
(2013) 02 CAL CK 0042

In the Calcutta High Court

Case No : Writ Petition No. 20447 (W) of 2012

M/s. R.R. Agro Tech. Pvt. Ltd. and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 11-02-2013

Acts Referred:

Citation : (2013) 02 CAL CK 0042

Hon'ble Judges : Nadira Patherya, J

Bench : Single Bench

Advocate : Saktinath Mukherjee, Mr. Kalyan Kumar Bandopadhyay, Adv, Mr. Kishore Dutta, Ms. Sumita Shaw and Mr. S. Bandopadhyay, for the Appellant; Asok Banerjee, Sr. Adv, Mr. Kamalesh Bhattacharya and Mr. Susovan Sengupta, for the State, for the Respondent

Final Decision : Dismissed

Judgement

Nadira Patherya, J.—By this writ petition the petitioners seek to set aside the investigation initiated by South Port P.S. being Case No. 285 of 2012 dated 28th July, 2012. The case of the petitioners is that petitioner No. 1 has been appointed by the respondent Nos. 4 to 8 for crushing wheat for supply of Atta to BPL category of people after fortifying the same with micro nutrients and delivering the same to the MR Distributors. Pursuant to a delivery order issued on 25th July, 2012, the petitioner was to lift quantities of wheat to be distributed to the BPL category. In fact delivery was taken by the petitioner till 27th July, 2012 and the said wheat lifted was transported to its Mill and recorded in the wheat Register maintained. Subsequently delivery was also effected on the basis of instructions dated 10th August, 2012 to the nominated MR Distributors. The wheat delivered from the petitioners' godown will be reflected from the wheat register.

2. On 28th July, 2012 an FIR was lodged by the Enforcement Directorate with the Officer-in-Charge, South Port Police Station alleging diversion of BPL wheat to Bangladesh by the petitioners. While the Enforcement Directorate alleges

diversion the Food & Supplies Department which is connected with supply of BPL wheat has endorsed the quantity of wheat lifted and the quantity of wheat in the petitioners' godown and has found no irregularity in respect thereof. On 16th August, 2012 the wheat lifted by the petitioners had been delivered to the MR Distributors whose names will appear from the delivery atta register maintained. The lifting of such atta has been accepted by the respondent No. 8. Therefore, the case of diversion or violation of any of the provisions of the Public Distribution System (Control) Order, 2001 or imposition of punishment is unjustified. The FIR has been issued alleging violation of paragraph 6(4) of the Public Distribution System (Control) Order, 2001 on the ground of diversion but in view of the wheat register which has been signed by the Inspector of Food & Supplies Department, the case of diversion does not exist and no punishment therefore can be levied on the petitioners. In view thereof the charge levelled against the petitioners is not sustainable in the eye of law and in view of the decision reported in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, the FIR be quashed.

3. In opposing the said application counsel for the respondent authorities submits that an FIR can be quashed only if it does not disclose any cognizable offence. On 27th July, 2012 the lorries carrying the BPL wheat was intercepted when it was diverting the said goods to Bangladesh. A seven-member enquiry committee has already been constituted to consider the said issue and several sittings have been held. The petitioners are aware of this committee, as the same has been mentioned by them in the writ petition. Admittedly the seven-member committee has not reached a conclusion as yet. The goods intercepted were found in the same lorries which had taken delivery of BPL wheat from the Food & Supplies godown. The seal of Food Corporation of India was also found on the said goods intercepted. Therefore to direct investigation is not absurd. It has been admitted that the FIR does disclose an offence and on basis of the investigation the authorities will be entitled to include further sections in the FIR. The FIR is in the embryonic stage and therefore need not be quashed. Although the wheat register has been authenticated by the Officer of the Food & Supplies Department no provision exists empowering the Officer to authenticate the stock statement. The facts are not so absurd to warrant discontinuance of investigation. The quantity of BPL wheat, markings on the bags and involvement of vehicles which took delivery of the wheat lifted by the petitioners warrant investigation. The petitioners have called for production of letter dated 16th August, 2012 and the note sheets dated 23rd August, 2012 and 28th August, 2012. The letter dated 16th August, 2012 is based on an inspection report of the Inspector from the Food & Supplies Department who has endorsed "seen". The said Inspector ought to have put in more details than just a cryptic endorsement. There is over writing in the wheat register and in some cases no signature of the Officer against such over writing. The letter dated 28th August, 2012 is nothing but a certificate issued in favour of the petitioner. This needs to be investigated and all that is sought at this stage is prima facie an investigation which will not in

any way prejudice the petitioners. Therefore the FIR be not quashed.

4. Reliance is placed on Chikkam Koreswara Rao Vs. Chikkam SubbaRao and Others, for the proposition that admission must be clear, unequivocal, conclusive and not ambiguous. In fact steps have been taken against the District Controller, Food & Supplies Department so also the Inspector. It has not been argued that the FIR has been filed by a person having no jurisdiction. Therefore this application warrants no order.

5. In reply it has been submitted by counsel for the petitioners that the Food & Supplies Department has filed no affidavit nor has it filed any FIR although it is goods supplied by it which has been allegedly diverted. The FIR has been filed by the Enforcement Directorate.

6. As it was the month of Ramzaan, a directive was issued that wheat should be distributed to the MR Distributors for further distribution to the people belonging to the BPL category. In the FIR it was alleged that the goods belonging to the Food & Supplies Department has been diverted to Bangladesh. The goods were lifted on 27th July, 2012 and on 28th July, 2012 there was a raid conducted at the godown of M/s. LMJ International Co. On the same day the flour mill of the petitioners was also raided when the stock was found in order which will appear from the note of the District Controller on 28th August, 2012.

7. Paragraphs 11 and 12 of the Affidavit-in-Reply be also read in this regard and in view of Bhagat Singh's case order be passed.

8. Having considered the submissions of the parties on a reading of the FIR the allegations made therein cannot be construed as absurd or inherently improbable. No malafides can be alleged to the Excise Department as it is only on the basis of events which had occurred that an FIR was lodged.

9. As held in State of Haryana and others Vs. Ch. Bhajan Lal and others, the Supreme Court has observed that the Court in writ jurisdiction is not to embark on an enquiry with regard to reliability or genuineness of the allegations made in the FIR although it can do so in the rarest of rare case.

10. The instant case is not such a case and any observation made will affect the case of either party and hinder an independent investigation.

11. Non-filing of affidavit by the Food Department cannot tantamount to the case in the FIR being disproved as without disclosure of evidence and supporting documents at this stage to quash the FIR will amount to pre-empting investigation.

12. Malafide exercise of power will assume significance only if an authority acts for unauthorised purpose. At this stage no such unauthorised purpose is reflected in the FIR.

13. The proper test to be applied in such cases is to ascertain the purpose for which discretionary power is to be exercised. When this test is applied to the

case in hand it will be seen from the case disclosed by the respondents that on interception of the wheat bags, bearing the seals of FCI and from the same lorries which took delivery of wheat, investigation was contemplated and FIR lodged.

14. Therefore to quash the FIR which the petitioners are seeking by this application and to thwart the investigation cannot be supported. The right to enquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and the offence must be prima facie disclosed in the FIR. This condition has been satisfied and therefore the investigation must continue. For all the reasons aforementioned this application warrants no order and is dismissed.