

223+107 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-12326 of 2014 (O&M)
Date of Decision : 20.02.2015

M/s Maa Sharda Rice and General Mills **Petitioner**

Versus

State of Punjab and others

..... Respondents

CORAM HON'BLE MR. JUSTICE K.KANNAN

- 1. Whether reporters of local newspaper may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the digest?**

Present: Mr. V.M. Gupta, Advocate and
Ms. Sonal Datta, Advocate
for the petitioner/appellant.

Mr. R.S. Pathania, DAG, Punjab.

Mr. Rajesh Garg, Sr. Advocate with
Ms. Nimrata Shergill, Advocate
for the respondent-FCI.

K.Kannan, J (Oral)

The petitioner who is a purchaser from M/s Dhariwal Rice Mill had been stated to be disqualified to the allotment for the year 2009-2010. This was a subject of challenge brought before this Court in CWP No.17444 of 2009. The Court held that the cancellation of the allotment made was not correct and that the reference of M/s Dhariwal Mill as a defaulter could not attach to his own disqualification. The decision of this Court annulling the cancellation was taken in appeal and the Division Bench also confirmed the decision in LPA No.691 of 2010 through the judgment dated 28.05.2010. In the said decision the State as well as FCI were parties and the decision had become final between them.

For the year in 2011-12 allotment had been made but it was declined for subsequent years in 2012-13 and 2013-14, when the petitioner has sought for intercession from the High Court through CWP No.20012 of 2013. This Court had directed consideration of his plea and when this was not done even after the legal notice the petition was not favorably considered and hence the writ petition.

Learned counsel would explain his own eligibility and state that the fact that he had taken his partner, one Mohit Kumar cannot be used as a disqualification by citing his father Sushil Kumar, who was himself a partner in one Hare Rice Mill which was a defaulter. The counsel would refer to the policy which makes only the owner/partner/director who was a defaulter and who is also a owner/partner/director in a new Rice Mill from claiming any allotment. The counsel would state that Sushil Kumar is not an owner/partner/director in the petitioner Rice Mill and only his son was a partner and this does not render any disqualification. The only financial transaction between father and son was a sale of ancestral property by the father Sushil Kumar for a consideration of award of Rs.45 lacs and his son had been granted a share of Rs.15 lacs and this financial transaction cannot also amount to a relationship with a partner that can be used as a disqualification for an allotment.

Countering the allegations, the FCI would point out that this Court had in another judgment held a purchaser from a defaulter Rice Mill to be also disqualified and since the petitioner was a purchaser from M/s Dhariwal Mill which was a defaulter, the petitioner would be disqualified. I reject this argument as not tenable since between the same parties in which FCI was a party there has been already a concluded adjudication in CWP No.17444 of 2009 and LPA

No. 691 of 2010 as referred to above and it cannot be reopened. The only point that would be used is whether the petitioner comes under any disqualification under any other clause. I have already extracted the particular disqualification that could arise of a owner/partner/director of a defaulting Rice Mill also being a owner/partner/director of a new Mill which claims an allotment. I have also shown that the existing situation of the partner's father being a owner in a defaulting Rice Mill cannot be used as disqualification. Therefore, there is no justification for denying any allotment to the petitioner.

The writ petition has been filed in the year 2014 with reference to the allotments for 2012-2013 and 2013-14. The seasons have ended and therefore, there is no question of making possible allotment in favour of the petitioner. This adjudication will only govern the rights of parties in future but will again be subordinated to any new condition or policy terms spelt out for the succeeding seasons. The petitioner's claim will be considered in the light of any new policy that may be declared but such consideration shall take into account the concluded judgment between parties in the two cases referred to above and their judgment.

The writ petition is allowed with the above observations.

(K. KANNAN)
JUDGE

February 20, 2015

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