

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.10173 of 2013

Date of Decision.05.02.2015

M/s Kailash Agro Foods

.....Petitioner

Versus

The State of Haryana and others

.....Respondents

Present: Mr. Piyush Kant Jain, Advocate and
Mr. Suresh Kumar Yadav, Advocate
for the petitioner.

Mr. Keshav Gupta, AAG, Haryana.

Mr. Raman B. Garg, Advocate
for respondent No.2.

Mr. K.K. Gupta, Advocate
for respondent Nos.3 and 4.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J.

1. The petitioner who had a contract with Hafed, the 2nd respondent for custom milling of paddy and for delivery to FCI was served with a notice of rejection of partial quantity of paddy delivered on the ground that they fell beneath the standard specification (BRL limits) and for substitution of rice to conform to the standard specifications. The impugned notice also declined to accept any further supplies till the rejected quantity of rice was made good. The contract related to the Khariff Marketing Season 2012 and admittedly, the parties were governed by the policy considerations spelt out by the circular issued by the Government of Haryana dated 28.09.2012 referred to as Annexure P-2.

2. The petitioner's case is that he had been allowed 65,245.95 quintals of paddy and the outflow by way of rice was to be 67% namely 43,714.79 quintals of rice. Admittedly, the petitioner had supplied between 5.11.2012 to 05.04.2013, 32,118.41 quintals to FCI. They had passed through the inspection by the local officers and when the balance of 11,596.38 was also to be delivered, the petitioner had been served with the impugned notice.

3. Learned counsel for the petitioner would bring to the attention of Court's certain orders passed during the pendency of the petition as being relevant for consideration of the case on a plea by the petitioner that the rejection was unjustified and that the petitioner had not been served with any notice of sampling or analysis and that further that the particular Stack No.2/26 rejected by the Food Corporation of India was also of standard quality. The Court passed an order issuing notice on 27.05.2013 directing a fresh analysis to be done at the Food Laboratory Gurgaon within 7 days on receipt of copy of the order. When the report had been made ready on 04.06.2013 rejecting the earlier finding that the sampling drawn for Stack No.2/26 was of BRL quality, the petitioner was aggrieved and contended that at the time when the Court had passed an order in C.M. No.9086 of 2013, they were not aware of the fact that there was a Central Government Laboratory called Central Grain Analysis Laboratory (CGAL). The Court passed a further order on 15.07.2014 and again made reference to the observations made by the Court that if the Government of India was to send a sample for analysis to CGAL located at New Delhi why the same could not be adopted by drawing a second sample and directed a detailed affidavit to be given

explaining the procedure which was followed in the State of Haryana to be filed by FCI and to clarify how many laboratories of FCI were functioning in the State of Haryana to explain also whether after accepting the rice deposited by the millers, the samples were sent only to the laboratories at Panchkula and Gurgaon or it was also sent to CGAL. The respondent has filed detailed affidavit in response to the same.

4. Before the arguments got underway at a previous hearing on 09.12.2014, I had directed one more sample to be drawn and sent to CGAL. At a time when there was no representation for FCI. After the order was dictated in Court, the counsel appearing for respondent Nos.3 and 4 sought for rehearing of the matter. I had, therefore, given a liberty for FCI to file an independent application to recall the order if there were justifying circumstances why a second sample cannot be given and a reanalysis done at CGAL.

5. The application has been filed again in C.M. No.15917 of 2014 pointing out two aspects: (i) There are no further samples available from Stack No.2/26 since the rules required only six months time for its retention and since more than six months has expired, they had been destroyed. (ii) The other contention was that there was no justification at all for sending a sample to CGAL since all the necessary formalities have been observed for standard testing and there was no scope for a fresh analysis. The petitioner has himself joined issues on the contentions raised by respondent Nos.3 and 4 in the application through application filed in C.M. No.1061 of 2015 and has placed for consideration the orders passed by this Court on various dates on 25.06.2013, 28.06.2013 and 19.12.2014.

6. The three principal contentions raised by the petitioner are:

(i) The samples and analysis had not been done in the presence of the petitioner after due notice and therefore, it cannot be acted upon; (ii) the respondent, having accepted the stack after the inspecting staff had approved the same cannot return any good as falling below standards and characterising them as BRL; (iii) the testing done had been at the in-house facilities of FCI which is grossly partial and CGAL will be the most appropriate lab to which it should be sent. As if to buttress his claim that the analysis already done and a report submitted on 04.06.2013 (Annexure R4/1) cannot be acted upon, the petitioner would state that the method of carrying out the analysis for foodgrains issued as prescribed by the Bureau of Indian Standards had not been followed.

7. The learned counsel appearing on behalf of the FCI would contest all the contentions raised by the petitioner by specific references to the various contractual terms of circulars that allow for the manner of consideration of appeal by a miller if the issue of quality was the point of dispute. The predominant consideration will have, therefore, to be to contest the petitioner's plea with reference to the contractual term and the regulation that governs the right of parties.

8. On the first contention that the petitioner had not been joined in the sampling and analysis in his presence, the learned Senior Counsel appearing on behalf of the FCI would argue that even the prayer in the writ petition was only for a mandamus directing the respondent Nos.3 and 4 to draw the sample of rice in Stack No.2/26 in the presence of the office of Hafed and representative of the petitioner and get it analyzed in their presence or from the nearest laboratory of FCI. This

according to the learned Senior Counsel would also answer the second objection which the petitioner had taken that the testing must have been done only in CGAL and not in a laboratory of FCI. The counsel would point out that the Court was actually passing an ex parte order of testing to be done by drawing a sample in the presence in a FCI lab in the way that the petitioner had himself sought and he cannot, therefore, have any objection as regards the same. The counsel would refer me to the procedure prescribed and the circumstances that justified the analysis to be done by the FCI lab by reference to the affidavit given by one Devesh Mehta, Deputy General Manager in response to the Court's directions where he has stated that initial analysis at the time of acceptance was made by the concerned Technical Assistant and Manager (QC) at the field unit lab but subsequently when stacks were found BRL during super check that was possible by the Deputy General Manager, the Court by its order dated 27.05.2013 intervened to have the sample analyzed by the Headquarter Laboratory at the institute of Food Security, Gurgaon. When the rice supplied was found to be BRL, the stack was not accepted and there was no further provision for any analysis including the analysis in the CGAL.

9. I find that there is no merit in the contention that the analysis had been done in the absence of the petitioner and that therefore, it cannot be acted upon. The analysis came to be done in the manner sought for in the writ petition and in the manner directed by this Court through first order dated 27.05.2013. There was no provision for presence of the petitioner at the time of analysis which is essentially a scientific procedure. Only the sampling could have been drawn in his

presence and if the report was ultimately prepared, the question could not be whether the report itself is tainted with any irregular practice that would require to be set aside but it cannot be rejected only on the ground that the petitioner was not present.

10. Equally an argument that after the inspecting team had inspected the stacks, there was no question of analysis to be done is also without merit. I have seen through the circular issued by FCI for all the General Managers throughout India setting out a procedure for inspection, sampling and analysis in procurement of paddy and acceptance/purchase of rice stacks during Khariff Marketing Year 2012-2013. The Circular dated 17/19.09.2012 details the following procedure to ensure the acceptance of rice conforming to standard specifications following a super inspection that reads as under:-

6.	Genl. Manager (QC), Dy. Genl. Manager (QC), Zonal Office	A minimum of two Depots in different procuring Regions each month by drawing/analyzing samples of at least two different stacks of rice already accepted. Next month, different Regions should verify the stocks inspected by Dy. General Manager (QC) of the Region and Asstt. General Manager (QC) to the extent of 50% of the scale prescribed for him for periodical inspection.
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Clause 23 in the same circular is also worthy of reproduction:-

“23. The stocks identified as BRL on subsequents inspection should immediately be got replaced by the concerned Rice Miller. Action may be taken in accordance with the instructions issued vide this office letter No.QC/2(1)/06-07/Kharif Specifications dated 7.8.2007.”

11. While inspecting staff had been within their powers to receive the stacks, it does not bar a super-inspection to be conducted by making a random sampling for checking the standards and that has what

precisely happened in this case when Stack No.2/26 was taken up for random check and it was found of BRL quality. I cannot, therefore, take also the contention raised by the petitioner that having accepted the delivery of stacks, no further checking could have been done.

12. Learned counsel appearing for the petitioner wanted to point out that the Standards Bureau set down the following procedure which was not followed. The procedure for refraction other than foreign matter is reproduced as under:-

“6.3 Refraction other than Foreign Matter and Inspect Damaged Grains

Mix the contents of the four sieves freed from foreign matter together and spread out evenly on a flat smooth surface just as in 4.1. From this spread, take exactly the specified quantity required for analysis for the grains under test as indicated in Table I from different sides and the middle by means of small scoops. Place the weighed quantity on an enamelled plate. Then pick out by hand with the help of a magnifying glass, if necessary, various items of refractions, other than foreign matter, in the order given in Table 2, care being taken that each refraction is accounted for only once. Separate those refractions from the weighed sample and weigh on the physical balance. Calculate the percentage of various individual refractions separately on the quantity taken for actual analysis.”

The same procedure for analysis also sets down the order in which refraction should be separated from the weighed sample:-

Sr. No.	Refractions
i)	Other goodgrains
ii)	Damaged
iii)	Discoloured
iv)	Insect damaged
v)	Fragments
vi)	Broken
vii)	Slightly damaged or touched
viii)	Chalky (in case of rice)
ix)	Red grains
x)	Kernels with husk
xi)	Shrivelled or immature

xii) Varietal admixture

13. The counsel's argument would be that in the order of analysis, the damaged foodgrains must be separated and it is set out as step No.(ii) and slightly damaged or touched will have to be taken as step No.(vii) in the analysis report filed in Court under Annexure R4/1. The damaged and the slightly damaged had been clubbed together and therefore, this analysis was not properly done. The counsel appearing on behalf of the petitioner points out that the uniform specifications of all varieties of paddy would require to be done as per the schedule of specification for 2012-2013 which the petitioner himself has filed that sets a maximum percentage of damage that is possible. Damaged and slightly damaged grains would qualify for the same maximum percentage and they are not required to be segregated. The counsel would refer me to the uniform specifications spelt out as under:-

S. No.	Refractions		Maximum Limit (%)	
			Grade A	Common
3.	Damaged/Slightly Damaged Grains	Raw	3.0	3.0
		Parboiled/single parboiled rice	4.0	4.0

The counsel would argue that there is no error in the manner of the analysis done and when the lab report had carried out the test, it was found that the percentage of damages was 3.35% much more than the accepted norms of 3%. This had been signed by five officers and there was no reason to suspect the correctness of such a report. I thought for a while whether at the time of analysis, the petitioner should have been made present and the report given would be suspect for the fact that the petitioner was actually not present at the place. I find that the answer is available in a further circular issued by the FCI to all the

General Managers on 31.10.2012 (Annexure R-4/4) which was filed along with the affidavit given by Sh. Yadav in response to the Court's directions. It reads as under:-

“In the event of protest/appeal lodged by the supplier on rejection of lots by Manager (QC) sealed joint samples will be drawn by Manager (QC) in duplicate which shall be coded by the Depot Manager for concealing the identity of the Miller and thereafter he shall immediately refer the same to District Lab. One of the samples in duplicate may be used by Asstt. General Manager (QC) for analysis for deciding the appeal and the verdict of the Asstt. General Manager (QC) will be final. During the course of analysis of samples in appeal and also at the time of confirmation of BRL by the Manager (QC), the representative of respective State Govt. be associated in case of CMR. In case of levy rice, the Miller himself be associated. Asstt. General Manager (QC) shall inform the Depot Manager concerned of his decision who after decoding the identity of the supplier/Miller shall inform the concerned Manager (QC) and supplier of the Rice stock of the decision of the Appellate Officer in writing. Second sample forwarded by the Depot Manager may be preserved in District Lab for a period of six months unless otherwise directed by the Executive Director (Zone) by way of exercising supervisory control. The lots covered under protest will not be taken into FCI stock account till the issue is finally settled.”

14. It points out that the only in the case of levy rice, the miller himself has to be associated. Since in this case it is not an issue of assessment of the quality of levy rice, the requirement of miller is not contemplated at all in the circular. The same para also answers the issue of the unavailability of yet another sample to be drawn for a fresh analysis, for, all that is necessary for retention of the sample for a period of six months unless otherwise directed by the Executive Director. In this case, I have already passed an independent order observing that it was not possible to allow for a fresh inspection to be done through CGAL and the order already passed on 19.12.2014 could not be worked out on account of unavailability of any sample to examine the case on merits.

On the other hand, the conduct of FCI could not be found to be wrong in a situation where on a super-inspection made and when the sample did not conform to the quality, the petitioner had the benefit of analysis to be done through a Court order in the manner prayed for in the petition. It could be no argument that there was a FCAL facility under the control of the Central Government. I cannot attribute any mala fides for non-disclosure, for, the direction for analysis by FCAL lab was the way that the petitioner had wanted in the writ petition and in the manner in which the Court had also directed.

15. There is no plea anywhere nor an argument made that the result of the analysis was bad for any particular reason that they were motivated against the petitioner for a mala fide rejection. The analysis is a scientific process and it conforms to the manner of carrying out the analysis spelt out in BIS. I have extracted the relevant portion about the maximum percentage of damage that was acceptable and if it was above the said percentage, it was perfectly possible for the FCI to take an appropriate decision to reject further supplies till the paddy that contained BRL was substituted. That incidentally was the nature of the impugned order. The report secured under Annexure R4/1 was one that was brought through a Court's direction and the petitioner having invited an order to have the analysis done cannot seek for a reanalysis only for the reason that the result of such analysis turned out to be against the petitioner's case. The report under Annexure R4/1 dated 4.6.2013 is a foundation of what the FCI was contending for that the Stack No.2/26 was below the acceptable norms and the FCI was, therefore, justified in causing the rejection.

16. I will find that there is no error in the decision taken and the petitioner cannot have any remedy through the writ petition. The petitioner's grievance that even further stacks which remained had not been lifted and the stacks which were already available had been sold without leaving any trace for a fresh reanalysis cannot be also countenanced for the reason that when the stacks already supplied were found to be BRL, FCI was entitled to seek for substitution with new stacks and if they were not substituted, they were at liberty to dispose them of in the manner possible. The refusal to receive further stacks till the paddy stacks were replaced were also within the terms and conditions which we have already extracted above.

17. There is no merit in the writ petition. It deserves to be dismissed and accordingly dismissed.

(K. KANNAN)
JUDGE

February 05, 2015
Pankaj*