IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.6198 of 2014

M/s Mahalaxmi Food Products

....Petitioner(s)

Versus

State of Punjab and Ors.

....Respondent(s)

2. CWP No.6194 of 2014

M/s Singla Paper Board Mills

....Petitioner(s)

Versus

State of Punjab and Ors.

....Respondent(s)

3. CWP No.6202 of 2014

M/s Shiva Gram Udyog Samiti

....Petitioner(s)

Versus

State of Punjab and Ors.

....Respondent(s)

4. CWP No.6203 of 2014

M/s Goyal Foods

....Petitioner(s)

Versus

State of Punjab and Ors.

....Respondent(s)

5. CWP No.6206 of 2014

M/s Jai Balaji Rice Mill

....Petitioner(s)

Versus

State of Punjab and Ors.

....Respondent(s)

6. CWP No.6207 of 2014

M/s Shri Durga Rice Mill

....Petitioner(s)

Versus

State of Punjab and Ors.

....Respondent(s)

7. CWP No.6208 of 2014

M/s Jai Shankar Rice Mill

....Petitioner(s)

Versus

State of Punjab and Ors.

....Respondent(s)

8. CWP No.6209 of 2014

M/s Snow Agro Industries Pvt Ltd

....Petitioner(s)

Versus

State of Punjab and Ors.

....Respondent(s)

9. CWP No.6210 of 2014

M/s Nav Durga Foods Longowal

....Petitioner(s)

Versus

State of Punjab and Ors.

....Respondent(s)

10. CWP No.6211 of 2014

M/s HD Chawal Gram Udyog Samiti Regd

....Petitioner(s)

Versus

State of Punjab and Ors.

....Respondent(s)

11. CWP No.6212 of 2014

M/s J.K. Rice Mill

....Petitioner(s)

Versus

State of Punjab and Ors.

....Respondent(s)

12. CWP No.6213 of 2014

M/s Cheema Rice Mill

....Petitioner(s)

Versus

State of Punjab and Ors.

....Respondent(s)

13. CWP No.6214 of 2014

M/s Shree Guru Teg Bahadur Rice Mill

....Petitioner(s)

Versus

State of Punjab and Ors.

....Respondent(s)

14. CWP No.6215 of 2014

M/s Maa Durga foods

....Petitioner(s)

Versus

State of Punjab and Ors.

....Respondent(s)

15. CWP No.6216 of 2014

M/s Vipan Rice Mill

....Petitioner(s)

Versus

State of Punjab and Ors.

....Respondent(s)

16. CWP No.6217 of 2014

M/s Shivalik Rice Udyog Samiti

....Petitioner(s)

Versus

State of Punjab and Ors.

....Respondent(s)

17. CWP No.6218 of 2014

M/s Vijay Rice Mill

....Petitioner(s)

Versus

State of Punjab and Ors.

....Respondent(s)

18. CWP No.6227 of 2014

M/s Gaggarpur Rice Mill

....Petitioner(s)

Versus

State of Punjab and Ors.

....Respondent(s)

19. CWP No.6228 of 2014

M/s Satyam Traders

....Petitioner(s)

Versus

State of Punjab and Ors.

....Respondent(s)

20. CWP No.6433 of 2014

M/s Mahashakti Rice Mill

....Petitioner(s)

Versus

State of Punjab and Ors.

....Respondent(s)

Date of Order: 20.07.2016

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Avnish Mittal, Advocate and

Mr. Aman Bansal, Advocate for the petitioner (s).

Mr. Anant Kataria, DAG, Punjab.

Mr. Sumeet Goel, Advocate for CBI.

RAKESH KUMAR JAIN, J (ORAL)

This order shall dispose of a bunch of afore mentioned twenty writ petitions as the issue involved in all these cases is the same as stated by the parties, however, for the sake of convenience, the facts are being extracted from CWP No.6198 of 2014.

Learned counsel for the petitioner has submitted that in the bunch of cases, some petitioners are the owners whereas some are the lessees of the Rice Mills. Petitioner is aggrieved against the report dated 27.6.2013 submitted by the CBI and the order dated 27.12.2013 passed by respondent No.2.

In short, in Punjab, paddy is procured by the state agencies on behalf of Government of India under MSP Scheme. The paddy so procured is milled by the rice millers under an agreement with respective state agencies and rice is delivered to FCI as per specification laid down by Government of India. There were some complaints regarding poor quality of rice delivered during the year 2004-2005 and on inquiry/investigation conducted by the CBI, 322 rice mills were found to be guilty of delivering "Below Rejection Limit" (BRL) and "Beyond Prevention of Food Adulteration Act norms" (BPFA). Some stocks were found as Mixed Stocks (MS). 271 rice mills were black-listed on the recommendation of C.B.I but many of the black-listed rice mills were leased out or sold out to new entities, who claimed allotment for custom milling. When refused, they approached this Court by way of various writ petitions including CWP No.16795 of 2009 titled M/s Puja Rice Mill Vs. State of Punjab, which was allowed on 12.1.2010 and the black-listing of premises was struck down with a direction to consider their claim for allotment of paddy provided no sham transaction had taken place between the original owner and subsequent purchaser or lessor. Said decision rendered in M/s Puja Rice Mill's case (supra) was upheld in LPA No.542 of 2010. Pursuant to the decision of this Court rendered in M/s Puja Rice Mill's case (supra), the State Government constituted a three members committee to scrutinize the cases of mills, in which claims were raised for allotment and about 150 black-listed rice mills approached the respondents-Department for allotment of paddy in 2010-2011 and 2011-2012. After scrutiny, 77 rice mills were found eligible for allotment of paddy and one of such rice mills was M/s SID Rice Mill, Tapa, Barnala, which had purchased one of the black-listed rice mill (original owners M/s Balaji Rice Mill, Tapa and their lessee M/s Baba Virgir Rice Mill, Tapa, were the actual defaulters). Against the decision of the FCI, the petitioner (s) filed a writ petition bearing No.4179 of 2012 titled M/s SID Rice Mills Vs. State of Punjab and Others in which an interim order was passed on 11.9.2012 to the following effect:

> *"It is evident that all is not well with the system that is prevailing where the Punjab Government and its agencies offer*

paddy for custom milling to the rice mills and then obligating the F.C.I.to lift the same and when the rice is found to be defective, it has to meet the burden from its own pocket. Evident from the record is also the fact that gross mischief has been played by the officials of the Food & Supplies Controller who have rampantly cleared certain firms operating from the premises of the defaulting firm either by showing a sale in their favour or by a change in the constituents of the firm. There is no explanation forthcoming from the respondent/State regarding the blacklisted firm, a partial list of which has been appended as Annexure R-4/1 given recently in February, 2012 and yet giving the consignment of paddy to be milled by the petitioner in the year 2011. If the predecessor of the firm was a blacklisted firm, then without duly establishing the credentials, the paddy could not have been given to such firms and in the instant Investigation to probe the following aspects:-

(1) The entire list of blacklisted firms indicated in Annexure R-4/1 as also all the blacklisted firms existing today and the transactions entered into by such firms in favour of the existing firms purportedly acting under a sale/transfer/mortgage or change in constitution be looked into. The Court has been informed that earlier an exercise was conducted in 2005. Be that as it may, all the currently blacklisted firms and their subsequent sale/transfer and previous change in constitution shall be looked into. Noticing the suggestive relentless violation with the connivance of the officials of the Food & Supplies Departments, the enquiry shall also indicate the role of each such District Food & Supplies Controllers who cleared such firms which are now raising their claims.

(2) If the enquiry indicates the complicity of such officials of the Food & Supplies Department, then immediately an F.I.R. should be registered against them and their assets investigated.

(3) If it is established that the transactions are sham, legal action be initiated against the erring rice mills and all this would be without prejudice to the rights of the F.C.I.to establish its losses and recover the same from such erring and defaulting millers.

The C.B.I. is given six months time to produce a report before

> *this Court.*
>
> *List for further proceedings on 20.3.2013.*

In terms of the aforesaid order, the CBI investigated the matter and submitted its report dated 27.6.2013 specifically referring to the default of M/s Singla Paper Board Rice Mill, Cheema, District Sangrur, which was taken on lease by the petitioner. Observations in this regard recorded by the CBI in its report are being reproduced as under:

> ***"Defaulter mill, M/s Singla Paper Board Rice Mill, Cheema, District Sangrur.***
>
> *Enquiry has revealed that the original defaulter rice mill was M/s Singla Paper Board Rice Mill, Cheema, District Sangrur, Shri Raj Kumar, Shri Pawan Kumar and Shri Pankaj Kumar were the partners of the mill. The mill was taken on lease by M/s Mahaluxmi Food Products, Cheema, District Sangrur. Shri Ravinder Kumar son of Sh. Prithi Chand was the sole proprietor of the lessee mill. The lessee mill applied to the DFSC, Sangrur for allotment of paddy for KMS 2010-11. The documents submitted by party were scrutinized by the committee comprising of Ms.Simranjot Kaur, DD (F), Ferozepur, Shri KC Kajal, then DD(F), Patiala and Shri Narinder Singh, the then District Controller, Barnala on 21.01.2011 in Head Office at Chandigarh and recommended that the party was not eligible for the allotment for Kharif 2010-11 provided.*
>
> *i. Copies of ration cards submitted by the applicant party are examined by the committee and as per which no relationship is made out with the proprietor of lessee party.*
>
> *ii. Latest copy of electricity bill dated 10.6.2011 amounting to Rs.4750/- shows that the consumption of electricity is against lighting purpose and not for full consumption against the seasonal sanctioned load. Latest report in this regard should be got from the DFSC, before making allotments by the Head Office.*
>
> *iii. No entry of lessee party is made in the*

Jamabandi copy of which is submitted by party as per CMR policy.

3.9.2 During the next year, the mill was given on lease to Shri Ravinder Kumar s/o Shri Prithi chand vide Lease Deed dated 30.09.11 for 3 years from 01.09.11 to 31.08.14 for a sum of Rs.81,000/- per annum. The Lease Deed was registered before Sub-Registrar, Sunam, Sangrur vide Vasika No.3048 dated 30.09.11. Shri Ravinder Kumar applied for allotment of paddy for crop year 2011-1. The matter was forwarded by DFSC, Sangrur vide his letter dated 21.10.11 to the Director, Food, Civil Supplies and Consumer Affairs, Punjab enclosing field report/memo no.1260 dated 17.10.11 of Inspector, AFSO & DFSO. The committee assembled on 25.10.11 and found that the applicant party was eligible for allotment for KMS 2011-12 and recommended for consideration of Director on the condition that:-

I. As per the District Food Supplies Officer, Sangrur report, the party has electricity load of 93.40 KW.

II. The party has submitted NO Objection Certificate of pollution Control Board.

Hence the party becomes eligible only if two sureties of eligible rice mills are submitted by the party.

3.9.3 Subsequently, the allotment was approved by Director, Food, Civil Supplies on 02.11.11, FCI was intimated vide Memo No.RP-10-2011/6375 dated 03.11.11. The allotment was made to the party vide Memo No. RP-10 (Allotment)-2011/6376 dated03.11.11. Thereafter, AGM (QC), FCI vide letter No.QC.7/Court Case/Mahaluxmi Food Products/Sangrur/2011/334 dated 21/26.11.11 asked Director, Food, Civil Supplies & Consumer Affairs, Punjab to verify whether the transaction was SHAM or not. In reply, Food Corporation of India was intimated vide Memo No.RP-10-2012/284 dated 18.1.12 that there was no sham transaction between defaulter mill and new mill.

3.9.4 During enquiry, in order to detect sham transactions, genuineness of rations cards of defaulter mill as well as new mill were verified from the records maintained in respective districts to ascertain relationship of defaulter mill

> *with the present mill but no ration card was found to be fake. Also Lease Deed was verified from the office of Sub-Registrar, Sunam, Sangrur and was found to be genuine.*
>
> *3.9.5 Enquiry has further revealed that the new firm M/s Mahaluxmi Food Products, Cheema is having current A/c No.65071774503 in SBOP, Cheema. As per bank record Rs.5,00,000/- were credited into the said account on 16.1.13 strength of cheque no.541204 dated 15.1.13 of Punjab & Sind Back, Sangrur by M/s Mahaluxmi Food Products, Cheema, Sangrur. Subsequently Rs.3,90,000/- were withdrawn in cash by Shri Pankaj Kumar on 19.1.13 by presenting cheque no.105785, Rs.75,000/- were withdrawn on 25.1.13 and Rs.70,000/- were withdrawn on 31.01.13 by Shri Pankaj Kumar. Further Rs.88,285/- were credited to this account on 31.01.13 on the strength of cheque no.541809 dated 31.01.13 of Punjab and Sind Bank. Subsequently, Rs.90,000/- were withdrawn in cash by Shri Pankaj Kumar on 01.02.13 by presenting on 06.02.13 by Shri Pankaj Kumar. Enquiry has thus, established that the bank account of the new firm is being operated largely by the partner of the defaulter mill, Shri Pankaj Kumar, hence the transaction is sham"*

On the basis of the aforesaid report, the impugned order is passed after serving a show cause notice to which the petitioner had filed reply as well. The relevant portion of the order dated 27.12.2013 under challenge further reads as under:

> *"This case pertains to M/s Singla Paper Board Rice Mills. Cheema, Sangrur, which was decaled a defaulter and was blacklisted in the episode of 2004-05 referred to in earlier part of this order. After this mill having been declared defaulter and blacklisted, the same was leased out to M/s Mahaluxmi Food Products, Cheema, Sangrur for period of 3 years vide lease dated 01/09/11. The lease period was to expired on 31/08/14. The C.B.I. had enquired into the nature of transaction between the lessor and lessee mill and ultimately found the same to be a sham transaction on the*

ground that financial relations existed between the both milers. The lessor mill which was also a defaulter and blacklisted, was found to have been operating the bank account of the lessee firm. It is alleged that a partner of lessor mill namely Pankaj Kumar withdrawn 3,90,000/- on one occasion and Rs.90,000.00 on other occasion from the account of lessee firm M/s Mahaluxmi Food Products, Cheema, Sangrur.

According to the C.B.I report the partners of lessee firm were dummy figures and transactions between the both parties was sham transaction.

In reply to the Show Cause Notice, the firm M/s Singla Paper Board Rice Mills, cheema, Sangrur, through its partner denied all the allegation levelled against him in the CBI report. According to it, Pankaj Kumar and Ravinder Kumar has no dealings what-so-ever during the period of allotment for the crop year 2011-12 and subsequently. Pankaj Kumar was not authorized to operate the bank account of lessee from M/s Mahaluxmi Food Products, Cheema, Sangrur. The back accounts of lessee firm was operated exclusively by Ravinder Kumar and there was no authority or Power of Attorney to operate the bank account of the lessee firm. Regarding withdrawal of amount as stated in CBI report, it was explained that Ravinder Kumar, the sole proprietor of lessee firm had suffered from heart ailments and was unable to move and accordingly he has delivered cheques to Pankaj Kumar to collecting or withdrawing of the amount from the account of the lessee firm. To lend colour to his submission, he has placed reliance on the certificate issued by the bank to the effect that there was no authority or power of attorney given to Pankaj Kumar to operate the bank account of the lessee firm. The report of C.B.I.is said to be wrong, illegal and without any basis.

I have gone through the entire records of the case and have minutely perused the enquiry report of C.B.I., CBI in its report had clearly found that a payment of rupees 5 lakhs was made to M/s Mahaluxmi Food Products Cheema on 15.1.2013. Out of that amount a sum of Rs.3,90,000.00 was *withdrawn by Pankaj Kumar s/o Raj Kumar who is one of the partners of defaulter i.e. M/s Singla Paper Board Rice Mill. Not only this, the report further says that Sh. Pankaj Kumar had also withdrawn Rs.90,000.00 from this account out of the payment received from Pungrain by M/s Mahaluxmi Food Products, meaning thereby that the partners of the new firms are dummy figures and the transaction of lease is sham. The stand taken by the respondent in its reply to the show cause notice does not sound convincing. Of course he has filed certain medical prescription chits to supports his contention as to his heart ailment, but these pertains to the period of 2009 to 2011. However, the said amount was withdrawn in 20.13. There is nothing on record to show that during the specific period Ravinder Kumar was suffering from heart ailment as found by the C.B.I.. On the very face of it, the withdrawal of such a big amount from the account of lessee firm by the partner of lessor firm clearly shows that the lessee firm was a dummy and the lessor firm is actually managing the working of the mill.*

As such I am of considered opinion that there existed financial relations between the defaulter and new lessee firm. By no stretch of imagination can it be termed as a pure business transaction. As such, it is held that is a fit case where recommendations of C.B.I. contained in para 6.3 of its report dated 27.06.2013 should be invoked and both the aforesaid firms are banned for a further period of three years. Ordered accordingly.

So far as recommendation of C.B.I contained in para 6.1 of its report for filing a criminal complaint against both the firm is concerned, a separate letter is ordered to be written to concerned D.F.S.C. for filling complaint to the police after collecting relevant records of the case."

The only issue raised by learned counsel for the petitioner is that before passing the said order, no opportunity of hearing was granted whereas learned counsel for the respondents has submitted that the observations made by the CBI in its inquiry has been relied upon while passing the impugned order. It is submitted that the said inquiry report has been approved by this Court vide order dated 19.9.2013 passed in CWP No.4179 of 2012 with the following observations:

> *"In view of the above-said recommendations made by the CBI, all the respondents, to whomsoever the recommendations apply, shall proceed further in the matter ensuring the effective and early action thereon. The respondent authorities shall make every endeavour to take the matter to its logical end at the earliest possible time but in any case within a period of three months from today because the orders are being passed in the presence of the learned counsel for the respondents. In view of the observations made and directions issued as here-in-above, the present writ petition stands disposed of."*

Before that, it is submitted that on 27.8.2013, the following order was passed by this Court:

> *"Learned counsel for the applicant-petitioner submits that CBI has already submitted its report and the present writ petition may be disposed of, directing the respondent State to proceed further, in accordance with the report submitted by the CBI. Report dated 27.6.2013 submitted by the CBI in sealed cover, has been received and it was opened in the Court today. Learned counsel for the parties are ad idem that since the report submitted by the CBI is running into 78 pages, they may be permitted to go through the report, after getting a copy of the same or by inspecting the record. Permission granted."*

Thus, in view of the aforesaid facts and circumstances, the petitioner cannot be allowed to raise grievance that opportunity of hearing was not given, as order dated 27.8.2013 passed by this Court in CWP No.4179 of 2012 specifically talks of the permission granted to the parties either to go through the report after getting a copy of the same or by inspecting the record, therefore, the petitioner had the opportunity to peruse the CBI report and the impugned order has been passed by respondent No.2 after serving notice on the petitioner and receiving their reply. Thus, the provisions of natural justice, have been followed by the respondents while passing the impugned order.

Consequently, finding no reason to interfere with the impugned order, the writ petitions are dismissed.

July 20, 2016 **(RAKESH KUMAR JAIN)**
manoj **JUDGE**