

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

**CWP-1295-2020 (O&M)
Date of decision:13.03.2020**

M/s Sran Rice Mills

... Petitioner

Vs.

State of Punjab & others

... Respondents

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

Present: Mr. Shiv Kumar, Advocate for the petitioner.

Ms. Ambika Bedi, AAG, Punjab.

Ms. Deepali Puri, Advocate for respondents No.3, 5 and 7.

Mr. NS. Dandiwal, Advocate
for applicant in CM Nos.3025-26-2020.

....

TEJINDER SINGH DHINDSA, J.

Petitioner is a Rice Mill.

Present petition has been filed seeking a writ of certiorari quashing the order dated 22.11.2019 (Annexure P-16) issued by the Director, Food, Civil Supplies and Consumer Affairs, Punjab, whereby registration and allotment of the petitioner/Mill for custom milling of paddy for KMS 2019-20 has been cancelled and mill has been blacklisted for custom milling operations for a period of 3 years w.e.f. KMS 2019-20. Petitioner further seeks quashing of order dated 13.01.2020 (Annexure P-18) passed by the Principal Secretary, Food, Civil Supplies and Consumer Affairs, Punjab affirming the order dated 22.11.2019 passed by the Director.

The brief factual matrix that has led to the passing of the impugned orders may be noticed.

Petitioner/mill was allotted to PUNGRAIN by the District Allotment Committee, Moga for milling of government paddy as per provisions of the Punjab Custom Milling Policy (hereinafter to be referred to as 'the Policy') for paddy (Kharif 2019-20). Upon a physical verification of the mill undertaken by a team of Chief Vigilance Commissioner (C.V.C.) of the Department on 03.11.2019, surplus paddy to the extent of 33130 bags were found in the mill premises over and above the government paddy transported to the mill out of its allotted quantum. A letter dated 03.11.2019 was issued by the Food and Supply Officer concerned that the work relating to lifting of paddy be stopped. Thereafter, on 05.11.2019, a communication was sent to the petitioner/mill seeking explanation as regards verification of the paddy stock lying in the premises. At this stage, petitioner filed CWP-32647-2019 raising a grievance that the letter dated 03.11.2019 containing directions to stop lifting of paddy was in violation of the terms and conditions of the Policy. CWP-32647-2019 was disposed of on 08.11.2019 in the following terms:

“The grievance of the petitioner, Sran Rice Mills, was that, by letter dated 03.11.2019 (Annexure P-4), the Assistant Food and Supplies Officer, Ferozepur Road, Moga, District Moga, State of Punjab, directed it to stop the lifting of paddy pursuant to the physical verification which was undertaken on that date. The further grievance of the petitioner was that, by letter dated 05.11.2019 (Annexure P-5), the Food and Supplies Officer, Nihal Singh Wala, Moga District, respondent No.7, called upon it to produce various documents before him within 24 hours from the date of receipt thereof for the purpose of sending a report to the higher officials.

Mr. Naresh Jain, learned counsel for the petitioner Rice Mills, would contend that this punitive action has been visited

upon the petitioner Rice Mills without adhering to the procedure prescribed under the Punjab Custom Milling Policy (Kharif 2019-2020) and more particularly, Clause 24(a) thereof.

Perusal of the aforesaid clause would demonstrate that all orders are required to be passed only after written notice is given to the miller of the action proposed and an opportunity of personal hearing is also given to such miller. The clause further states that in the light of the short time line of the crop season, the notice period would be restricted to two days and a maximum of one adjournment would be given for the personal hearing.

The notice dated 05.11.2019 (Annexure P-5) is obviously a notice referable to the aforesaid clause. It is therefore for the petitioner Rice Mill to respond thereto.

Mr. Naresh Jain, learned counsel, would inform this Court that Annexure P-5 notice was received on 06.11.2019 and the response thereto, along with supporting material, would be furnished by the petitioner Rice Mills to the authorities by 5 p.m. Today. Thereupon, the authority concerned shall afford an opportunity of personal hearing to the authorized representative of the petitioner Rice Mills at 11:00 a.m. on 11.11.2019 and a reasoned order shall be passed in terms of Clause 24 (a) of the Policy by 5.00p.m. On 11.11.2019.

The petition is disposed of with the aforesaid directions.

No order as to costs.”

Show cause notice vide Memo dated 08.11.2019 (Annexure P-9) was then served upon the petitioner/mill contemplating cancellation of the allotment of paddy made in its favour as regards Kharif 2019-20 as also for **blacklisting**. Petitioner/mill apparently responded to the show cause notice. Apprehending foul-play, petitioner again approached this Court by

filing CWP-33816-2019 and which was disposed of on 20.11.2019 in the following terms:

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

Present:- Mr. Naresh Jain, Advocate for the petitioner.

Mr. Abhay Pal Singh Gill, AAG, Punjab.

*Ms. Deepali Puri, Advocate for
respondent/PUNGRAIN.*

TEJINDER SINGH DHINDSA J.(Oral)

Petitioner is a rice mill.

Challenge is to letter dated 03.11.2019 (Annexure P-4) issued by the Assistant, Food and Supplies Officer, District Moga and in terms of which pursuant to a physical verification having been undertaken directions have been issued to stop lifting of paddy.

Petitioner had earlier approached this Court by way of filing CWP No.32647 of 2019 and which was disposed of on 08.11.2019 by directing that the authority concerned would afford an opportunity of personal hearing to the authorized representatives of the petitioner-rice mill and thereafter take a final decision as per terms of the Punjab Custom Milling Policy (Kharif 2019-2020).

Counsel would submit that the petitioner has filed a reply to the notice that had been served and had also appeared before the Director, Department of Food and Civil Supplies, Punjab, but till date no final order has been passed.

Since an advance copy of petition already stood served, Mr. A.P.S. Gill, Learned AAG, Punjab, upon instructions from Ajay Pal Saron, Deputy Director, Rice, Punjab, informs the Court that it is the petitioner himself who had sought further time for production of certain documents and it is on the request of the petitioner that the matter has now been deferred to 22.11.2019.

Be that as it may, the respondents-authorities are

obligated to take a decision in an expeditious manner keeping in view the paddy season which has a limited and a short time frame.

Instant writ petition is disposed of in terms of granting liberty to the petitioner to appear before the 2nd respondent i.e. Director, Department of Food and Civil Supplies, Punjab on 22.11.2019 at 11.00 AM.

It would be open for the petitioner to produce all relevant documents in his defence.

Director would take a final decision in the matter and would convey the order to the petitioner the day thereafter i.e. on 23.11.2019.

It is clarified that this Court has not examined the matter on merits.

Disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE”

Petitioner has thereafter been visited with the impugned order dated 22.11.2019 (Annexure P-16) cancelling its registration as also the allotment for custom milling of paddy for KMS 2019-20 apart from being **blacklisted** for custom milling operations for a period of three years w.e.f. KMS 2019-20. An appeal having been preferred by the petitioner/mill, the same has been dealt with vide impugned order dated 13.01.2020 (Annexure P-18) passed by the Principal Secretary, Food, Civil Supplies and Consumer Affairs, Punjab upholding the order dated 22.11.2019 passed by the Director. The Appellate Authority has gone a step further taking a view that out of the surplus paddy of 33130 bags found in the petitioner/mill's premises, only 913 bags are the privately purchased paddy and as such balance 32217 bags have been declared as government owned paddy.

It is against such brief backdrop that the instant writ petition

has been filed.

It would be apposite to take note that the writ petition came up for preliminary hearing on 17.01.2020 and while issuing notice of motion, interim orders were passed that status quo regarding lifting of paddy as of date be maintained. Petitioner/mill was also restrained from removing the paddy from the premises.

Having heard counsel for the parties at length and having perused the pleadings on record, this Court is of the considered view that the impugned orders cannot sustain. Such view is founded on the following reasoning:

(i) The show cause notice dated 08.11.2019 (Annexure P-9) which has led to the passing of the impugned orders is itself defective.

In the case of **Gorkha Security Services Vs. Government of NCT of Delhi, 2014 (9) JT 165**, it had been held that not only is **blacklisting** to be preceded by a show cause notice to fulfill the requirement of principles of natural justice, the show cause notice must meet two parameters viz.

- (i) The material/grounds are to be stated on which according to the department, such action is necessitated and;
- (ii) the particular penalty/action which is proposed to be taken should also be mentioned.

It was observed by the Apex Court that the fundamental purpose behind the serving of a show cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches

and defaults he has committed, so that he gets an opportunity to rebut the same.

In the present case, the show cause notice served upon the petitioner/ mill was essentially in the following terms:

“About 33,000 surplus gunny bags were found/recovered at the time of inspection of your mill on 03.11.2019 by a team constituted by the Chairman, C.V.C., Chandigarh and no record pertaining to the same was found/received. Therefore, you should submit your clarification as per section 16(b) of the Custom Milling Policy 2019-20 to the effect that why by not cancelling an allotment of your mill as regards Kharif 2019-20, proceedings as regards declaring your mill as blacklisted should not be initiated.”

Perusal of the impugned order dated 22.11.2019 (Annexure P-16) reveals that action has been taken on the basis that the surplus paddy claimed to be purchased privately by the petitioner/mill from M/s Bhikam Chand and Company, Commission Agent shop was owned by the mother and there was no record of private purchase of paddy by the miller in the official records/ PR-I register of any of the 28 mandis of Bagha Purana Centre. Further, it was alleged that the miller has not able to produce proof of payment of Minimum Support Price to all such farmers, from whom the private paddy was supposedly purchased by M/s Bhikam Chand and Company. It was observed by the Director in the impugned order that the Secretary, Market Committee, Bagha Purana had stated during the course of personal hearing that the miller had supplied the details of payment to only 60-65% of farmers and from which it cannot be substantiated that all the surplus paddy was procured privately and that too, at MSP. An adverse view as such was taken by the Director that the petitioner/mill has not been able

to place on record proof of payment of MSP of the concerned Commission Agent to all the farmers from whom the paddy was supposedly procured privately.

The show cause notice dated 08.11.2019 (Annexure P-9) did not touch upon the afore noticed aspect and as such the petitioner/mill was not made aware of the precise case set up against him and which he had to meet. The show cause notice merely recited that 33000 surplus gunny bags had been found at the time of inspection on 03.11.2019 and no record pertaining to the same had been found. Accordingly clarification as per Section 16(b) of the Policy was called upon.

Clause 16(b) of the Policy reads as follows:

“Clause 16(b):

First physical verification of stock will be carried out within 10 days of start of storage of paddy to prevent bogus billing. If miller intends to store own purchased paddy/rice in his mill, it should be stored and marked separately from the CMR paddy as per relevant clause of this Policy. Further, such paddy rice must have supporting sale bills/invoices/transportation proof and proof of deposit of requisite market fee, RDF etc. otherwise, such unaccounted paddy/rice so found in mill premises would invite penal action including cancellation & blacklisting of the mill.”

Perusal of such Clause envisages that if the miller intends to store own purchased paddy/rice in the mill, it should be stored and marked separately from the CMR paddy. That apart, such privately purchased paddy must have supporting sale bills/invoices/transportation proof and proof of deposit of requisite market fee, RDF etc.

Clause 16(b) which was adverted to in the show cause notice

dated 08.11.2019 (Annexure P-9) cannot be said to have put the petitioner/mill to notice that he was under an obligation to supply the details/proof of payment of MSP of all the farmers from whom the private paddy was purchased by M/s Bhikam Chand and Company and from whom paddy had in turn been purchased by the petitioner/mill.

This Court would have no hesitation in holding that the show cause notice dated 08.11.2019 did not fulfill the fundamental purpose and requirement as laid down by the Hon'ble Supreme Court in the case of **Gorkha Security Services (supra)**. Since the very initiation of proceedings against the petitioner/mill has been found to be faulty, the consequential action/impugned orders also cannot sustain.

(ii) Vide impugned order dated 22.11.2019 passed by the Director at Annexure P-16, the registration and allotment of the petitioner/mill for custom milling of paddy for KMS 2019-20 was cancelled and the mill was **blacklisted** for a period of more than 3 years w.e.f. KMS 2019-20. The Appellate Authority vide impugned order dated 13.01.2020 (Annexure P-18) has not only upheld the action of the Director but has gone a step further as regards the surplus paddy of 33130 bags and has declared 913 bags to be legitimate private purchase and declared the balance as government owned paddy. Insofar as such action is concerned, admittedly, the petitioner/mill was never put to any notice. Such additional directive at the hands of the Appellate Authority vide impugned order dated 13.01.2020 (Annexure P-18) is clearly violative of the principles of natural justice and against the dictum laid down by the Hon'ble Supreme Court in the case of **Gorkha Security Services (supra)** and in the case of **Raghunath Thakur Vs. State of Bihar and others (1989) 1 SCC 229**.

(iii) It is by now well settled that the object of **blacklisting** is seen as an effective method to discipline a deviant Supplier/Contractor. **Blacklisting** is a punitive measure and has to be commensurate to the acts of commission and omission and other breaches of the terms and conditions under which contracts have been entered into. The principle of proportionality has to apply to the decision making process of the competent authority while **blacklisting** a firm. An administrative decision of **blacklisting** has to contain the element of proportionality and it would be imperative upon the decision making authority to strike a balance between the adverse effect of such an order on the interest of the firm and the need to adopt punitive measures upon parties guilt of such default, keeping in mind the object and purpose it intends to serve.

Adverting to the facts of the present case, this Court finds that the extreme penalty of **blacklisting** has been imposed in a mechanical fashion. The impugned order dated 22.11.2019 (Annexure P-16) would in itself reveal that pursuant to the physical verification conducted on 03.11.2019, the paddy purchased on behalf of PUNGRAIN in the concerned mandi linked with the petitioner/mill was reconciled and it was found that the PUNGRAIN's stock present in the mill matched with the paddy purchased on its behalf in the mandi. In other words, it was not a case of misappropriation of paddy stock by the petitioner/mill. Furthermore, as per contents of letter dated 21.11.2019 from the DFSC, Moga, which has been reproduced in the impugned orders itself, the entire paddy found stored within the mill premises be it government paddy or privately purchased paddy was of grade 'A' variety. However, the paddy purchased privately and the paddy of government agency/PUNGRAIN was found to have been

stored collectively and accordingly, an advisory was issued that the petitioner/mill should get affixed stack cards by storing the paddy separately. Furthermore, the Secretary, Market Committee, Bagha Purana suffered a statement during the course of hearing on 22.11.2019 and which has also been recorded in the impugned order and which would demonstrate that the requisite market fee, RDF, penalty and interest had been duly deposited by the petitioner/mill as regards the privately purchased paddy. Yet another relevant factor to be noticed is that as per terms and conditions of the Policy, there was no bar imposed upon the petitioner/mill as regards private purchase of paddy. Rather the mandate of the Policy was that in the case of private purchase, such paddy be stored/stocked separately from the paddy of the government agency i.e. PUNGRAIN.

The afore noticed factors ought to have weighed with the competent authority prior to taking a decision imposing the extreme penalty of **blacklisting**. Such aspect has been over looked in the present case. In the considered view of this Court, the provision with regard to **blacklisting** has to be seen as an enabling provision and not in the nature of a power to issue blanket order debarring a contractor by way of **blacklisting**. The principle of proportionality has not been applied by the concerned authority in the instant case while issuing the impugned orders at Annexures P-16 and P-18.

(iv) There has been a deviation and non-adherence to Clause 24 of the Policy and in particular Clause 24 (a) and 24 (b) which govern orders to be passed under the Policy and the Alternative Dispute Resolution Mechanism. Clause 24 (a) and (b) read in the following terms:

“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 timelines 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 within the DFS and a second appeal therefrom with the PSFS. The decision of PSFS in such appeals shall be final and binding.”

Perusal of the relevant clauses reproduced herein above would clearly show that the orders in the first instance have to be passed against the miller by the District Allotment Committee and a first appeal from the order of the District Allotment Committee would lie with the Director, Food Supplies and a second appeal thereafter with the Principal Secretary. In the present case, the order of cancellation of registration/allotment of the petitioner/firm has been passed by the Director and not by the District Allotment Committee. The first appeal has been dealt with by the Principal Secretary vide impugned order dated 13.01.2020 (Annexure P-18). In other words, the petitioner/mill has been denied the remedy of second appeal as envisaged under Clause 24(b) of the Policy. At this stage, submission advanced by counsel representing the respondent/department is noticed that the impugned order dated 22.11.2019 (Annexure P-16) had been passed by the Director only in pursuance to the order dated 20.11.2019 by this Court while disposing of CWP-33816-2019. Such submission is not well founded. The Alternative Dispute Resolution Mechanism contained under Clause 24 (a) and 24(b) had neither been canvassed nor dealt with by this Court while

disposing of CWP-33816-2019. In any case, the order dated 20.11.2019 passed by this Court while disposing of the afore noticed writ petition cannot be construed as if this Court had permitted a deviation and non-adherence of the relevant Clause under the Policy.

In view of the afore noticed infirmities, the impugned orders dated 22.11.2019 (Annexure P-16) and 13.01.2020 (Annexure P-18) are held to be bad in law and are quashed.

Needless to observe that any interim directive issued by the respondent/department as regards lifting of paddy etc. prior to passing of the impugned orders would also cease to operate.

It is, however, clarified that this order will not prevent the District Allotment Committee from taking any future steps/passing of order afresh in accordance with law.

Petition is allowed.

Pending application(s), if any, shall also stand disposed of.

13.03.2020*harjeet***(TEJINDER SINGH DHINDSA)
JUDGE**

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|------|----------------------------|--------|
| (i) | Whether speaking/reasoned? | Yes/No |
| (ii) | Whether reportable? | Yes/No |