

## **West Bengal Essential Commodities ... vs Pradip Kumar Saha And Anr. on 26 August, 1983**

**Equivalent citations: AIR 1983 SC 1205, 1983(2) SCALE 404, 1985 SUPP(1) SCC 698, 1984(16) UJ 62(SC), AIR 1983 SUPREME COURT 1205, 1985 SCC (SUPP) 698**

**Bench: D.A. Desai, Ranganath Misra**

### **ORDER**

1. Special leave granted.

2. The first respondent Pradip Kumar Saha filed C.R. 13232 (W)/82 in the High Court of Judicature at Calcutta against the present appellant West Bengal Essential Commodities Supply Corporation Ltd. (Corporation for short) and the State of West Bengal for a writ of mandamus directing the present appellant to make allotment of edible oils and pulses at the normal rate and/or at the monthly average rate calculated on the basis of the allotments made from the inception of the respective agencies; or in the alternative for compensation for non-allotment or reduced allotment. The cause of action was founded on an alleged contract between the parties and the breach thereof by the present appellant. In this writ petition, a notice of motion was taken out for an interim order and a learned Single Judge of the Calcutta High Court granted interim relief in terms of Prayer (a) of the petition by which the present appellant was directed; 'to allot every month to the petitioner atleast 30,000 tins of oil at his Siliguri godown and depot under the agreement and 20,000 tins of oil under the agreement at his Calcutta godown and depot until further orders.' The present appellant preferred first appeal E.M.A.T. No. 3670 of 1982 on December 20, 1982. A Division Bench of the Calcutta High Court by its order dated December 21, 1982 granted stay of the operation of the interim order dated December 13, 1982 and the matter was posted for hearing on January 18, 1983. The application for stay filed in the appeal came up for hearing before the Division Bench of the Calcutta High Court of January 21, 1983 when the Court made the following Order:

Having heard the learned Advocates for both sides and considering the materials on record, we do not think that there is sufficient ground to interfere with the interim order passed by the trial court. This application is accordingly rejected. But we make it clear so that this order will not prevent the appellant-petitioner from making a fresh application on fresh materials for the same purpose.

An application was moved for reconsidering the question of granting stay of the operation of the order of the learned Single Judge pursuant to the liberty reserved by the order dated January 21, 1983. This application was rejected by the Division Bench on February 2, 1983. Thereafter, the present petition for special leave to appeal is filed by the present appellant. This Court while directing a notice to show cause to be issued to the original petitioner-first respondent in this case, made an order

staying the operation of the order of the High Court by which the present appellant was directed to perform the contract in the terms laid down by the learned Single Judge of the High Court. this Court made it clear that the matter will be finally heard on special leave paper books. That is how the matter has come up today before us for final hearing. We granted special leave to appeal and proceeded to hear the appeal on merits.

3. Mr. A.K. Sen and Mr. S.S. Ray, learned Counsel appearing for the first respondent drew out attention to some developments subsequent to the rejection of the application for stay by the Division Bench of the Calcutta High Court moved on behalf of the present appellant. It appears that the appellant invited tenders from intending contractors for giving fresh contract for storing of edible oils tins both at Siliguri and at Calcutta. Some tenders were received. After considering them, some of the tenders were accepted and appointment letters were issued on April 30, 1983 thereby appointing storing-cum-handling agent of the appellant at Siliguri and Calcutta. Some from amongst the tenderers, who did not obtain the appointment letter approached the Calcutta High Court. Amongst them is the first respondent. In the second set of petitions, an interim order has been made we were told with the consent of the present appellant by which the first respondent was to be allotted a certain number of edible oil tins to be stored at Siliguri. That order is not questioned before us and we cannot look into the merits of this order. Once there is another interim order subsequent to the date of the impugned order by which the appellant is under an obligation to allot edible oils tins for storing at Siliguri, we refrain from considering that part of the impugned order by which the appellant was under an obligation to allot and store 30,000 tins of oil to be kept at Siliguri godown and depot on the understanding that that part of the order is superseded by the later interim order dated July 28, 1983. We make it abundantly clear that it would not be open to the first respondent to claim storing of 30,000 tins of oil at Siliguri godown and depot as per the order dated December 13, 1982.

4. We are, therefore, left with the consideration of that part of the impugned interim order by which the appellant is under an obligation to give 20,000 tins of oil for storage at Calcutta godown. We are, however, spared the time and energy of examining this question because of a very constructive and positive attitude adopted by the learned Counsel for the first respondent. Mr. A.K. Sen stated that the first respondent original petitioner shall not claim allotment of 20,000 tins of edible oil at Calcutta godown as directed by the interim order made by the learned Single Judge on December 13, 1982 till the decision of C.R. 13232 (W)/82. Therefore, without prejudice to any of the contentions of the rival parties, we say that that part of the interim order by which the appellant was under an obligation to allot 20,000 tins of oil to the first respondent at Calcutta godown ceases to be operative and enforceable. This order would not come in the way of the parties taking any appropriate proceedings to vindicate and/or enforce their rights that they may have, nor this order would have any impact on the adjudication of the contentions on merits in the writ petition pending in the High Court. It would be open to the parties to move the High Court for early hearing of the writ petition. This appeal is accordingly disposed of with no order as to costs.