

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM & ARUNACHAL PRADESH)**

ITANAGAR PERMANENT BENCH : NAHARLAGUN

WP(C) No. 29 (AP) of 2019

M/s Rongoge Mega Food Park Private
Ltd, represented by its Director Mr. Likha
Chada Aged about 30 years, having its
Registered Office Paschim Colony,
Naharlagun ESD, Naharlagun,
Papum Pare, Arunachal Pradesh,
PIN-791110.

..... Petitioner

-Vs-

1. Union of India, represented by the
Secretary to the Ministry of Food
Processing Industries, Panchasheel
Bhawan, August KrantiMarg,
New Delhi-110049.

2. The Ministry of Food Processing
Industries, represented by the
Secretary to the Ministry of Food
Processing Industries, Panchasheel
Bhawan, August KrantiMarg,
New Delhi-110049.

3. The Inter-Ministerial Approval
Committee, represented by the
Chairperson, Ministry of Food
Processing Industries, Mega Food Park
Division, Panchasheel Bhawan, August
KrantiMarg, New Delhi-110049.

4. The Director, Ministry Food
Processing Industries, Panchasheel
Bhawan, August KrantiMarg,
New Delhi-110049.

5. The Deputy Industrial Adviser,
Ministry Food Processing Industries,
Panchasheel Bhawan, August Kranti

Marg, New Delhi-110049.

6. Marketing Officer, Ministry Food
Processing Industries, Panchasheel
Bhawan, August KrantiMarg,
New Delhi-110049.

7. The State of Arunachal Pradesh,
Represented by the Commissioner
(Industries), Department of Industries,
Govt. of Arunachal Pradesh,
Civil Secretariat, Itanagar-PIN-791111.

8. Department of Industries,
Represented by the Director, Govt. of
Arunachal Pradesh, UdyogBhawan,
Itanagar,791111.

..... Respondents

By Advocates:

Mr. D. Das, Sr. Advocate
Mr. T. Gohainbura, Advocate
Mr. R. Sarmah, Advocate

..... For the petitioner

Mr. M. Kato, CGC
Mr. S. Tapin, Senior Govt. Adv.

..... For the respondents

:::BEFORE:::

THE HON'BLE MR JUSTICE NELSON SAILO

Date of hearing	-	19.06.2019
Date of judgment	-	26.06.2019

JUDGMENT & ORDER (CAV)

Heard Mr. D. Das, learned senior counsel assisted by Mr. T. Gohainbura, learned counsel for the petitioner. Also heard Mr. M. Kato, learned CGC appearing for the

respondent Nos. 1 to 6 and Mr. S. Tapin, learned senior Govt. Advocate appearing for the respondent Nos. 7 and 8.

2. The facts of the case in brief may be noticed at the outset. The petitioner is a private limited company registered under the Company's Act having its registered office at Paschim Colony, Naharlagun, Papum Pare District, Arunachal Pradesh. The respondent authorities issued a notice inviting 'Expression of Interest' from potential promoters for setting up Mega Food Parks to provide modern infrastructure facilities for the food processing in the uncovered States such as, Arunachal Pradesh, Goa, Manipur, Meghalaya, Sikkim and Uttar Pradesh. The same was issued by the Ministry of Food Processing Industries, Government of India on 02.08.2017. It also stipulates that the willing investors/promoters may submit their proposals as per the Mega Food Park Scheme Guidelines dated 21.07.2016 and the proposal should be submitted on or before 4:00 PM on 18.09.2017 and that the proposal should be accompanied by an Earnest Money Deposit (EMD) of Rs. 10 lakhs.

3. The revised guidelines for Mega Food Parks Scheme (MFPS) which came into effect from 21.07.2016 and issued by the Ministry of Food Processing Industries, Government of India aims to facilitate the establishment of a strong food processing industry backed by an efficient supply chain which would include collection centres, processing centres and cold chain infrastructures. The eligibility criteria of the Special Purpose Vehicle (SPV) are provided under Clause 5.2 of the said guidelines which inter-alia, provides that the SPV will be a body corporate under the Companies Act apart from meeting the other criteria provided therein. It also provides that in response to the notice inviting Expression of Interest by the respondent authorities for selection of projects, a proposal for the proposed Mega Food Park will be submitted by the SPV and the points to be covered in the proposal along with the Expression of Interest is provided at Annexure-B of the said guidelines.

4. The guidelines further stipulates that there will be a Program Management Agency (PMA) to assist the implementation of the Scheme and the proposal submitted in response to the Expression of Interest will be evaluated by the PMA. The PMA will undertake

evaluation on a scale of 100 points and the criteria for evaluation is provided at Annexure-C of the said guidelines. The PMA will place reports before the Technical Committee (TC) and the applicants will have to make presentation of their proposal before the TC. The TC will undertake independent evaluation on a scale of 50 points on the basis of presentation made by the applicants and such criteria for evaluation are provided in Annexure-D of the said guidelines.

5. The final evaluation report along with the recommendation of the TC will be placed before the Inter Ministerial Approval Committee (IMAC) for consideration of the 'In Principal Approval' to the projects. The applicant who has been accorded 'In Principal Approval' will have to submit a Detail Project Report (DPR) and comply other necessary requirements within 4 (four) months of the date of the issue of 'In Principal Approval' unless extension of time is granted by the Ministry.

6. The guidelines dated 21.07.2016 also stipulates the role of the State Government, which amongst others are to monitor the implementation of the proposal, nominate a suitable Officer to be appointed as Ministry's nominee Director in the SPV, provide external infrastructure like road, power etc.

7. The petitioner Company being eligible submitted its proposal on 18.09.2017, proposing to set up the Mega Food Park at Dolikoto village, Arunachal Pradesh along with all the necessary documents and information as required. Against the notice dated 02.08.2017, a total 10 proposals were received which includes 3 proposals from the North East. The proposals were considered by the PMA and placed before the TC. The TC in its meeting dated 21.11.2017 considered the proposal submitted by the PMA but wrongly assessed the net worth of the petitioner. Accordingly, the Commissioner of Industries, Government of Arunachal Pradesh vide letter dated 30.11.2017, wrote to the Ministry of Food Processing Industries that the TC meeting dated 21.11.2017 was attended by the State representative and the proposal of the petitioner is in complete compliance of the requirements and meets

the criteria. Further, the combined net worth of the petitioner's Company was annexed to the letter dated 30.11.2017 of the Commissioner of Industries, Government of Arunachal Pradesh.

8. Thereafter, a meeting of the IMAC was held under the Chairmanship of the Hon'ble Ministry, Food Processing Industry to consider the recommendation of the TC in respect of the 10 proposals against the Expression of Interest dated 02.08.2017. After a detail deliberation and scrutiny of all the documents and representation, the petitioner Company was found to be eligible with a final score of 100 points. Out of the 10 proposal received, IMAC approved only 5 proposals for setting up a MFP under the MFPS. From the North East sector, only the petitioner's Company and M/S Lamka Mega Food Park from Manipur were found to be eligible. In terms of the decision taken in the meeting dated 04.12.2017 by the IMAC, the Ministry of Food Processing Industries accorded 'In Principle Approval'to the petitioner Company for establishment of MFP at Dolikata village in Arunachal Pradesh vide Letter dated 21.12.2017. The 'Final Approval' was however, subject to fulfilment of the conditions laid down in paragraph No. 5.7 of the revised MFPS guidelines within a period of 4 (four) months unless extension of time is granted by the Ministry.

9. A meeting of the IMAC was held on 08.05.2018 to discuss the progress of implementation of MFP. It noted that the petitioner Company has complied with all the conditions except securing sanction letter of term loan and appraisal note from the Bank. After detailed deliberation, IMAC directed the petitioner Company to submit the requisite documents/information by 07.07.2018 for according final approval to the project. Thereafter, another meeting was held on 19.07.2018 to consider the progress of implementation of MFP approved under the MFPS. During the meeting, the IMAC noted that all the required compliance for according final approval has been satisfactorily and fully complied with by the petitioner Company. However, during the meeting it also noted that a copy of news clipping from Arunachal Times with the caption "Former DC Lollen, Likha Maj

arrested in TAH Compensation Scam” was received by the Ministry. After detailed deliberation, IMAC decided to defer the decision on “Final Approval” till a report was received from the Chief Secretary of the State of Arunachal Pradesh on the arrest of the lead promoter of the firm. The meeting minutes dated 19.07.2018 was circulated vide Office Memorandum dated 02.08.2018 (Annexure-8).

10. Thereafter, the Ministry of Food Processing Industry vide letter dated 20.07.2018 sought clarification from the State of Arunachal Pradesh on the issue of news clipping with the caption “Former DC Lollen, Likha Maj arrested in TAH Compensation Scam”. The Commissioner of Industries, Government of Arunachal Pradesh, who is also the Commissioner of Vigilance in the State vide letter dated 27.09.2018 informed the Ministry of Food Processing Industry regarding the factual status of the matter of Joram-Koloriang, Trans-Arunachal Highway Project (TAH) annexing therewith the status report of the Special Investigation Cell (Vigilance) dated 29.08.2018. The letter further mentioned that Agriculture and Horticulture are the main source of economy of the State and has the potential to become a “fruit bowl” of India. Hence, the State is in dire need of MFP for the advancement of its economy and to reduce wastage of perishable crops/produce and for which, the Government of Arunachal Pradesh is ready to provide all necessary support.

11. A meeting of the IMAC was again held on 03.10.2018 and during the said meeting, it was noted that all the required compliance for according final approval was satisfactorily fulfilled by the petitioner Company. However, the decision for giving final approval was deferred till the lead promoter submits a letter from the Hon’ble Chief Minister of the State in respect of the payment of compensation for the Joram-Koloriang, Trans-Arunachal Highway Project. Thereafter, vide letter dated 20.10.2018 (Annexure-12), the Hon’ble Chief Minister of the State wrote to the Ministry of Food Processing Industry that the petitioner’s proposal for setting up of MFP at Dolikoto village was a much awaited pending final approval of the Ministry. The Ministry was also apprised that the project will be the largest Food

Processing Investment in the State, which will support small and marginal farmers of the State and also generate employment opportunities to the youths of the State. Accordingly, the Ministry was requested to grant final approval to the project since the petitioner Company had complied with all the requisite criteria as per the guidelines. It was also assured that the State Government will persistently monitor the implementation of the project for its early completion.

12. The Commissioner of Industries, Government of Arunachal Pradesh vide letter dated 02.11.2018 (Annexure-13) informed the Ministry of Food Processing and Industries that an FIR was lodged in the Police Station, Special Investigation Cell (SIC) on 01.07.2018 being numbered as FIR No. 13/2018 against one of the promoter of the petitioner Company in connection with Joram-Koloriang, Trans-Arunachal Highway Project. However, no chargesheet/final report was filed till date. It was further mentioned that the FIR was not in connection with proposed MFP.

13. The IMAC thereafter, held its meeting again on 30.10.2018 and deferred the decision to accord final approval to the petitioner Company. Subsequently, the respondent authorities issued the impugned show cause notice dated 18.01.2019 (Annexure-14) asking the petitioner Company to show cause as to why the 'In Principle Approval' accorded should not be cancelled on account of the involvement of its lead promoter in gross irregularities in connection with payment of compensation against the Joram-Koloriang, Trans-Arunachal Highway Project. It was further intimated that a reply to the show cause notice should reach the Ministry within 3 (three) weeks from the date of issuance of the letter failing which, the Ministry will proceed ahead for cancellation of the 'In Principle Approval' accorded to the petitioner Company for the project without any further notice.

14. Mr. D. Das, the learned senior counsel appearing for the writ petitioner submits that the Government of India in the Ministry of Food Processing Industries has come up with a policy decision to grant financial assistance to set up MFP under the Kisan Sampada Yojana

(KSY). The operational guidelines for MFPS were first notified on 12.12.2009 and since then, the same has been further modified to streamline the process of implementation of the MFPS projects. Consequently, a revised guidelines for MFPS was issued by the Ministry concerned, which become effective w.e.f., 21.07.2016. He submits that the same aims to facilitate the establishment of a strong food processing industry backed by an efficient supply chain which would include collection centres, processing centres and cold chain infrastructures. That in response to the notice inviting expression of interest by the Ministry, the petitioner Company submitted its proposal. The proposal was then evaluated by the PMA and the petitioner Company was invited to make its presentation before the TC. The PMA undertook the evaluation on a scale of 100 points on the basis of the expression of interest proposal, while the TC undertook independent evaluation on a scale of 50 points, which was on the basis of the presentation made by the petitioner Company. The final evaluation report along with the recommendations of the TC was placed before the IMAC for its consideration. It was only thereafter that the IMAC granted the 'In Principle Approval' for establishment of MFP by the petitioner Company at Dolikoto Village in the State of Arunachal Pradesh. The 'In Principle Approval' was granted and communicated to the petitioner Company on 21.12.2017 with a mention that final approval will be accorded by the Competent Authority on compliance of the condition laid down in paragraph No. 5.7 of the guidelines of the scheme.

15. The learned senior counsel submits that the 'In Principle Approval' having been given to the petitioner Company after a detailed study and scrutiny of the capacity and resources available to the petitioner Company, the same cannot be cancelled by issuance of the impugned show cause notice dated 18.01.2019 by the Ministry of Food Processing Industry. He submits that the petitioner Company has fulfilled all the conditions and criteria for being granted the final approval in terms of clause 5.7 of the guidelines and as such, the show cause notice is only unsustainable.

16. Mr. D. Das, the learned senior counsel submits that nowhere in the guidelines or in the notice inviting expression of interest is there a requirement for a prospective proposal to indicate as to whether any criminal case or a criminal investigation was pending against the Company. Therefore, there was no occasion for the petitioner Company to indicate the same while submitting its proposal. He submits that from the various communications made by the Commissioner of Industries, who is also the Commissioner of Vigilance Department of the State, a clarification was already made indicating that the registration of the FIR against the lead promoter of the petitioner Company was in respect of payment of compensation against the Joram-Koloriang, Trans-Arunachal Highway Project, which was not connected with the MFP project. As indicated in the meeting minutes of the IMAC held on 03.10.2018, the lead promoter even secured the letter of the Hon'ble Chief Minister of the State, who is also the head of the Vigilance Department, requesting the Ministry to grant final approval to the project. The impugned show cause notice dated 18.01.2019 is therefore only unwarranted and could not have been issued to the petitioner Company.

17. Referring to the guidelines issued by the Ministry of Food Processing Industries, more particularly paragraph No. 9, the learned senior counsel submits that funds towards the project are to be released in several instalments and they are subject to fulfilment of certain conditions including the establishment of trust and retention account. Under the circumstances, even for a moment, there cannot be any apprehension of mis-use of the funds at any stage. The learned senior counsel submits that under the given facts and circumstances, the 'In Principle Approval' already awarded to the petitioner Company cannot be withdrawn or cancelled and the respondent authorities, in view of the fulfilment of all the conditions prescribed in paragraph No. 5.7 of the guidelines should be directed to accord final approval to the petitioner Company without delay and within a time frame.

18. The learned senior counsel in support of his submissions with regard to the filing of the FIR against the lead promoter and for which, the show cause notice has been issued, places his reliance upon the following authorities:-

(i) Roop Singh Negi Vs. Punjab National Bank & Ors., reported in (2009) 2 SCC 570.

(ii) Basayya Prabhayya Hallur Vs. State of Karnataka, reported in (2009) 17 SCC 55.

(iii) Siddhivinayak Enterprises Vs. Union of India & Ors., reported in 2019 SCC Online Bombay 665.

19. The learned senior counsel in connection with the Court's jurisdiction as mentioned in the revised guidelines at paragraph No. 13 submits that the same cannot bar the petitioner Company from approaching this Court, inasmuch as, there is no concluded contract between the petitioner Company and the Ministry of Food Processing Industries. Secondly, the cause of action also arises partly within this Court's jurisdiction, inasmuch, as the MPF is sought to be established in the State of Arunachal Pradesh. Thirdly, paragraph No. 13 of the guidelines also does not mention that the Court's jurisdiction will be exclusively and only the Courts and Tribunals having jurisdiction over Delhi. He therefore submits that there cannot be any manner of doubt that this Court has the jurisdiction to entertain the writ petition of the petitioner Company. In support of his submissions, the learned senior counsel relies upon the following authorities:-

(i) A.B.C. Laminart Private Ltd. & Anr. Vs. A.P. Agencies, Salem, reported in (1989) 2 SCC 163.

(ii) P.R. Transport Agency Vs. Union of India, reported in AIR 2006 Allahabad 23.

(iii) Nawal Kishore Sharma Vs. Union of India & Ors., reported in (2014) 9 SCC 329.

(iv) Gammon India Ltd. Vs. Union of India &Ors., reported in 2002 SCC Online Delhi 1241.

(v) Tulip I.T. Services Ltd. Vs. Punjab National Bank, reported in 2004 (75) DRJ 624.

20. The learned senior counsel further submits that the respondent authorities by importing the issue that the lead promoter of the petitioner Company being involved in a criminal investigation, the 'In Principle Approval' granted is liable to be cancelled, although the same having not being provided in the revised guidelines, only amounts to changing the rule of the game. He submits that besides the undertaking required to be submitted by the prospective proposal to the expression of interest floated/invited by the Ministry at paragraph No. 5 of Annexure-B of the guidelines, there is no such requirement for furnishing any other information or material. Sub-paragraph No. 1.6 of paragraph No. 1 of Annexure-B to the revised guidelines only pertains to such information, which is in the context of the scheme. Therefore, the attempt of the respondent authorities to cancel the 'In Principle Approval', as mentioned in the impugned show cause notice dated 18.01.2019 is misconceived and importantly, will only amount to changing the rule of the game. In this connection, the learned senior counsel relies upon the Apex Court decision in *K. Manjusree Vs. State of Arunachal Pradesh & Anr.*, reported in *(2008) 3 SCC 512*.

21. Mr. M. Kato, the learned GCC appearing for the respondent Nos. 1 to 6 submits that the writ petition is not maintainable, inasmuch as, Clause 13 of the revised guidelines provides that any dispute on selection/rejection and/or implementation/cancellation/withdrawal of the proposal/projects under the scheme is subject to Courts/Tribunals having jurisdiction over Delhi. To substantiate his submission, the learned CGC refers to paragraph No. 4 of the affidavit-in-opposition filed by the respondent Nos. 1 to 6 on 28.03.2019.

22. The learned CGC further submits that as per Clause 1.6 of Annexure- B of the revised guidelines, it is the responsibility of the writ petitioner/promoter to submit information that would establish its credential and suitability for the project. Therefore, the petitioner ought to have disclosed the pendency of the FIR. Furthermore, lack of specific mention in the revised guidelines to disclose information about the pendency of the FIR, cannot be construed as a bar upon the Ministry to take preventive steps if misuse of public money is anticipated. The learned CGC in this regard refers to paragraph Nos. 7 and 11 of the affidavit-in-opposition, where such a stand has been made.

23. Mr. S. Tapin, the learned Senior Govt. Advocate by referring to the affidavit-in-opposition filed by the respondent Nos. 7 & 8 on 21.05.2019 submits that Clause 7.1 of the revised guidelines stipulates the role of the State Government, which amongst others is to provide all statutory clearances for implementation of the project, necessary assistance in power, water, approach roads etc. including external infrastructure to the projects. The State Government accordingly earmarked Rs. 30 Crores for external infrastructure for the proposed food park in its budget. Therefore, the State Government has already initiated its role by extending full cooperation for establishment of the MFP, which also is a much awaited project keeping in mind the impact it can make to the economy of the State of Arunachal Pradesh in employment generation, self sufficiency etc.

24. The learned State counsel further submits that as per Clause 6.1 of the revised guidelines, the State Government through its official is also a member of the technical committee and accordingly, the State Government vide letter dated 30.11.2017 wrote to the Ministry of Food Processing Industries that TC was attended by the State's representative and the proposal is in complete compliance of the requirements to meet the criteria. The Commissioner of Industries in his letter dated 21.11.2017 informed the Ministry about the importance of MFP in the State. He mentioned that the State has surplus raw materials, which gets wasted due to lack of processing infrastructure. The proposed components of

MFP including pulping line, cold storage, juice packing line etc. will assist in the Government's endeavour to reduce food wastages. He also added that the promoter has strong background linkage through their own plantations of oranges, guava, lemon, kiwi, rubber, large cardamom etc. The State Government therefore will provide all necessary support for setting up the MFP.

25. I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record including the authorities relied upon by the parties.

26. The issue to be considered is as to whether the present writ petition can be maintainable in view of Clause 13 of the revised guidelines, which provides that the Courts/Tribunals having jurisdiction over Delhi will be the competent Courts/Tribunals to have the jurisdiction. Secondly, whether the 'In Principal Approval' already granted to the petitioner Company can be cancelled in view of the subsequent discovery that FIR was filed against one of the lead promoter of the petitioner Company and that non-disclosure of the same is in violation of the revised guidelines and that even in absence of such stipulation, the respondent authorities are justified in issuing the show cause notice to the petitioner Company.

27. Now, dealing with the first issue, it may be convenient to abstract Clause 13 of the revised guidelines for ready perusal:-

"13. Court's Jurisdiction: Any dispute on selection/rejection and/or implementation/cancellation/withdrawal of the proposal/project under the scheme will be subject to Courts/Tribunals having jurisdiction over Delhi".

28. From a perusal of the above abstract, it may be noticed that dispute with regard to selection/rejection/implementation/cancellation/withdrawal of the proposal/project under the scheme has been subjected to the Courts or Tribunals having jurisdiction over Delhi. The

admitted fact is that the proposed food park is to be established at Dolikoto Village in the District of Papum Pare in the State of Arunachal Pradesh. Therefore, a part of the cause of action would surely fall in the State of Arunachal Pradesh. Section 28 of the Indian Contract Act, 1872 (Contract Act) provides that any agreement excluding Courts jurisdiction absolutely is void. Parties to a contract may agree as to the jurisdiction to which dispute in respect of the contract shall be subjected to, provided that such Court/Tribunal has the jurisdiction. Therefore, where there are two or more competent Courts, which can entertain a suit, if the parties to the contract agree to vest jurisdiction in one such Court to try the dispute which might arise as between themselves, the agreement will be valid. However, it may be noticed that the Apex Court in the case of *A.B.C. Laminart Private Ltd. & Anr. (Supra)* held that unless the agreement contains exclusionary words like 'exclusive', 'alone', 'only' and the like, the jurisdiction of the Courts which can entertain the suit cannot be confined to a particular Court only. As may be seen in the present case, Clause 13 of the revised guidelines also do not contain exclusionary words to oust the jurisdiction of all other Courts except those having jurisdiction over Delhi. That apart, there is also no concluded contract between the petitioner Company and the respondents concerned. In the case of *Gammon India Ltd. (Supra)*, a Division Bench of the Delhi High Court held that unless the contract is a concluded one, the parties cannot insist on raising the question of the jurisdiction of the Court to try the dispute. Similarly, the Delhi High Court in the Case of *Tulip I.T. Services Ltd. (Supra)* held that before signing of an agreement, an arbitration clause contain in the tendered document cannot be availed by an unsuccessful tenderer.

29. In the case of *P.R. Transport Agency (Supra)*, the Division Bench of the High Court of Allahabad held that there are differences between the jurisdiction of a Civil Court conferred by Section 20 of the Civil Procedure Code and those conferred by Article 226 of the Constitution of India upon the High Court. The jurisdiction to pass a decree accrues to a Civil Court only upon institution of a suit by filing of a plaint and the Civil Court cannot act *Suo Moto*. However, under Article 226 of the Constitution of India, the power to issue writs,

orders and directions is not necessarily dependent upon filing of a writ petition. The High Court has the power to act Suo Moto, if an appropriate matter comes to its knowledge.

30. The above observation and the authorities discussed would leave no room of doubt that this Court under the facts and circumstances of the case would have the jurisdiction to entertain the writ petition against the impugned action of the respondent authorities to cancel the In Principle Approval given to the petitioner Company.

31. Coming to the next question with regard to the show cause notice issued to the petitioner Company contemplating the cancellation of the 'In Principle Approval' already given, in view of the FIR lodged against one of the lead promoter of the petitioner Company, it may be noticed that there are no such stipulation in the revised guidelines which requires the petitioner Company to declare the pendency of any criminal proceeding or an FIR against the Company. In this connection, what can be appreciated as contended by the respondent Nos. 1 to 6 is Clause 1.6 of Annexure-B of the revised guidelines. A perusal of the same would go to show that the promoters are required to provide any other relevant information that would establish the credentials and suitability of the promoters in the context of the scheme. The same would only go to show that the promoters are required to provide such information that would boost their suitability in being selected in the project and the same is in the context of the scheme. The other stipulation as per the revised guidelines is an undertaking affirmed by the promoter that it has not obtained any financial assistance for Food Processing Project in the past from the Ministry of Food Processing Industries. Further, an undertaking that the petitioner Company has also not obtained or applied for or will not obtain any grant/subsidy from the Ministry/Department of the Central Government/Government of India Organization/Agencies for the same activity/components, if such financial assistance have been applied for, the promoter is to furnish complete details of the same.

32. In the case of *Roop Singh Negi (Supra)* the Apex Court held that undisputable a departmental proceeding is a quasi-judicial proceeding wherein the Inquiry Officer performs a quasi-judicial function. The charges levelled against the delinquent Officer must be found to have been proved. The Inquiry Officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself cannot be treated to be evidence in the disciplinary proceeding, as no witness was examined to prove the said documents. Applying the ratio to the present case, it may be seen that apart from the FIR being filed against one of the lead promoter of the petitioner Company, there are no such materials to show that the lead promoter is indeed indulged and responsible in the financial irregularity since the allegation admittedly is only in the investigation stage. Therefore, the FIR alone cannot be the basis for coming to a conclusion that the petitioner Company in view of the alleged financial irregularity cannot be given final approval for the project.

33. In the case of *Basayya Prabhayya Hallur (Supra)* the Apex Court once again reiterated the fundamental principles of criminal jurisprudence that every person shall be presumed to be innocent unless he is proven guilty by a competent court of law.

34. In the case of *Siddhivinayak Enterprises (Supra)* the Division Bench of the High Court of Bombay, while examining the disqualification conditions provided in the tender held that a pending investigation cannot be equated with a conviction by the Court. The disqualification conditions provided that a tenderer convicted by a Court and sentenced to imprisonment for a period of 3 years or more would render such tenderer/ineligible unless acquitted by the Appellate Court. Therefore, no wrong was found on the award of the contract to the respondent No. 4 therein, against whom it was alleged that there was an FIR registered and investigation pending.

35. The Apex Court in the case of *K. Manjusree (Supra)* held that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced since the same would amount to changing the rules of the game. Applying the ratio to the present case, since there is no stipulation in the revised guidelines, requiring the promoter or applicant to declare involvement in any criminal case, Court is of the considered view that the show cause notice under the circumstances is only unwarranted. The apprehension of misuse of public money as submitted by the learned CGC also cannot be a ground to deter the respondent authorities from granting final approval considering the criteria provided for release of funds against paragraph No. 9 of the revised guidelines or even otherwise. In fact, the hands of the respondent authorities are not tied, should an eventuality as apprehended arise.

36. In the result, upon due consideration of the case in its entirety, I find merit in the writ petition and accordingly, the show cause notice dated 08.01.2019 is hereby set aside. The respondent authorities concerned shall now consider and proceed to grant final approval to the petitioner Company in terms of paragraph No. 5.7 of the revised guidelines, which of course shall be subject to fulfilment of all the stipulations provided therein. Such process be undertaken and completed as expeditiously as possible preferably within a period of 3 (three) months from the date of receipt of a certified copy of this order.

37. The Writ Petition is accordingly disposed of as allowed. No cost.

JUDGE

Annette