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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23236 of 2017 (O&M)
Date of decision:02.11.2017

M/s Durga Rice Mills …Petitioner

Versus

Director, Department of Food, Civil Supplies &
Consumer Affairs, Punjab and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. S.P.Garg, Advocate,
for the applicant/petitioner.

Mr. Abhaypal Singh Gill, AAG, Punjab.

Mr. K.K.Gupta, Advocate,
for the respondent-FCI.

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Rakesh Kumar Jain, J.

The petitioner, a proprietorship firm, has filed the present petition through its proprietor Nirmal Rani wife of Darshan Lal for seeking a writ in the nature of *certiorari* for quashing the communication dated 26.09.2017 sent by respondent no.6 (Food Corporation of India) to respondent no.3 for not allotting the petitioner-mill to any of the State Agencies for custom milling for the crop year 2017-18 and also for seeking a writ in the nature of *mandamus* to direct the respondents to allot the petitioner-mill to any of the State Agencies except FCI for custom milling for the crop year 2017-18 as per the policy dated 04.09.2017.

Counsel for the petitioner has submitted that the Government of Punjab has issued the Custom Milling Policy, Kharif Marketing Season 2017-18 (hereinafter referred to as the "Custom Milling Policy of 2017-18") on

04.09.2017. The name of the petitioner-mill was mentioned in the list prepared on 28.09.2017 for the allotment of rice for custom milling. It is alleged that the petitioner claimed the payment of transportation charges from the District Office, FCI, Moga, but the same was blocked illegally by the Area Manager, FCI, Moga, on the allegation that during the crop year 2004-05, M/s Mahavir Trading Company, Moga, of which Smt. Nirmal Rani was a proprietor, delivered Beyond Rejection Limit (BRL)/BPFA rice stocks, due to which the FCI allegedly suffered losses. The FCI filed Civil Suit No.95 dated 22.08.2012 for recovery of the alleged suffered losses, which was dismissed on 18.03.2017 by the Civil Judge (Senior Division), Moga, against which the FCI has filed appeal, which is pending adjudication. The petitioner has alleged that it had received the impugned communication dated 26.09.2017, against which the present petition has been filed.

It is argued that since the suit filed by the FCI for recovery against M/s Mahavir Trading Company, of which Nirmal Rani was a proprietor, has already been dismissed by the Civil Court on 18.03.2017, being barred by limitation, therefore, there is no amount recoverable and the petitioner cannot be denied allotment of agency for the purpose of custom milling.

In reply, the FCI has averred that the petitioner is getting the allotment of the paddy in the past in different names through different members of the family just to escape the liability of payment of the loss caused to the FCI on account of supply of BRL/BPFA rice, due to which even the CBI has recommended ban on such entities of the petitioner and has also included their names in the list of defaulters. It is also averred that the petitioner-firm is a sham entity as sometimes, it has claimed itself to be a partnership concern while at the other time, it has claimed itself to be a proprietorship concern, as has also been so claimed in the present petition. In this regard, it is averred that the petitioner-firm executed a lease deed in favour of M/s Abhinav Rice Mills through Abhinav Singla S/o Darshan Lal, who (Darshan Lal) is one of the partners of M/s Durga Rice Mills along with Krishan Chand and Lalit Mohan. The aforesaid partners of M/s Durga Rice Mills, namely, Darshan Lal S/o Hans Raj, Krishan Chand S/o Sh. Dhani Ram and Lali Mohan S/o Krishan Chand, also gave an affidavit taking responsibility to deposit the amount, if any recoverable, from the lessee miller and to pay any cost/loss etc. recoverable from the lessee. The said affidavit was filed on 08.09.2004 but the fact of leasing out the petitioner-mill to M/s Abhinav Rice Mills and giving guarantee in favour of the said miller-lessee has been concealed from this Court. It is further alleged that during the same crop year 2004-05, the petitioner-mill also executed another lease deed in favour of M/s Mahavir Trading Company through its proprietor Nirmal Rani w/o Darshan Lal, who has been described as one of the partners of the petitioner-mill in the partnership deed attached as Annexure R-5/3 and at the same time, Nirmal Rani W/o Darshan Lal also filed an affidavit dated 24.08.2005 and declared that she was the sole proprietor of M/s Durga Rice Mills. In any case, during the said crop year 2004-05, M/s Abhinav Rice Mills and M/s Mahavir Trading Company caused loss of ₹10,98,087/- and ₹13,82,493/- respectively to the FCI by supplying BRL/BPFA rice, on account of which the CBI has also registered a criminal case against both the aforesaid millers and also included their names in the list of defaulters prepared by the CBI.

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 even otherwise, the petitioner has no legal right to claim the allotment of paddy as 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, has 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.

It is also submitted that insofar as the dismissal of civil suit for recovery is concerned, that was only on the basis of limitation and in this regard, he 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.

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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.
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> 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.
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> e. xxx xxx xxx xxx
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> f. If a police/court case/arbitration case is pending against the

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> 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 relevant contents of the joint affidavit filed by Darshan Lal S/o Sh. Hans Raj, Krishan Chand S/o Sh. Dhani Ram, Lalit Mohan S/o Sh. Krishan Chand, partners of M/s Durga Rice Mills, Moga, read as under:-

> "xxx xxx xxx xxx xxx
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> That we are partners of M/s Durga Rice Mills, Moga and I take responsibility relating to paddy to be issued to M/s Abhinav Rice Mills, Moga, which is a lessee party of M/s Durga Rice Mills during the year 2004-05 for custom milling by government or other agencies as under:-
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> 1) For balance paddy/rice/bardana or any other recoverable towards millers in respect of paddy given by government or any other agencies.
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> 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.
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> xxx xxx xxx xxx"

There is no dispute that the petitioner is liable to pay the dues of M/s Abhinav Rice Mills, Moga and M/s Mahavir Trading Company, 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 Mahavir Trading Company and another" has already been dismissed on 18.03.2017, 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 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......"

Thus, looking from any angle, I do not find any merit in the present case as the petitioner is bound by the affidavit of Darshan Lal and

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others to make good the losses caused to the FCI by M/s Abhinav Rice Mills and M/s Mahavir Trading Company, for which they had taken the responsibility and, thus, the petitioner has rightly been barred for the purpose of its allotment to any of the State Agencies for custom milling.

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

November 02, 2017 **(Rakesh Kumar Jain)**
vinod* **Judge**

Whether speaking / reasoned: Yes/No
Whether Reportable: Yes/No