In the High Court of Punjab and Haryana at Chandigarh

CWP No. 16753 of 2020 (O&M)
Date of Decision:3.12.2020

M/s Sran Rice Mills

---Petitioner

vs.

State of Punjab and others

---Respondents

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Naresh Jain, Advocate
for the petitioner

Ms.Deepali Puri, Advocate
for respondent No. 4

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Rekha Mittal, J.

The petitioner has invoked jurisdiction of this Court for issuance of a writ in the nature of certiorari for setting aside orders dated 17.9.2020 (Annexure P-34) and dated 17.4.2020 (Annexure P-24) being illegal and violative of the Custom Milling Policy of the Government of Punjab (hereinafter referred to as "the policy") for the year 2019-2020. Further prayer has been made for issuance of mandamus to allocate the petitioner rice mill to an agency as per custom milling policy for the year 2020-2021.

Under KMS-2019-2020, the petitioner mill was allocated 7459 metric ton of paddy under the policy 2019-2020 and 5000 metric ton under release order scheme. On 3.11.2019, physical verification was conducted whereby the paddy was found to be complete but 33130 bags of private purchase were also lying in the mill. Letter dated 3.11.2019 (Annexure P-2) was issued by respondent No 6, the mill was sealed and security guards were appointed by the respondents. The security guards deployed on 3.11.2019 were changed on 24.1.2020. On 5.11.2019, respondent No. 5 issued letter seeking explanation regarding verification of stock lying in the premises.

The petitioner filed CWP No. 32467 of 2019 and the same was disposed of vide judgment dated 8.11.2019 (Annexure P-7). In pursuance of directions issued by this Court, the petitioner submitted reply (Annexure P-8). Thereafter, petitioner received another letter dated 8.11.2019 to the effect as to why the allotment should not be cancelled and the mill be blacklisted. The petitioner was called upon to appear on 13.11.2019. On 13.11.2019, the petitioner appeared before respondent No. 2 and submitted documents with regard to purchase of 33130 bags, found in excess. Another letter dated 14.11.2019 (Annexure P-12) was issued to which the petitioner submitted reply on 15.11.2019 (Annexure P-13). The petitioner moved complaint to the Central Bureau of Investigation. A raid was conducted and officials of higher level were caught red handed. FIR No.RCCHG2018A0008 dated 19.3.2018 alongwith proceedings conducted on the same is Annexure P-14. The petitioner again filed CWP No. 33816 of 2019 and the same was disposed of vide order dated 20.11.2019 with the observation to pass the order within stipulated time frame. The Director Food, Civil Supplies and Consumer Affairs, Punjab, after hearing the parties, passed order dated 22.11.2019 (Annexure P-16) whereby the Director cancelled registration and allotment of petitioner mill for custom milling of paddy crop for the year 2019-2020 alongwith blacklisting for three years w.e.f. the crop year 2019-2020. The petitioner filed an appeal under Clause 24-b of the policy before the Principal Secretary, Department of Food, Civil Supplies and Consumer Affairs, Punjab and the same was dismissed vide order dated 13.1.2020 (Annexure P-17). Immediately thereafter, letter dated 15.1.2020 (Annexure P-18) was issued for shifting of paddy lying in the petitioner mill. The orders dated 22.11.2019 and 13.1.2020 (Annexures P-16 and 17) were challenged in CWP No. 1295 of 2020, in which interim order dated 17.1.2020 (Annexure P-19) was passed by this Court. Orders dated 22.11.2019 and 13.1.2020 were quashed and interim directions were also ordered to be ceased to operate. The respondents did not allow the petitioner to mill paddy of Pungrain as well as privately purchased.

The District Allotment Committee, Moga (in short "DAC") issued fresh show cause notice vide letter No. 2324 dated 8.4.2020 (Annexure P-22) to which the petitioner submitted reply (Annexure P-23). On 17.4.2020, the petitioner was handed over one letter to the effect that Rs. 7,45,388/- has been ordered to be recovered as expenses for transportation of paddy from the petitioner mill. The petitioner received order dated 4.5.2020 (Annexure P-26) whereby the DAC again blacklisted the petitioner mill for two years and cancelled its allotment and registration. In an appeal filed by the petitioner, respondent No. 2 upheld the order passed by DAC vide order dated 8.6.2020 (Annexure P-27). In the second appeal filed by the petitioner, the case was adjourned on several occasions. The petitioner filed CWP No. 13927 of 2020 and the same was disposed of vide order dated 17.9.2020. In pursuant to the same, appeal filed by the petitioner was disposed of by respondent No. 1 and order passed by respondent No. 2 was modified to the effect that petitioner mill was blacklisted for one year. The petitioner received show cause notice dated 16.7.2020 (Annexure P-29) issued by respondent No. 3 whereby it was alleged that there is shortage of 1454 bags and total 1835.715 quintals of paddy. The petitioner filed detailed reply alongwith documents. A copy of reply alongwith physical verification reports dated 6.4.2020 and 30.6.2020 are Annexures P-30 to P-32. It is alleged that without considering reply filed by the petitioner, respondent No. 4 passed order for recovery of Rs. 69,24,508/-, vide order dated 17.9.2020 (Annexure P-34). The respondents have denied to allocate an agency to the petitioner mill in view of policy for the year 2020-2021. A copy of policy for the year 2020-2021 is Annexure P-35.

The respondent filed reply raising preliminary objections inter alia that recovery imposed vide Annexure P-34 (challenged in the petition) is to be recovered through process of arbitration in view of arbitration clause No. 24(c) of the policy (Annexure P-1) read with Clause 41 of agreement dated 10.10.2019 entered into between the parties. The process of arbitration has been initiated for recovery of sum of Rs. 61,79,120/- along with interest. Copy of notice issued under Section 21 of the Arbitration and Conciliation Act, 1996 is Annexure R-1. On merits, it is admitted that the petitioner is running the mill and was allocated paddy. On physical verification of said rice mill on 3.11.2019, excess bags of paddy were found for which no details were submitted by the petitioner and accordingly the proceedings were initiated to seek reply of the petitioner. The petitioner mill was given proper opportunity of hearing before passing the orders impugned. It is submitted that recovery notice dated 17.9.2020 is to be treated as a fresh issue and petitioner is not entitle to allocation of paddy till payment of outstanding liability to the extent of Rs. 61,79,120/- is discharged by the petitioner. All other material averments of the petition have been denied with the prayer for dismissal of the same.

Counsel for the petitioner would argue that as the paddy allocated to the petitioner for the crop year 2019-2020 was in exclusive custody of the respondents who have also appointed their guards to guard the premises coupled with that 45583 bags were shifted on 30.6.2020, stated to be in custody of Pungrain since 3.11.2019 vide communication (Annexure P-32) signed by APSO, Moga, order dated 17.9.2020 imposing liability to the tune of Rs. 69,24,508/- is absolutely without any basis, therefore, this issue can also be decided by this Court without requiring the parties to submit to the jurisdiction of Arbitrator, in view of clause 24 of the policy for the year 2019-2020. Counsel has also tried to draw some milage from the observations made by this court in judgment dated 13.3.2020 passed in CWP No. 1295 of 2020, quoted thus:-

> "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."

Counsel has further relied upon judgment of Hon'ble the Supreme Court **Zonal Manager, Central Bank of India vs. M/s Devi Ispat Limited and others 2010 (11) SCC 186.**

Another submission made by counsel is that petitioner mill was eventually blacklisted for one year (though the order with regard to blacklisting is under challenge in CWP No. 18380 of 2020). It is argued that paddy allotted to the petitioner mill for the crop year 2019-2020 was ordered to be lifted and actually lifted, therefore, plea of the respondents that petitioner mill is also blacklisted for the crop year 2020-2021 can not hold the field, to deny allotment of paddy to the petitioner mill for the crop year 2020-2021.

Counsel has also raised an argument that in view of various clauses in the policy for the year 2020-2021, the petitioner mill can not be said to be a defaulter in order to press for payment of alleged outstanding liability before considering its case for allocation of paddy for the crop year 2020-2021. To bring home his contention, counsel has few fold submissions to make. It is argued that as per para 5 of the policy, there is a schedule for allocation to be followed by the DAC. As per said schedule, registration of rice millers was to be completed by 17.9.2020. According to counsel, prior to 17.9.2020, there was no demand of outstanding liability raised by the respondents, therefore, the petitioner can not be said to be a defaulter, in view of clause (f) of para 4 of the policy, prescribing eligibility conditions for allocation to an agency. It is further argued that clause (f) of para 7 under the heading 'Events of Default' provides as to which miller shall be considered as a defaulter. It is argued that since in the case of petitioner neither any police case nor any court case or arbitration case was pending upto 17.9.2020, the last date provided in the schedule of allocation under para 5, the respondent can not press for payment of alleged outstanding liability prior to allocation of paddy to the petitioner for the crop year 2020-2021. The last submission made by counsel is that even if plea of the petitioner is not accepted that he has no liability to pay the outstanding amount or the dispute in this regard is to be decided by the Court, the respondents may be directed to allocate paddy to the petitioner, subject to its furnishing bank guarantee in respect of alleged outstanding amount of Rs. 61,79,120/- as the respondents have already recovered more than Rs. 7,00,000/- out of liability of Rs. 69,24,508/-, noticed in order dated 17.9.2020.

Counsel for respondent No.4, on the contrary, would argue that dispute with regard to liability of the petitioner qua amount of Rs. 61,79,120/- out of Rs. 69,24,508/- worked out vide order dated 17.9.2020 can not be decided by this Court being a disputed question of fact and more particularly in the face of arbitration clause in the agreement admittedly executed between the parties. It is argued that vide letter dated 6.4.2020 (Annexure P-31) sent to Sh. Rohit Mittal, Proprietor of the petitioner mill, it was admitted by him that responsibility of taking care of paddy would be of Rohit Mittal, proprietor of the mill. It is vehemently argued that in view of letter (Annexure P-31), petitioner can not be heard to say that paddy lying in the mill allocated for the crop year 2019-2020 was in exclusive possession/custody/care of the respondents, thus, petitioner can not be held responsible for shortage etc.

To refute contention of the petitioner that petitioner mill cannot be considered to be blacklisted for the crop year 2020-2021, it is argued that though the petitioner mill was initially blacklisted for a period of three years which was later reduced to one year but order by the Appellate Authority was passed on 30.9.2020 (Annexure P-28). It is argued that since the petitioner mill was allocated paddy for the crop year 2019-2020, the period of one year of blacklisting would be for the crop year 2020-2021. It is further argued that even if contention of the petitioner is accepted that period of one year of blacklisting would be for the crop year 2019-2020, the petitioner cannot be allocated paddy unless he clears the pending/outstanding dues of the concerned agency and obtains No Due Certificate under Clauses (b) and (d) of para 4 dealing with eligibility conditions for allocation to an agency in the policy for the crop year 2020-2021.

I have heard counsel for the parties, perused the paper-book particularly various annexures appended with the petition and reply filed by the respondents.

The questions that call for determination are:-

(1)Whether dispute between the parties in respect of outstanding liability of the petitioner mill is liable to be referred to an Arbitrator or the same can be decided by this Court, as has been so contended by the petitioner?

(2)Whether blacklisting of the petitioner mill is for the crop year 2019-2020 or 2020-2021?

(3)If issue No. 1 is decided against the petitioner and issue No. 2 is answered in its favour, whether the petitioner can press for allocation of paddy for the crop year 2020-2021 without depositing outstanding amount of Rs. 61,79,120/-?"

Para 24 of the policy for the year 2019-2020 deals with 'orders passed under this policy and alternative dispute resolution mechanism'. Clause (c) of para 24, reads as follows:-

"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."

Counsel for the petitioner has pressed for deciding the dispute by this Court in place of enforcing the arbitration clause contained in the policy. The question whether the paddy stocked at the premises of the petitioner mill was in the exclusive custody of the respondents or joint custody of the parties, is a disputed question of fact that needs to be decided on the basis of evidence to be adduced by the parties. The petitioner by referring to certain observations made by this Court in order dated 17.1.2020 passed in CWP No. 1295 of 2020 or documents annexed with the petition can not be allowed to contend that the dispute with regard to outstanding liability can be decided by this Court. Similarly, the petitioner by no stretch of imagination can cover its case under the enunciation laid down in the referred authority, reads thus:-

> "It is clear that, (a) in the contract if there is a clause for arbitration, normally, writ court should not invoke its jurisdiction; (b) the existence of effective alternative remedy provided in the contract itself is a good ground to decline to exercise its extraordinary jurisdiction under Article 226; and (c) if the instrumentality of the State acts contrary to the public good, public interest, unfairly, unjustly, unreasonably discriminatory and violative of Article 14 of the Constitution of India in its contractual or statutory obligation, writ petition

would be maintainable. However, a legal right must exist and corresponding legal duty on the part of the State and if any action on the part of the State is wholly unfair or arbitrary, writ courts can exercise their power."

In this view of the matter, I find myself unable to be persuaded with the arguments of counsel for the petitioner that dispute with regard to outstanding liability needs to be decided by this court in place of the parties submitting themselves to the jurisdiction of the Arbitrator under the aforesaid clause. I would hasten to add that the respondents have already issued notice for appointment of an Arbitrator and the arbitration proceedings would be commenced in due course of time.

The petitioner mill was initially blacklisted for a period of three years but the order was set aside by this Court vide judgment dated 13.3.2020 passed in CWP No.1295 of 2020. Eventually, the proceedings with regard to blacklisting of the petitioner mill culminated in order dated 30.9.2020 passed by the Principal Secretary, Transport Department, Government of Punjab, Chandigarh (Annexure P-28). In para 25 of the order, relevant observations read thus:-

"As far as irregular purchase of paddy and subsequent compounding of market fee etc. etc. as discussed in the preceding paras, and in view of the observations/decision of the Hon'ble High Court in CWP No. 1295 of 2020 in para (iii) at page 10 that the principle of proportionality has to apply to the decision making process of the competent authority while blacklisting a firm, the ends of justice would be met if blacklisting of the appellant mill is reduced to one procurement season. It is clarified that the appellant would be eligible for paddy allotment unless there is any fresh issue, other than the irregular purchase of paddy, which emanated after the orders passed by the District Allotment Committee/Ist Appellate Authority and recovery notice dated 17.9.2020 be treated as fresh issue."

A plain reading of the aforesaid extract leaves no manner of doubt that in view of order dated 30.9.2020, the petitioner mill was blacklisted for one procurement season and held to be eligible for paddy allotment unless there is any fresh issue subsequent to recovery notice dated 17.9.2020. It is never the plea of respondents that subsequent to recovery notice dated 17.9.2020, any fresh issue has arisen nor any fresh order has been passed by the competent authority subsequent to 30.9.2020 blacklisting the petitioner mill. In addition, the petitioner mill was allocated paddy for the crop year 2019-2020. The paddy lying in premises of the petitioner mill was lifted by the respondents meaning thereby that the petitioner was not permitted to shell paddy and supply rice to FCI, in view of agreement executed on the basis of policy for the crop year 2019-2020, meaning thereby that the petitioner firm has already suffered in respect of its blacklisting for a period of one year. A cumulative analysis of order dated 30.9.2020 coupled with the aforesaid discussion leads to a definite conclusion that one year of blacklisting would be crop year 2019-2020.

This brings the Court to aspect of entitlement of the petitioner to seek allocation/allotment of paddy for the crop year 2020-2021 without deciding its liability determined in letter dated 17.9.2020 (Annexure P-34). Counsel for the petitioner has pressed into service clause (f) of para 7 of the policy for the year 2020-2021 (Annexure P-35). No doubt, as per clause (f) under para 7 of the policy, the miller shall be considered as a defaulter if a police case/court case/arbitration case is pending against the miller on account of embezzlement and/or on account of non-delivery of rice and/or on account of non-clearance of any dues of any State Procurement Agency and/or declared blacklisted by the Department/FCI including cases where blacklisting has been done on the basis of CBI recommendation. The remaining para deals with clearing of dues by the miller. Counsel for the petitioner either ignorantly or intentionally did not refer to clause (k) under the same para 7 that says, "if any agency reports any case of misappropriation of paddy of the previous year(s) by the miller". In the case at hand, the District Allotment Committee-cum-District Controller, Food Civil Supplies and Consumer Affairs, Moga issued notice dated 16.7.2020 (Annexure P-29) and in the said notice, it has been clearly mentioned that deficiency has been found in the government paddy from which it is clear that noticee Sh. Rohit Mittal, Proprietor M/s Sran Rice Mills, village Lande, Tehsil Baghapurana, District Moga, has misappropriated the government paddy in gross violation of the policy for the crop year 2019-2020. This notice culminated in order dated 17.9.2020 (Annexure P-34) whereby the petitioner mill was asked to deposit outstanding amount of Rs. 61,79,120/- out of total liability of Rs. 69,24,508/-. Taking into consideration clause (k) under para 7 of the policy (Annexure P-35), it is difficult to accept contention of the petitioner that it can not be said to be defaulter under the policy, therefore, can not be called upon to deposit the outstanding amount.

To be fair, counsel for the respondent has pointed out towards clause (d) under para 4 of the policy for the crop year 2020-2021 prescribing eligibility conditions for allocation to an agency. A reading of the said clause indicates that the same can be attracted where a mill has actually milled paddy but failed to deliver due rice. In the case at hand, indisputably, the petitioner mill was not allowed to do custom milling in respect of paddy allocated for the crop year 2019-2020. Before the petitioner could undertake custom milling, an order was made for lifting of paddy which was eventually lifted from premises of the mill. In this view of the matter, the respondents can not derive any advantage to their contention from clauses (b) and (d) under para 4 of the policy (Annexure P-35). Nevertheless, in view of aforesaid discussion, contention of the petitioner that it can not be treated as a defaulter under para 7 of the policy, is unfounded and liable to be rejected.

The petitioner can press for allocation of paddy for the crop year 2020-2021 by discharging its liability in respect of outstanding amount. Taking into consideration the observations made by this court in order dated 13.3.2020 passed in CWP No. 1295 of 2020 and various documents brought on record by the petitioner, in my considered opinion, ends of justice would be served if the petitioner is directed to deposit Rs. 20 lakh in cash and furnish a bank guarantee qua the remaining amount of Rs. 41,79,120/- (out of outstanding liability of Rs. 61,79,120/-) to seek allocation of paddy under policy (Annexure P-35). If the petitioner makes compliance of aforesaid directions and terms and conditions of the policy (Annexure P-35), the respondents would consider its case for allocation of paddy for the crop year 2020-2021. It is pertinent to mention here that counsel for the respondent had informed that procurement of paddy had already been completed by 30.11.2020. It is clarified that the petitioner mill shall keep the bank guarantee alive till the dispute with regard to outstanding liability is finally adjudicated upon in the arbitration proceedings and petitioner has discharged its liability, if any, determined by the Arbitrator.

Before parting with the order, it is stated that direction with regard to furnishing of bank guarantee of Rs. 41,79,120/- instead of deposit has been made in view of peculiar facts and circumstances of the case and would not be treated as a precedent.

(Rekha Mittal)
Judge

3.12.2020
paramjit

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