

CWP No.21635 of 2017

[1]

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

**CWP No.21635 of 2017
Date of decision:30.10.2017**

M/s Vijay K. Gupta and Company ...Petitioner

Versus

State of Punjab and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Akshay Bhan, Senior Advocate, with
Mr. Alok Mittal, Advocate, for the petitioner.

Ms. Sunint Kuar, AAG, Punjab.

Mr. K.K.Gupta, Advocate,
for respondent no.4-FCI.

Rakesh Kumar Jain, J.

The petitioner, a proprietorship firm, has filed the present petition through its proprietor Reetam Gupta wife of Vijay Kumar Gupta for seeking a writ in the nature of *mandamus* to direct the respondents to allot paddy to the petitioner for custom milling for the year 2017-18.

The petitioner has averred that it had leased out its mill in the year 2004-05 to M/s Anand Foods, Moga, vide lease deed dated 01.08.2004. There was some dispute between M/s Anand Foods and the respondents regarding quality of rice supplied by it and a suit for recovery against that firm was filed by the Food Corporation of India (FCI). It is further averred that the petitioner is not a defaulter as not even a single penny is due against it, therefore, it cannot be denied the allotment of paddy.

Learned counsel for the petitioner has submitted that at the time

when the writ petition was filed, the Civil Suit filed by the FCI against M/s Anand Foods was pending, which has now been dismissed on 20.09.2017 on the ground of limitation. He has further submitted that no amount is recoverable from M/s Anand Foods after the decision of the suit, therefore, the petitioner does not fall within the definition of a defaulter, as specified in Clause 11(H) of the Custom Milling Policy, Kharif Marketing Season 2017-18 (hereinafter referred to as the “Custom Milling Policy of 2017-18”).

On the other hand, learned counsel for respondent no.4-FCI has submitted that the petitioner is a proprietorship firm having the proprietor, namely, Reetam Gupta and the petitioner had leased out its mill to M/s Anand Foods, Moga, who was allotted paddy for milling by the State Agency as well as by the FCI and the said lessee had caused loss to the State Agencies as well as to the FCI by supplying Beyond Rejection Limit (BRL) rice, which was detected in the raid conducted by the CBI and in the analysis got conducted from the Central Government Analysis Laboratory (CGAL), the said supply of rice by M/s Anand Foods was categorized as BRL (Feed-1 Category). Consequently, FIR No.2 dated 07.01.2006, under Sections 120-B IPC read with Section 420 IPC, Section 13(2) read with Section 13(1)(d) of the PC Act, 1988 was registered by the CBI against the said lessee and the loss caused to the FCI was determined @ ₹24,17,411/- but the said lessee has failed to pay it to the FCI. It is further submitted that it is not disclosed in the writ petition that the petitioner, namely, Reetam Gupta had given an undertaking/guarantee to bear or to deposit any amount becomes recoverable from the miller-lessee while settling any account of the paddy milled by the said lessee. It is further submitted that in the Custom Milling Policy of 2017-18 and even in the earlier such milling policies, it has been provided that if the lessee has caused any loss

and a financial relationship is established, then the mill premises in question shall also be declared as defaulter and even if a rice miller stood guarantor for any other miller against whom a court case/police case is registered or arbitration proceedings are initiated, then such a rice miller, who stood guarantor, shall not be considered for allotment of paddy. He has referred to Clause 11(H)(c) and (d) of the Custom Milling Policy of 2017-18 and also submitted that the Board of Directors of the FCI, in its 350th meeting held on 27.09.2012, has resolved that future dealings with such millers would be decided subject to depositing of the loss suffered by the FCI along with penal interest and completion of specific ban period.

It is also submitted that the Division Bench of this Court in the case of **FCI vs. M/s Bajrang Rice Mill and others**, LPA No.1219 of 2016, decided on 28.08.2017, held that all these transactions are purely commercial in nature, even though the Government Agency is involved and while considering a miller for allotment of paddy, the State Agency/FCI can always examine each case on the basis of their past conduct.

Learned State counsel has submitted that the petitioner had filed an application for allotment of paddy on 28.09.2017 and the department has sought 'No Objection Certificate' from various procurement agencies vide letter No.5188 dated 29.09.2017 in order to decide the factum of allotment of paddy to the petitioner and a report to this effect is still awaited from the FCI. It is also submitted that the petitioner has an outstanding dues of ₹15 lacs towards the PUNGRAIN agency on account of guarantee tendered by the petitioner of another miller, namely, M/s Anand Foods during crop year 2004-05, who had committed a default of ₹26,35,788/- and as such, the said agency had decided to recover the defaulted amount from the petitioner-guarantor.

In response, learned senior counsel appearing on behalf of the petitioner has reiterated that even in the affidavit (Annexure R-4/1) submitted by Reetam Gupta wife of Vijay Kumar Gupta, she had stated that she takes the responsibility relating to paddy to be issued to M/s Anand Foods and deposed that she would deposit the amount if any becomes recoverable from miller in future and since the suit for recovery filed by the FCI has already been dismissed, therefore, no amount is recoverable.

In this regard, he has relied upon a Division Bench judgment of the Karnataka High Court rendered in the case of **T. Raju Setty vs. Bank of Baroda**, 1992 AIR (Karnataka) 108.

On the other hand, counsel for the FCI has relied upon a judgment of the Supreme Court rendered in the case of **Punjab National Bank vs. Surendra Prasad Sinha**, 1992 AIR (SC) 1815 to contend that if the suit has been dismissed on account of limitation, then only the judicial remedy has been barred but not the right.

I have heard learned counsel for the parties and examined the available record with their able assistance.

In order to appreciate respective contentions of the counsel for the parties, it would be relevant to refer to Clause 11(H)(c), (d) and (f) of the Custom Milling Policy of 2017-18, which read as under:-

“H. No defaulter rice mill shall be considered for allotment/provisional registration. The default may be on the following counts:-

- a. xxx xxx xxx xxx
- b. xxx xxx xxx xxx
- c. If the owner/partner/director of a lessee/owner rice mill becomes partner/Director of a new/lessee/owner rice mill, or if the transfer of a rice mill either through sale or through

lease is found to be sham or financial relation is established between the new and old rice mill, which was defaulter on any count then the said mil and the mil premises in question shall also be declared as defaulter. Besides, in case of family member of a defaulter rice miller, proof of separate residence/separate family shall not itself be sufficient to prove that his/her project is not being financed/promoted by his/her defaulter family members/blood relations. The Director, Food Civil Supplies & Consumer Affairs, Punjab shall examine such cases and Director's decision in this regard shall be final and binding on all concerned.

- d. The rice miller(s) who stood guarantor(s) for any other miller against whom a court case/police case is registered or arbitration proceedings are initiated on account of embezzlement and/or on account of non-delivery of rice relating to custom milling pertaining to any crop year, shall not be considered for allotment until such miller for whom guarantee was furnished, clears the default of the concerned agency along with penal interest at the rates for the relevant year(s) as decided by the Government from time to time.
- e. xxx xxx xxx xxx
- f. 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. 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 Government from time to time, he may be considered for allotment without prejudice to the out-come of the FIR/Court Case/Arbitration Case pending against him.”

At the same time, it would also be relevant to refer to the necessary contents of the affidavit filed by Reetam Gupta wife of Vijay Kumar Gupta, which read as under:-

“xxx xxx xxx xxx xxx

I am the owner of M/s Vijay K. Gupta & Co., Ferozepur Road, Dune-ke, District Moga and I take responsibility relating to paddy to be issued to M/s Anand Foods, Dune-ke, Moga which is a lessee

party of M/s Vijay K. Gupta during year 2004-05 for custom milling by government or other agencies as under:-

- 1) For balance paddy/rice/bardana or any other recoverable towards millers in respect of paddy given by government or any other agencies.
- 2) For timely delivery of rice due after completion of milling according to milling policy of year 2004-05 or directions issued from time to time.
- 3) To deposit the amount if any becomes recoverable from miller in future after settling account of paddy milled.”

There is no dispute that the petitioner is liable to pay the dues of M/s Anand Foods, Moga and the only argument raised by counsel for the petitioner is that even if the contents of the affidavit are accepted as true, the petitioner is liable to pay the amount recoverable. It is further submitted that the suit filed by the FCI titled as “Food Corporation of India vs. M/s Anand Foods and others” has already been dismissed on 20.09.2017, therefore, there is no amount recoverable and the petitioner cannot be denied the allotment of paddy.

This argument of the petitioner appears to be attractive at the first instance but would not help the petitioner because of the decision of the Supreme Court in **Punjab National Bank's case (supra)**, in which it has been held that in the case of time barred debts, the only right to enforce debt by judicial process is barred under Section 3 of the Limitation Act but the right to recover the debt can be exercised in any other manner than by means of a suit. The observations made by the Supreme Court in this regard are as under:-

“.....The time barred debt does not cease to exist by reason of Section 3. That right can be exercised in any other manner than by means of a suit. The debt is not extinguished, but the remedy to enforce the liability is destroyed. What Section 3 refers is only to the remedy but not to the right of the creditors. Such debt continues

to subsist so long as it is not paid. It is not obligatory to file a suit to recover the debt. It is settled law that the creditor would be entitled to adjust, from the payment of a sum by a debtor, towards the time barred debt. It is also equally settled law that the creditor when he is in possession of an adequate security, the debt due could be adjusted from the security in his possession and custody. Undoubtedly the respondent and his wife stood guarantors to the principal debtor, jointly executed the security bond and entrusted the F.D.R as security to adjust the outstanding debt from it at maturity. Therefore, though the remedy to recover the debt from the principal debtor is barred by limitation, the liability still subsists. In terms of the contract the bank is entitled to appropriate the debt due and credit the balance amount to the savings bank account of the respondent. Thereby the appellant did not act in violation of any law, nor converted the amount entrusted to them dishonestly for any purpose.....”

In **T. Raju Setty's case (supra)**, relied upon by the counsel for the petitioner, it has been held by the Karnataka High Court that if the suit abates as against the principal debtor, then it would abate altogether and cannot be decreed against the sureties, which is not the position in the present case.

Thus, looking from any angle, I do not find any merit in the present case as the petitioner is bound by the affidavit of Reetam Gupta to make good the losses caused to the FCI by M/s Anand Foods, for which she had taken the responsibility and, thus, the petitioner has rightly been barred for the purpose of allotment of paddy.

Consequently, the present petition is hereby dismissed, though without any order as to costs.

October 30, 2017
vinod*

(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No