IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-22891-2017 (O&M)
Date of decision:05.12.2018

M/s Manav Rice Mills & others ... Petitioners

Vs.

Union of India & others ... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Daman Dhir, Advocate for the petitioners.

Mr. Rajesh Garg, Senior Advocate with
Ms. Nimrata Shergill, Advocate for FCI.

Ms. Rukhsaar Dhindsa, AAG, Punjab.

Mr. Ankit Kumar, Advocate for respondent No.6.

...

TEJINDER SINGH DHINDSA, J.(ORAL).

Petitioner-M/s Manav Rice Mills had filed the instant writ petition impugning recovery proceedings (Annexure P-15) with regard to interest imposed by the State Procurement Agency i.e. the Punjab Agro Food Grains Corporation Limited towards cost of empty gunny bags retained by the petitioner/Miller Company after delivery of the custom milled rice for the kharif marketing season 2013-14.

Court has been apprised that similar issue has already been dealt with by a Division Bench of this Court in LPA-2044-2016 (.R.L. Enterprises Vs. Union of India & others) and other connected LPAs decided on 10.09.2018 and wherein the following order was passed:

> *"This order shall dispose of LPA-2044-2016, LPA-2045-2016 and CWP-24964-2016 as the point in issue involved in all the cases is common in nature. For the sake of convenience, the facts are being extracted from LPA-2044-2016.*

[2] The appellants are Rice Millers in State of Punjab, who invoked the writ jurisdiction of this Court challenging levy of 60% cost including interest on 'once used Gunny bags' for the crop year 2012-13 and consequently sought quashing of Clause 18(1) of the Custom Milling Policy of KMS 2012-13 dated 27.09.2012.

[3] Learned Single Judge has dismissed appellants' writ petition with a very brief order observing that the Policy sought to be quashed by the appellants was earlier upheld by the learned Single Judge in a bunch of writ petitions and Intra Court appeals filed against the said order including LPA-800-2016 were withdrawn on May 23, 2016.

[4] Learned counsel for the appellants submits that the issue sought to be raised in the instant cases was distinguishable from the one decided earlier by a learned Single Judge. He further points out that vide order dated May 23, 2016 passed in LPA-800-2016, the appellants in that appeal, were permitted to re-agitate the matter based upon fresh cause of action.

[5] It is submitted on behalf of the appellants that while Government of India has taken a Policy decision for allowing the Rice Millers to retain Gunny bags on payment of 20% of the value, State of Punjab and its procurement Agencies have levied interest on the said price, without any justification whatsoever. He urges and rightly so that even if the Policy re: fixation of price by Government of India stands upheld, the element of interest introduced or levied by State of Punjab or its Procurement Agencies is a fresh cause of action and requires determination.

[6] The writ petitions were dismissed in limine, hence the official respondents have now filed their written statements. A perusal of the written statement filed by respondent Nos.1 to 4 does not unfortunately reveal as to in what circumstances the interest has been levied on the value of gunny bags determined/fixed under the Government of India Policy. Unless there are some valid reasons to levy interest, State of Punjab

or its procurement agencies cannot indulge in unjust enrichment. At the same time in the absence of specific pleadings or material on record, it may not be expedient for this Court to express any final view on the issue.

[7] These appeals are accordingly allowed in part; the order under appeal dated 24.09.2016 is modified and the writ petitions are disposed of with a direction to the Principal Secretary, Department of Food and Civil Supply, Government Punjab to consider and decide the following questions by way of a reasoned order:-

(i) Whether any interest has been levied by State of Punjab orits Procurement Agencies on the price of used Gunny Bags as fixed by Government of India/or its Agencies?

(ii)If so, what is the basis of levying the interest by State of Punjab or its Procurement Agencies?

[8] Let these questions be determined preferably after giving an opportunity of hearing to the representative of the appellant-rice millers or other stake holders preferably within a period of three months from the date of receipt of a certified copy of this order."

In the considered view of this Court, the order afore reproduced in LPA-2044-2016 would cover the controversy raised in the instant writ petition as well.

Accordingly, the instant writ petition is disposed of in terms of order dated 10.09.2018 passed in LPA-2044-2016.

(TEJINDER SINGH DHINDSA)
JUDGE

05.12.2018
harjeet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No