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

**CWP No.24159 of 2016 (O&M)**
**Date of decision:23.01.2017**

M/s Sant Rice and General Mills ... Petitioner

Vs.

State of Punjab and others ... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. M.L.Saggar, Senior Advocate with
Mr. Sunny Saggar, Advocate and
Ms. Armaan Saggar, Advocate
for the petitioner.

Mr. Yatinder Sharma, Addl.A.G.Punjab.

Mr. Nitin Kaushal, Advocate
for respondents No.2 and 3.

Mr. Shiv Kumar, Senior Law Officer for Markfed.

**AMIT RAWAL J. (Oral)**

The petitioner – M/s Sant Rice & General Mills being involved in the litigation way back in the year 1997 having a rigmarole before the Arbitrator, Objecting Court, in this Court, vide CWP No.21478 of 2016 and even the present one and running from pillar to post for vindication of the grievance.

The case of the petitioner in the present writ petition, according to Mr. M.L.Saggar, learned Senior Advocate assisted by Mr. Sunny Saggar and Ms. Armaan Saggar, Advocates is that the petitioner-Mill was allotted paddy by the MARKFED since kharif season for the year 1994-95 and for the last more than 5 years, the paddy was allotted by PUNGRAIN. The detail of the milled rice for the years 2013-14 to 2015-16 is reflected from annexures attached along with the writ petition. That in the month of October, the respondents entered into an agreement for allotment of paddy, its shelling and delivering of custom milling rice. The agreements for the crop year 2013-14, 2014-15 and 2015-16 show that despite the litigation, the petitioner had been allotted paddy for custom rice milling and onward supply to the FCI on account of the procurement agency. The name of the petitioner -Mill was included in the list of eligible rice millers of Ludhiana East as on 01.10.2016. The paddy was to be allotted by PUNGRAIN. However, on 06.10.2016 the name of the petitioner was deleted/struck off from the list of the eligible rice shellers for allotment of paddy. Civil Writ Petition bearing No.21478 of 2016 was filed for deciding the matter stated to be pending before the Managing Director, in view of the order dated 01.04.2011 of the Additional District Judge, whereby, the objections filed against the arbitrator award dated 13.10.2003, were accepted.

The Managing Director has passed the impugned order dated 08.11.2016. The contention of Mr. Saggar is that aforesaid order being non-speaking has not been taken care of the objections, raised by the petitioner, qua limitation, supply of paddy for the crops year during the pendency of the proceedings before the Arbitrator and also entitlement for allotment of rice for the crop year 2016-17, much less deletion of the name of the petitioner from the list of eligible rice shellers. The order of the Managing Director is not maintainable in law as the MARKFED has to resort to the provisions of law under Section 9 of Code of Civil Procedure and this fact is evident from the copy of the notice dated 16.01.2017, whereby, a legal notice for recovery of ₹2,44,53,439/- has been received by petitioner, i.e., the intention to file the suit. A copy of the same has been given to the Court which is taken on record and the same is ordered to be attached at the end of the paper book.

He further submits that since the order is lacking reasons, much less has not addressed the issue, the petitioner cannot be constrained to seek vindication of the grievance by seeking remand, in essence, being deprived of the allotment of paddy for custom milling as it would be violation of the provisions of Article 19(1)(g) of the Constitution of India.

He has drawn the attention of this Court to the order dated 02.12.2016, whereby, this Court had directed the respondents-authorities to retain requisite quantity of paddy for the purpose of entitlement of petitioner, in case, finally found entitled for it. The order reads thus:-

> *"Learned senior counsel for the petitioner refers to the operative part of the judgment dated 1.4.2011 passed by the learned Additional District Judge, Ludhiana, in Arbitration Case No.62 dated 9.3.2004 filed by the petitioner-Rice Mills, to contend, inter alia, that respondent no.2 miserably failed to appreciate true import of the judgment passed by the learned Additional District Judge, while passing the impugned order dated 08.11.2016 (Annexure P-8). He further submits that*

*neither the petitioner committed any illegality, including alleged unauthorized conversion of rice, nor any amount was recoverable against the petitioner. In face, case of the petitioner would squarely fall in Category 'A' of the Government instructions dated 6.6.2000 and not in Category 'B' of the said instructions, as wrongly held by respondent no.2 in the impugned order.*

*Notice of motion for 14.12.2016.*

*Process dasti only.*

*In the meantime, requisite quantity of paddy shall be retained by the respondent authorities, whosoever it may be, so as to allot the same to the petitioner, in case it is finally found entitled for it."*

Mr. Yatinder Sharma, learned Additional Advocate General Punjab appearing on behalf of respondents No.1 and 4 has drawn the attention of this Court to the contents of reply filed by way of an affidavit of Geeta Bishambhu, District Controller, Ludhiana (East), Department of Food, Civil Supplies and Consumer Affairs, Punjab, to contend that after the decision dated 08.11.2016 of the Managing Director, the interim order in the aforementioned order dated 03.11.2016 had been complied with and the reserved paddy has already been released. Reference has been made to paragraphs 5 and 6 which read thus:-

*"5.That the petitioner had challenged the above said order dated 06.10.2016 by way of filing CWP No.21478 of 2016*

*before this Hon'ble Court and the Court disposed of the Writ Petition vide order dated 03.11.2016 (Annexure P-2) with a direction to the present respondent No.2, i.e., Managing Director, Markfed, to decide the claim petition within two weeks and further directed the present respondent no.5, i.e. District Manager, Pungrain to reserve the paddy to be allotted to the petitioner for a period of three weeks with further providing liberty to present respondent no.5 that in case the present respondent no.2 does not decide the claim petition of Markfed within the stipulated period of two weeks, then he shall be at liberty to allot the same quantity of paddy to the petitioner.*

*6. That, in compliance of the order dated 03.11.2016 (Annexure P-2) passed by this Hon'ble Court, District Food & Supplies Controller, present respondent no.4, ordered to keep reserved 6,765 MT of paddy, as per entitlement of the petitioner miller for further three weeks, vide memo no.8079 dated 03.11.2016. Further, the present respondent no.2, i.e., Managing Director, Markfed passed an order dated 08.11.2016 (Annexure P-8) disposing the claim petition filed by respondent no.3 and the paddy kept reserved was released after the lapse of a period of three weeks to the other eligible rice Millers in the district."*

Mr. Nitin Kaushal, learned counsel appearing on behalf of respondents No.2 and 3 -MARKFED has filed reply in the Court which is taken on record. A copy thereof has been supplied to Ms. Armaan Saggar, in the Court today. He submits that there has been compliance of the directions given by this Court indicated in the order dated 03.11.2016 passed in CWP No.21478 of 2016, wherein, the Managing Director after hearing the parties has held the petitioner liable to pay the amount below mentioned i.e., ₹2,44,53,439/- along with interest @ bank rate w.e.f.19.05.2015 and as per the policy of the Government, until and unless the arrears of the procuring agency is not clear, the Miller is not entitled for the allotment of paddy for the purpose of custom milling and thus, urges this Court for upholding the order under challenge by dismissing the writ petition.

I have heard learned counsel for the parties and appraised the paper book.

The operative part of the impugned order/reasoning do not reflect the addressal of the following issues raised on behalf of the petitioner:-

i) regarding the limitation;

ii) the factum of issuance of 'No Dues Certificate', though noticed in the order but not adhered to;

iii) till the matter was pending before the Arbitrator, , much less, Objecting Court, the petitioner had been allotted paddy for all the crop years and there had been no default.

The dispute is of the crop year 1994-95. As per the policy of the State, the MARKFED has dropped/withdrawal the cases against all except the petitioner and few other rice millers. For the sake of brevity, the order dated 8.11.2016 of the Managing Director, reads thus:-

> *"I have carefully considered the claim of the Claimant-District Manager, Markfed, Ludhiana as well as reply submitted by the Respondent-Miller-M/s Sant Rice & General Mills, Village Khawajke, District Ludhiana. As per the claim, the rice was delivered in the year 1994-95 and Markfed is entitled to claim the interest on account of non-delivery of rice in Markfed account. The main contention put forth by the Miller is that there was no rice sold and entire sale was of paddy and as such the case falls under category "A" of the Govt. instructions dated 06.06.2000 and as such nothing is recoverable. However, the miller has tried to hide the fact that Govt. had issued instructions that rice converted unauthorizedly shall be converted into paddy for the purpose of calculation and issuance of RO at the time of sale. So in fact as per the record unauthorized conversion of rice is proved as per PV & the case falls under category "B" for sale of such rice and the claim of the Markfed is correct. Further, on the entire amount on account of interest on delayed delivery of rice as well as on account of quality cut and TDS and bardana retained by the respondent-Miller, the said claim is in accordance with the terms and conditions of the agreement.*

*Thus, I pass an order that the respondent-Miller-M/s Sant Rice & General Mills, village Khawajke, District Ludhiana is liable to pay an amount of Rs.2,44,53,439/- to the claimant-Markfed and further interest at the bank rate w.e.f.19/05/2015 till the recovery is made. Taxes shall also be recovered on the cost of rice and bardana respectively wherever not charged as per Clauses of the agreement. Accordingly, the respondent-Miller M/s Sant Rice & General Mills, village Khawajke, District Ludhiana are directed to deposit the amount of Rs.2,44,53,439/- with Markfed within 30 days, failing which District Manager, Markfed, Ludhiana shall take further legal action in accordance with the law."*

I am in agreement with the aforementioned points which have not been addressed. The things do not rest here. The order aforementioned is not sustainable in the eyes of law. The remedy for the MARKFED is to refer the matter by availing the remedy under Section 9 of Code of Civil Procedure by filing a civil suit as their intention reflected in legal notice referred above, *ibid*.

In my view, the Managing Director exceeded its jurisdiction by violating the terms and conditions of the contract entered into between procuring agency and rice millers which envisage the resolution of dispute in respect of the matter falling within the "excepted clause" . In such cases, the Managing Director can only waive of the interest, that to in case the Miller agrees for it. In case, there is discord or no consensus, the passing of decision, in my view, was/would be totally farcical exercise as order has no force of law as it cannot be executed in any Court of law.

Instead of pondering upon the merits and de-merits of the matter, without wasting time, much less to avoid the objection of limitation, I am of the view that the Managing Director of all the Procurement Agencies should with broad application of mind after hearing the Millers, in case of failure of consensus, immediately order for recovery of the amount by filing a civil suit being a disputed question of fact and law, which can only be resolved by leading direct and cogent evidence. The entire exercise being done by the Managing Director for the number of months or years, too have effect on the economy of the State, much less public exchequer. Even for recovery of an amount, heavy court fees is required to be paid and by that time, the other party is benefitted with certain legal objection qua limitation etc.

It is strange that allotment of paddy for the crop year 1994-95 is still alive after almost expiring of a decade. Though the MARKFED has already given its indication by approaching the Civil Court, yet it would be a farcical exercise in remanding the matter back to the Managing Director for passing an order afresh. The MARKFED shall be at liberty to prove the claim independently in the intended suit to be filed by leading a direct and cogent evidence.

I cannot also remain unmindful of the fact that there is no denial with regard to the allotment of paddy for the other crop years. The Miller cannot deprived being violation of Article 19(1)(g). The interim order, indicated above has not been even adhered to by respondents No.1 and 4 as the reply is most sketchy. No date of order keeping in abeyance or allotment to the agency, much less release has been mentioned. The godowns of PUNGRAIN are already full of grains. Thus, the order dated 08.11.2016, Annexure P-8 would not come as impediment/hindrance regarding the case of the petitioner for entitlement of allotment of paddy for the crop year 2016-17, in view of the interim order, noticed above. PUNGRAIN is directed to look into the matter and pass an order for the purpose of custom milling of rice by taking into consideration the observations made hereinabove.

With the aforementioned directions, the writ petition stands disposed of.

**(AMIT RAWAL)**
**JUDGE**

**January 23, 2017**
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No