contract forthwith without prejudice to other rights and remedies in the event of breach by the contractor of any of the terms and conditions of the contract and to forfeit the security deposit or any part thereof and also the bank guarantee due, for any damages, losses, charges, expenses or costs that may be suffered or incurred by the Corporation due to the contractor's negligence in the performance of any of the services rendered under the contract. Further, Condition No.26 refers to arbitration in case of disputes arising out of the agreement. Thus, this Court finds that there is no violation of any of the above conditions by the petitioner. Except for the FIR being registered against the petitioner, the petitioner has not been convicted by any of the Courts in criminal proceedings or under the Essential Commodities Act. The respondents have also not issued any show-cause notice to the petitioner on the FIR

being registered against the petitioner and also as to whether there was any violation of the conditions of the contract, but have straight away cancelled the contract. Though the contract was at the fag-end of its conclusion, the respondents ought to have issued notice to the petitioner before terminating the contract since it involved or included the forfeiture of the security deposit and also the bank guarantee. After going through the facts and circumstances of the case and also the terms and conditions of the contract, this Court is satisfied that there is no violation as of any of the terms and conditions by the petitioner. Further, there is clear violation of principles of natural justice in issuing the termination order. Though in the written instructions, the respondents contend that no orders have been issued for blacklisting the petitioner, the petitioner's name has been shown in the list of blacklisted contractors while issuing other tenders. Therefore, such an action of the respondents is unsustainable and is unjustified.

8. In view of the same, the impugned order dt.05.03.2016 and also inclusion of the petitioner's name in the list of blacklisted contractors is liable to be set aside and it is accordingly set aside. The respondents are directed to pay the security deposit as well as the bank guarantee due to the petitioner forfeited on account of the termination of the contract

within a period of two months from the date of receipt of a copy of this order and also remove the name of the petitioner from the list of blacklisted contractors immediately.

9. Both these Writ Petitions are accordingly allowed. No order as to costs.

10. Pending miscellaneous petitions, if any, in these Writ Petitions shall stand closed.

SD/-A.SRINIVAS REDDY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Ex-Officio Secretary-cum, Commissioner of Civil Supplies Civil Supplies Bhavan, State of Telangana, Somajiguda, Hyderabad - 500 082.
2. The Managing Director, Telangana State Civil Supplies Corporation Limited, Telangana Unit, Civil Supplies Bhavan, Somajiguda, Hyderabad - 500 082.
3. The Joint Collector & Ex-Officio Executive Director, Telangana State Civil Supplies Corporation Ltd., Nalgonda - 508 001, Nalgonda District
4. The District Manager, Telangana State Civil Supplies Corporation Ltd., Nalgonda - 508 001, Nalgonda District
5. One CC to SRI N.SIVA REDDY, Advocate. [OPUC]
6. Two CCs to GP FOR CIVIL SUPPLIES, High Court for the State of Telangana. [OUT]
7. Two CD Copies.

BSK/BSK

HIGH COURT

TMD,J

DATED:11/12/2024



COMMON ORDER

WP.No.23698 of 2016
&
WP.No.23705 of 2016

ALLOWING BOTH THE WRIT PETITIONS WITHOUT COSTS

10 copies
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28/12/24