

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.3184 of 2015

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for Civil Supplies appearing for respondents.

2. This Writ Petition is filed assailing the order in reference No.MKTG/M2/Paddy/2013-14 dt.10-12-2014 passed by 4th respondent.

3. Petitioner is a registered firm running rice mil from 2010. The petitioner is under an obligation to supply custom rice after receiving paddy from the respondents pursuant to an agreement dt.12-02-2014 entered into by the petitioner with 2nd respondent. In the year 2013-14 during Kharif season, the petitioner received 36,931 bags of paddy and in the Rabi season, 62,389 bags of paddy.

4. It is the case of the petitioner that some of the paddy which was supplied to the petitioner was drenched and that the supply of such damaged paddy was also certified by the Tahsildar, Jaipur Mandal, Adilabad District by Certificates dt.11-06-2014, 06-06-2014, 10-06-2014 and 02-06-2014. Petitioner contends that the respondents cannot compel the petitioner to give rice after supplying such damaged paddy, that this stand of the

petitioner was specifically informed to 2nd respondent by a representation dt.18-11-2014 (wherein it is stated that discoloured and split paddy was received from IKP centers) and it was asserted therein that IKP center incharges have also stated in writing to this effect. In this representation, petitioner had sought exemption from supply of 513 MTs. of rice on this count.

5. However, this request of the petitioner to provide exemption for the 513 MTs of rice, which the petitioner considered to be a loss on account of supply of damaged paddy, was rejected by the impugned order passed by 4th respondent.

6. The 1st respondent stated that there is no provision to accept any losses or damages regarding the quantity and quality after receiving the paddy from PPCs by millers such as the petitioner. It is further stated therein that as per the agreement, 2nd respondent-Corporation is not responsible for any loss declared by the miller at any time after acknowledging paddy received from PPCs. But in the said order itself, the 2nd respondent referred to the damaged paddy and stated 388 bags of paddy were found in damaged condition in an inspection of the stock done by the Assistant Manager (T), APSCSCL, Adilabad on 26-11-2014.

7. Challenging the same, this Writ Petition is

filed.

8. It is the contention of the petitioner that the petitioner had objected to the receipt of paddy which was damaged but the IKP suppliers insisted that the petitioner receive the said stock, and that they gave letters stating that they are unloading wet paddy and some of these were also attested by the Tahsildar, Jaipur Mandal, Adilabad District also. He contended that a large number of paddy bags containing damaged paddy were still lying in the petitioner's premises and it was brought to the notice of the respondent-authorities also, but no attempt was made to assess loss or damage on account of the said fact. Petitioner contended that impugned order has been passed mechanically ignoring the fact that the paddy supplied was wet paddy and merely stating that there is no provision to accept any loss or damages regarding the quality and quantity after receiving paddy from PPCs and that 4th respondent directed the petitioner to deliver CMR rice due of 842.158 MTs. to FCI on or before 31-12-2014 and is threatening to recover the costs thereof, if the said amount of rice is not supplied by 31-12-2014.

9. It is the contention of the petitioner that the quantity of rice that can be supplied depends upon the quality of paddy which was given to the petitioner-mill for milling and after supplying damaged paddy, the

respondents cannot expect the petitioner to supply quality rice and they are bound to take note of the effect of damaged paddy on the production of rice.

10. Learned counsel for the petitioner contended that it is impossible to mill good quality rice from damaged paddy and even if the agreement between parties did not provide for it, in view of Section 56 of the Indian Contract Act, 1872, the contract to that extent, cannot be enforced.

11. Counter affidavit has been filed by the respondent Nos.2 to 4 supporting the impugned order and denying the allegations of the petitioner that the paddy supplied to the petitioner was wet and damaged paddy. It is stated that the other millers did not object to receive similar quality of paddy having some moisture and only the petitioner raised such a plea. According to the respondent Nos.2 to 4, petitioner has therefore to pay a sum of Rs.2,17,14,402/- being the cost of the undelivered rice. It is the contention of the respondents that the petitioner never objected or pointed out that the paddy supplied was in a wet condition and was not in a good condition and that it is not possible to supply the percentage sought to be supplied after milling for both Kharif and Rabi 2013-14 seasons. He contended that the petitioner as an after thought filed present Writ Petition.

12. It is also asserted that on verification by the employees of respondent Nos.2 to 4, it was found that

there were 588 bags of paddy kept outside out of which 200 bags were in good condition and 388 bags were in damaged condition and it was also informed to the Collector (CS), Adilabad. It is further alleged that as per record, 30,690 bags of paddy had to be made available at rice mill premises, but as per the AM (Technical)'s report, only 588 bags were available and therefore the petitioner has misused 30102 bags of paddy by diverting to black market.

13. It is pertinent to note that nowhere in the counter affidavit, the documents filed by the petitioner signed by the Tahsildar, Jaipur Mandal, Adilabad District or by the IKP centers stating that they had supplied wet paddy to the petitioner were disputed. In fact it is admitted that at the time of procuring paddy, usually some kind of moisture would be present and it would evaporate. It is asserted that only fair and above average quality paddy will be procured.

14. Since the respondent Nos.2 to 4 have not disputed any of the documents filed by the petitioner which indicate that the petitioner did receive wet paddy for milling and some of which are signed by the Tahsildar, Jaipur Mandal, Adilabad District as well as IKPO center incharges, it has to be accepted that at least some portion of the paddy supplied to the petitioner for purpose of milling was damaged.

15. The respondents cannot be allowed to now contend that the paddy they supplied to the petitioner was of good quality and that the petitioner was bound to produce good quality rice even for the damaged paddy. Admittedly this is impossible for the petitioner to do. The law does not compel a party to do an impossible act of producing good quality rice from damaged paddy. Even according to 4th respondent, 388 bags of paddy found in the premises of the petitioner on 26-11-2014 are in damaged condition. Therefore at least to this extent, the respondents cannot avoid to exempt the petitioner from the obligation to supply custom milled rice.

16. The reason stated in the impugned order for not allowing the exemption is that there is no provision to accept any losses or damages regarding quantity and quality after receiving paddy from PPCs and that as per the agreement, the respondent No.2 is not responsible for any loss declared by the miller at any time after acknowledging the paddy received from the PPCs. The 4th respondent cannot take such a stand since any agreement between the parties is subject to the provisions of the Contract Act, 1872 in particular Section 56 thereof. Moreover if such a plea is accepted, it could amount to allowing the respondents to take advantage of their own wrong. It is settled principle of law that a party cannot be allowed to take advantage of his own wrong. (See **Union**

**o f India and others Vs. Major General Madan Lal
Yadav (Retd.)^[1] and Eureka Forbes Limited Vs.
Allahabad Bank and others^[2]).**

17. For all these reasons, I am of the opinion that the impugned order cannot be sustained. It is accordingly set aside and the matter is remitted back to 4th respondent to consider the matter afresh after taking into account the plea of the petitioner regarding supply of damaged paddy and the material placed on record by the petitioner in support of the said plea including the finding recorded in the impugned order that 388 bags of paddy found in the premises of the petitioner are in damaged condition. This exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

18. Accordingly, the Writ Petition is allowed. No costs.

19. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 12-02-2016

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^[1] (1996) 4 S.C.C. 127

^[2] (2010) 6 S.C.C. 193