

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

CWP-34674-2019 (O&M)

Date of decision:- 28.11.2019

M/s Sherpur Rice Mills, Sherpur, District Sangrur

...Petitioner

Versus

M/s Noor Agro Industries and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SHARMA

Present:- Ms. Dhivya Jerath, Advocate,
for the petitioner.

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RAVI SHANKER JHA, C.J. (ORAL)

The petitioner has filed this petition assailing clause 7(g) of the Customs Milling Policy for the year 2019-2020 on the ground that it is illegal, arbitrary and violative of Articles 14, 19 and 21 of the Constitution of India.

The undisputed facts are that the petitioner is a guarantor in a milling contract entered into by respondent No. 1 with respondents No. 2 and 3. It is stated that respondent No. 1 has committed an embezzlement on account of which the proceedings are pending against respondent No. 1. It is also stated that the petitioner has also filed a criminal case against respondent No. 1 with regard to the embezzlement.

Learned counsel for the petitioner submits that in view of the aforesaid proceedings, the petitioner who is merely a guarantor is being treated as a defaulter and is not being allocated work as an agency under the scheme. Learned counsel on the basis of the aforesaid factual matrix has challenged clause 7(g) of the Punjab Custom Milling Policy for Paddy (Kharif 2019-2020).

We have heard learned counsel for the petitioner at length.

Before appreciating the submissions of learned counsel for the petitioner, it is necessary to peruse clause 7(g) of the Milling Policy which is as under:-

"7(g) A Miller(s) who stood guarantor(s) to another miller which has subsequently defaulted and with whom a legal dispute has arisen on account of embezzlement of paddy or non-delivery of custom milled rice or pendency of any other due amount in any of the previous crop year(s) shall also be considered defaulter until the final decision is arrived at in such case/cases. However, if a miller, against whom a legal dispute is pending on account of non-delivery of rice or embezzlement of custom milling paddy or pendency of any other due amount, clears the amount of default along with 100% of such due interest, such a miller may be considered for allocation. Such an allocation shall be without any prejudice to outcome of the pending legal dispute."

From a perusal thereof, it is apparent that a guarantor cannot be considered for allocation of work in case the miller for whom he stood guarantee has either defaulted or with whom a legal dispute has arisen on account of embezzlement of paddy or non-delivery of custom milled rice or pendency of any other due amount in any of the previous crop years.

Admittedly and undisputedly, the petitioner has entered into an agreement of guarantee with respondents No. 2 and 3 with its eyes open and has accepted the liabilities of the guarantor under the milling policy. It is settled law that the guarantor stands in the same footing as the miller entering into the agreement and, therefore, is also subject to the same liabilities and consequences. It is clear that the liabilities under the contract of guarantee having been accepted by the petitioner willingly and voluntarily

cannot be said to be an unreasonable restriction under Article 19(1)(g) of the Constitution of India and as the said clause comes into operation only in the circumstances mentioned therein and as the reasons for the same are clearly prescribed and are applied uniformly, the question of the said clause of the policy being violative of Article 14 of the Constitution of India also does not arise.

As the petitioner has been subjected to the clause of the policy in accordance with law and does not prevent the petitioner from doing any business except with the respondents in terms of the policy to which the petitioner has voluntarily subscribed, the question of violation of Article 21 of the Constitution of India also does not arise in the present petition. No other ground of challenge has been argued before this Court.

In these circumstances, we do not find any merit in the petition challenging the constitutional validity of clause 7(g) of the Punjab Custom Milling Policy for Paddy (Kharif 2019-2020).

The petition filed by the petitioner being meritless is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(RAJIV SHARMA)
JUDGE

28.11.2019
Amodh

whether speaking/reasoned	Yes/No
whether reportable	Yes/No