

(1996) 10 DEL CK 0012

In the Delhi High Court

Case No : Civil Miscellaneous Appeal No. 5197 of 1996 and Civil Writ Appeal No. 2365 of 1996

Priyanka Overseas Pvt. Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-10-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 64 DLT 639

Hon'ble Judges : Mohd. Shamim, J

Bench : Single Bench

Advocate : G.L. Rawal, B. Babbar, Rakesh Upadhyaya, K.N. Bhatt and K.C. Mittal, for the Appellant;

Judgement

Mohd. Shamim, J.

(1) This is an application by the petitioner for issue of a direction to the respondent No. 2 to supply to them 70,000 Mt of wheat at the price notified by respondent No. 2 in their fax dated July 1,1996 and July 3,1996.

(2) It has been urged for and On behalf of. the petitioner that the petitioner are a Company duly incorporated under the Companies Act. They are well known exporter. They have been exporting different items to various parts of the world, including wheat. The petitioner have secured orders for export of wheat. They have entered into an irrevocable contract, for export of wheat on the basis of allocations made in their favor dated February 15,1996 and March 7,1996. Irrevocable letters of credit have been issued in favor of the petitioner. The petitioner thus wants that a direction be issued to the respondents to supply 70,000 Mt of wheat.

(3) The application has been vehemently opposed by the respondents.

(4) Mr. K.N. Bhatt, learned Additional Solicitor General on behalf of respondent No. 3 has vehemently contended that the petitioner before making a request for

the issue of a direction must show that they have got a right to do so, either on the basis of a statute or on account of a contract. According to him, there is neither any contract, in between the petitioner and the respondents nor the petitioner have shown any provision of law in their favor for the issue of the impugned direction. The next limb of the argument of Mr. Bhatt is that even if it is assumed in favor of the petitioner that there is a binding contract and the respondent No. 2 has failed to perform the said contract, in that eventuality the petitioner should have filed a suit for specific performance of the contract and damages instead of approaching this Court under its Extraordinary Jurisdiction under Art. 226 of the Constitution of India. The other contention urged by the learned Additional Solicitor General is that there is no wheat in the stock of the respondent No. 2 or at the disposal of respondent No. 3 for the purpose of supply to the petitioner.

(5) Learned Counsel for respondent No. 2, Mr. Upadhyaya has supported the learned Additional Solicitor General through his arguments. He has further contended that the respondent No. 2 is simply a custodian and trustee of the respondent No. 3. The buffer stock has gone down and they have to meet the requirement of the teeming millions of this country through Public Distribution System. Thus there is absolutely no wheat with them which can be supplied to the petitioner for the purposes of the export.

(6) I have heard the learned Counsel for both the parties at sufficient length and have very carefully examined their rival contentions and have given my anxious thought thereto.

(7) It is true, as put forward by the learned Additional Solicitor General, that the petitioner before agitating their right must show the source of the said right. The said rights can either emanate from a contract or may be based on a statute. The learned Counsel for the petitioner in the instant case has relied on an order which was passed in their favor on an application moved by them i.e. C.M. No. 4692/96 dated July 26, 1996. The petitioner through the said application prayed that the respondent No. 2 be directed to complete supply of the balance quantity of 1.42 million Mt of wheat. It was further prayed that immediate orders be passed to supply not less than 15,000 Mt of wheat. During the course of the arguments the respondent No. 2 did not oppose the prayer of the learned Counsel for the petitioner to supply 10,000 Mt of wheat. Thus the impugned order was passed by the learned predecessor of this Court on the basis of a concession made by the learned Counsel for respondent No. 2. Hence the said order is of no avail to the petitioner.

(8) The entire case of the petitioner is based on two Registration-cum-Allocation Certificates (RCACs for short) dated February 15, 1996 and March 7, 1996. Learned Counsel for the respondent No. 3 has contended that mere issuance of an Rcac by the Agricultural & Processed Food Products Export Development Authority would not entitle the petitioner to the release of the food grains from the central pool stock lying with the Food Corporation of India. According to them

it is not a contract so as to enable the petitioner to enforce the same against the respondent No. 2.

(9) The other point canvassed by the learned Counsel for respondent No. 2 is that assuming argue even if it is to be treated as a contract, even then the petitioner cannot be granted any relief under its Extraordinary Jurisdiction under Art. 226 of the Constitution of India. The petitioner should have filed a suit for specific performance to enforce the alleged contract and damages.

(10) The said points raised by the learned Counsel for the respondents go to the root of the matter and it would be premature to adjudicate upon these issues while disposing of an interim application.

(11) It has then been urged for and on behalf of the respondent No. 3 that there are no foodgrains available with the respondent to be supplied to the petitioner. Considering the low procurement of wheat for central pool by about 4 million tonnes the Government finally decided to export only 5 lac tonnes of wheat from public stocks during the year 1996. Out of the said, the respondent No. 2 has already sold 4.27 lacs Mt of wheat. The remaining quantity as per the report of the respondent No. 2 has also been allotted for release to such of the parties who have furnished 10% security or 100% of the cost of the quantity required by them (vide reply of respondent No. 3 dated October 5 , 1996 supported by an affidavit). Thus according to the respondent there is absolutely nothing in their stock to supply to the petitioner.

(12) There is another aspect of the matter. The petitioner have filed the present writ petition for issue of a direction to the respondent No. 2 to supply to them 1.50 lacs Mt of wheat against the RCACs dated February 15, 1996 and March 7, 1996. Admittedly, 68,000 Mt of wheat has already been supplied to them. If the present application is allowed it would be tantamount to allowing the present writ petition.

(13) In view of the above I do not see any force in the present application. It is dismissed.