

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

CWP No. 31586 of 2019 (O&M)

Date of decision:-05.11.2019

Chinu Goyal and others

.....Petitioners

versus

State of Punjab and others

.....Respondents

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

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

Mr. Abhay Pal Singh Gill, AAG, Punjab.

Ms. Deepali Puri, Advocate for
respondents No.4 to 7.

TEJINDER SINGH DHINDSA, J.(ORAL)

The instant petition is at the hands of the Rice Mill/partners of Rice Mills.

Petitioners assail the action of the respondent authorities in having allegedly violated certain clauses of the Punjab Custom Milling of Paddy Policy (Kharif 2019-2020) (Annexure P-1).

A writ of mandamus has been sought for directing the official respondents to strictly adhere to the clauses of the policy. Yet another prayer raised in the petition is for the first respondent i.e. The Principal Secretary-cum-Financial Commissioner, Government of Punjab, Department of Food, Civil Supplies and Consumer Affairs, to constitute a *expert body* or a high power committee and/or grievance redressal committee so as to ensure that the paddy policy in question is enforced

strictly in terms/conditions contained therein.

Mr. Daman Dhir, Advocate, during the course of arguments has adverted to the averments made in the petition as also a linkage statement of rice mills at Annexur P-2 in an attempt to impress upon this Court that there has been a deviation of certain terms and conditions contained in the Custom Milling Policy at Annexure P-1 dated 16.09.2019.

A complete copy of the writ paper book had been furnished to learned State counsel on the last date of hearing so as to enable him to complete instructions.

Mr. Abhay Pal Singh Gill, AAG, Punjab, who is being instructed by Sh. A.S. Sarao, Deputy Director, Rice, Punjab, has invited the attention of this Court in Clause 11 of the Punjab Custom Milling Policy for Paddy (Kharif 2019-20) and which reads in the following terms:-

“11. LINKING OF MANDI(S) AND RICE MILLS

a. Linking should be got done by the agencies at the time of allocation of rice mills.

b. The DAC shall make all efforts while linking rice mills and mandis in such a way so as reduce the expenditure on transportation of paddy to a bare minimum. Centers/mandis shall be linked with the nearest milling center/storage center keeping in view the availability of milling capacity at the milling/storage center(s) at which paddy is proposed to be stored/milled.

c. Mandis should preferably be linked with the rice mills situated within the same milling center.

Provided that, where a rice mill is situated in any

adjoining milling center (either in the same district or in any other district) and the distance of mandi and such mill is considerably lesser than the distance between mandi and the mill within the same milling center, such a mill shall be linked with nearest mandi unless the miller(s) at the same center are ready to pay (by way of an undertaking in this regard) the extra cost of transportation. DDF concerned shall prepare a list of such Mandis and mills mentioning therein distances from all such mandis.

Provided further that while linking of mandis and millers in such cases, equitable distribution of paddy to the mills in respective milling centres shall be the guiding principle and in no case the storage of paddy in such mills shall exceed the maximum free allocable paddy after proportionate cut of the respective milling centre. Provided that if a dispute arises between millers and the agencies regarding equitable distribution of paddy or otherwise, it shall be decided by the DDF-cum-Chairman DAC. Further an appeal against such decision by the DDF-cum-Chairman DAC shall lie with the DFS and subsequently with PSFS.

d. DAC should allot mandis in such a manner so as to ensure that paddy is shifted directly from the purchase centre/mandi to the storage points/mill premises and no criss-cross movement of paddy stocks takes place. If any crisscross movement is detected at a later stage DAC shall collectively be held responsible and liable for disciplinary action, in addition to

recovery of extra expenditure incurred in such crisscross movement, from the responsible member(s) of DAC.

e. After linking all the mandis and mills, information in proforma (Annexure XXI) shall be submitted by every DFSC to the office of Director. A soft copy of final linking of all the mandi and mills shall also be sent to the office of Director by an e-mail at adfsriceho90@gmail.com and directorfoodsupplies@gmail.com. ”

Clause 24 of the Policy refers to an alternative dispute resolution mechanism and which would also be relevant in the context of the prayer (s) raised in the instant petition and reads as under:-

***24. ORDERS PASSED UNDER THIS POLICY AND
ALTERNATIVE DISPUTE RESOLUTION MECHANISM***

a. All orders passed under any of the provisions of this Policy shall be passed after the Miller has been given a written notice of the proposed action and an opportunity of personal hearing before proceeding against him. Given the short time lines of the crop season, a notice of 2 days shall be issued to the Miller and a maximum of one adjournment for personal hearing.

b. A first appeal from orders passed by the DAC related to any clause of this policy shall lie with the DFS and a second appeal therefrom with the PSFS. The Decision of PSFS in such appeals shall be final and binding.

c. All the disputes and differences arising out of or in any manner touching or concerning the agreement whatsoever

shall be referred to the sole arbitration of an Arbitrator to be appointed by the SPA. The award of the Arbitrator shall be final and binding on the parties to the contract.

d. Provided that any demand for arbitration in respect of any claim(s)/dispute between both the parties, under the contract shall be in writing and shall be made within one year of the date of completion or expiry of the period of contract. If the demand is not made within the period, the claim (s) of the Miller shall be deemed to have been waived off and the agency shall be released of all liabilities under the contract in respect of these claims. The cost for and in connection with arbitration shall be the discretion of the Arbitrator who may make suitable orders in his award.

e. The award of such arbitrator shall be final and binding on all the parties to the contract. In the event of death of an Arbitrator or his being transferred or vacating his office or being unable to act for any reason, the Managing Director concerned at the time of such transfer, vacation of office, death or inability, shall appoint another person to act as Arbitrator or himself/herself act as Arbitrator. Such a person shall be entitled to proceed with reference from the stage where it was left his predecessor.

f. Subject as aforesaid, the Arbitration and Conciliation Act 1996, the Arbitration and Conciliation (Amendment) Act 2015 or any statutory re-enactment or modifications thereof shall apply to the arbitration provided

under this clause. However, the cases of fraud, theft, misappropriation etc. on the part of the miller are not covered under this clause and in such cases legal proceedings as deemed fit shall be initiated by the agency against the miller as well as against the sureties.

g. In cases where where documents of agreements are lost during arbitration/civil proceedings and the miller has delivered delivered even a single consignment of custom-milled rice to FCI it shall be presumed that the Agreement containing the Arbitration Clause did actually exist but has been deliberately lost by some vested interests. This Clause shall be acceptable to all the stakeholders.

In the considered view of this court in the light of Clause 11 and 24 reproduced hereinabove, the respondent authorities have already put in place an alternate redressal mechanism and which the petitioners ought to invoke.

Mr. APS Gill, learned AAG, upon instructions from Sh. A.S. Sarao, Deputy Director, Rice, Punjab, very fairly states that the joint representation dated 25.10.2019 (Annexure P-3) would be dealt with by the appropriate authorities as per Clause 11 of the Policy and a decision in accordance with law and as per terms and conditions of the policy itself would be taken and conveyed to the petitioner within a period of 10 days from today.

Statement made by learned State counsel, is accepted.

It would be appreciated if prior to taking a final decision in the matter an opportunity of personal hearing is granted to the petitioners.

In view of the above, writ petition is disposed of as no further directions are required to be passed.

It is clarified that this Court has not examined the contentions and Submissions made on behalf of the petitioners on merits.

(TEJINDER SINGH DHINDSA)
JUDGE

05.11.2019

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No