

(2010) 03 CAL CK 0037

In the Calcutta High Court

Case No : G.A. No. 474 of 2010, A.P.O.T. No. 530 of 2009 and C.S. No. 234 of 2009

Gour Flour Mills Pvt. Ltd.

APPELLANT

Vs

Sarada Cereals Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 17-03-2010

Acts Referred:

Citation : (2010) 03 CAL CK 0037

Hon'ble Judges : Mohit S. Shah, C.J.; Pinaki Chandra Ghose, J

Bench : Division Bench

Advocate : Reetabrata Mitra, in G.A. No. 474 of 2010, A.P.O.T. No. 530 of 2009 and C.S. No. 234 of 2009 and Kalyan Bandhyapadhyaya and Sumita Shaw, for the Appellant; Anindya Kr. Mitra Abhrajit Mitra, Jishnu Chowdhury and Rajshree Kajaria, for the Respondent

Judgement

Mohit S. Shah, C.J.—Both these appeals are directed against the common judgment dated 11th December, 2009 by the Learned Single Judge in G. A. No. 2252 of 2009 and 2613 of 2009 in Civil Suit No. 234 of 2009 directing the Director, District Distribution, Procurement and Supply, Food & Supplies Department, Government of West Bengal to take appropriate steps to consider the case of plaintiff (respondent No. 1) in each of these appeals - Sarada Cereals Pvt. Ltd. for being allotted quota for supply of fortified atta to BPL consumers in Malda District.

2. The facts leading to filing of these appeals, briefly stated, are as under:

Government of West Bengal, Department of Food & Supplies invited applications from eligible operators of flour/ chakki mills to offer supply of fortified atta in the District of Malda to the BPL consumers. The flour mills were to be supplied wheat by the Director of District Distribution, Procurement and Supply, Food & Supplies Department, Government of West Bengal (herein after referred to as Director).

The applications were invited by notice dated 9th July, 2009 in the following

terms:

Applications are invited from existing/running bona fide flour/chakki mills of the Malda District which fulfil/satisfy the guidelines as laid down in the G.O. No. 8347/FS/Sectt/Food/13A06/07 dt. 10.08.2007 (obtainable from the office of the undersigned) for selection of Flour/ Chakki Mills for production and distribution of fortified Atta. Flour/Chakki Mills must be in running condition for at least three months prior to the date of publication of this notice.

Intending Flour/Chakki Mills may apply as per preforma (obtainable from the office of the undersigned) along with copies of supporting documents.

Government of West Bengal reserves the right to accept or reject all or any of the applications without assigning any reasons whatsoever.

Last date of receipt of the application is 24.8.2009.

The relevant extract of the Guidelines referred to in the above notice reads, inter alia, as under:

With a view to streamlining the process of conversion of wheat into fortified atta & smooth distribution thereof through PDS the following guidelines have been drawn up for strict adherence thereto:

1. The Director, District Distribution, Procurement and Supply is authorized to allot wheat to the areas brought under the scheme.
2. The Director, DDP & S, will select eligible flour mills / chakki mills keeping in view the eligibility criteria set forth in the guidelines.
3. Eligibility criteria for selection of flour mill(s) chakki mill(s) under the scheme:

(i) In addition to the main wheat crushing machinery the mill should be equipped with cleaning machine (for cleaning of wheat before grinding), dozing machine (for premixing nutrients at appropriate dose) and automatic online/automatic packaging machines capable of packaging 750 gms of atta in properly labeled polypacks having (thickness above 40 microns (to avoid wastage, contamination, short weightment and proper sealing). Priority will be given to flour mills/chakki mills having automatic online/automatic punching machines. However, if the number of automatic online/automatic packaging machines are insufficient in a district to pack the required allocation of wheat within the specified time for proper distribution, then as a special case and only for such time as the packaging capacity under automatic/automatic online packaging machine are not enhanced/increased in the flour mills/chakki mills in a district, semiautomatic packaging machines may be considered provided that they are capable of packing the fortified atta within the required time while maintaining the relevant PFA standards/norms. But on no account are manual packaging machines to be considered as it would be difficult to monitor wastage, short weightment, contamination and ensure proper sealing.

ii) The mill should be capable of giving atta at an outturn ratio not less than 90%. Packaged product should conform to the specification laid down under PFA Act.

iii) Packaging capacity should be commensurate with the milling capacity

3. In response to the above advertisement, both the appellants herein, i.e., Maa Laxmi Enterprise and Gour Flour Mills Pvt. Ltd. applied and the Director took decision on the file to consider them as eligible and to issue allotment letters in their favour for allotment of 713 MTs per month and 1031 MTs per month respectively. However, before allotment orders could be issued in their favour, the suit giving rise to these appeals came to be filed by Sarada Cereals Pvt. Ltd. (plaintiff) which had also applied within the time limit, but the plaintiff was not considered eligible by the Director mainly on two grounds. Firstly, the plaintiff had purchased the property of Neelam Flour Mills, but according to the Director, in view of litigation by Neelam Flour Mills against the plaintiff, there was dispute about ownership of the plant and machinery of the flour mill and, therefore, the plaintiff, Sarada Cereals Pvt. Ltd. was not entitled to run the mill on its own. Secondly, the plaintiff had not installed packaging machines in the factory premises. This view was taken pursuant to an investigation conducted at the factory premises of plaintiff to assess the plaintiff's eligibility.

4. The plaintiff filed the suit in question and also prayed for interlocutory orders being GA No. 2252 of 2009. By order dated 21st August, 2009, the learned Single Judge acting as a Trial Court passed order dated 21st August, 2009 to consider the plaintiff's case for allotment. The District Controller (F&S) rejected the plaintiff's request. That order came to be stayed on 16th September, 2009 with a further direction not to take any steps in the matter. Thereafter, by order dated 4th December, 2009 the learned Single Judge appointed a Special Officer to accompany the Director for inspection of the plaintiff's factory premises. The Director found that there were four packaging machines one of which was defunct and that there were defects in the three functioning machines producing fortified atta pouches containing 750 gms. atta. The Director concluded that the plaintiff's mill was otherwise eligible for the purpose of the scheme provided the plaintiff addressed the inadequacies mentioned in the findings. Plaintiff then gave the second application (G.A. No. 2613 of 2009) contending that when three packaging machines were run for 20 minutes each, the ratio of the defective packets as compared to the properly packed packets was very low (9/356, 15/189 and 40/290).

The plaintiff further contended that any pouch not conforming to the agreed specifications would immediately be rectified by the plaintiff before the goods leave the plaintiff's custody in the event the plaintiff is awarded a part of the order for crushing wheat into fortified atta.

5. When the plaintiff's application came up for hearing, Maa Lakshmi Enterprise and Gour Flour Mills Pvt. Ltd., i.e., the appellants herein, also filed applications

(G.A. No. 2961 of 2009 and G.A. No. 3190 of 2009) seeking leave to intervene or being impleaded, since they were likely to be affected by any order that may be made in the suit. In the said applications appellants contended that eligibility of the plaintiff should have been assessed as on the date of the advertisement or as on the date of the original inspection and that if on the basis of the subsequent improvements made by the plaintiff, any part of the quota is diverted from the appellants to the plaintiff, they will be affected and the plaintiff would get the quota notwithstanding the fact that it had failed to fulfill the eligibility criteria on the last date of submitting applications.

6. The Learned Single Judge rejected the applications of the appellants herein for intervention and/or for being impleaded as parties and directed that since it now appeared from the Director's report that the packaging machines had been installed, it will now be open to the State Government to take a considered decision regarding the plaintiff's eligibility and desirability of allotting a part of the work to the plaintiff within a period of three weeks from the date of the order, i.e., by the end of December, 2009. The Trial Court, accordingly, allowed the applications of the plaintiff and directed the Director to take appropriate steps to consider the plaintiff's case for being allotted quota for supply of fortified atta to the BPL consumers in Malda.

7. Aggrieved by the above directions in favour of the plaintiff and the order rejecting their applications for intervention and/or for being impleaded as parties, the appellants have filed these appeals. Initially, this Court granted ad interim stay of the directions given by the learned Single Judge and then decided to hear out the appeals. Since both the appeals raise common questions of law and facts, the appeals were taken up for hearing together and are being disposed of by this common judgment.

8. At the outset, we may note that the first ground on which the authority had rejected the plaintiff's application was found to be untenable as per the judgment dated 17th Feb. 2010 in APO No. 2 of 2010 which we have noted that the Debt Recovery Appellate Tribunal has already held that the plaintiff had purchased not only the land and building of Neelam Flour Mills Pvt. Ltd., but also the plant and machinery of the said company and that, therefore, the plaintiff was the owner of the plant and machinery and is legally entitled to run the flour mill on its own without any consent, and despite the opposition, of Neelam Flour Mills Pvt. Ltd. In view of the above, the controversy is only with regard to the second ground on which the respondent authority had held the plaintiff to be ineligible.

9. Learned Counsel for the appellant submitted that the notice dated 9th July, 2009 at Annexure "A" clearly indicated that the last date of receipt of applications was 24th July, 2009 and the advertisement also required the persons to be existing/running bona fide flour/chakki mill fulfilling/satisfying the guidelines dated 10th August, 2007 and that the flour/chakki mill must be in running condition at least on the date of publication of the notice. It is further

submitted that as per the inspection made by the competent authority after receiving the applications and before taking the decision on the file for issuing allotment orders in favour of the appellant, the plaintiff's mill was found to be not fulfilling/satisfying eligibility criteria specified in the Guidelines dated 10th August, 2007, as the packaging machines were not installed. It is submitted even if the packaging machines had been installed, the very fact that during inspection by the Director on 6.12.2009, accompanied by the Special Officer appointed by the Court, one packaging machine was found to be defunct and three packaging machines were found to be running in a defective manner by throwing up defective packets, the plaintiff had no right to get any allotment of wheat. Reliance is placed on several decisions in support of the contention that once a party is found to be not eligible on the cut off date, subsequently acquired qualification cannot make the ineligible party eligible.

10. Learned Counsel for the State Government, respondent no 2 in each of these appeals, made the same submissions that since the plaintiff's flour mill was not found to be having packaging machines at the time of first inspection and, in any case, one of the four packaging machines was found to be not working at the time of record inspection on 6.12.2009 and that time the three packaging machines were found to be working in a defective manner, the plaintiff had no right to get allotment. It is further pointed out by the learned State counsel that in view of the fact that every time such exercise for selection faces litigation, the Government is not in a position to supply fortified atta to the BPL consumers. Hence in public interest, the State Government has taken the decision dated 11th December, 2009 to continue the allotment orders in favour of the flour mills which were already issued earlier for a period of one year from December, 2009 and the plaintiff has no right to get any quota till the next selection takes place. It is further stated that when the suit was filed, the Government had already taken the decision to make the allotment in favour of the appellants-Gour Four Mills Pvt. Ltd. 1031 Mt. per month and Maa Lakshmi Enterprise 713 Mt. per month. It is submitted that on account of the litigation and stay orders fortified atta is not being supplied to the BPL consumers.

11. Learned Counsel for the respondent No. 1, original plaintiff, has opposed the appeals and submitted that since the earlier rejection of the plaintiff's application for allotment was found to be vitiated and as per the second inspection made by the Director in presence of the Special Officer appointed by the Court, subject to removal of a few inadequacies, the plaintiff's mill is otherwise found eligible for the purpose of the scheme, the trial Court was justified in giving the impugned directions.

12. Having heard the learned Counsel for the parties, we find that the published advertisement required existing/running bona fide flour/chakki mill of the Malda District fulfilling/satisfying the Guideline dated 10th August, 2007 to make applications by 24th July, 2009. While the learned Counsel for the plaintiff has sought to raise same dispute as to whether the flour mills of the appellants were

running for at least 3 months prior to the date of publication of the advertisement, no doubt has been raised as to their being eligible on the last date of making applications i.e. 24th July, 2009 and no proceeding has been filed to challenge any decision or proposed decision in favour of either of the appellants. In the suit filed by Sarada Cereals Pvt. Ltd., when the plaintiff objected and the Trial Court even did not permit Gour Flour Mills Pvt. Ltd. and Maa Lakshmi Enterprise to intervene and/or being impleaded as parties, the plaintiff cannot be permitted to challenge the eligibility of the appellants. The appellants would certainly be at least proper parties when any order in favour of the plaintiff would adversely affect the quota to be attached in favour of the appellants.

13. The only controversy that remains to be decided in these appeals is whether the plaintiff was eligible to get allotment of wheat for production and distribution of fortified atta on the date of inspection before the Director took the decision in favour of the appellants. Guideline No. 3 of the Guidelines dated 10th August, 2007 at Annexure -"B" clearly requires that in addition to the main wheat crushing machine, the mill should be equipped with cleaning machine, dosing machine and automatic online/automatic packaging machines capable of packaging 750 gms of atta in properly labeled poly-packs having specified thickness. While the plaintiff's allegation in the suit was that at the time of first inspection, the report against the plaintiff that the packaging machines were not installed was given on the basis of extraneous considerations, the Learned Single Judge has not given any finding accepting such allegation. The fact remains that even at the time of second inspection on 6th December, 2009, i.e., after filing of the suit, the Director accompanied by Special Officer appointed by the Court found that the packaging machines were not running in a satisfactory manner inasmuch as, even as per the admission of the plaintiff, out of 4 packaging machines, 1 was not working and the 3 others had thrown up defective/proper packets in the ratio of 9/356, 15/189 and 40/290. In view of this state of affairs, it is not possible to accept the plaintiff's allegations at least at the interlocutory stage and to hold that the rejection of the plaintiff's application for allotment was illegal. In this view of the matter, we find considerable substance in the submissions made on behalf of the appellants and also on behalf of the State Government that the trial Court ought not to have given a mandatory interim direction in favour of the plaintiff directing the authority to take appropriate steps to consider the plaintiff's case for being allotted quota for supply of fortified atta to BPL consumers in Malda.

14. The impugned interim direction given by the learned Single Judge in favour of the plaintiff cannot, therefore, be sustained. Even while holding so, we also find that in a similar case by our judgment dated 18th February, 2010 in APO No. 19 of 2010, we have held that the parties who were allotted quota earlier cannot continue to enjoy the allotment indefinitely and, therefore, advertisement should be issued well in time so as to ensure that the next selection is made before December, 2010.

15. In view of the above discussion, both these appeals are allowed. GA No. 2961 of Maa Lakshmi Enterprise and G.A. No. 3190 of 2009 of Gour Flour Mills Pvt. Ltd. for being impleaded as party defts in the Suit are allowed. The impugned direction in the judgment dated 11th December, 2009 of the Learned Single Judge allowing plaintiff's G.A. No. 2613 of 2009 is set aside and the said application is dismissed. G.A. No. 3419 of 2009 also stands disposed of. While clarifying that the decision taken by the Director in favour of Gour Flour Mills Pvt. Ltd. and Maa Laxmi Enterprise for allotment of wheat to be crushed into fortified atta for supply to BPL consumers may be acted upon, it is directed that the allotment in favour of the said parties shall not be made beyond December 2010 without issuing another advertisement by 30th September, 2010 and completing the selection by 30th November, 2010 as already directed in our judgment dated 18th February, 2010 in APO No. 19 of 2010.

16. Before parting with the matter we must note with discomfort that the Government authorities did not appreciate that the ad-interim/interim orders granted by the learned Single Judge were only in respect of the allotment to be made in favour of the plaintiff and that the ad interim stay - the status quo granted by this Court was only to stay the implementation of the direction given by the learned Single Judge in favour of the plaintiff, but no stay orders were passed restraining the Government from issuing the allotment/provisional allotment orders in favour of the appellants or from allotting any quota whatsoever in favour of any party for supplying fortified atta to BPL consumers. If at all the Government had any doubt on this issue, either regarding interpretation of any stay order or interim direction or the implications thereof, the Government ought to have moved some application for clarification or made oral submissions to avoid any hardship to BPL consumers. We are sure that in any future litigation on such issues, on behalf of the Government authorities appropriate submissions will be made, when the Court hears any stay application or application for interlocutory directions or even at the final hearing of any proceedings so as to ensure that no hardship is caused to BPL consumers.

Pinaki Chandra Ghose, J.

17. I agree.