
(2002) 09 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5242 of 2002

Balajee Roller Flour Mills (P.) Ltd.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Prevention of Food Adulteration Rules, 1955 — Rule 32, 37A

Citation : (2003) 3 BC 630 : (2003) 2 WLC 762

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : Dalip Singh and Mahesh Gupta, Mahendra Goyal, for the Appellant; Mahesh Dausawala, A.A.G. and Virendra Singh Deora, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Rathore, J.—The petitioner-company is manufacturing wheat flour, maida, fortified maida and nutritional foods in various States like Uttar Pradesh, Jharkhand and Pradesh.

2. The Department of Women and Child Development purchases substantial quantities of nutrient food including baby mix, sweet and salted Murmure and other items of nutrient food under various schemes e.g. Pradhan Mantri Gramin Yojna (for short PMGY). I.C.D.S.

3. An NIT was issued on 11.2.2002 for requiring "Poshahars" from prestigious manufacturers. The petitioner also moved an application for tender document and after obtaining at the same was submitted to the Department of Women and Child Development within the stipulated period. However, in June 2002 the tender was cancelled without assigning any reason. The respondents called fresh tender dated 8.7.2002 and the petitioner submitted fresh bids for tender dated 8.7.2002 for zone D as the bids were invited zonewise.

4. It is contended on behalf of the petitioner that in the tender document dated

8.7.2002 neither "Poshahar" has been defined nor energy food has been defined and both these terms are foreign to the Prevention of Food Adulteration Act, 1954 and the rules made therein.

5. Learned Counsel for the petitioner Mr. Dalip Singh referred Rule 32A of Food Adulteration Rules, 1995 which deal with the Nutritional Food according to which the food claimed to be enriched with nutrients such as minerals, proteins and vitamins shall give the quantities of such added nutrients on the label.

6. Learned Counsel further referred Rule 37A and item No. A18.02.01 and A18.01.01, appended to Appendix-B of Rule 5 of Prevention of Food Adulteration Rules, 1955 which is reproduced hereunder :

"37.A. Manufacture of proprietary foods and infant foods.--(1) An article of infant food whose standards are not prescribed in "Appendix B" shall be manufactured for sale exhibited for sale or stored for sale only after obtaining the approval of such article of food and its label from Government of India

(2) In cases of proprietary foods, the name of the food or category under which it falls in these rules shall be mentioned on the label.

Explanation.--For the purposes of the rule--(a) "Infant food" means "any food which may be used for partial or total replacement of breast milk, commonly called breast milk substitute and includes infant milk food, infant formulate and any food suitable as a complement to breast milk, to meet the nutritional needs of the infant after 4 months of age, commonly called "complementary food", "breast milk supplement" or "weaning food".

A. 18.01.01.--"Fortified atta" means the product obtained by adding one or more of the following materials to atta namely :

- (a) Calcium carbonate (prepared chalk, popularly known as Creta preparata).
- (b) Iron,
- (c) Thiamin,
- (d) Raboflavin, and
- (e) Niacin.

A. 18.02.01.--"Fortified maida" means the product obtained by adding one or more of the following materials to maida, namely :

- (a) Calcium carbonate (prepared chalk by popularly known as Cretapreparata).
- (b) Iron,
- (c) thiamin,
- (d) Raboflavin, and
- (e) Niacin.

7. After referring these provisions of the Food Adulteration Act and Rules, Mr. Dalip Singh submits that the above items which are the actual ingredients of the baby mix are to be considered as eligible. The petitioner has been manufacturing and supplying fortified maida which is nutritional food. In the absence of guidelines defining the eligibility the same is liable to be quashed and the petitioner being a manufacturer of nutritional food has to be considered as eligible. Condition No. 3-ka which has no nexus with the object sought to be achieved inasmuch as one of the bidders have actual experience of manufacturing of the baby mix with the ingredient as prescribed in para 4 of tender document dated 8.7.2002 as such the condition No. 30-ka being vague and there being no nexus with the object sought to be achieved and leaving room for arbitrariness in the determination of the eligibility and the same is liable to be quashed and bid of the petitioner is liable to be considered ignoring the condition No. 3-ka of the tender document.

8. Mr. Mahesh Dausawala, Additional Advocate General and Mr. Mahendra Goyal appeared on behalf of the respondents and raised preliminary objection regarding maintainability of the writ petition and submits that the present writ petition has been filed for quashing of the condition No. 3-ka in the tender dated 11.2.2002 and the ingredients for baby mix as defined in para No. 24 of the tender dated 8.7.2002. Since the petitioner has participated in the tender process is fully aware of the condition No. 3-ka and recipe of baby mix vide tender dated 8.7.2002 and on being declared ineligible in Technical Bids, the petitioner has challenged the aforesaid conditions which is not possible in eye of law.

9. It is also submitted on behalf of the respondents that the tender dated 8.7.2002 issued under PMGY Scheme has also been finalised and supply orders have already been placed. The respondents have also placed copies of supply orders dated 3.8.2002 and 12.8.2002 for Zone-A, Zone-C, Zone-D, Zone-E and Zone-F. So far as tender invited by NIT dated 23.7.2002 is concerned a decision has been taken by the tender committee to cancel the tender dated 23.7.2002 and reinvoke the tenders in its meeting dated 14.8.2002. In view of the fact that both the tenders have been finalized inasmuch as under one of the tenders the contracts have already been awarded which are not under challenge and with regard to the second tender, a decision has already been taken to invite fresh tenders, the present writ petition has become infructuous.

10. Mr. Mahesh Dausawala also referred the interim measure of the Hon''ble Supreme Court passed in the People's Union for Civil Liberties v. Union of India and Ors., Writ Petition No. 196/2001, on 28th November, 2001 wherein the Hon''ble Supreme Court has dealt with the issue with regard to nutritious food and directed the State Govts./Union Territories to implement the integrated Child Development Scheme (ICDS) in full and to ensure that every ICDS disbursing centre in the country shall provide as under :

(a) Each child up to 6 years of age to get 300 calories and 8-10 grams of

protein :

- (b) Each adolescent girl to get 500 calories and 20-25 grams of protein:
- (c) Each pregnant woman and each nursing mother to get 500 calories and 20-26 grams of protein;
- (d) Each malnourished child to get 800 calories and 16-20 grams of protein :
- (e) Have a disbursement centre in every settlement.

11. In reply to the argument with regard to reference of Rule 32, learned Counsel for the respondents submits that Rule 32 is not relevant as the same provides that in case of artificial flavouring substances, the label may not declare chemical names of the flavours but in the case of natural flavouring substances or nature-identical flavouring substances, the common name of flavours shall be mentioned on the label.

12. It is also given on behalf of the respondents that term used baby mix in condition No. 24 in the tender dated 11.2.2002 is a synonymous for Poshahar and since it was to be used for the children for age group of 6 to 36 months, as such "Terminology Baby Mix" has been used and the baby mix purchased under PMGY Scheme is a scheme of Central Government.

13. In rejoinder, Mr. Dalip Singh, learned Counsel for the petitioner submitted that no cause of action accrued to the petitioner till such time as an arbitrary interpretation was taken by the respondent to the interpretation of the term ""Energy Food" for rejecting the technical bid of the petitioner company and non-inclusion of the petitioner for consideration of the financial bid, holding the petitioner ineligible on account of consideration of the term 3-ka does not estop the petitioner from filing the present writ petition.

14. Heard learned Counsels for the parties and carefully examined the material available on record as well as original record. I also perused the relevant provisions of Prevention of Food Adulteration Act, 1954 and conditions of the tender document as well as judgment referred before me.

15. It is not disputed that in view of the tender dated 8.7.2002 which was issued under PMG Y scheme has been finalised and supply orders have already been placed as evident by the order dated 3.8.2002 and 12.8.2002 for Zone-A, C, D, E and F. So far as tender dated 8.7.2002 is concerned as stated by learned Counsel for the respondents that decision has been taken by the tender committee to cancel the tender dated 23.7.2002 and decided to reinvoke the tenders in its meeting dated 14.8.2002 headed by Chief Secretary and Development, Commissioner consisting of Special Secretary (Finance), Special Secretary (Industries) and Director. Women and Child Development Department, Director (Litigation) and Deputy Secretary (Finance). Thus, so far as tender dated 23.7.2002 is concerned, the present writ petition does not survive as it has already been cancelled.

16. The only point survives is that what is the nutritious food. In annexure-3 formulation/ composition of baby mix has been given in which wheat, dehulled soya, rice, sugar are shown as contents of Poshahar by weight. As per condition No. 24, baby mix shall be manufactured from fresh ingredients of good quality, which shall be free from foreign materials, substances hazardous to health, excessive moisture, insect damage and fungal contamination.

17. But learned Counsel for the petitioner submitted that sub-condition No. 1 of condition 16.24 has drastically been changed vide annexure-3. Thus, the respondents are unable to define what is the baby mix food and what should be ingredients. In lack of ingredients and specifications given in conditions which is contrary to Annexure 2 as earlier issued by the respondents, the petitioner is found eligible as per condition No. 1 of Annexure-3. The petitioner is not found eligible for manufacturing the baby mix/nutritious foods as the ingredients are changed by the respondents.

18. Be that as it may, as already discussed hereinabove, since the contract has already been finalised and supply order has been issued at this stage, on this technical ground the writ petition cannot be entertained while exercising power under Article 226 of the Constitution of India specially in contractual matters, therefore, the present writ petition does not survive and the same deserves to be dismissed as having become infructuous.

19. However, the respondents are advised to specify the ingredients of baby mix specifying the quantity of nutritious such as minerals, proteins or vitamins as this is the admitted case of the respondents that the tender committee has decided to cancel the tender dated 23.7.2002 and further decided to reinvoke the tenders by the meeting held on 14.8.2002. It is also advised to the respondents that prior to reinvitation of the tender, they should specifically define what is the contents of baby mix food.

20. It is further advised that after laying down the specifications with regard to nutritious food and baby mix food specifying the minerals and nutritious recipe.

21. Original record produced by the respondents may be returned back forthwith.

22. As discussed hereinabove, the writ petition fails and the same is hereby dismissed with no order as to costs.