

16.07.2025
SL No.19
Court No.24
Ali/ASR

WPA 15750 of 2025

**Subrata Ghosh
Versus
The State of West Bengal & Ors.**

Mr. Kalyan Bandopadhyay, Sr. Adv.
Mr. Ramesh Dhara

.....for the petitioner.

Mr. Vibekananda Bose,
Mr. Tarak Nath Sarkar

.....for the State.

1. Petitioner is owner of G.K. Agro Food Products which was empanelled by the Government of West Bengal for functioning flour mill for conversion of wheat into F/Atta for distribution to the NFSA beneficiaries of District Nadia.
2. After empanelment, while petitioner was proceeding to execute an agreement with the department, the petitioner was arrested in connection with a case under Prevention of Money Laundering Act, 2002 (hereinafter referred to "PMLA", 2002) and was in custody; consequent thereto he could not execute the agreement with the department which was fixed to be executed on 18th of February, 2025. While petitioner was in custody, he on the sanction of the learned Trial Court has executed

a power of attorney in favour of her wife to execute agreement with the department. The wife of the petitioner though approached with the department but no such agreement was executed. Petitioner after releasing on bail has applied before the concerned District controller for giving an opportunity to execute the agreement; on such, the District Controller vide a memo dated 24th of April, 2025 has directed the petitioner to furnish relevant Bank Guarantee so that he may approached the department for execution of agreement as the last date of agreement has already been over on 18th of February, 2025.

3. At this juncture, the petitioner approached this Court in a writ petition being WPA No.11813 of 2025. This Court vide an order dated 23rd of May, 2025 has directed the concerned authority as follows:

"Having considered the materials on record, it appears the petitioner is aggrieved for non-execution of the agreement by the concerned authority, he has been empanelled. It further appears that the petitioner has failed to appear before the authority on May 18, 2025, when the date was fixed for execution of the agreement. However, the authority concerned has made it clear that the agreement can be executed on furnishing a bank

guarantee. Since, the bank guarantee has already been furnished, the concerned department should have act according to the Memo dated April 24, 2025.

I make it clear that as the state authority has decided that they shall proceed to execute the agreement on furnishing Bank Guarantee, and as it appears petitioner has already furnished required Bank Guarantee, this Court feels necessary to relegate the matter to the Authority concerned for further decision”.

4. In pursuance to such direction the Director, DDP&S, Food and Supplies Department vide an order dated June 12, 2025 formed a committee to take decision on that matter. Such committee has considered the case and passed an order on June 25, 2025 whereby the committee by referring Sub Clause 5 of Clause 8 of the concerned guideline of 2024, has observed that petitioner is not eligible for empanelment/renewal of flour mill. Accordingly, his representation was rejected; hence this writ.
5. It is the prayer of the petitioner in the writ that the impugned order dated June 25, 2025 may not be given effect to.
6. Mr. Kalyan Bandopadhyay, learned senior counsel appearing on behalf of the petitioner initially submits that Director, DDP&S has to

take a decision on the direction of this Court but he sub delegate the matter to the committee which is illegal delegated power cannot be sub-delegated.

7. It is further contentions of Mr. Bandopadhyay that criminal proceeding as referred in Sub clause 5 of Clause 8 of the said guideline, 2024 means and includes only a criminal case pertains to an offence under Essential Commodities Act. He further submits that the petitioner was arrested in connection with an alleged offence under Prevention of Money Laundering Act, 2002. The respondent authority cannot deny his right for execution of agreement by showing such flimsy ground.
8. Mr. Bandopadhyay also referred to the relevant provisions of Sub clause 5 of Clause 8 of the said guidelines argued that this is in connection with renewal of empanelment. Mr. Bandyopadhyay submits that the present petitioner was newly empanelled. It is not a case of renewal of earlier agreement. Thus the Clause 8 is not at all applicable.
9. It has also contended by the learned counsel for the petitioner that once a flour mill was empanelled and required Bank Guarantee has been submitted according to the provisions of

Clause 7, the District Controller has no option but to execute an agreement within a specific period.

10. It has further contended by the learned counsel for the petitioner that this Court has considered the prayer of the petitioner and has directed the concerned authority to take a reasoned decision only in respect of the execution of agreement. The impugned decision of the authority is arbitrary. Thus, it is required to be set aside.
11. Learned counsel appearing on behalf of the State submits that the direction of this Court in WPA 11813 of 2025 has made it clear that the authority concerned has to take a decision on that point.
12. The Director, DDP&S has formed a committee so that the decision can be arrived at properly. There are no such directions by this Court to pass an order in respect of execution of agreement by a particular respondent of particular authority. Thus, the decision of the Direction DDP&S to create a committee to take decision is not at all illegal.
13. Learned counsel appearing on behalf of the State further submits that Clause 3 of the said Guidelines specifically made it clear that merely empanelment of a flour mill cannot *ip so facto*

create any right in favour of the flour mill that an agreement has to be executed by the State of West Bengal with all ever empanel flour mill. He further pointed out Sub clause 2 and Sub clause 6 of Clause 3 of the said guidelines wherefrom and where under he argued that there are sufficient opportunity to the State that after empanelment a flour mill and before execution of agreement, at any time on the relevant reasons, the State may not execute an agreement. It has further argued on behalf of the State authority that petitioner was arrested in connection with a criminal proceeding. During submission of affidavit it has been clearly laid down that the flour mill must sworn affidavit to the effect that no criminal proceeding is pending against the owner/proprietor/partner/director. In this case the petitioner was arrested in a criminal case so the State have authority to deny execution of agreement with the petitioner.

14. Mr. Bandopadhyay, learned senior counsel for the petitioner has referred me paragraph 32 of the writ petition wherein it has been averted that some flour mill standing under similar circumstances were allowed by the State of West Bengal to execute an agreement, though

the Directors of those the flour mill were also arrested in connection with PMLA case and they were also enlarged on bail along with the petitioner. It has been submitted by the petitioner that when the State has taken a decision in respect of the other flour mill who were standing in the same footings, the petitioner may be allowed to be dealt with in the like manner.

15. Refuting the contentions of Mr. Bose, learned counsel appearing on behalf of the State submits that Clause 22 of the said guidelines has empowered the State to examine certain provisions of the said guidelines in a special case. Furthermore, the learned counsel for the State submits that he has to take a proper instruction from the department to enlighten this matter before this Court.
16. Having heard the learned counsels for the parties also considering the issue involved therein. In the first instance when the petitioner approached this Court in WPA 11813 of 2025 this Court is of opinion that as the authority concerned has made it clear that agreement can be executed on furnishing bank guarantee this Court on the basis of such memo dated April 24, 2025 directed the concerned authority

to take a decision. This Court while passing the order has clearly mentioned to relegate the matter to the authority concerned. This Court has not directed any of the particular respondent or particular authority to take a decision. The decision of the Government has its own merit and prerogative to arrange an officer or committee who shall take the decision. The decision of any of the authority of the Government on that matter, would be the decision of the Government.

17. I make it clear that this Court has not relegated the matter to a particular authority. Thus, the decision of the concerned Director, DDP&S to form a committee to take a decision is not at all appears to me illegal.

18. In considering the merit of the matter it appears that the authority concerned has denied executing agreement with the petitioner by showing reasons as per provisions of Sub clause 5 of Clause 8.

19. To understand the issue properly, let clause 8 of the notification of 2024 be set out as follows:

"Clause 8- "Validity, renewal etc. of empanelment-1) Every agreement of

empanelment made in accordance with these Guidelines shall be valid for the period of one (1) year. The agreement unless an application for renewal is made within the period of validity shall stand terminated after the expiry of the validity period.

2) The respective District Controller of Food & Supplies with prior permission of the Director may renew the empanelment and execute a fresh agreement with such terms and conditions as deemed necessary at the time of renewal after expiry of one year for another one (1) year or part of a year each time subject to a maximum period of two (2) years on satisfactory performance of the previous year and subject to fulfillment of provisions period of two (2) years on satisfactory performance of the previous year and subject to fulfillment of provisions mentioned in Clause 8. The State Government may renew the empanelment for only a part of the year also.

3) the application for such renewal of empanelment shall be made at least sixty

(60) days before the expiry of the validity period of the agreement.

4) Mere satisfactory performance may not be a sole criterion for renewal of empanelment of a flour mill. While considering the renewal of the flour mill, the State Government reserves its right to:

a) Not to renew the empanelment of all the mills who are empanelled for the year prior to the year of renewal or

b) renew empanelment of only that number of flour mills as it may consider necessary for conversion of wheat into atta at that point of time; or

c) Renew empanelment of only those flour mills which it may consider good performing or would perform satisfactorily as per the provisions of these Guidelines and Control order.

5) State Government may not renew empanelment of a flour mill, which has defaulted in supply of atta to the State Government or its Agency or has not maintained the proper quality of atta or whose performance has not be satisfactory or any criminal proceedings

are pending or have been initiated against its owner proprietor/partner/director or designated partner.

6) The selected flour mill shall have to pay annual renewal fee of 1,00,000/- (Rs. One lakh only) for each such renewal.

7) The State Government any ask an empanelled Flour Mill to deposit a Bank Guarantee of such amount with such terms and conditions, validity period and claim period as may be required at the time of the renewal of empanelment depending upon economic cost of the quantity of allocation of wheat or the credibility or performance of the flour mill.

8) the flour mill as may be renewed for empanelment hereinunder shall have to execute and agreement again for the renewed period and to abide by the terms and conditions of the agreement and submit Bank Guarantee as may be required and incorporated in the agreement.”

20. Apparently Clause 8 dealt with the validity renewal etc of empanelment. Sub clause 5 of Clause 8 dealt with renewal of empanelment of a flour mill by the State Government.

21. In this case Clause 3 would be more applicable regarding empanelment of new Flour mill.

Clause 3 enumerates:

22. "3. Empanelment of flour mill.-with a view to control the production and distribution of atta through the public distribution system amongst different categories of ration card holders, the State Government may empanel flour mills in the districts of West Bengal in the manner laid down herein below:

(1) The State Government may, by notification, invite applications from eligible flour mills for empanelment for the purpose of conversion of wheat into atta through the public distribution system for a district or group of districts.

(2) There shall be no application fee for applying for empanelment of flour mills for conversion of wheat into atta but each selected flour mill shall have to pay a non-refundable empanelment fee of 5,00,000/- (Rs. Five Lakh only) before execution of the agreement.

(3) No person holding a Distributor License or Wholesaler License or Fair Price

Shop (FPS) Dealer License under the provisions of Control Order in the capacity of flour mill or owner/proprietor/partner/director or designated partner shall be eligible to apply for selection of his flour mill in the above-mentioned capacity under the scheme of conversion of wheat into atta. If any person applies, suppressing the facts of holding a Distributor License or Wholesaler License or FPS Dealer License under the provisions of Control Order in the capacity of flour mill or owner/proprietor/partner/director or designated partner, his application shall be cancelled or if already empanelled, his empanelment shall be de-empanelled from the panel at any point of time by the State Government.

(4) Any mill, which was empanelled earlier and has defaulted in supply of atta to the State Government or its Agency or has not maintained the proper quality of atta or whose performance has not been found satisfactory or any criminal proceedings are pending or have been initiated against the flour mill or its

owner/proprietor/partner/director or designated partner under EC Act or any criminal proceedings are pending or have been initiated by the department against the flour mill or its owner/proprietor/partner/director or designated partner, shall not be eligible to apply for empanelment.

(5) The State Government reserves its right to, without assigning any reason to:-

(i) not to empanel all the flour mills who have applied; or

(ii) select only that number of flour mills as it may consider as required for conversion of wheat into atta for the district and/or a group of districts; or

(iii) empanel only those flour mills which it may consider are good performing or would perform satisfactorily as per the provisions of these Guidelines and Control Order.

(6) Mere submission of application and/or fulfilling the eligibility criteria and/or deposition of empanelment fee or renewal fee does not make a flour mill eligible for empanelment or renewal.”

23. It appears that if the guideline of 2024 specially Clause 3 and Clause 8 read conjointly, that means that if any mill which was empanelled earlier or which has applied for empanelment is entangled with a Criminal proceeding in respect of E.C. Act or any other criminal proceeding, if pending or have been initiated by the department against the flour mill or its owner proprietor, owner or Direction or designated partner shall not be eligible to apply for empanelment
24. The specific provision of Clause-8of the said guideline though have imposed a bar for a flour mill against whom a criminal proceeding is pending under E.C. Act but it has also made clear in Sub-rule 4 of Clause 3 that pendency of any other criminal proceeding is also a bar to empanel a flour mill.
25. In this case though the submission of the learned counsel for the petitioner have substance regarding the merit of the impugned order but at this juncture, without giving the State authority to submit affidavit, if an order as prayed for be passed that would be the tantamount to be the final order in this motion stage.

26. Moreover, I make it clear that the State has to provide opportunity to submit through affidavit in respect of paragraph 32 of the writ petition so that the matter can be dealt with properly. I make it clear that the State must submit an affidavit-in-opposition on the point that the other flour mills who were entangled in cases of similar nature to that of the present petitioner why they are allowed to execute the agreement with State. However, such affidavit of State may also contain oppositions on other merits of writ petition.
27. Under the above observation, the State authority is directed to submit an affidavit-in-opposition within four weeks from date, reply, if any, by the petitioner within one week thereafter.
28. Let the matter appear in the list under the same heading on 20th August, 2025.

(Subhendu Samanta, J.)