HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs. 43010 and 43418 OF 2018

Date: 31 .12.2018

WP 43010 of 2018

Between:

M/s Sri Ganapathi Industries
Rep by its Proprietor T Ranjith Rao
S/o Sampath Rao Age 32 years R/o Penchikalpet Mandal Elkathuthy District Warangal Urban

....Petitioner

And

State of Telangana
Rep through its Principal Secretary
Department of Civil Supplies Secretariat Hyderabad & others

.....Respondents

The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs. 43010 and 43418 OF 2018

COMMON ORDER:

As the issue for consideration in these two writ petitions is same, writ petitions are disposed of by this common order.

2. Petitioners are lessees of respective rice mills, they are aggrieved by the decision of competent authority rejecting their request to allot custom made rice paddy for the Khariff marketing season 2018-19.

2.1. In W P No. 43010 of 2018, petitioner has taken on lease M/s Balaji Industries Rice Mill. According to petitioner after obtaining lease from the owner, he invested good amount of money to repair and to renovate the sick mill. Petitioner thereafter applied to allot Custom Milled Rice (for short referred to as CMR) paddy for the current season, which is rejected. It appears, M/s Balaji Industries is owned by Mr K Ravinder Reddy. Alleging that he has committed illegalities in milling of CMR paddy, case under Section 6-A of Essential Commodities Act, 1955 was booked and criminal complaint was filed. Petitioner claims to be owner of M/s. Ganapathi Industries and obtained lease of M/s. Balaji Industries.

2.2. Petitioner in W P No. 43418 of 2018 claims that he obtained lease of rice mill known as M/s. Vasavi Food Processing Industries and applied for supply of CMR paddy for the current Khariff season. It appears, proceedings initiated against Masetty Narsaiah and Masetty Ganesh, proprietors of M/s. Vasavi Food Processing Industries under Section 6-A of the Essential Commodities Act, 1955 ended in confiscation of 50 % of the seized stock. The said two persons preferred Criminal

Appeal No. 79 of 2018 pending on the file of Court of Sessions Judge at Nizamabad and the Sessions Court vide order dated 13.11.2018 made in Crl M.P.No. 475 of 2018 granted stay of operation of confiscation order dated 23.10.2018. On the ground that order of confiscation of 50 % of the rice seized from the owners was made, request of the petitioner to supply CMR paddy for the current agricultural season is rejected.

3. Heard Sri S.Rahul Reddy and Sri T.S.Anurudh Reddy, learned counsel for petitioners, learned Government Pleader for Civil Supplies and learned Standing Counsel for Telangana State Civil Supplies Corporation.

4. According to learned counsel for petitioners, 'Policy of Procurement of Paddy Under Minimum Support Price Operations and Delivery of Custom Milled Rice For The Khariff Marketing Season 2018-2019 notified vide G O Ms No. 21 Consumer Affairs, Food and Civil Supplies (CS.I-CCS) Department dated 3.10.2018 is subject to Telangana Rice (Custom Milling) Order, 2015 notified vide G O Ms No. 18 Consumer Affairs, Food and Civil Supplies (CS.I-CCS) Department dated 30.10.2015. According to learned counsel only 'the miller' of rice mill is personally liable for any illegalities committed by him in undertaking the job of milling the CMR paddy under the Procurement and Delivery of Custom Milled Rice Policy and mill is no way concerned with such illegalities. Petitioners are no way concerned with the illegalities committed by the owners and having obtained valid lease of the concerned mills, they are entitled to be enrolled under the policy and to secure paddy for milling. Lessee of the mill cannot be penalized by depriving the enlistment of the mill to undertake the job of milling paddy as per the policy notified vide G O Ms No. 21 dated 3.10.2018. By placing reliance on Clause H (4) of Annexure appended to G O Ms No. 21

dated 3.10.2018, learned counsel would contend that the Government recognized entitlement of the lessee of rice mill for allotment of paddy under the policy. It only requires guarantee from the owner of the rice mill and guarantee from two financially sound rice millers or by obtaining 50 % of bank guarantee from the lessee (sic.leaser). They would therefore submit that subject to fulfillment of this condition lessees are entitled to secure paddy during the current agricultural season, mill the paddy and deliver the identified quantity of rice. Denying enrolment and supply of paddy under the policy to the petitioners amounts to arbitrary exercise of power, illegal and offends the right to carry on business as guaranteed by Article 19 (1) of the Constitution of India.

5. *Per contra*, learned Government Pleader as well as learned Standing Counsel would submit that once the miller earns disqualification as per the policy, no paddy can be supplied to the same mill, therefore rejection of the request is validly made. By drawing attention to paragraph 12 of G O Ms No. 21 dated 3.10.2018, they would contend that power is vested in the Collectors (Civil Supplies) to take action against the rice millers who divert paddy stock delivered for custom milling or indulge in purchase of PDS rice and attempt to deliver the same under CMR and to black-list them. Once action is taken in exercise of said power, the paddy cannot be supplied to the same rice mill merely because the said rice mill is leased out. The lessee cannot claim independent right ignoring the fact that the illegalities were committed by the owners in the very same rice mills.

6. The only issue for consideration in these writ petitions is whether on account of disqualification suffered by the erstwhile owner of the two rice mills in these writ petitions, whether the subsequent lessees

can be deprived of enrolment into the paddy procurement and custom milling of rice as per the policy notified vide G O Ms No. 21 dated 3.10.2018.

7. Indian economy is largely agriculture oriented. Majority of the population in India are dependant on agriculture for their sustenance. The dependence on agriculture is by way of cultivation of small extents of land owned by farmers/assigned to them or as agriculture labour. There are millions of people who do not own even small extent of land, millions of people are below poverty line, who cannot afford to purchase essential commodities required for their livelihood. In order to support those people who are below poverty line, for their sustenance, Government extends its helping hand. Well structured PDS system is put in place, through which commodities which are essentially required for a family to sustain are supplied either free of cost or at a minimal cost. Government is also ensuring that the commodities supplied under PDS are of good quality. Government incurs huge money to procure the commodities and supply them to the needy people at a subsidized price or free of cost. Similarly as most of the farmers own small extents of land, their biggest problem is marketing of their produce. As most of the farmers are small farmers, it is herculean task for an individual farmer to sell the produce on his own. They are dependant on middlemen who purchase the produce at price far less than its value. They thrive on this predicament of small farmer. It has been the endeavor of the successive Governments that the farmers are relieved from the clutches of middlemen. One of the main methodology evolved to ensure that farmer gets reasonable price for commodities produced by him is fixing minimum support price. Every year, during the agricultural season, Government announces the minimum support

price of a commodity. The farmer can sell his produce at the rate fixed to anybody or to the Government as the case may be. He is also entitled to sell the commodities at higher price than the minimum support price prescribed. In other words, the farmer is ensured minimum price fixed by the Government to the commodities produced by him.

8. Thus, on the one hand there is a mandate to procure the commodities produced by the farmers with minimum support price and on the other hand there is requirement to the Government to supply the essential commodities to the needy people through PDS. In state of Telangana, rice is the staple food. Government requires heavy quantity of rice to supply to needy people under PDS. However, it does not have means to convert the paddy into rice. It therefore ropes in rice millers to undertake the job of converting the paddy into rice. They are given appropriate remuneration for undertaking the job. The quality of paddy is thoroughly scrutinized before purchasing the same and rice milled from said paddy is also of good quality to supply to the needy people free of cost, whereas, very same rice fetches higher price in the open market. To ensure that millers do not indulge in diverting the milled rice or purchase rice from the gullible people at throw-away price and sell the same in the open market as milled CMR rice falling to their share, Government has notified 'The Telangana Rice (Custom Milling) Order, 2015' and 'The Telangana State Public Distribution System (Control) Order, 2016. The policy notified vide G.O.Ms.No.21 dated 3.10.2018 also regulate the conduct of millers.

9. Order 2015, while mandating rice millers to mill the rice, it also imposes restrictions on them to deliver the milled rice. The order vests power in the competent authority to enter, search and seize if any illegalities are brought to their notice. Miller is also required to maintain

true accounts indicating the total transactions right from receipt of paddy, paddy milled, custom milled rice delivered and balance stock available. Miller is also required to maintain separate account for the stocks of paddy purchased on his own account, paddy milled, rice produced and sold. He is also required to furnish the abstract of the above accounts every fortnightly. The enforcement officers are vested with power to periodically verify the paddy/rice stock in the mill and issue certificate. According to paragraph 4 of the Order, 2015 if miller fails to comply the directions, he is liable for imposition of penalty.

10. In G.O.Ms No. 21 dated 3.10.2018 the policy of procurement of paddy under MSP operations and delivery of custom milled rice for the Khariff Marketing Season 2018-19 was notified. The policy prescribes the procedure for procurement of paddy, delivery of paddy to rice millers, the nature of job to be undertaken by millers etc.

11. As per paragraph 11 of the said policy, the Collectors (CS) are required to review the entire process of custom milling operations, regulate and take actions against rice millers who fail to deliver the resultant custom milled rice within the stipulated time. In paragraph 12, The Collectors (CS) are also entitled to take action against rice miller who divert paddy stocks delivered for custom milling or indulge in purchase of PDS rice and attempt to deliver the same under CMR. It vests power to black list such millers.

12. Annexure –IV appended to this Government Order deals with operational guidelines for 'Procurement of Paddy and Delivery of Custom Milling Rice for the Khariff Marketing season 2018-19'. Paragraph –H of this Annexure deals with allotment of paddy to rice millers. As per sub paragraph 1 of this paragraph, paddy should not be allotted to rice

millers against whom Section 6-A cases are booked. As per sub paragraph 2, paddy also should not be allotted to rice millers who failed to deliver the CMR rice for the Khariff Marketing Season 2017-18 by 30th September, 2018. According to sub paragraph-3, paddy should not be allotted to defaulted rice millers. Thus, sub paragraphs-1 to 3 deal with who can be denied supply of paddy under the scheme.

13. According to sub paragraph 4, if rice mill is taken on lease, it requires an additional safeguard in the form of guarantee from the owner of the rice mill and also guarantee from two financially sound rice millers or alternatively furnishing of 50 % of the value as bank guarantee from the lessee to supply CMR paddy for milling.

13.1. Heavy reliance is placed on paragraph–H.4 by learned counsel for petitioners to contend that petitioners cannot be denied supply of paddy for the present season, once they complied with this condition and the disqualification is only applicable to the rice millers and not to the rice mills. This Clause is applicable in normal circumstances where a mill is leased out but is not an exception carved out from other clauses. They have also placed reliance on definition of 'Miller' and 'Rice Mill' as defined in order 2 (g) and (m) respectively to contend that clear distinction is drawn between the 'Rice Miller' and 'Rice Mill' in the order, 2015 and the disqualification clauses are applicable to the 'Rice Miller' only and not to the 'Mill'.

13.2. In the light of the objective of the scheme put in place, as briefly noted in the earlier paragraphs, about whole system of procuring paddy, milling the paddy and channeling the rice milled to the PDS, the definition of the word 'Miller' and 'Rice Mill' as defined in paragraphs-

2(g) & (m) of the Order 2015 requires consideration. Order 2 (g) and (m) read as under:

> **2 (g) : "Miller"** means the owner or any other person in-charge of rice mill and includes a person or authority which has the ultimate control over the affairs of such mill and when the said affairs are entrusted to a manager, Managing Director or Managing Agent, such Manager, Managing Director or Managing Agent.
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> ....
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> **2 (m) : "Rice Mill"** means the plant and machinery with which and thepremises including the precints thereof in which or in any part of which rice milling operation is carried on."

13.3. As per paragraph 2 (m) 'Rice Mill' means, Plant and Machinery within the premises including precincts to which or any part of which rice milling operation is carried on. In paragraph 2 (g) very wide connotation is given to word 'Miller'. It is inclusive definition. It encompasses all categories of persons who are managing the affairs of the rice mill. It means the owner or any other person incharge of a rice mill. On a plain reading of this definition, it is apparent that lessee steps into the shoes of owner and is the 'Miller' of the concerned 'Rice Mill'. In cases on hand, the owners of concerned rice mills obtained paddy in the previous agricultural season under similar policy claiming themselves as millers and on account of their illegalities they were penalized/penal proceedings are set in motion. The said illegalities were committed in same rice mills taken on lease by petitioners. Thus, proceedings initiated against owner equally binding on lessee who stepped into the shoes of the owner and managing the affairs of the mill and are the new millers of the concerned rice mills.

14. Further, accepting the plea of petitioners would lead to deleterious consequences. The unscrupulous mill owner can indulge in illegalities in milling paddy procured under the scheme and secure PDS

rice illegally and can still carry on milling activity in the same rice mill by proxy. This arrangement can go on endlessly. A lessee can walk out of the lease agreement after committing illegalities in a procurement season and a new person can claim to be the lessee to secure paddy in the next agriculture season and so on. Season after season, the mill can change hands, defeating the very objective of imposing restrictions on allotment of paddy, milling of rice and distributing rice under PDS. Such method, if validated, would be amounting to perpetrating the illegalities. The end result of these illegalities would be loss of public money.

15. In these two writ petitions also after having suffered the disqualification, the owners of respective rice mills, leased out the properties and the lessees claim as a matter of right to allow them to enroll into the policy notified vide G O Ms No. 21 dated 3.10.2018. It is appropriate to note that miller is not deprived of his commercial activities. Restriction imposed on a 'Miller' is only with reference to paddy procured under the Minimum Support Price scheme, milling the paddy and utilization of rice so milled for PDS. Therefore, right enshrined under Article 19 (1) of the Constitution is not affected in any manner. Merely because there is limited scope for rice mill to operate outside the present system cannot be a ground to hold that imposing restrictions would be offending Article 19 (1) of the Constitution of India. Further, Article 19 also permits reasonable restrictions. I am of the considered opinion that the restrictions imposed under the policy are in the larger public interest and would only deny perpetuating illegalities in procurement of paddy and distribution under the PDS which has a cascading effect.

15.1 This Court can not be oblivious to many cases instituted in this Court by the owners of the rice mills against seizure of custom milled rice and vehicles carrying custom milled rice confiscation and prosecution bringing out the stark reality as to how such illegalities are committed by millers. Thus, the contentions of the learned counsel for petitioners cannot be countenanced. No policy of the Government can be understood to mean that such illegalities are intended to be permitted and defaulting millers left scot free.

16. Assuming what is contended by the learned counsel for petitioners is valid and disqualification suffered by miller cannot be extended to mill, having regard to the objective of the policy of the Government, the purpose of milling the rice for distribution under PDS to the needy people, the Court in exercise of its extraordinary and equitable jurisdiction under Article 226 of the Constitution of India, need not grant the relief prayed for by the petitioners.

17. The parameters of judicial review in matters of this nature are well settled. In the judgment dated 08.06.2010 rendered in W.P.Nos.12674, 12685 and 12691 of 2010, this Court delineated the principles laid down by the Supreme Court in various cases on the scope of exercise of jurisdiction by this Court under Article 226 of the Constitution of India. They are:

> "It is well to remember that the exercise of jurisdiction under Article 226 of the Constitution of India is discretionary and a Writ is not issued as of right or as a matter of course. **C.R.Reddy Law College Employees' Association, Eluru W.G.District vs. Bar Council of India, New Delhi [(2004 (5) ALD 180 DB].** As the power exercised by this Court, under Article 226 of the Constitution of India, is discretionary it need not be exercised in every case where there is an error of law. One of the limitations imposed by this Court, on itself, is that it would not exercise jurisdiction unless substantial injustice has ensued or is likely to ensue. It would not allow itself to be turned into a court of appeal to set right mere errors of law which do not occasion injustice. **Sangram Singh v. Election Tribunal, Kotah [AIR 1955 SC 425]**. Even when some defect is found in the decision making process, this Court will exercise its discretionary power, under Article 226 of the Constitution of India, with great caution and only in furtherance of public interest and not

> merely on the making out of a legal point. This Court is required to keep larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to the conclusion that overwhelming public interest requires interference, would it intervene in the matter. **Air India limited v. Cochin International Airport Limited [(2000 (2) SCC 617].**

18. Though, the decision in **Ramniklal N. Bhutta v. State of Maharashtra[1],** is under the Land Acquisition Act, the observations made by the Supreme Court aptly apply to this case also. It reads as under:

> **"10.** .... ***The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point.*** .... ***The courts have to weigh the public interest vis-à-vis the private interest while exercising the power under Article 226 — indeed any of their discretionary powers..........***"

19. In the facts of these two writ petitions, it cannot be said that the decision of respondents in refusing to supply CMR paddy in the Khariff marketing season 2018-19 is manifestly illegal, warranting interference by this Court.

20. The Writ Petitions are accordingly dismissed. Miscellaneous Petitions, if any pending stand dismissed.

JUSTICE P.NAVEEN RAO

Date: 31.12.2018
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[1] (1997) 1 SCC 134

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