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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19361 of 2015
Date of decision:24.02.2016

M/s. Bajrang Rice Mill ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Vikas Mohan Gupta, Advocate,
for the petitioner.

Mr. V. Ramswaroop, Addl. A.G., Punjab.

Mr. K.K.Gupta, Advocate,
for respondent No.4.

Mr. Karan Singh, Advocate, for
Mr. Nitin Kaushal, Advocate, for respondent No.5.

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Rakesh Kumar Jain, J.

The petitioner is a partnership firm which came into being on 27.07.2001 with four partners, namely, Shankar Lal, Madan Lal, Manoj Kumar and Anil Kumar. The petitioner-firm purchased the land, constructed the rice sheller over it and was allotted paddy by the respondents. It worked to the complete satisfaction of the respondents and delivered the resultant rice to the Food Corporation of India (FCI). During the crop year 2004-05, the petitioner-firm leased out its rice sheller to one M/s Rishi Rice Mill, which was also a partnership firm with three partners,

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namely, Prem Kumar, Neeraj Kumar and Anil Kumar. One of the partners, namely, Anil Kumar was common in the petitioner-firm as well as in M/s Rishi Rice Mill. The petitioner-firm was allotted paddy for the crop years 2005-06, 2006-07, 2007-08 and 2008-09. In the year 2008, one of the partners of the petitioner-firm, namely, Anil Kumar resigned and new partnership deed dated 04.09.2008 came into being with three partners, namely, Shankar Lal, Madan Lal and Manoj Kumar. The respondents had initially issued the allotment letter for the crop year 2009-2010 to the petitioner-firm vide order dated 06.11.2009 but the said allotment was cancelled, without giving any hearing, on the ground that the CBI had recommended to blacklist M/s Rishi Rice Mill, Tapa, lessee of the petitioner-firm for the crop year 2004-2005. The blacklisting was done on the ground that M/s Rishi Rice Mill had delivered the rice which was beyond prevention of food adulteration (BPFA) but the petitioner-firm has never been blacklisted nor any civil/criminal proceedings are pending against the petitioner-firm for the alleged loss for the crop year 2004-2005. Since the allotment of the crop year 2009-2010 was cancelled and there was no allotment for the year 2010-2011, the petitioner filed CWP No.1606 of 2011, which was disposed of on 28.01.2011, directing the respondents to consider the case of the petitioner in terms of the order passed in CWP No.1675 of 2009 titled as “M/s. Pooja Rice Mill vs. State of Punjab and others” but despite that no action was taken by the respondents.

Respondent No.4 issued two policies dated 11.10.2012 and 16.10.2012 by which the ban earlier imposed for delivery of BRL (Beyond

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Rejection Limits) and BPFA rice for the crop year 2004-2005 was restricted to 3 years and 5 years respectively with a condition that the entire loss will have to be made good by the defaulting miller(s). It is alleged that these policies were framed in order to give benefits to the original defaulting unit only, whereas the petitioner, who was the lessor of M/s Rishi Rice Mill, the defaulting unit for the crop year 2004-2005, was never declared to be a defaulter.

It is alleged that since the crop year 2010-2011, no paddy has been allotted to the petitioner-firm only on the ground of declaring its lessee firm a defaulter for the crop year 2004-2005. Since the respondents were adamant not to allot the paddy to the petitioner-firm, therefore, the petitioner again filed CWP No.16907 of 2014, in which it was prayed that the respondents may be directed not to treat the petitioner-firm as a defaulter and also for quashing of the order dated 06.11.2009 by which earlier allotment made for the crop year 2009-2010 was cancelled. During the pendency of the said writ petition, the petitioner undertook to wipe off the liability of the defaulter firm i.e. M/s Rishi Rice Mill and directions were issued to the respondents to inform the Court as to whether any such settlement could be arrived at so as to make the petitioner-firm eligible for future allotment. In this respect, an order was passed on 20.02.2015, which reads as under:-

> "After hearing the arguments of the counsel for the petitioner at some length, the counsel for the petitioner states that the petitioner will be willing to undertake the liability of the principal amount suffered by Rishi Rice Mill on account of the fact that Anil Kumar, who was a partner in the said Rice Mill was also

> an erstwhile partner in the petitioner's rice mill and would seek for a consideration of waiver of penalty and interest. The respondents may take appropriate instructions on the proposal and report to Court of whether any settlement could be arrived at to make eligible the petitioner for future allotment. The petitioner is also at liberty to approach this Court for decision which is mutually beneficial to both parties."

The petitioner-firm paid all the dues of M/s Rishi Rice Mill and deposited ₹22,43,056/- and, thereafter, no objection certificate was also issued by the Punjab Agro Foodgrain Corporation Limited, by whom the defaulter firm i.e. M/s Rishi Rice Mill got the paddy allotted for the crop year 2004-2005. It is alleged that despite the fact that there is no dues pending even of M/s Rishi Rice Mill, the respondents did not pass any appropriate order not to consider the petitioner-firm as a defaulter, though the CWP No.16907 of 2014 was disposed of on 30.03.2015, with the following order:-

> "Counsel for the parties agree that the matter has been compromised between the parties and the petitioner's counsel states that all dues, as per settlement, have been paid. Counsel for the respondent submits that in case the payments as per the settlement have been received, further action in accordance with law will be taken.
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> The writ petition is disposed of."

In the background of the aforesaid facts and circumstances, the present writ petition has been filed for issuance of a writ in the nature of *mandamus,* directing the respondents not to consider the petitioner as a defaulting firm for the purpose of allotment of paddy for the crop year 2015-2016 and further directing respondent No.4 to issue no objection certificate to the petitioner so that the case of the petitioner for allotment of paddy for the crop year 2015-2016 can be considered in terms of the Custom Milling Policy.

Counsel for the respondents has submitted that the petitioner cannot be considered for allotment of paddy in view of Clause 11(H)(i) of the Custom Milling Policy as per which the millers, with whom the F.C.I. has banned its business dealings on account of delivery of BPFA and BRL rice during the previous year, shall not be considered for allotment. It is further submitted that the petitioner has been blacklisted on the recommendation of the CBI.

The petitioner filed the rejoinder to the reply filed by respondent No.4 in which it is averred that the FCI is having dealings with other rice millers, whose partners are facing criminal prosecution at the hands of the CBI and allotment of paddy has been made to such mill owners. It is alleged that CBI had launched criminal prosecution against one Bhushan Kumar S/o Laxman Dass, proprietor of M/s Ganga Rice Mill, which was later on purchased by M/s Shree Balaji Rice Mill. The respondents had refused allotment of paddy to M/s Shree Balaji Rice Mill, who filed the writ petition and same was allowed on 19.10.2011. The FCI filed LPA No.1439 of 2012, in which the purchaser offered to pay the entire defaulted amount of M/s Ganga Rice Mill and same was paid to the respondents. Thereafter, allotment of paddy was allowed by order of this Court dated 27.11.2012 passed in the aforesaid LPA. Similarly, one Prem Kumar S/o Walaiti Ram was prosecuted by the CBI who was partner of M/s Jai Jawala Rice Mills. M/s Jai Jawala Rice Mills leased the said mill in favour of M/s Ashu Rice Mill and allotment is being allowed to M/s Ashu Rice Mill who was a lessee on the mill owned by M/s Jai Jawala Rice Mills and was declared defaulter by respondent No.4 on the recommendation of the CBI. Another example is of M/s Radha Rice Mill, who had taken the rice sheller of M/s Jai Hanuman Rice Mill on lease and allotment was refused on the ground that the lessor has been declared as a defaulter. This Court allowed CWP No.2154 of 2010 on 19.10.2011 and allowed the allotment of the paddy to the lessee firm but with the condition that the case shall be reviewed after the final adjudication of the criminal prosecution launched by the CBI.

Counsel for the petitioner has further referred to a letter dated 27.03.2015 written by the Area Manager to the Asstt. General Manager, Regional Office of the FCI, Punjab, in which it is mentioned that "the agency further certified that nothing is due either from M/s Rishi Rice Mill or from M/s Bajrang Rice Mill against delivery of BPFA Rice for KMS 2004-05 and also recommended for allotment of paddy for KMS 2015-16. In this regard, an additional affidavit has been filed by Sangeet Verma, Area Manager, Food Corporation of India, District Office Sangrur, in which it is mentioned that the FCI, Sangrur had never recommended for the allotment of paddy for shelling to the petitioner and in fact, the letter dated 25.03.2015 of the District Manager, Punjab Agro Foodgrains Corporation, Barnala was simply forwarded by the District Office, FCI, Sangrur to the Regional Office of the FCI, vide letter dated 27.03.2015.

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I have heard learned counsel for the parties and examined the available record.

From the facts narrated here-in-above, it transpires that the petitioner-firm came into being in 2001; it purchased the land and set up a rice sheller over it and was allotted paddy for milling. For the crop year 2004-2005, it leased out its mill to M/s Rishi Rice Mill, in which one of the partners of the petitioner-firm was also a partner. It is not in dispute that the CBI had recommended to ban the dealings with the millers who had supplied BRL and BPFA rice stocks during the crop year 2004-2005 and in the said list, M/s Rishi Rice Mill was at Sr. No.77. Respondent No.4 has also issued a letter dated 11.10.2012 that the ban imposed upon the millers, who have supplied rice which was beyond PFA limits, may continue and the final decision on the matter may be taken by the CBI Court. There is also no dispute that the loss caused on account of supply of BPFA rice by M/s Rishi Rice Mills has already been made good by the petitioner-firm by depositing an amount of ₹22,43,056/- with the Punjab Agro Foodgrains Corporation Limited and at present no amount is due either against M/s Rishi Rice Mill or the petitioner-firm i.e. M/s Bajrang Rice Mill. It is also not in dispute that insofar as the petitioner-firm is concerned, it is altogether a different entity, which was only lessor of M/s Rishi Rice Mill, to which its rice sheller was leased out for the crop year 2004-2005 and it has never been declared as a defaulter either by the respondents or by the CBI and in order to avail the allotment of paddy for the purpose of milling, the petitioner-firm had also deposited the entire dues of M/s Rishi Rice Mill as the petitioner-firm has suffered a lot on account of non-allotment of paddy after the crop year 2008-2009 onwards.

The stand taken by the respondents that the petitioner is a defaulting firm cannot be accepted in the absence of any evidence of the default committed by it which has also to be established after giving an opportunity of hearing and the fact that the petitioner has deposited the dues on behalf of M/s Rishi Rice Mill would not make them liable to be declared as a defaulter. Moreover, the respondents have not denied the examples quoted by the petitioner in its rejoinder of allotment of paddy to the firm(s) of which one of the partners was the partner of the defaulting firm, therefore, the respondents cannot adopt the policy of discrimination with the petitioner.

Thus, in view of the aforesaid facts and circumstances, this Court is of the opinion that the respondents cannot consider the petitioner as a defaulting firm and as such, the petitioner is entitled to be considered for allotment of paddy for the present and future crop year(s).

The present writ petition is allowed accordingly.

February 24, 2016 **(Rakesh Kumar Jain)**
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