



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

WP(C) NO. 31720 OF 2023

PETITIONER:

SUKUMAR K PANIKKER
PROPRIETOR, M/S SHREE INDUSTRIES,
B 370, OBEROI GARDEN ESTATE
CHANDIVALI FARM ROAD, CHANDIVALI,
ANDHERI EAST, MUMBAI, PIN - 400072

BY ADVS.
SRI.RENJITH THAMPAN (SR.)
SRI.V.M.KRISHNAKUMAR
SRI.P.S.SIDHARTHAN

RESPONDENT:

THE TRAVANCORE SUGARS AND CHEMICALS LTD
THIRUVALLA, VALANJAVATTOM.P.O.,
PATHANAMTHITTA - 689104
REP.BY MANAGING DIRECTOR.

BY ADV SRI.P.K.RAKESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10.06.2024, THE COURT ON 08.04.2025 DELIVERED THE FOLLOWING:



T.R. RAVI, J.

W.P.(C). No.31720 of 2023

Dated this the 8th day of April, 2025

JUDGMENT

The writ petition has been filed praying for directions to the respondent to refund the earnest money deposit and to release the Bank Guarantee furnished by the petitioner, covered by Ext.P1.

2. The petitioner entered into Ext.P1 agreement on 01.07.2021 for supplying 13.5 lakh litres of Extra Neutral Alcohol (ENA for short) to the respondent for the period 01.07.2021 to 31.12.2021, pursuant to a tender floated by the respondent on 17.5.2021. The petitioner had furnished Rs.7,50,000/- as Earnest Money Deposit (EMD) on 02.06.2021 and a bank guarantee for a sum of Rs.6,75,000/- on 08.09.2021. As per Ext.P1 and the tender specifications "the supply of ENA shall be commenced as soon as the agreement is executed and as per the supply order placed by the respondent". Though the agreement was executed, no supply orders were placed by the respondent till 28.09.2021, submits the petitioner. It is also submitted that the respondent placed supply orders for 2.10 lakh litres on 28.9.2021, 1 lakh litres on 22.11.2021, 1.80 lakh litres



on 25.11.2021, and 3 lakh litres on 26.12.2021, totalling to 7.9 lakh litres, out of the promised quantity of 13.5.lakh litres. On 31.12.2021, the date of expiry of the agreement, an order for 3.2 lakh litres is stated to have been placed and the same was received by the petitioner only after the period stipulated in Ext.P1, on 07.01.2022. According to the petitioner, the respondents did not satisfy their part of the contract and did not place orders for the entire quantity covered by Ext.P1, within the stipulated time.

3. The petitioner requested for return of the EMD amount of Rs.7,50,000/- and the release of the Bank Guarantee for Rs.6,75,000/- by letters dated 19.01.2022, 02.02.2022, 21.04.2022, 08.10.2022 and 30.01.2023. Thereafter, a request was made to the Managing Director of 1st respondent on 10.5.2023, for the refund of the said amount and release of bank guarantee. The writ petition has been filed in the above circumstances.

4. The respondent, which is a Government-owned company, has filed a counter affidavit. It is stated that the tender was floated for a requirement of 54 lakh litres of ENA and 10 bidders participated. M/s Som Distilleries Pvt.Ltd, M/s Woodpecker Distilleries and Breweries Pvt.Ltd, and the petitioner were the L1, L2 and L3 bidders respectively, and it was decided to issue supply orders to the above-named



companies in the ratio of 2:1:1, which in quantity translates to 27 lakh litres, 13.5 litres and 13.5 litres respectively. Ext.P1 was entered into thereafter. It is admitted that a security deposit of Rs.7.5 lakhs was made, which was to be refunded only on satisfactory completion of the contract. It is also admitted that a Bank Guarantee was furnished as required. The respondent contends that, as per the terms of the agreement, the respondent has the right to recover any loss or damage that may be incurred due to the non-execution of the agreement and consequent non-supply of ENA at the agreed rate, from the petitioner. It is admitted that as per Ext P1 agreement, the respondent has to intimate their requirement and the petitioner should thereafter, furnish their route of transportation, source and quantity of ENA to the respondent. On receipt of the above information, the respondent is to apply to the Excise department for NOC and permit. It is also admitted that on receipt of NOC and permit from the Excise department, the respondent must send the originals through courier to the petitioner, who in turn must lift, transport and deliver the required quantity. The supply of 8.5 lakh litres of ENA is admitted. The respondent has also stated the reasons why they could not place the orders immediately after Ext.P1 agreement. The justification for the delay need not be considered in these proceedings. It is stated that on



6.12.2021, the respondent requested the petitioner to send route and source of the ENA of 300000 lakh litres for applying for NOC and permit from the Excise Department and that reminders sent on 16.12.2021 and 21.12.2021 did not evoke any response. It is stated further that on 22.12.21, the respondent sent an urgent request for 400000 lakh litres of ENA and a reminder on 23.12.2021, that the required route and source were furnished on 24.12.2021 and the respondent applied for NOC and permit on 26.12.2021. On 30.12.2021 the Excise Commissioner issued NOC and permit for 2 lakh litres with permit validity till 29.03.2022. It is submitted that the petitioner did not supply the quantity. The respondent claims to have incurred a loss of Rs.12,77,416/-. It is hence claimed that the respondent has the right to recover the loss with interest from the EMD and the Bank Guarantee furnished by the petitioner. It is contended that as per the terms of Ext.P1 agreement, all disputes arising out of Ext.P1 agreement are to be raised in the courts in Pathanamthitta District, and a writ petition under Article 226 of the Constitution is not the remedy.

5. The petitioner has filed a reply to the counter affidavit stating that, to his knowledge, there has been no production loss for the respondent due to the non-supply of ENA and hence they are not



entitled to recover any damages for the loss. The respondent has thereafter produced the audit report of the respondent as an additional document, to show the position as per their accounts.

6. Heard Sri.Renjith Thampan, Senior Advocate on instructions by Sri.V.M.Krishnakumar, on behalf of the petitioner and Sri.P.K.Rakesh Kumar, Standing Counsel for the respondent.

7. The facts are not much in dispute. As per Ext.P1, the agreement was to supply 13.5 lakh litres ENA, from 01.07.2021 to 31.12.2021 as per the supply order issued by the respondent. According to the petitioner, before the expiry of the agreement on 31.12.2021, the respondent had placed supply orders for 7.9 lakh litres of ENA only, and the said quantity had been supplied by the petitioner. It is seen that even after the expiry of the agreement on 31.12.2021, the respondent had placed a supply order on 07.01.2022. According to the petitioner, he is not bound to comply with the said supply order. The petitioner submits that except for supplying a quantity of 2.4 lakh litres, the rest of the quantity had been supplied. It is in the above circumstances that the petitioner has requested the refund of the EMD and the release of the Bank Guarantee. The writ petition itself was filed after more than 18 months of the expiry of the period stipulated in Ext.P1.



8. A reading of Ext.P1 agreement would show that the petitioner had to confirm the name of the supplier distillery, quantity etc. to the respondent in writing based on the delivery schedule given by the respondent so that NOC and import permits from Kerala Excise Department can be arranged in time by the respondent at their cost. Clause 12 of the agreement further says that in case of delay on the part of the petitioner in confirming the name of the supplying distillery, the responsibility will be solely that of the petitioner and the petitioner will be liable for the losses that may be sustained by the respondent due to the delay in the supply. The case of the respondent is that on 06.12.2021, they had requested the petitioner to send route and source of 3 lakh litres of ENA for applying for NOC and permit from the Excise Department. Reminder is stated to have been sent on 16.12.2021 and when no response was offered by the petitioner, the respondent had again sent an urgent reminder on 21.12.2021. It is stated that on 22.12.2021, the respondent sent an urgent request for 4 lakh litres of ENA and sent a reminder on 23.12.2021. It is stated that the petitioner provided the route and source only on 24.12.2021 and thereafter the respondent had applied for NOC and permit on 26.12.2021. The NOC, received on 30.12.2021 for 2 lakh litres having permit validity upto 29.03.2022, is stated to have been sent to the



petitioner by courier. It is hence submitted that the petitioner was under the legal obligation to supply 2 lakh litres of ENA as per Ext.P1 agreement itself. It is contended that even the said quantity was not fully supplied. The above facts are not seriously disputed. However, it is contended that even with the additional quantity required, the total order issued comes only to 10.09 lakh litres out of the agreed quantity of 13.5 lakh litres.

9. The main contention of the respondent is that the petitioner has to approach the competent civil court since these are disputed matters relating to a contract, which cannot be agitated under Article 226 of the Constitution of India. Reliance is placed on Ext.R1(f) judgment of a learned Single Judge of this Court in WP(C) No.37921/2008, which relates to a claim by another supplier of ENA of the respondent. This Court held that adjudication into *inter se* liabilities has to be done by a competent authority and cannot be the subject matter of a writ petition under Article 226 of the Constitution. The counsel for the petitioner relied on the decision of a learned Single Judge of this Court in **Julie Sabu V. State Election Commission, Tvm. (2024 (2) KHC 106)** to submit that there can be no illegality in entertaining a writ petition when there are no disputed questions of fact. Reliance was also placed on a judgment of the Hon'ble Supreme



Court in **Deputy Commissioner, Central Excise and Another V. Sushil and Company (2016 (13) SCC 223)** to canvas the said contention. The counsel also relied on the judgment of the Hon'ble Supreme Court in **Municipal Committee Katra V. Ashwani Kumar (2024 KHC OnLine 8219)**, wherein the Hon'ble Supreme Court had held that disputes arising out of purely contractual obligations cannot be entertained by the High Court in exercise of its extraordinary jurisdiction under Article 226. Reliance was also placed on the decision in **Union of India and Others V. M/s.Puna Hilda [(2021 KHC OnLine 6426 = (2021 (10) SCC 690)]**. The Hon'ble Supreme Court in the said decision held that a dispute arising out of terms of a contract or a breach of a contract has to be settled by the ordinary principles of the law of contract and the mere fact that one of the parties to the agreement is a statutory or public body will not by itself make a difference. The said observation was an extract from an earlier judgment of the Hon'ble Supreme Court in **Kerala State Electricity Board & Another V. Kurien E. Kalathil & Others (2000 (6) SCC 293)**, wherein it was held that such matters cannot be decided in a petition under Article 226.

10. Having gone through the pleadings on either side, it cannot be said that there are no disputed facts in the case on hand. I find



considerable force in the contention raised by the respondent that these are not matters that can be settled in a writ petition under Article 226. The petitioner has to approach the competent civil court for relief.

11. The writ petition fails and is dismissed, without prejudice to the right of the petitioner to approach the competent civil court and the period spent before this Court in this writ petition shall be excluded for calculating the period of limitation.

Sd/-

**T.R. RAVI
JUDGE**

Pn/dsn



APPENDIX OF WP(C) 31720/2023

PETITIONER'S EXHIBITS

- Exhibit P1 TRUE COPY OF THE AGREEMENT DATED
01.07.2021
- Exhibit P2 TRUE COPY OF THE RECEIPT DATED 02.06.2021
EVIDENCING DEPOSIT OF EARNEST MONEY
DEPOSIT OF RS.7,50,000/
- Exhibit P3 TRUE COPY OF THE RECEIPT DATED 08.09.2021
FOR FURNISHING BANK GUARANTEE OF
RS.6,75,000/-
- Exhibit P4 TRUE COPY OF THE LETTER SENT BY THE
PETITIONER TO THE RESPONDENT DATED
10.05.2023
- Exhibit P5 TRUE COPY OF LETTER ISSUED BY THE
TRAVANCORE SUGARS AND CHEMICALS LTD,
LETTER NO.TSCL/CMD/ENA/RE-TENDER/2022-2023
DATED 27.07.2023

RESPONDENTS' EXHIBITS

- Exhibit R1 (a) PHOTOCOPY OF THE TENDER CONDITIONS FOR
SUPPLY OF ENA DATED 17.5.21
- Exhibit R1 (b) PHOTOCOPY OF THE EMAIL COMMUNICATION DATED
6.12.21
- Exhibit R1 (c) PHOTOCOPY OF THE EMAIL COMMUNICATION DATED
NIL
- Exhibit R1 (d) PHOTOCOPY OF THE NOC BEARING NO:
NOCIPS/2021/01022 DATED 30.12.21
- Exhibit R1 (e) PHOTOCOPY OF THE NOC BEARING NO:
NOCIPS/2021/01023 DATED 30.12.21



**Exhibit R1 (f) PHOTOCOPY OF THE JUDGMENT IN WP (C) NO:
37921/2008 DATED 5.2.15**

**Exhibit R1 (G) PHOTOCOPY OF THE AUDIT INSPECTION REPORT
BEARING NO: AMG-II/HQ II/A/12-9058/ 2021-
23/38 DATED: 05.01.2024 OF THE ACCOUNTANT
GENERAL OF KERALA**