IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.24330 of 2014
Date of Decision:06 .01.2016

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Guru Teg Bahadur Rice Mills

. . . .Petitioner

Versus

State of Punjab and others

. . . . Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: Mr.JPS Sidhu, Advocate,
for the petitioner.

Mr.D.S. Sobti, Addl. A.G. Punjab.

Mr.Nitin Kaushal, Advocate,
for respondent Nos.3 & 5.

Mr.Rajesh Garg, Sr. Advocate, with
Ms.Namarta Shergill, Advocate,
for respondent No.4.

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RAKESH KUMAR JAIN, J.

The petitioner has prayed for issuance of 'No Objection Certificate' for allotment of rice to its mill from the central pool through the State Government agencies as per the Custom Milling Policy of Kharif Marketing Season 2014-15 [for short 'the Policy'], issued by the Rice Procurement Branch of the Department of Food, Civil Supplies and Consumer Affairs of the Government of Punjab.

According to the petitioner, no amount is due to be paid by it, therefore, it is entitled to the issuance of 'No Objection Certificate'. It is submitted that Clause 11 of the Policy deals with the 'Allotment of Rice Mills' of which relevant provisions are 11-B, D, H(e) , which are reproduced as under: -

> *"11-B The rice mills which complete 100% milling of paddy stocks of Kharif 2013-14 by 30.6.2014 are to be considered as eligible for allotment of paddy during Kharif Marketing Season 2014-15. But if the millers who are yet to clear the entire milling, deposit the acquisition cost of the balance paddy by 31st July, 2014 @ 2013-14 rates i.e. MSP + taxes + cost of bag + transportation + interest @ 13% to be charged from 1.12.2013 shall also be considered eligible for the allotment for KMS 2014-15."*
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> *"11-D If a defaulter mill clears the Government/agencies due of the previous year(s) including KMS 2013-14 to the full satisfaction of the Government, as mentioned in Clause 11(B) above, it can be considered as eligible for allotment from the date all the dues are cleared."*
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> *"11-H(e) 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, relating to custom milling or levy rice pertaining to any crop year. 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 Govt. 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."*

Learned counsel for the respondents has submitted that insofar as the custom milling policy for the year 2013-14 is concerned, it has been upheld by this Court in ***CWP No.21637 of 2013*** titled as ***"Gagandeep Jindal** Vs. **State of Punjab and others"*** decided on 14.11.2014 and has referred to another decision of this Court rendered in ***CWP No.20491 of 2014*** titled as ***"M/s G.N. General Mill*** *Vs.* ***State of Punjab and others"*** decided on 14.11.2014 in which it has been held that the State cannot be compelled to make the allotment in favour of a person, who was a defaulter for whatever reason. It is further submitted by him that two arbitration cases are pending against the petitioner in respect of claim of recovery of ₹58,07,135/- with interest @ 13% per annum pending before C.L. Bains, IAS (Retd.), Sole Arbitrator and recovery of ₹11,23,089/- with interest @ 12% per annum before B.K. Srivastva, IAS (Retd.), Sole Arbitrator, therefore, as per Clause 11-H(e) of the Policy, if an arbitration case is pending against the miller then his case cannot be considered by the Government for the purpose of allotment of rice mills.

In rebuttal, learned counsel for the petitioner has submitted that Clause 11-H(e) of the Policy does not apply to the case of the petitioner because it talks of pendency of arbitration case 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. Whereas, the amount sought to be recovered about which the arbitration case is pending is not on account of either embezzlement or non-delivery of rice of any crop year, whether it is custom milled or levy rice.

I have heard learned counsel for the parties and perused the record.

There is no dispute that the parties are governed by the Custom Miller Policy for the Season 2014-15 in which Clause 11 of the Policy deals with the 'Allotment of Rice Mills'. According to Clause 11-H(e) of the Policy, in case of pendency of arbitration case, 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, the NOC cannot be given but if the default is cleared then the rice miller may be considered subject to the outcome of the said case which may be a Court case/FIR or arbitration case pending against the rice miller.

In the present case, in the first arbitration case pending before C.L. Bains, IAS (Retd.), Sole Arbitrator, recovery of amount of un-milled paddy is one of the issues. Thus, it cannot be said that no recovery is being effected from the petitioner as has held by this Court in the case of ***M/s G.N. General Mill (Supra)*** that *"if the entire amount of paddy in any of the previous season had not been delivered within the time stipulated and the amounts therefore have not been paid, the State can declare in its policy that such a person will not be entitled to allotment. In every such situation, a miller who wants to avail the benefit of allotment is bound to comply with the requirements in the policy"*.

Hence, in view of the facts emanating from the record and also the mandatory terms of the Policy which has been followed by the petitioner himself, no error is found on the part of the respondents for not issuing 'No Objection Certificate' for the purpose of allotment of rice mill. As a result of the aforesaid discussion, the present petition is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

06.01.2016
Vivek