

IN THE PUNJAB & HARYANA HIGH COURT
AT CHANDIGARH

Date of Decision: 23.12.2015

CWP No.23922 of 2015 (O&M)

M/s Mahadev Rice & General Mills

...Petitioner

Versus

State of Punjab & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

Present: Mr. Tribhuwan Singla, Advocate, for the petitioner.
Mr. Manoj Bajaj, Addl. AG, Punjab.
Mr. Nitin Kaushal, Advocate, for respondent Nos.4 & 6.
Mr. Aayush Arora, Advocate, for respondent No.5.
Mr. S.S.Brar, Advocate, for respondent No.7.
Mr. Satinder Khanna, Advocate, for respondent No.8.

HEMANT GUPTA, J.

Challenge in the present writ petition is to the action of the respondents restricting the allotment of the paddy for the year 2015-16 on the ground that arbitration proceedings are pending under Section 34 of the Arbitration & Conciliation Act, 1995 (for short 'the Act') against the petitioner.

The petitioner has installed a rice sheller at Village Mehtabgarh, Quila Raipur, District Ludhiana with a capacity of 8.69 ton. The petitioner is stated be doing the work of custom milling satisfactorily for the last many years without any default except default in the year 2009-10, which is pending adjudication before the learned Additional District Judge, Chandigarh.

It is pointed out that food-grains are procured by State Agencies/Instrumentalities and that Punjab State is major contributing State of

rice in the central pool. The handling of food-grains stock is major responsibility of the Punjab Government. Every year, the State Government frames a policy called Custom Milling Policy. Such Policy for the year 2015 is appended with the writ petition as Annexure P-1. The said Policy defines 'defaulter' in Clause 3(xv), whereas Clause 11 of the said Policy describes the procedure for allotment of paddy to the Rice Mills. The relevant extract from the policy read as under:

“3. DEFINITIONS:-

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- (xv) “Defaulter” means a mill/miller who is yet to clear the entire dues of rice and/or settle the accounts of any procuring agency/agencies of the previous year(s) and as detailed in Clause 11(I).”

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11. ALLOTMENT OF RICE MILLS:-

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- H. No defaulter rice mill shall be considered for allotment/provisional registration. The default may be on the following counts:

- a. If a rice mill has to deliver custom milled rice of any agency pertaining to the previous years including 2014-15.

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- d. The rice miller(s) who stood guarantor(s) for any other miller against whom a police/court case is registered or arbitration proceedings are initiated on account of embezzlement and/or on account of non-delivery of rice relating to custom milling or levy rice pertaining to any crop year, shall not be considered for allotment until such miller for whom guarantee was furnished, clears the default of the concerned agency along with interest at the rates for the relevant year(s) as decided by the Government from time to time.

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- f. If a police/court case/arbitration case is pending against the miller on account of embezzlement and/or on account of non-delivery of rice. However, if the miller clears the default of the concerned agency along with penal interest at the rates for the relevant year(s), as decided by the Government from time to time, he may be considered for

allotment without prejudice to the outcome of the FIR/Court Case/Arbitration Case pending against him.

- g. The miller against whom an arbitration award has been passed and has failed to deposit the amount of award shall be considered as defaulter and shall not be considered for allotment, till he has deposited the awarded amount.

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- n. Any miller declared defaulter on account of non-delivery/non-payment of levy rice/penalty for the previous years shall be treated defaulter unless he deposits the due amount/amount deducted by FCI with upto date interest @ 13%.
- o. No defaulter rice mill shall be permitted to do custom milling for an on behalf of an eligible miller i.e. an eligible rice mill shall not get his paddy milled from a defaulter rice mill. In case, he does so, the eligible miller shall be blacklisted.
- p. No defaulter miller shall be allowed to operate the mill (which includes the land on which it is situated) nor to transfer it to any other party by way of gift/lease or sale unless he has obtained an NOC from the concerned agency/agencies.”

It is the stand of the petitioner that for the khariff season 2009-10, the petitioner was allotted paddy. As per the petitioner, it milled the entire paddy, but the Authorities failed to lift the stock, as there was insufficient storage space at the Depot. The petitioner invoked the jurisdiction of this Court by way of CWP No.8472 of 2010 for directing the respondents to lift rice, which was allowed vide order dated 17.08.2012. In appeal i.e. LPA No.1366 of 2012 against the said order, it was pointed out that the arbitration proceedings have been initiated by the Punjab State Warehousing Corporation against the petitioner. In another appeal bearing LPA No.1420 of 2012 filed by the Food Corporation of India against the same order, as per the stand of the Food Corporation of India, it is incorrect that milled rice was not shifted for want of space or other constraints.

The said appeal was disposed of on 18.12.2012. The relevant extract from the order dated 18.12.2012 reads as under:

“As noticed earlier, the direction regarding permitting the Rice Miller to sell the custom milled rice in open market has already been substantially modified by us vide order dated 07.09.2012. The consequences and implications of the part of the custom milled rice which the Miller had already sold in open market before we intervened, shall have to be gone into by the Arbitrator in the proceedings pending between the Punjab State Warehousing Corporation and the Rice Mill. Since now there remains no occasion for the FCI to lift the custom milled rice or to create any space for its storage, we dispose of this appeal with a clarificatory direction that the observations made by the learned Single Judge, against the appellant or the statements attributed to the appellant shall be in consequential and have no effect in law.”

It is also come on record that Arbitrator has announced Award on 27.03.2014 (Annexure P-5) awarding a sum of Rs.4,77,36,696/- as on 31.12.2012, as the amount payable by the petitioner to the Punjab State Warehousing Corporation. The petitioner did file an objection petition under Section 34 of the Act. The said objection petition has since been accepted by the learned Additional District Judge and the matter remanded to the Arbitrator. An appeal i.e. FAO No.8032 of 2015 preferred by the petitioner against the said order has been accepted vide order dated 02.12.2015 upholding the order of remanding back the dispute to the Arbitrator.

Learned counsel for the petitioner has vehemently argued that the action of the respondents in not allotting paddy to the petitioner is not justified and the condition in the Policy that the paddy should not be allotted to the defaulter is unfair, unjust and infringes upon the right of the Miller to carry on business.

We have heard learned counsel for the parties and find no merit in the present petition. The Hon'ble Supreme Court in a judgment reported as

Modern Industries Vs. Steel Authority of India Limited (2010) 5 SCC 44

examined the expression 'amount due from a buyer, together with the amount of interest' as appearing in Section 6 of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993. The Court noticed that the word 'due' has a variety of meanings, in different context it may have different meanings. In its narrowest meaning, the word 'due' may import a fixed and settled obligation or liability. In a wider context the amount can be said to be 'due', which may be recovered by action. It has been held to the following effect:

“42. The word 'due' has variety of meanings, in different context it may have different meanings. In its narrowest meaning, the word 'due' may import a fixed and settled obligation or liability. In a wider context the amount can be said to be 'due', which may be recovered by action. The amount that can be claimed as 'due' and recoverable by an action may sometimes be also covered by the expression 'due'. The expression 'amount due from a buyer' followed by the expression 'together with the amount of interest' under sub-section (1) of Section 6 of 1993 Act must be interpreted keeping the purpose and object of 1993 Act and its provisions, particularly Sections 3, 4 and 5 in mind. This expression does not deserve to be given a restricted meaning as that would defeat the whole purpose and object of 1993 Act. Sub-section (1) of Section 6 provides that the amount due from buyer together with amount of interest calculated in accordance with the provisions of Sections 4 and 5 shall be recoverable by the supplier from the buyer by way of suit or other proceeding under any law for the time being in force.

43. If the argument of senior counsel for the buyer is accepted, that would mean that where the buyer has raised some dispute in respect of goods supplied or services rendered by the supplier or disputed his liability to make payment then the supplier shall have to first pursue his remedy for recovery of amount due towards goods supplied or services rendered under regular procedure and after the amount due is adjudicated, initiate action for recovery of amount of interest which he may be entitled to in accordance with Sections 4 and 5 by pursuing remedy under sub-section (2) of Section 6.

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48. The High Court, in the impugned order, however, held that expression 'amount due from a buyer' would be amount admitted to be due in its plain and natural meaning and when admitted due amount is not paid by the buyer, the provisions of Sections 3 to 6 along with other provisions of 1993 Act would be applicable. In the opinion of High Court since the buyer has alleged breach of contract by the supplier, there was no amount admitted to be due or settled amount and, therefore, there was no question of delayed payment and reference of the dispute to the IFC under sub-section(2) of Section 6 was without jurisdiction.

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50. We find it difficult to accept the reasoning of the High Court. The interpretation put by the High Court upon the expression 'amount due from the buyer' is fallacious for the reasons indicated above which we need not respect."

The rice miller is given paddy for custom milling. It is a paddy procured by the Food Corporation of India or other State Agencies/ Instrumentalities and entrusted to the Rice Miller for shelling. If a rice miller defaults in the delivery of rice on any ground whatsoever, it is the State, which suffers financially as well as in its obligation to maintain supply chain under the public distribution system. Therefore, keeping in view the context and the purpose of the Policy, the defaulter will mean not only, who had admitted liability to discharge, but includes a person who has pending dues payable to the Food Corporation of India or State Agencies/ Instrumentalities. The definition in Clause 3(xv) has to be given wider and purposeful interpretation. The conditions of allotment as contained in Clause 11 (H), as reproduced above, make the petitioner a defaulter, as it has failed to supply custom milled rice to the Food Corporation of India and/or the State Agencies/Instrumentalities.

The order passed by the learned Single Judge in the writ petition filed by the petitioner on 17.08.2012 has been modified, firstly in LPA No.1366 of 2012 on 07.09.2012 and later in LPA No.1420 of 2012 on 18.12.2012. It is also admitted fact that the petitioner has sold the milled rice in open market under

an order passed by the learned Single Bench. Thus, it is only the quantification of the amount of sale of rice, which can be said to be now pending before the Arbitrator in terms of an earlier order passed by this Court. The fact that the petitioner has disposed of the milled rice from the paddy entrusted to it is not in dispute. Therefore, the petitioner is a defaulter. For such default, the respondents are justified in withholding further delivery of paddy unless it clears the entire dues.

In view of the above, we do not find any merit in the present writ petition. The same is accordingly dismissed.

(HEMANT GUPTA)
JUDGE

23.12.2015
Vimal

(RAJ RAHUL GARG)
JUDGE