

(2015) 07 MAD CK 0198

In the Madras High Court

Case No : Writ Petition No. 2806 of 2015 & M.P. No. 1 of 2015

G. Baskaran

APPELLANT

Vs

The Managing Director and Others

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Citation : (2015) 07 MAD CK 0198

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : C. Prakasam, for the Appellant; T.P. Savitha, G.A., Advocates for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J—The petitioner seeks for issuance of a Writ of Certiorarified Mandamus, to quash the order dated 07.01.2015, passed by the first respondent and to direct the respondents to supply paddy to the petitioner's Rice Mill.

2. The petitioner was appointed as a Hulling Agent of the Tamil Nadu Civil Supplies Corporation (hereinafter referred to as the "respondent Corporation") and in terms of the agreement entered into the second respondent would supply paddy to the petitioner, who is required to hull the same and deposit the processed and resultant rice in the godown of the respondent Corporation as per the quality and quantity specified. To ensure proper performance of the terms of the agreement, the petitioner has remitted a security deposit of Rs. 3,00,000/- and bank guarantee for the value of Rs. 2,70,000/-. During May 2013, the petitioner was supplied 485 tonnes of paddy for hulling and the petitioner is stated to have delivered the processed rice to the respondent Corporation on 07.06.2013. In terms of the procedure prescribed under the Hulling Manual, samples were drawn for analysis and based on the report, a show cause notice was issued to the petitioner calling upon him to show cause as to why the agreement should not be cancelled and why the petitioner should not be blacklisted from the list of approved contractors.

3. The petitioner challenged the show cause notice by filing a Writ Petition in W.P. No. 11795 of 2013, and for a direction to continue to supply paddy. The said Writ Petition was allowed on the ground that the sample was drawn on 16.05.2013, received by the Laboratory on 17.05.2013, analysis done on 28.05.2013 and the same was in contravention of clause 25, Chapter IV of the Hulling Manual. The respondent Corporation filed W.A. No. 1176 of 2013, against the said order. The said Writ Appeal along with other connected matters were allowed with directions, consequently the order passed in the Writ Petition was set aside. The petitioner who was the first respondent in the appeal was permitted to make additional representation to the show cause notice and on receipt of the same, the respondent Corporation was directed to pass orders. In the mean time, the District Collector was directed to ascertain as to whether the rice is fit for consumption, so as to distribute through the public distribution system and if it is found unfit for distribution, shall be sold in an auction as animal feed after notice to the petitioner. It was further ordered that if the petitioner succeeds in the adjudication, the respondent Corporation cannot impose any liability, but in case the adjudication goes against the petitioner, the respondent Corporation was entitled to recover the losses arising out of exercise directed to be done. The petitioner submitted his additional explanation to the show cause notice on 24.07.2014 and the second respondent by order dated 06.08.2014, terminated the hulling agency by order dated 05.08.2014. Further, the petitioner was informed that he has to bear the cost of the rice due to the respondent Corporation and will be recovered from the deposits with the corporation as per the terms and conditions of the contract agreement. Aggrieved by such order, the petitioner preferred an appeal to the first respondent, which was dismissed by order dated 07.01.2015, confirming the order of cancellation of the hulling agency, apart from blacklisting the petitioner and recovery of the loss. Challenging these orders, the petitioner is before this Court by way of this Writ Petition.

4. The learned counsel appearing for the petitioner elaborately referred to the factual situation and contended that the drawal of samples was clearly contrary to the procedure stipulated under the Manual of Processing of Paddy and in this regard referred to the clause 25 of the Manual of Procedure and submitted that on receipt of the samples from the godown within 24 hours from the date of deposit, the Quality Control Staff of the Regional Lab shall analyse the samples and issue quality certificate to the Miller, who on receipt of the quality certificate if aggrieved on the analysis results, can apply for re-analysis within 15 days from the date of receipt of the quality certificate. It is submitted that in the instant case samples were drawn beyond 24 hours and sent for analysis only on 28.05.2013, after delay of 12 days of deposit of resultant rice and this procedural infirmity goes to the root of the matter and on this ground, the impugned orders are liable to be set aside. Further, it is submitted that the quality certificate was forwarded to the petitioner along with show cause notice and the petitioner filed an appeal disputing the correctness of the certificate and the same was not

considered and the samples were not sent for second quality analysis. Further, it is submitted that the samples were not drawn in the presence of the petitioner, which would vitiate the entire proceedings. It is further submitted that there was no proposal in the show cause notice for recovery of the alleged loss from the petitioner and therefore, the impugned order, ordering of recovery of the alleged loss from the petitioner, is illegal. Referring to the quality certificate dated 28.05.2015, it is submitted that in the said certificate, it has been recorded "incidents of old rice, low moisture and musty smell, hence it is PDS rice". Commenting upon the said certificate, it is submitted that the smell alleged to have been noticed during the analysis is on account of the belated analysis having been done after a period of 12 days and the respondents have supplied paddy classified under different grades and owing to different in grades is reflected in the resultant rice. Therefore, it is submitted that an improper test has been applied to reject the quality of the rice. On the above grounds, the learned counsel prayed for setting aside the impugned order and to direct the respondents to continue to supply paddy for hulling.

5. The learned Government Advocate appearing for the respondents submitted that after the order passed by the Hon"ble Division Bench, the petitioner was afforded an opportunity to put-forth his explanation and after analysing the same, it was found to be not convincing and the impugned order was passed. Further, it is submitted that the irregularities committed by the petitioner were proved during the analysis, broken rice, discoloured rice, damaged rice, were noticed and incidents of old rice, low moisture and nasty smell were found during the analysis and the rice was not fit for human consumption. Further, it is submitted that as per direction issued by the Hon"ble Division Bench, the District Collector, an independent authority, assessed the quality of the rice and reported that the rice is unfit for human consumption. Further, it is submitted that the quality of paddy supplied, has been certified by the Quality Control Officials and the paddy which is harvested afresh are taken up by Hulling Agents with check samples and the allegation of the petitioner is baseless. Further, it is submitted that the rice samples were taken from the rice deposits in the presence of the representative of the petitioner, sample slips were prepared, samples were put in a cloth bag with sample slips and sealed in the presence of the representative of the petitioner. Further, proper procedures and formalities such as coding analysis, decoding entry etc, were scrupulously followed. Further, it is submitted that since the adjudication has ended against the petitioner, the respondent Corporation was entitled to recover the loss. On the above grounds, the learned Government Advocate seeks to sustain the impugned orders.

6. Heard the learned counsels appearing for the parties and perused the materials placed on record.

7. On 21.06.2013, the petitioner was issued a show cause notice stating that the rice supplied by the petitioner in the godown of the respondent Corporation is unconnected rice, thereby meaning that the same has no connection with the

paddy supplied by the Corporation to the petitioner for hulling. The show cause notice referred to the quality certificate, the godown in which the supply was effected and the sample number. It was alleged that the petitioner had supplied rice meant for public distribution. Therefore, the petitioner was called upon to explain as to why the hulling agent contract agreement should not be terminated and why the petitioner should not be blacklisted from the list of contractors of the respondent Corporation. The petitioner filed a Writ Petition before the Madurai Bench of this Court in W.P.(MD) No. 11795 of 2013, challenging the show cause notice. The grounds raised in the said Writ Petition is identical to that of the grounds raised in this Writ Petition stating that the samples drawn for quality analysis, was not in terms of the procedure prescribed under the Hulling Manual. The Court accepted the plea raised by the petitioner and quashed the show cause notice by order dated 24.07.2013. In the said order, the Court directed the respondent to take appropriate action against the officials who failed to follow the procedure under the Hulling Manual. A memo was filed by the respondent Corporation stating that the Quality Inspectors were placed under suspension. It appears that the petitioner alone was not accused of having violated the terms and conditions of the agreement, but there were four other hulling agents against whom similar action had been initiated and show cause notices were issued. The other hulling agents had also challenged the show cause notice which were quashed.

8. The respondent Corporation preferred W.A.(MD). Nos. 1123 & 1174 to 1177 of 2013, challenging all the orders passed in the Writ Petition before the Hon''ble Division Bench of the Madurai Bench of this Court. The Hon''ble Division Bench pointed out that the issue which arises for consideration is whether as per clause 25 of Chapter IV of the Manual, the rice has to be sent and analysed, within the time limit prescribed thereon or not. After referring to the relevant clause in the manual, it was pointed out that the respondent Corporation Corporation produced the calender for the year 2013 and demonstrated that there was no delay in drawing and sending the samples and held that the delay in analysing the samples cannot be put against the respondent Corporation. It was further pointed out that analysis of samples would take a longer time and the respondent Corporation cannot be held responsible for the same. Further, it was pointed out that the Writ Court came to the conclusion that taking of samples as well as analysis should take place within one day, however, this is not the requirement of the Manual. With the said observations, it was held that the order quashing the show cause notices cannot be sustained. Further, the Hon''ble Division Bench during the pendency of the appeal issued a direction to the District Collector to examine the rice and file a report regarding the quality and stability for reuse, which was submitted before the Court. Thus, in the final order in the Writ Appeal, the Hon''ble Division Bench took note of the report of the District Collector and allowed the Writ Appeals, set aside the order passed in the Writ Petitions and permitted the petitioner and other hulling agents to make additional representations to the show cause notices within a time frame and the

second respondent was directed to adjudicate the same. Further directions were issued to the District Collector to dispose of the rice based upon the quality and condition with a further direction that if the adjudication of the show cause notice went in favour of the petitioner no liability can be fastened on the petitioner, on the contrary, if the adjudication was against the petitioner, it was open to the respondent Corporation to recover the losses arising out of such exercise.

9. After the order passed by the Hon"ble Division Bench, the petitioner submitted additional representation on 24.07.2014. On a perusal of the said representation, it is seen that apart from the contentions regarding the drawal of samples, no other new point was canvassed by the petitioner.

10. As noticed above, the allegation made by the petitioner regarding the procedure adopted for drawal of samples, alleging that it is not in accordance with the procedure stipulated under the Manual, was rejected by the Hon"ble Division Bench and held that there was no delay in the procedure adopted while analysing the samples. Therefore, the Hon"ble Division Bench having conclusively held that there was no delay in drawing and sending the samples for analysis, the petitioner cannot once over again agitate the same point and he is estopped from doing so. In fact in the appeal petition filed before the first respondent, this appears to be once over again canvassed and even in this writ petition, the same ground is canvassed. In the light of the decision of the Hon"ble Division Bench giving a seal of approval to the action of the respondent Corporation in the manner of drawal of samples and quality analysis, the same point cannot be canvassed to set aside the impugned orders.

11. The allegation that samples were not drawn in the presence of the petitioner, has been stated to be a false averment, since the samples were drawn in the presence of the representative of the petitioner. This contention raised in the counter affidavit has not been denied by the petitioner.

12. As regards the recovery of the loss caused to the respondent Corporation, the petitioner would contend that there was no such proposal in the show cause notice, therefore, no recovery could have been directed to be made from the petitioner for the alleged loss. This contention does not merit acceptance for the simple reason that the Hon"ble Division Bench has issued directions empowering the respondent Corporation to recover the loss caused to the Corporation, in the event, the adjudication of the show cause notice goes against the petitioner. This direction by the Hon"ble Division Bench has become final and binding on the petitioner.

13. As regards the penalty of blacklisting is concerned, it is seen that the petitioner was appointed as Hulling Agent of the respondent during March 2013 and was given 425 tonnes of paddy from March to June 2013 for the purpose of hulling. The petitioner is said to have deposited 22.5 tonnes of resultant rice, which has been found to be unconnected rice, did not confirm to the quality requirement, it was discoloured, damaged and emanating foul smell. Further, the

result of the analysis concluded that the rice said to have been deposited by the petitioner is rice meant for public distribution system.

14. In such circumstances, this Court is not inclined to examine the decision of the respondent Corporation, blacklisting the petitioner by acting as if, this Court is an appellate authority over the decision of the respondent Corporation. The petitioner has been afforded reasonable opportunity as per the directions issued by the Hon''ble Division Bench. The petitioner cannot fall back on any observations made in the said Writ Petition, which was filed challenging the show cause notice, since the order passed in the Writ Petition has been set aside. Pursuant to the directions issued by the Hon''ble Division Bench, the petitioner had an opportunity to submit additional representation and while doing so, the petitioner ought to have canvassed grounds which were not dealt with earlier and rejected by the Hon''ble Division Bench. The petitioner miserably failed to do so and once again raised the same contention regarding the delay in taking samples and sending for analysis samples and the time period for analysis. This could not have been raised by the petitioner, since already the Hon''ble Division Bench has rejected the contentions of the petitioner in this regard.

15. For all the above reasons, the petitioner has not made out any case for interference and accordingly, the Writ Petition fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.