



2024:DHC:6897-DB



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 848/2024 &amp; C.M. APPL. No. 49863/2024

M/S PAMPAR OVENFRESH FOODS PRIVATE  
LIMITED

.....Appellant

Through: Mr. Pravitt Bag, Mr. Sashi Mohan,  
Mr. Rahul Pollar and Ms. Akausera  
Jha, Advocates.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr. Sandeep Kumar Mahapatra,  
CGSC with Mr. Tribhuvan, Mr.  
Mohit Kumar, Advocates and Mr.  
Vivek Nagar, G.P. for UOI/R-1.

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**Date of Decision: 30<sup>th</sup> August, 2024****CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****MANMOHAN, ACJ : (ORAL)**

1. Present appeal has been filed under Clause X of the Letters Patent Act, 1866 assailing the judgement dated 30<sup>th</sup> July, 2024 passed by the learned Single Judge of this Court in W.P.(C) No. 1142/2024 titled "*Pampar Overnfresh Foods Private Limited vs. Union of India & Ors*" dismissing the writ petition filed by the appellant, whereby the learned Single Judge has upheld the decision taken by the respondents herein i.e. to recover the first installment of grant-in-aid along with the accrued interest as the appellant had failed to adhere to the various stages mandated under the Scheme for Creation/Expansion of Food Processing



and Preservation Capacities (for short 'CEFPPC') under Pradhan Mantri Kisan Sampada Yojana (for short 'PMKSY').

2. Mr. Pravitt Bag, learned counsel appearing for the appellant states that the respondent no.1/Union of India floated a Scheme for CEFPPC under PMKSY. He states that in terms of the said Scheme, the Government through Ministry of Food Processing Industries decided to provide subsidy for creation of processing and preservation capacities and modernization and/or expansion of Food Processing Units. He further states that the appellant applied for grant-in-aid and for expansion of its projects which was approved on 21<sup>st</sup> January, 2019 for a sum of Rs.139.99 lakhs.

3. He submits that the appellant commenced the expansion of the project in terms of the various modalities and claims that a major portion of the expansion was completed by the appellant much ahead of the agreed timeline. He states that the appellant submitted its claim for 50% of the sanctioned grant-in-aid and the same was approved and the grant-in-aid amounting to Rs.69.995 lakhs was disbursed in favour of appellant on 7<sup>th</sup> August, 2019.

4. He further states that unfortunately the appellant suffered a huge setback as a massive fire broke out in the factory of the appellant causing severe damage to the property. He states that the appellant submitted its claim with the insurance company for a sum of Rs.35 crores. Simultaneously, the appellant also informed the respondents about the incident. He states that, consequently, the Project Management Agency (for short 'PMA') inspected the unit of the appellant which was gutted by fire and submitted its report on 2<sup>nd</sup> December, 2019 stating that the project of the appellant has been burnt to ground.



2024:DHC:6897-DB



5. Learned counsel for the appellant submits that the appellant received a notice dated 19<sup>th</sup> December, 2019, issued by the respondent no.2/ Inter Ministerial Approval Committee, directing the appellant to refund the first installment of grant-in-aid amounting Rs.69.995 lakhs along with interest on the ground that appellant has failed to adhere to the timeline as mandated under the Scheme.

6. He states that the appellant was not able to adhere to the timeline due to the fire accident that gutted the factory of the appellant because of which the project of the appellant was severely hit. He submits that despite demonstrating the efforts put by the appellant to put the project back on tracks, the respondents had decided to initiate recovery proceedings against the appellant. The appellant, thereafter, filed W.P.(C) No. 10771/2023 before this Court challenging the recovery proceedings initiated against the appellant. He submits that this Court vide order dated 29<sup>th</sup> August, 2023, disposed of the said writ petition directing the appellant to submit a representation to the respondents. In compliance thereto, a detailed representation was submitted, which was rejected by the respondents vide its decisions dated 4<sup>th</sup> December, 2023.

7. He states that the appellant being aggrieved of the rejection order dated 4<sup>th</sup> December, 2023, assailed the same vide the underlying writ petition on the ground that the said order was bereft of reasons apart from other grounds. He states that during the pendency of the underlying writ petition, to cover the lacunae and misgivings in the order dated 4<sup>th</sup> December, 2023, the respondents passed another order dated 5<sup>th</sup> February, 2024 on the same issue, yet now attempting to cover the lacunae in the previous order.

8. Learned counsel for the appellant submits that the learned Single



Judge did not consider the import of the order dated 29<sup>th</sup> August, 2023 passed by this Court in the earlier writ petition directing the appellant to submit a representation to the respondents along with all the documents evidencing bonafide steps taken by the appellant to ensure that the project is put back on tracks. He contends that a perusal of order dated 4<sup>th</sup> December, 2023 clearly indicates that it is bereft of any reasons of rejection. He further submits that even the learned Single Judge failed to consider the various documents annexed by the appellant with its representation dated 14<sup>th</sup> September, 2023, which would ipso facto demonstrate the genuine and *bonafide* attempts of the appellant to revive itself.

9. Learned counsel appearing for the appellant submits that the order dated 4<sup>th</sup> December, 2023 has recorded that the documents submitted by the appellant along with its representation “*cannot be considered*” and upheld the unilateral decision dated 19<sup>th</sup> December, 2019 taken by the respondent no.2/ Inter Ministerial Approval Committee. He submits that the said order needs to be set aside as it is bereft of any reasoning. He also submits that the impugned order is also vitiated being violative of the directions passed by this Court on 29<sup>th</sup> August, 2023.

10. Mr. Bag, learned counsel for the appellant draws attention of this Court to para 2 of the order dated 5<sup>th</sup> February, 2024, to submit that the respondents have rejected appellant’s representation dated 14<sup>th</sup> September, 2023 on the ground that there was no physical progress and no fresh facts available to change the decision taken by the respondent no.2/ Inter Ministerial Approval Committee in its meeting held on 19<sup>th</sup> December, 2019. He submits that this order was passed by the respondents without giving proper explanation for rejecting its representation. He also submits



that the non rendering of reasons for rejection *vide* order dated 4<sup>th</sup> December, 2023 is violative of principles of natural justice. He states that the said decision making process itself is vitiated.

11. He further contends that the rejection order dated 5<sup>th</sup> February, 2024 was passed during the pendency of the underlying writ petition and attempts to supply reasons which were woefully missing from the original rejection order dated 4<sup>th</sup> December, 2023. He states that it is settled law that the lacunae in the administrative orders cannot be cured by subsequent orders. On that basis, he states that both the orders, that is, the orders dated 4<sup>th</sup> December, 2023 and 5<sup>th</sup> February, 2024 ought to be quashed and set aside.

12. Learned counsel for the appellant also contends that the Joint Inspection Report dated 26<sup>th</sup> October, 2023 relied upon by the learned Single Judge does not justify the rejection. By referring to certain portions of the Joint Inspection Report, he states that the appellant was not afforded a fair opportunity to be a part of such joint inspection. He states that the appellant could not, therefore, fairly demonstrate the progress achieved by it. On that basis, he submits that the learned Single Judge erroneously relied upon the Joint Inspection Report.

13. Learned counsel for appellant concluded his arguments by submitting that the appellant had no opportunity to counter the judgements which were relied upon by the learned Single Judge in the impugned judgement. He submits that the judgments do not apply to the facts of the instant case, in any manner whatsoever.

14. We have heard learned counsel for the appellant and perused the records too.

15. It is trite that Constitutional Courts exercise the powers of judicial



review, particularly in matters concerning administrative decisions, only to the extent of determining fairness and transparency in the decision making process rather than the decision itself. This appeal needs to be tested on the above settled parameters. The Supreme Court in ***Tata Cellular vs. Union of India, (1994) 6 SCC 651*** has held as under:-

*“77. The duty of the court is to confine itself to the question of legality. Its concern should be:*

- 1. Whether a decision-making authority exceeded its powers?*
- 2. Committed an error of law,*
- 3. committed a breach of the rules of natural justice,*
- 4. reached a decision which no reasonable tribunal would have reached or,*
- 5. abused its powers.*

*Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:*

- (i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.*
- (ii) Irrationality, namely, Wednesbury unreasonableness.*
- (iii) Procedural impropriety.*

*The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind [(1991) 1 AC 696], Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, “consider whether something has gone wrong of a nature and degree which requires its intervention”.*

16. We find from the record as also the observations in the impugned judgement that the appellant was afforded a fair opportunity to submit a detailed representation along with all the relevant documents in support



thereof, in pursuance of the order dated 29<sup>th</sup> August, 2023 passed in W.P. (C) No. 10771/2023. Though the respondents in its order dated 4<sup>th</sup> December, 2023 noted that the request of the appellant could not be considered, yet had also noted that the representation has been examined in terms of the order dated 29<sup>th</sup> August, 2023 passed in W.P.(C) No. 10771/2023. Moreover, *vide* the order dated 5<sup>th</sup> February, 2024, the respondents had referred to the inspection conducted on 19<sup>th</sup> October, 2023 disclosing that no physical progress was observed during such inspection at the approved site. Admittedly, the representatives of the appellant were also a part of the joint inspection team. Keeping in view the lack of progress coupled with “*no fresh facts on the case*”, the respondent had rejected the representation.

17. This Court also finds from the Joint Inspection Report dated 19<sup>th</sup> October, 2023, that a number of employees/representatives of the appellant were indeed present at that time and ostensibly participated in such inspection. Thus, the submission that the inspection was conducted unilaterally in the absence of the appellant is incorrect and falls flat.

18. Learned counsel for the appellant was at pains to demonstrate, what according to him, were the lacunae in the said report. In support of such contentions, he referred to and read certain portions of the report. We find that the appellant has not challenged the Joint Inspection Report at any time. Undoubtedly, the Joint Inspection Report is a bundle of facts, the veracity whereof, cannot be considered by a Court exercising powers of judicial review, which itself is circumscribed. Thus, even the submission that the learned Single Judge did not appreciate the objections pointed out by the learned counsel for the appellant too, cannot be appreciated by us. In case the appellant seeks, it has the remedy available to assail the said



report. However, examination of disputed questions of fact are not available to a writ Court. The Supreme Court in ***S.P.S. Rathore vs. State of Haryana, (2005) 10 SCC 1*** held as under:-

*“16. In Chairman, Grid Corpn. of Orissa Ltd. (Gridco) v. Sukamani Das [(1999) 7 SCC 298] the question which arose for consideration was, can the High Court under Article 226 of the Constitution award compensation for death caused due to electrocution on account of negligence, when the liability was emphatically denied on the ground that the death had not occurred as a result of negligence, but because of an act of God or of acts of some other persons. **The Court held that it is the settled legal position that where disputed questions of facts are involved, a petition under Article 226 of the Constitution is not a proper remedy. Therefore, questions as to whether death occurred due to negligence or due to act of God or of some third person could not be decided properly on the basis of affidavits only, but should be decided by the civil court after appreciating the evidence adduced by the parties.** In T.N. Electricity Board v. Sumathi [(2000) 4 SCC 543] it was held that when a disputed question of fact arises and there is clear denial of any tortious liability, remedy under Article 226 of the Constitution may not be proper. The Court carved out exception to this general rule by observing that, it should not be understood that in every case of tortious liability, recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there, it cannot be said that there will be any bar to proceed under Article 226 of the Constitution.”*

(emphasis supplied)

19. In view of the limited examination above, we find no reasons to interfere with the impugned judgement and resultantly, dismiss the appeal along with pending applications, however, without any order as to costs.

**ACTING CHIEF JUSTICE**

**TUSHAR RAO GEDELA, J**

**AUGUST 30, 2024/rl**