

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(236)

CWP-21038-2016

Decided on: February 07, 2017.

M/s Sidhu Rice Mills

.... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Puneet Sharma-I, Advocate, for the petitioner.

Mr. Inderpal Goyat, Addl. A.G., Punjab.

Mr. Nitin Kaushal, Advocate, for respondent No.4.

M.M.S. BEDI, J (ORAL)

Through instant petition, the petitioner has challenged order dated 15.09.2016 Annexure P-19 rejecting the application of the petitioner for allotment of paddy for shelling season 2016-17.

Learned counsel for the petitioner has submitted that in the year 2014-15, the petitioner-rice mill had not been allotted paddy for milling despite its entitlement and capacity, as such, a writ petition was filed i.e. CWP-20324-2014 which was decided on 17.10.2014. The stand of the respondents-State authorities that the petitioner had purchased the property from M/s Sidhu Agro Food Industries which was a defaulter of the State agencies, had been considered and the High Court while disposing of the above writ petition on 17.10.2014, ordered that if there was any requirement of a personal inspection to vouch for the existence of the requisite capacity and the wholesomeness of the machineries to be entrusted the work of

milling, the State shall be at liberty to do so before they award the contact. A writ of mandamus was issued directing the respondents to do the requisite inspection of the rice mill premises and issue the allotment to the petitioner in accordance with law for the season 2014-15.

Learned counsel for the petitioner has contended that the reasons for non-allotment of paddy for the year 2016-17, are the same and the order dated 17.10.2014 would disentitle the respondents to decline the allotment of paddy for the year 2016-17 on the same grounds which existed for the rejection of claim for allotment in the year 2014-15.

I have heard learned counsel for the petitioner as well as counsel for respondent No.4-PUNSUP.

Learned counsel for respondent No.4-PUNSUP has submitted that the petitioner is not entitled to the allotment of paddy for the detailed reasons mentioned in Annexure P-19 issued by the District Manager, PUNSUP, Moga communicating the decision to the District Food and Supplies Controller, Moga.

Learned counsel for respondent No.4 has brought to the notice of the Court that claim of the petitioner has been considered objectively as per the policy of allotment by Deputy Director (Field), Food, Civil Supplies and Consumer Affairs, Ludhina, Moga wherein the following reasons have been given: (i) there is a difference between a custom milling policy for the year 2014-15 and for the year 2016-17; (ii) the petitioner is not eligible for allotment as per Section 11 (D) of the Police laying down that if a defaulter mill clears the Government/agencies dues of the previous year (s) including

KMS 2014-15 and 2015-16 to the full satisfaction of the Government, as mentioned in Clause 11 (B) it can be considered as eligible for allotment from the date all the dues are cleared and rice mill shall have to obtain a No Objection Certificate/Dues Certificate from all the procurement agencies; (iii) as per Section 11 (H) (c) of the Policy, in case the owner/partner/director of a lessee/owner rice mill becomes partner/Director of a new rice mill or if the transfer of a rice mill either through sale or through lease is found to be sham or any financial relation is establish between the new and old rice mill, which was defaulter on any count then the mill premises in question shall also be declared as defaulter; and (iv) as per Section 11 (H) (e) of the Policy, if the agency reports any case of misappropriation of paddy by a miller of the previous years and that no defaulter miller shall be allowed to operate the mill as per Section (H) (n) of the Policy. In view of above said circumstances, as per the policy 11 (F) (iv), the petitioner firm was declared ineligible for allotment for the year 2016-17.

I have considered the contention of learned counsel for the petitioner that in view of order passed by this Court pertaining to crop year 2014-15 to inspect the premises of the petitioner and pass an order, the said order would bind the respondents to allot paddy for the crop year 2016-17 also as the reasons for declining the allotment for the year 2014-15 and in the year 2016-2017, are the same. I am of the considered opinion that the order passed for the crop year 2014-15 will not be operative for all times to come and the claim of the petitioner is required to be considered in the light of the policy for a particular year.

In view of said circumstances, I do not find any ground to issue any direction to the respondents to allot paddy to the petitioner as the petitioner has not been able to satisfy this Court regarding any legally enforceable right against the respondents requiring the respondents to allot paddy to the petitioner.

At this stage, learned counsel for the petitioner submits that at present the situation on the spot is different and that the respondents are under misconception that the petitioner is connected with the defaulter rice miller M/s Sidhu Agro Food Badhni Kalan (Lopo) to the extent of more than Rs. 3 crores.

I have also considered the right of the petitioner under Article 19 (1) (g) of the Constitution of India to carry on a profession and that he cannot be deprived on the basis of any un-reasonable restriction.

Taking into consideration the abovesaid facts and circumstances of the case, the relief that can be granted to the petitioner is that in case the petitioner is able to satisfy the respondents regarding fulfillment of all the conditions and ensure that the right of the procuring agencies entrusting paddy to the petitioner for milling will be safeguarded or the petitioner is able to satisfy that the machinery has got no connection with the defaulter firm or that the petitioner or the defaulters are ready to discharge part of their liabilities sufficient enough to enable the procuring agency to allot paddy for the crop year 2016-17 on inspection of their working place, it will be open to the respondent agency to allot paddy to the petitioner for the crop year 2016-17.

This petition is accordingly disposed of with a direction that the petitioner will file a written representation enumerating the circumstances enabling him to get paddy for custom milling for the year 2016-17. All the points will be taken into consideration in the light of the above said observations and in case the respondents are satisfied that the interest of the respondents are secured, the paddy may be allotted to the petitioner. It is directed that the petitioner would file the requisite representation within two days from the date of receipt of certified copy of this order and thereafter the entire exercise will be under-taken by the respondents within a period of 15 days, in case, the petitioner submits his claim in the abovesaid manner.

It is made clear that any vicarious claim will not be considered and that order Annexure P-7 passed by this Court pertaining to crop year 2014-15 will not be treated as an estoppel against the respondents to take any final decision for the crop year 2016-17.

Interim order dated 23.11.2016 passed by this Court, will remain operative till 20.02.2017 or the date till the adjudication of the claim of the petitioner, whichever is earlier.

(M.M.S. BEDI)
JUDGE

February 07, 2017
harsha

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No