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

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CWP No.22751 of 2017 (O&M)
Date of Decision: 23.10.2019

Krishna Rice and General Mills ... Petitioner

Versus

State of Punjab and others ... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mrs. Baljit Mann, Advocate for the petitioner.

Ms. Simran Grewal, AAG, Punjab.

Ms. Deepali Puri, Advocate for respondent No.4.

Mr. Aditya Mann, Advocate for respondent No.5.

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RAJIV NARAIN RAINA, J (ORAL)

1. When the matter came on for hearing on 18.10.2019 with two other connected writ petitions, this Court, after hearing the parties at length, passed the following order:-

> *"By consent, the date fixed in these cases is advanced to 23.10.2019.*
>
> *Heard on preliminary point of allotment of paddy for the current season.*
>
> *In the meanwhile, Ms. Simran Grewal, learned State counsel to take instructions from the Director, Food, Civil Supplies and Consumer Affairs, Punjab, on Clause 7(f) of Custom Milling Policy- 2019-20 for paddy (kharif), as to what is to be done in a case of a Miller, who does not have a police/Court/arbitration case pending on account of (1) embezzlement and (2) non-delivery of rice. Clause 11(f) of the Custom Milling Policy-2016-2017, is in pari materia*

with Clause 7(f) of Custom Milling Policy-2019-20, which covers the field of Clause 11(f), but extends default to a 3rd condition of non-clearance of any dues of any State or Procurement Agency apart from the consequences of being blacklisted. This is not on facts, the case in these three petitions.

The Director in her additional affidavit to be filed will directly answer the Court query as to whether a Miller who has succeeded before the Arbitrator in a dispute between the Miller and the procurement agency and an appeal has been preferred by the unsuccessful party under Section 34 or 37 of the Indian Arbitration and Conciliation Act, 1996 as the case may be; then whether such Miller will be considered for allotment. In case allotment is made can the State/procurement agency demand as a pre-condition indemnity bonds/bank guarantees and security etc. from the Miller as performance guarantee depending on the ultimate fate of the State appeal. If the provisions of the Custom Milling Policy are to be interpreted in such a way that a miller would not get allotment of paddy till the appeal is pending proceedings, which may take years together, then where would the rights of the Millers go, so long as they are paying their bills and keeping to the right side of the law and are not within the default-vices mentioned in the policy.

Let the additional affidavit be presented with the Director's remarks/vision on this troublesome area expressing in the additional affidavit of what she proposes to do to balance justly the competing interests of the state agencies and the Miller. Copy of the policy 2019-20 has been handed over by Ms. Mann, which is retained and taken on record for further reference as the document is not on record of the writs.

That aside, Mr. Anupam Singla for the respondent submits that CWP No.19441 of 2016 has been rendered

> *infructuous as provisional NOC has been granted by the Punjab Agro Food Grains Corporation to the petitioning Miller and the matter is now before the State Government for consideration for allotment of paddy in the current Kharif season 2019-20. However, Mr. Mandeep Singh, Advocate appearing for Mr. Mehndiratta asserts that the matter is still before the Government undecided and no allotment of paddy has been made to the petitioning Millers. Whether the petition is rendered infructuous will be taken up in the next hearing.*
>
> *Relevant portions of the order dated 08.12.2017 passed by a Committee of six members has been read out in Court. That order does not answer the query raised in this order as to whether allotment can be denied only on account of pendency of appeal after the State lost the case before the arbitrator appointed by the State agency.*
>
> *List on 23.10.2019.*
>
> *Copy of this order be given to learned State counsel under the signatures of the Bench Secretary of this Court.*
>
> *A copy of this order be placed in all the files of the connected cases."*

2. In response to that order, Ms. Anindita Mitra, IAS, Director Food, Consumer Affairs and Civil Supplies, Punjab has filed her affidavit through Ms. Deepali Puri, Advocate which is taken on record. In Paragraph 6 of the affidavit, the Officer has stated that the case of the petitioner-mill has been examined by her keeping in view the Policy for KMS 2017-18 and KMS 2019-20. Paragraph 7 of the affidavit is prominently important for the disposal of this petition as the stand of the State Government has been clarified in the following words:-

> *"That it is most respectfully submitted that in terms of the relevant Clauses of the Policy no mill can be considered for allotment even if the appeal is pending. However, as a matter of convention followed previously the Mills could*

> *be considered by submission of Bank Guarantee commensorating to the defaulted amount depending upon the fate of the appeal, provided that the petitioner fulfills the eligibility criteria as laid in the Custom Milling Policy 2019-20. Moreover, the Government has floated an OTS Policy 2019-20 in which if a defaulter miller has a pending Court case or arbitration case with the Procurement Agency such defaulter will may apply under the scheme upon submitting a Bank Guarantee equivalent to the amount recoverable calculated at the rates specified in the Schedule plus simple interest at the rate of 10% per annum calculated for two years on the amount recoverable. Thus, the petitioner mill may be considered for allotment in case it submits the said Bank Guarantee as per the Scheme by applying under it."*

3. The statement requires no paraphrasing as the meaning is clear and emphatic. The miller can be admitted to business of milling paddy only upon furnishing a bank guarantee equivalent to the amount recoverable calculated at the rates specified in the Schedule plus simple interest at the rate of 10% per annum calculated for two years on the amount recoverable. If this condition is fulfilled, the mill can be considered for allotment.

4. In case, the petitioner-miller is to be allotted paddy for milling in terms of the affidavit it would, needless to say, also have to fulfill all other eligibility conditions contained in the Custom Milling Policy 2019-20. As far as the bank guarantee is concerned, Ms. Mann on instructions from her client Sh. Rakesh Kumar, a partner of the mill, present in Court is ready and willing to furnish bank guarantee to enable the department to allot paddy for milling but she enters a caveat submitting that the interest component of the bank guarantee post 15.04.2015 (the date of commencement of dispute in arbitration) should not be levied at the

threshold but should be kept in abeyance to await the result of the arbitration proceedings in appeal under Section 34 of the Arbitration and Conciliation Act, 1996 pending at District Courts, Ludhiana at the instance of Markfed having lost the case before the arbitrator.

5. Accordingly, the petitioner is prepared to furnish bank guarantee in a sum of Rs.59,92,294/- being the principal amount claimed by Markfed, represented by Mr. Aditya Mann calculated as on 15.04.2015. I find that 10% interest per annum component, if added at this stage, as per the view of the Director it will grand total to a considerable amount over and above the claimed amount in the arbitration proceedings by Markfed. Having regard to the fact that the petitioner has succeeded before the Arbitrator and the unsuccessful Markfed is in appeal, then I feel that the submission of Mrs. Mann is just, fair and reasonable and the petitioner should only be pinned down to the original amount along with interest as claimed by the Markfed at the time of commencement of the arbitration proceedings, that is, on 15.04.2015. Any additional amount of the principal and interest thereon, other than the sum specified above, will by virtue of this order, be subject to and remain adjustable towards the sum of money determined in the final order passed in the Section 34 application or in further appeal under Section 37 and still further to the Supreme Court, as the case may be. It is inherent that the culmination of the proceedings will take an unpredictable time and the interest of both the parties needs to be balanced out and safe-guarded at this stage as an interim measure.

6. Toward that end, and as result of the above discussion, this petition is disposed of with the following directions binding on the petitioner and the respondents to clear the path for allotment of paddy to the

petitioner in the current milling season: 2019-20. Sequitur:-

1. The petitioner will furnish a bank guarantee in the sum of Rs.59,92,294/- to Markfed i.e. the amount in the award within one week from today. The payment of interest as claimed in the affidavit will be kept in abeyance to await the final result of the arbitration and shall remain adjustable on either side in terms of the final outcome of the proceedings.

2. On furnishing of bank guarantee, the Markfed will issue 'No Objection Certificate' to the petitioner.

3. On the strength of that certificate, the petitioner-firm shall be considered for allotment of paddy subject to satisfying the eligibility conditions as laid down in the milling policy and subject to this order. It is clarified that the District Allotment Committee and all other Officers/officials concerned in the respective respondent organizations including the empowered officers of the Punjab Government will facilitate in the matter and shall consider and complete the entire allotment process within one week from furnishing of the bank guarantee in terms of the first direction.

7. It is ordered accordingly and the petition in terms of the above stands disposed of.

8. Order dasti.

(RAJIV NARAIN RAINA)
JUDGE

23.10.2019
D.Bansal/Vimal

Whether speaking/reasoned : Yes
Whether reportable : Yes/No