IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.25488 of 2017 (O&M)
Date of Decision: 09.03.2018

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M/s. Luxmi Rice Mills

. . . . Petitioners

Vs.

State of Punjab and others

. . . .Respondents

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CORAM: - HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

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Present: Mr.Satish Goel, Advocate,
for the petitioner.

Mr.H.S. Sitta, AAG, Punjab.

Mr.Aman Sharma, Advocate,
for respondent No.5.

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RAKESH KUMAR JAIN, J.

The petitioner has assailed the validity of the order dated 25.10.2017 passed by respondent No.4 and conveyed by respondent No.3 on 26.10.2017 by which allotment of paddy for custom milling for the kharif marketing season 2017-18 to the petitioner has been rejected, the order dated 3.11.2017 passed by respondent No.2 by which appeal preferred by the petitioner under Clause 11(F) of the Custom Milling Policy for the Kharif Marketing Season 2017-18 [for short 'the Custom Policy] against the impugned order dated 25.10.2017 has been dismissed and for the issuance of a writ in the nature of mandamus directing the respondents to allot paddy for milling to the petitioner/mill for the kharif marketing season 2017-18.

The petitioner/mill had allegedly purchased land measuring 14 kanal 12 marlas being 292/2458 share out of land measuring 122 kanal 18 marlas situated in the Revenue Estate of Village Kutba, District Barnala along with building and machinery of rice mill, which was already in existence, from Hitesh Kumar s/o Vipan Kumar, resident of Barnala proprietor of M/s Shri Kuber Rice and General Mills, Kutba, Tehsil Mehal Kalan, District Barnala vide registered sale deed No.1117 dated 15.12.2014 for a consideration of ₹55 lacs and obtained the possession on the same day. Mutation was also sanctioned in favour of the petitioner vide order dated 6.5.2016 passed by the court of Collector-cum-Sub Divisional Magistrate, Barnala. The petitioner applied for new registration with the respondent-department during the kharif marketing season 2016-17 which was denied vide letter dated 19.9.2016 issued by the office of respondent No.2 on the basis of the letter dated 27.7.2016 issued by the office of respondent No.5 and letter dated 09.09.2016 issued by the office of District Manager, PUNGRAIN, Barnala. The petitioner challenged the letters dated 27.7.2016 and 19.9.2016 by way of a writ petition No.22075 of 2016, which was disposed of on 24.10.2016 with the following order: -

> *"Having heard the learned counsel for the petitioner and without expressing any opinion on merits of the case, lest it should prejudice the rights of either of the parties, present writ petition is disposed of, with a direction to District Manager, PUNSUP, Barnala-respondent No.4 that if the petitioner deposits the amount of Rs.10,76,000/-, disclosed in his letter No.1886 dated 27.07.2016 (Annexure*

P-4), along with interest @12% per annum within a period of 10 days from today and furnishes an undertaking to pay the amount finally settled between the parties within a period of one month, the said amount shall be accepted by respondent No.4 without prejudice to rights of either of the parties and subject to final settlement of the amount between the parties. Thereafter, Controller, Food Civil Supplies and Consumer Affairs, Barnala-respondent No.3 shall immediately consider the claim of the petitioner for registration for the current paddy season for the year 2016-2017 and writ petition stands disposed of."

It is alleged that the petitioner had deposited ₹14,42,600/- on 2.11.2016 in terms of the order dated 24.10.2016, in the State Bank of India, in the name of District Manager, PUNSUP, Barnala. It is further averred that the office of respondent No.2 had given approval for registration of the petitioner-mill with the respondent-department and allotted to agency PUNSUP, Barnala for storing of paddy for the kharif marketing season 2016-17 as per letter dated 16.11.2016. It is further averred that 1596 metric ton of paddy was stored in the petitioner-mill and the resultant rice i.e. 1058.70 metric ton was delivered as per the Custom Policy. It is further averred that for the kharif marketing season 2016-17, the respondent-department has issued a policy similar to the Custom Policy as prevalent for the kharif marketing season 2016-17 but respondent No.4 has decided that the petitioner-mill is not eligible for allotment for the kharif crop year 2017-18 and passed the impugned order on 25.10.2017. The petitioner filed appeal against the impugned order in terms of Clause 11(F) of the Custom Policy but the said appeal was dismissed by respondent No.2 vide impugned order dated 3.11.2017.

Learned counsel for the petitioner has submitted that the appellate authority has erred in rejecting the appeal on the ground that the mutation sanctioned in favour of the petitioner-mill in respect of the land purchased by them by the order of the Deputy Commissioner-cum-Collector, Barnala on 12.10.2017 which has no effect because the mutation does not create any title rather the title is created by the sale deed which has been executed in favour of the petitioner and the mutation is entered only for the fiscal purpose. It is further submitted that there was no attachment order or stay against the property purchased by the petitioner, therefore, the respondents have erred in not making allotment to the petitioner-mill of the agency for the purpose of custom milling for the kharif marketing season 2016-17.

On the other hand, it is argued by counsel for respondent No.5 that the petitioner has not given the true facts because one M/s Ganesh Rice Mill, Tulliwal District Barnala was taken on lease by M/s Jai Bir Bajrangi Rice Mills, Tulliwal District Barnala through its partners Umesh Goyal, Mukesh Garg, Rajinder Kumar and Pankaj Kumar. The said rice mill i.e. M/s Jai Bir Bajrangi Rice Mills was allocated paddy for the crop year

2011-12 by them but the said mill did not mill the paddy stocks and embezzled the amount and caused loss to them as such they suffered loss to the tune of ₹1.15 crores (approximately). An application under Section 9 of the Arbitration & Conciliation Act, 1996 [for short 'the Act'] was filed on 13.8.2014 before the Trial Court, who vide its order dated 30.7.2015 restrained M/s. Jai Bir Bajrangi Rice Mills as well as its partner Mukesh Garg from alienating the property till conclusion of the arbitration proceedings. It is further submitted that M/s. Shri Kuber Rice and General Mills is situated on the land owned by Mukesh Garg and Hitesh Kumar. The said land has been purchased by the petitioner i.e. M/s Luxmi Rice Mills on 15.12.2014 vide registration sale deed No.1117 in spite of the fact that the application under Section 9 of the Act was pending before the trial Court. It is further alleged that the present petition has been filed by Jugesh Chander proprietor of M/s Luxmi Rice Mills, who has purchased M/s Shri Kuber Rice and General Mills from his nephew, namely, Hitesh Kumar co-owner of land/premises of M/s Shri Kuber Rice and General Mills in order to circumvent the entire proceedings and to defeat the purpose of recovery of the defaulted amount, initiated by respondent No.5. It is also submitted that in view of the relevant clauses of the Custom Policy the rice mill situated on the land belonging to a defaulter i.e. Mukesh Garg and also that the rice mill of the petitioner is situated on the land of which the title is under challenge, therefore, the respondents did not consider the petitioner for allotment of paddy for the kharif marketing season 2016-17 in terms of Clause 11H(c) & (h) of the Custom Policy. Clause 11H(c) & (h) of the Custom Policy read as under: -

"(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 mill and the mill 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.

(h) Premises of a defaulter miller auctioned by a financial institution/commercial bank shall not be considered for allotment during KMS 2017-18, if there is any objectionable relation

> *between the buyer and the previous owner as far as allotment of paddy is concerned for Custom Milling Purposes. Further, if the Agency's dues could not be cleared out of the sale proceeds of rice mill/other properties of defaulter miller, in that case also the buyer of this auction mill will not be eligible for allotment of paddy during kharif 2017-18."*

I have heard learned counsel for the parties and perused the available record.

There is no dispute that Mukesh Garg s/o Vinod Kumar was the partner of M/s Jai Bir Bajrangi Rice Mills (defaulter mill) and the property on which M/s Shri Kuber Rice and General Mills has been installed is of Mukesh Garg. Apart from this M/s Shri Kuber Rice Mills (sister concern) is also defaulter of PUNSUP of the Kharif marketing season 2012-13 and in this mill Ashok Kumar son of Baldev Ram and Nitesh Kumar son of Vipan Kumar are the partners. It has also been found that in the case of M/s Shri Kuber Rice Mills, Kutba, Barnala, PUNSUP had registered an FIR No.35 dated 14.7.2014 under Sections 406/409/420 of the IPC at Police Station Mehal Kalan, Barnala against the said partners, which is pending. Ashok Kumar s/o Baldev Ram and Hitesh Kumar s/o Vipan Kumar are also the partners in M/s Shri Kuber Rice & General Mills, Kutba sister concern rice mill and Nitesh Kumar s/o Vipin Kumar and Hitesh Kumar s/o Vipin Kumar are real brother. The land measuring 14 kanal 12 marlas, purchased by the petitioner vide sale deed dated 15.12.2014, belongs to Hitesh Kumar s/o

Vipin Kumar and Mukesh Garg s/o Vinod Kumar in equal shares and as such the reasons given by the respondents in the impugned order as well as explained in the reply fully justify the action having been taken by them in terms of Clause H(c) & (h) of the Custom Policy denying the allotment of paddy to the petitioner-mill.

No other point has been raised.

In view of the aforesaid facts and circumstances, which are borne out from the record itself, I do not find any reason to interfere in this petition and the same is hereby dismissed though without any order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

09.03.2018
Vivek

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*