

Jvs.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1059 OF 2024

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M/s. Jay Anand Food Industries } Petitioner
versus
State of Maharashtra & Anr. } Respondents

Mr. Ashutosh M. Kulkarni with Mr. Vaibhav Gaikwad
i/b. Mr. Raviraj Paramane for petitioner.

Mr. O. A. Chandurkar, Additional Government
Pleader with Ms. G. R. Raghuwanshi, AGP for
respondent no. 1.

Mr. Hafeezur Rahman with Mr. Prathamesh
Waghmare for respondent no. 2.

**CORAM: ALOK ARADHE, CJ. &
M. S. KARNIK, J.**
DATE: MAY 5, 2025

ORDER: (Per M. S. Karnik, J.)

- 1.** Heard learned counsel for the parties.
- 2.** By the notice inviting tender dated 31st July 2020, the Food Corporation of India (FCI) invited bids from empanelled traders/bulk consumers of Wheat-URS under OMSS (D) lying at various depots under the FCI for sale of Wheat-FAQ, Wheat-URS and Rice Grade 'A' through e-auction. Relevant to the controversy in the writ petition is Clause 10(K) of the tender notice, which reads thus: -

"10(K) The Wheat-URS so purchased from FCI under OMSS through e auction will be utilized domestically and shall not be exported by the bidder. If the bidder violates any of the terms and conditions of the empanelment or found to be furnishing any wrong/false information at any stage, then in addition to forfeiture of EMD, bidder will be debarred from

participating in future tenders floated by fCI for disposal of foodgrains and coarse grains for a period of one year."

3. The petitioner M/s. Jay Anand Food Industries, a proprietary concern, is engaged in the business of manufacturing wheat flour and rice sorting and polishing. The petitioner has registered itself with empanelment with FCI for purchase of food grains under Open Market Sale Scheme-Domestic (OMSS-D) Scheme since 2017. On 31st March 2020, the petitioner was declared highest bidder for 100 MT of Wheat and was awarded the auction by the FCI.

4. In a raid conducted by the Supply Department at one Palak Ration Godown on 1st August 2020 it was found that a rationing rice is illegally stocked there, which was meant for public distribution. On the same day, an FIR bearing CR No. 274 of 2020 was registered at Panvel City Police Station under section 3 and 7 of the Essential Commodities Act, 1995. During the course of investigation, the investigating officer of Panvel City Police Station visited the processing plant of the petitioner. They noticed 270 MT of rice and 43 MT of wheat packed in the jute gunny bags depicting the logo of FCI. The rice and wheat were seized by police by drawing panchanama dated 2nd August 2020.

5. Suffice it to observe that a show cause notice was issued by the FCI to the petitioner on 25th June 2021 calling upon the petitioner to submit an innocence certificate from the Panvel City Police Station, otherwise the petitioner would be debarred from participating in the future auction to be held by FCI for one year.

6. Learned counsel for the petitioner raised a dispute about the service of notice. In any case, what we find from the

impugned order dated 30th January 2024, which is at page 118 of the paper book, is that in view of the ongoing criminal case pending at Panvel Court, the FCI has debarred the petitioner from participating in future e-auction with the FCI till the outcome of the case.

7. Learned counsel for the FCI submitted that serious allegations have been made against the petitioner in the criminal case pending in the Panvel Court. It is submitted that till such time the criminal case is decided, question of granting any relief to the petitioner does not arise.

8. In our considered opinion, the impugned order dated 30th January 2024 debarring the petitioner from participating in future e-auction with the FCI till outcome of the criminal case is unjustified. Vide the show-cause notice, the petitioner was debarred from participating in future tenders for a period of one year. That period of one year expired on 24th June 2022. In this view of the matter, we have no hesitation to set aside the impugned order dated 30th January 2024 insofar as it extends beyond the period of one year, i.e., from 24th June 2022 as contemplated in the show-cause notice.

9. The writ petition is, accordingly, allowed in the aforesaid terms.

10. We make it clear that refund of EMD amount will be subject to outcome of the criminal proceedings pending against the petitioner.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)