

(2007) 08 CAL CK 0041

Calcutta High Court

Case No: MAT No's. 739 and 849 of 2007

W.B. State Consumer's
Co-operative
Federation Ltd.

APPELLANT

Vs

W.B. Dairy and Poultry
Development
Corporation Ltd. and
Others
 Senior
Regional Manager,
Food Corporation of
India (West Bengal
Region) and Others Vs
W.B. Dairy and Poultry
Development
Corporation Ltd.

RESPONDENT

Date of Decision: Aug. 24, 2007

Citation: (2007) 4 CHN 176 : 111 CWN 1173

Hon'ble Judges: Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: Saktinath Mukherjee, Kalimuddin Mondal and Aniket Mitra, in MAT 739/2007 and Partha Sarathi Sengupta and Arunava Sengupta, in MAT 849/2007, for the Appellant; P.K. Das, Chandan Moitra and Tapan Mukherjee, for the Respondent

Final Decision: Allowed

Judgement

Bhaskar Bhattacharya, J.

These two mandamus appeals were heard together as these appeals are preferred against the self-same order dated 13th February, 2007 passed by a learned Single Judge of this Court thereby allowing a writ application filed by the common respondent No. 1 herein, namely, the West Bengal Dairy & Poultry Development Corporation Ltd.

2. In the writ application filed by the respondent No. 1 in these two appeals, it prayed for mandamus commanding the Food Corporation of India (in short "FCI"), to receive the bank draft of Rs. 6,64,000/- bearing No. 612001 of Punjab National Bank, N.S. Road Branch dated 12th August, 2005 towards the earnest money being 10% of total costs of the quantity of the damaged rice sought to be purchased by it which were lying at the depot under FCI, Siliguri and to allot the said stocks of damaged rice in favour of the writ petitioner. In the said writ application, further prayer was made for commanding the FCI to recall the allotment order in favour of the West Bengal State Consumers' Co-operative Federation Ltd., who was the respondent No. 5 in the writ application. Other consequential interim prayers were also made.

3. The grievance of the respondent No. 1 was inter alia as follows:

(a) The writ petitioner is a West Bengal State Government Undertaking under the Department of Animal Resources Development and the principal activity of the Corporation is the production and sale of animal-feed and running of several dairy firms, goat firms etc. According to the writ petitioner, it is a user of damaged food-grains, which are unfit for human consumption, and it has several manufacturing units of cattle-feed, poultry-feed and fish-feed in different districts in the State of West Bengal.

(b) For manufacturing of poultry-feed, cattle-feed and fish-feed, the main raw materials are the damaged rice and wheat, which are not fit for human consumption and accordingly, the writ petitioner entered into rate-running contract with the FCI for purchase of such damaged food-grains from FCI. In pursuance of such rate-running contract, the writ petitioner usually purchased damaged rice and wheat direct from the FCI on formula-rate and the said food-grains are being used for manufacturing of cattle/poultry/ fish feed.

(c) The Managing Director of the writ petitioner was served with a Memo dated 6th August, 2005 issued by the Senior Regional Manager, FCI for the disposal of the category of the damaged rice stocks lying at depot of the FCI, Siliguri, whereby the writ petitioner was informed that a quantity of 4454.8 MT of rice, unfit for human consumption, would be available under the disposal and accordingly, those were offered to the writ petitioner for sale on formula-rate basis. Accordingly, the writ petitioner was requested to communicate its willingness of purchasing the damaged food-grains along with 10% of the total costs of the offered quantity to the Senior Regional Manager, FCI, West Bengal Region within 12th August, 2005.

(d) Pursuant to such Memo dated 6th August, 2005, the writ petitioner was very much willing to purchase such damaged stock and accordingly, purchased a bank draft of Rs. 6,64,000/- on August 12, 2007 and on the selfsame date, at about 2.30 p.m. the Assistant Administrative Officer of the writ petitioner was present at the office of the FCI and wanted to deposit the said bank draft i.e. the 10% of the total costs of the quantity intended to purchase when the concerned officer asked the representative of the writ

petitioner to wait for sometime. However, surprisingly enough, as per instruction of the authority, the concerned officer gave out that the time to deposit such bank draft was over and the draft would not be taken in any circumstances.

(e) The refusal to receive the said bank draft was illegal, mala fide and without any valid reason and as there was no delay or laches on the part of the writ petitioner, the decision of the FCI to refuse to accept the said bank draft was liable to be set aside.

(f) The writ petitioner came to learn that such refusal was made for specific purpose and/or oblique motive inasmuch as the FCI authorities were very much interested to allot the entire quantity in favour of a particular party for illegal gain and as such, by the illegal refusal, the writ petitioner being the actual user of such damaged stocks, was going to be debarred from purchasing those stocks.

(g) The FCI authority allotted the entire damaged stocks in favour of the West Bengal State Consumers" Co-operative Federation Ltd. but the fact remained that the said West Bengal State Consumers" Co-operative Federation Ltd. was not a bona fide party or actual user of such damaged food-grains and in fact, the respondent No.5 was dealing with consumer goods and in anyway, could not purchase such damaged food-grains for selling it in open market and such being the position, the allotment in favour of the respondent No.5 was liable to be set aside.

4. The writ application was opposed by the FCI by filing affidavit-in-opposition and the defence of the FCI may be precised thus:

(i) Pursuant to the notice dated 6th August, 2005 issued by the FCI, the West Bengal State Consumers" Co-operative Federation Ltd. immediately by their letter dated 8th August, 2005 and without any further delay deposited the entire 10% of the total costs namely Rs. 15,00,000/- vide demand draft dated 8th August, 2005 which was received by the FCI on 9th August, 2005.

(ii) The FCI authority after getting the entire offer from the respondent No.5 issued release order in favour of the West Bengal State Consumers" Co-operative Federation Ltd. on 22nd August, 2005 and 24th August, 2005 and the said food-grains had already been lifted by the respondent No.5.

(iii) Nobody approached to the authority of the FCI on behalf of the respondent No. 1 with bank draft namely 10% cost of the food-grains on 12th August, 2005 as alleged and as such, the question of refusal of the said bank draft did not arise.

5. Subsequently, a rejoinder was given on behalf of the FCI as per direction of the learned Single Judge thereby denying the specific allegations of the writ petitioner in their affidavit-in-reply.

6. The learned Single Judge by the order dated 13th February, 2007 disposed of the writ application by directing the FCI to give 2000 MT of identical goods at the same rate to the writ petitioner before selling any such goods to anybody else provided 10% of the total costs of such goods is deposited by the writ petitioner within a week from the date of notice to be issued by the FCI and balance within such period as might be specified by the said respondents. The writ petitioner was granted liberty to have the pay order dated 12th August, 2005 encashed because the same had lost its validity by lapse of time. The Central Bureau of Investigation was directed to hold an investigation as to whether the undertaking given by the respondent No. 5, a copy whereof was at page 18 of the affidavit, was fully complied with and with further direction to investigate the allegations of the alleged unholy nexus between the FCI on one hand and the respondent No. 5 on the other. The learned Registrar General of this Court was directed to send a copy of the order impugned to the Director General of CBI for the purpose of compliance.

7. Being dissatisfied, the FCI and the West Bengal State Consumers' Cooperative Federation Ltd. have preferred two separate appeals as indicated above.

8. Mr. Sengupta, the learned Advocate appearing on behalf of the FCI, at the very outset, has challenged the locus standi of the writ petitioner to maintain the application before the learned Single Judge. According to Mr. Sengupta, in the offer letter dated 6th August, 2005, his client having offered to sell a total quantity of 4454.8 MT of the articles and having requested the respondents to give their offers along with 10% of the total costs of the offered quantity but the writ petitioner having allegedly offered 10% of 2000 MT of the articles, on the face of it, such offer was not maintainable. Mr. Sengupta contends that unless the writ petitioner deposited the 10% of the total costs of the offered quantity, such offer was not tenable and, therefore, on that ground alone, the alleged offer of the writ petitioner, if at all, was liable to be rejected.

9. Mr. Sengupta further contends that the writ petitioner could not produce the copy of the application, which the writ petitioner allegedly sought to submit before his client on the last date. Mr. Sengupta submits that it is apparent that the bank draft 10% of 2000 MT of goods was procured beyond the time fixed and as such, the writ petitioner has taken a false plea in the writ application as if it approached the FCI within the time fixed in the letter of offer. Mr. Sengupta in this connection vehemently contended before us that the learned Single Judge refused to look into the rejoinder affirmed by Sri Pankaj Sarkar on the ground that his denial was not made based on information received from Sri Kedar Nath Mallick; but it appears from the affidavit that Sri Sarkar specifically stated that the information was received from Sri Kedar Nath Mallick and, therefore, the reason for disbelieving the affidavit of Sri Sarkar was unjust. At any rate, Mr. Sengupta contends that the writ petitioner should be held to be "not maintainable" as the writ petitioner itself did not comply with the requirement of the offer.

10. Mr. Saktinath Mukherjee, the learned Senior Advocate appearing on behalf of the West Bengal State Consumers' Co-operative Federation Ltd., the other appellant, has

adopted the argument advanced by Mr. Sengupta and in addition to that, has contended that there was no justification of passing a direction for enquiry by the CBI into the allegation of user of the articles at the instance of his client. Mr. Mukherjee submits that his client is a Federation of various Co-operative Societies under the control of the State of West Bengal and for one of its units situated near Siliguri his client accepted the offer. Mr. Mukherjee submits that it would appear from the affidavit given by the Cooperative Society itself before the Appellate Court that it was the said Cooperative Society, which paid the money and before approaching the FCI, the said unit took permission of all the required Government authorities. Mr. Mukherjee, therefore, contends that as the writ petitioner is not the actual user of the goods but is using the same for its different units, in the same way, his client is also using the goods for one of its units. Mr. Mukherjee, therefore, prays for dismissal of the writ application and for setting aside the order passed by the learned Single Judge.

11. Therefore, the question that arises for determination in this appeal is whether the learned Single Judge was justified in setting aside the decision of the FCI in allotting the entire articles in favour of Mr. Mukherjee's client and in directing the FCI to allot 2000 MT of the materials in favour of the writ petitioner. We are also called upon to decide whether in the facts of the present case, the learned Single Judge was justified in passing a direction for enquiry by CBI.

12. After hearing the learned Counsel for the parties and after going through the materials on record, we find that undisputedly 12th August, 2005 was the last date of submitting the offer along with 10% of the total costs of the amount offered by the FCI.

13. The claim of the writ petitioner was that at 14:30 hrs., its representatives tendered 10% of the price of 2000 MT damaged goods which it wanted to purchase. We find that in this proceeding, either before the learned Single Judge or in this appeal, no copy of such offer-letter was produced which according to the writ petitioner was sought to be deposited on the last day. It appears that the only claim of the writ petitioner was that the money was tendered in the form of a bank draft at 14.30 hrs. on the last day. The allegation has been denied by the FCI and in disbelieving the version of the FCI, the learned Single Judge has assigned specific reason that the alleged written note given by one Kedar Nath Mallick, the Deputy General Manager of FCI, was not disputed by the said Kedar Nath Mallick but it was done by one Sri Pankaj Sarkar and Sri Sarkar did not allege that such denial was based on information received from Kedar Nath Mallick.

14. The aforesaid fact, according to the learned Single Judge, was sufficient to discard the affidavit of Sri Sarkar on the said question. We, however, find from the affidavit of Sri Pankaj Sarkar at page 200 of the paper book that he specifically stated that such denial was based on the information received from Kedar Nath Mallick and it was explained that as Sri Mallick was transferred from West Bengal Regional Office, he affirmed the affidavit on behalf of the FCI. Therefore, the learned Single Judge totally misread the affidavit of Sri Pankaj Sarkar in arriving at a wrong conclusion that the denial was not based on

information received from Sri Kedar Nath Mullick.

15. Although, it is very difficult to come to any conclusion as to whether the bank draft was really tendered to Kedar Nath Mallick or not on the said day or whether the alleged written note was in the handwriting of Sri Mullick in the absence of report of handwriting expert and cross-examination of the concerned persons as well as the representative who allegedly tendered the amount, we find that in the absence of even any letter of acceptance of 2000 MT of the food-grains accompanying the said bank draft, it was unjust to come to the conclusion that such offer was really given by the writ petitioner.

16. We, thus, find that the learned Single Judge on the basis of the materials placed before the Court should not have come to a conclusion that such acceptance was really made in accordance with the terms of the offer when the letter of acceptance or even any copy of the same with office reference number was not produced before the Court.

17. Apart from the aforesaid fact, we find that in the offer-letter issued by the FCI it is specifically stated that the valid acceptance can be made only along with the cost of 10% of the total amount offered by the FCI. Undisputedly, the total amount was 4454.8 MT whereas the writ petitioner had alleged wanted to deposit 10% of 2000 MT and therefore, on that ground alone, the FCI was entitled to reject the alleged offer, even if the same was accompanied by any offer in writing.

18. Regarding the other contention whether the respondent No. 5 was the actual user of the food-grains or not, we find that the respondent No. 5 is the confederation of various co-operative societies and the said confederation has been constituted for looking after interest of its different units. It is apparent that the offer was accepted by the respondent No. 5 on behalf of one of its units, which intended to use the food-grains as would appear from the various documents relied upon by the said unit pursuant to the direction given by a Division Bench while admitting the appeals.

19. Therefore, there was no basis of the conclusion that the respondent No.5 purchased the articles for misuse of the same. The affidavit affirmed pursuant to the direction of the Appellate Court itself has justified the claim of the respondent No. 5 that the said unit had taken all necessary permissions from the various Government authorities and there was no scope of any mishandling.

20. We, thus, find that this is a case where the writ petitioner itself had failed to prove that it had approached the FCI with the necessary application and the affidavits required to be accompanied by it, those not having been placed before the Court. The question whether the bank draft was really tendered within the time mentioned in the offer-letter is such a disputed question of fact that cannot be adjudicated in the writ application on the basis of affidavits but as it appears from the materials on record, even if we accept for the sake of argument that such application was filed claiming 2000 MT of the total amount with the price of 10% of the said amount, the same was not a valid offer of acceptance and

therefore, no relief can be granted to the writ petitioner on the basis of such a claim.

21. On the other hand, the respondent No. 5, a confederation of different units of co-operative societies, is entitled to claim such amount as it had complied with all the formalities and therefore, there was nothing wrong on the part of the FCI in giving that amount to the respondent No.5. Once we hold that the writ petitioner had no right to claim any amount as it had not complied with the terms of the offer, at its instance, the writ application is not maintainable and consequently, the further direction for an enquiry in the matter was uncalled for. Moreover, we have already found that there was no motive of the respondent No. 5, a Government agency, to sell the goods in open market as would appear from the supporting affidavit of its unit for whose benefit the offer was accepted.

22. We, therefore, set aside the order passed by the learned Single Judge and dismiss the writ application filed by the respondent No. 1. The appeals, thus, are allowed. In the facts and circumstances, there will be, however, no order as to costs.

Rudrendra Nath Banerjee, J.

23. I agree.