IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-17043-2020(O&M)
Date of Decision: 03.11. 2020

M/s New Shakti Rice Mill **.....Petitioner**

Versus

Food Corporation of India and others **..... Respondents**

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

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Present: Mr. Gurminder Singh, Senior Advocate with
Mr. Jatinder Singh Gill, Advocate for the petitioner.

Mr.K.K.Gupta, Advocate for respondents No. 1 and 2.

Mr.Abhay Pal Singh Gill, AAG, Punjab
for respondents No. 3 to 5.

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TEJINDER SINGH DHINDSA, J.

Petitioner is a rice mill.

Challenge in the instant petition is to a letter dated 30.09.2020 (Annexure P-2) which has been sent by Food Corporation of India, Divisional Office, Amritsar to the 5th respondent with a direction not to allot paddy to the petitioner from KMS (Kharif Milling Season) 2020-21.

It has been averred that the petitioner-mill was established in the State of Punjab in the year 1970 and has a milling capacity of 3.5 tonnes.

Since the last 20 years petitioner has been allotted paddy every year and on each occasion milled rice was delivered on time and that no proceedings are pending against the petitioner on behalf of the procuring agency for late delivery of rice or otherwise. Petitioner has never been declared as a defaulter. For purposes of allotment of paddy to the millers the State of Punjab, Department of Food, Civil Supplies and Consumer Affairs has issued the Punjab Custom Milling Policy for Kharif 2020-21 on 26.08.2020 (Annexure P-1. The same would hereinafter be referred to as the Policy). It has been submitted on behalf of the petitioner that since it was eligible for allotment of paddy under the various clauses of the Policy and the allotments were to be made prior to 1st of October, 2020 i.e. the date from which the marketing season commences, the petitioner-mill was hopeful and was waiting for formal orders as regards allotment of paddy. However, when allotment letters were issued in favour of other millers, office of 5th respondent was contacted to enquire about the allotment status. It is at such stage that the impugned letter dated 30.09.2020 (Annexure P-2) was supplied and as per which Food Corporation of India (FCI) had issued a directive that paddy be not allotted to the petitioner-mill and neither any food grains be stored in its premises. Reason assigned in the impugned letter for non-allotment of paddy is that name of the petitioner-mill appears in a CBI report as regards misappropriation of food grain stock that had been dispatched from FCI godowns in the State of Punjab to Jammu and Kashmir by road. Petitioner-mill submitted a representation dated 03.10.2020 stating that since no proceedings were pending against it before the CBI as such the impugned letter issued by FCI is baseless. The 5th respondent acting upon the representation issued memo dated 03.10.2020 at Annexure P-4, addressing the same to the Area Manager, FCI, Amritsar stating that every year the petitioner-mill had been allotted paddy and the milling process had been completed on each occasion on a timely basis. Petitioner-mill is not a defaulter of any agency and accordingly the matter was called upon to be reinvestigated-rechecked and future course of action be advised. The Divisional Manager, FCI, Amritsar in turn addressed a communication dated 05.10.2020 (Annexure P-5) to the General Manager (R), FCI, Regional Office, Punjab, Chandigarh stating that upon perusal of the CBI report neither the name of the petitioner rice-mill nor name of any of its partners has been made as an accused and no FIR has been lodged by CBI against the petitioner-mill. Accordingly direction was sought as to whether paddy be allotted to the petitioner-mill for milling purposes during the ensuing KMS 2020-21. No further action having been taken, petitioner-mill has approached this Court.

Learned senior counsel representing the petitioner has submitted that allotment of paddy has been declined as name of the petitioner-mill has appeared in a CBI report. It is argued that there is no FIR registered by CBI against the petitioner or its partners. Petitioner's name does not appear in any challan submitted by the CBI nor is it an accused in any CBI proceedings. As such the very basis for issuance of the impugned letter dated 30.09.2020 (Annexure P-2) is nonexistent. Further argued that petitioner fulfils all the eligibility conditions prescribed in the Policy and every year paddy had been allotted and there was no default till date. Further argued that the prohibition laid down by the FCI vide impugned letter dated 30.09.2020 (Annexure P-2) visits the petitioner-mill with adverse civil consequences and no opportunity of hearing was granted prior to issuance of the same. Action is stated to be in violation of the principles of natural justice. Yet another submission advanced by learned senior counsel is that the marketing season for the paddy crop starts from 1st October, 2020 and continues only for a period of about 6-8 weeks and consequently the petitioner will suffer irreparable loss if paddy is not allotted as the petitioner had invested Crores of rupees in establishment of the mill and had installed costly machines and had also employed labour.

Upon notice having been issued a joint reply on behalf of respondents no. 1 and 2 (FCI) has been filed. Stand taken is that CBI had registered an FIR dated 27.09.2017 as regards misappropriation of food grains and in a CBI report dated 24.09.2019 it has been stated that vehicles carrying food grains (rice) had been dispatched from FCI godowns in Punjab to Food Storage Depot (FSD), Kupwara (State of Jammu and Kashmir) but the same had been unloaded at the rice sheller of the petitioner-mill. A stand has been taken that in the given situation, '**the FCI would not like to have any business dealing with the petitioner unless its involvement in the said matter of misappropriation of stock of the FCI is cleared.'**

Petition had come up for hearing before this Court on an earlier date i.e. 16.10.2020 and the following order came to be passed:-

> " *The case has been taken up through Video Conferencing due to prevailing situation of COVID-19.*
>
> *Written reply filed on behalf of respondent Nos.1 and 2 is ordered to be taken on record.*
>
> *The State counsel has requested for an adjournment to file written reply on behalf of respondent Nos.3 to 5.*

The petitioner has impugned letter dated 30.09.2020 (Annexure P-2), which has been sent by Food Corporation of India, Divisional Office, Amritsar, to respondent No.5 with direction not to allot paddy to the petitioner during KMS 2020-21. In the said letter, there is reference to one CBI report regarding misappropriation of food grains. The plea of the petitioner is that he has not been named as accused in any such case of misappropriation of food grains, instituted by the CBI. Learned Senior counsel has relied upon CBI report dated 24.09.2019 (Annexure R-1). The final report dated 26.12.2019 submitted by the CBI under Section 173 Cr.P.C has also been sent to this Court as well as the opposite counsel by the learned Senior counsel through E-mail. Learned Senior counsel submitted that the case of the petitioner is not covered under Clause 7(f) of the Punjab Custom Milling Policy for Kharif 2020-2021, which clearly states that miller can be debarred if a police case/court case/arbitration case is pending against him on account of embezzlement or on account of non-delivery of rice or on account of non-clearance of any dues of any State Procurement Agency or has been declared black listed by the Department/FCI, on the basis of CBI recommendation.

Learned counsel for respondent Nos.1 and 2 as well as the State counsel requested for short adjournment to verify the fact regarding pendency of any such case or CBI recommendation with regard to the petitioner.

Learned Senior counsel has made request that as the matter is of urgent in nature, let respondent Nos.1 and 2 should consider and decide his representation dated 03.10.2020 (Annexure P-3) in a time bound manner. He has further made request that he be allowed to move similar representation to respondent No.5, who should also decide the same in a given time frame.

The opposite counsel are having no objection to the same. So, the petitioner is directed to move comprehensive *representations along with the concerned documents, today itself to respondent Nos.1 and 2 as well as respondent No.5. The said respondents are directed to consider and decide the said representations within one week of the receipt of the same in their office.*

The respondents are directed to submit their reports regarding the decision taken thereof, with an advance copy to the learned Senior counsel for the petitioner well within time.

Adjourned to 27.10.2020."

FCI thereafter has passed order dated 23.10.2020 declining the representation of the petitioner. Reasoning assigned therein is a reiteration of the stand taken in the reply filed by FCI to the instant petition.

Learned State counsel has forwarded by e-mail an order carrying endorsement dated 28.10.2020 passed by the District Controller, Food, Civil Supplies and Consumer Affairs, Amritsar stating that petitioner cannot be allotted paddy for KMS 2020-21 in view of the prohibition contained in the letter dated 30.09.2020 (Annexure P-2).

Even though written response was not filed on behalf of respondents No. 3 to 5, yet with the consent of the counsel for the parties writ petition was taken up for final hearing and arguments were heard on 29.10.2020.

Claim of the petitioner for allotment of paddy for the Kharif season 2020-21 and validity of the stand taken by the respondent-authorities in declining such allotment would have to be examined in the light of the Policy. Clauses of the Policy which would be relevant to the issue at hand are set out herein below:-

" ***1. SHORT TITME AND COMMENCEMENT:***

a. The Policy shall be named as "The Punjab Custom Milling Policy for Kharif 2020-21".

b. It shall extend to the whole of the State of Punjab.

c. It shall come into force with immediate effect and shall be applicable for the KMS 2020-21.

d. shall be followed by all the procuring agencies (i.e. Pun It grain, Markfed, Punsup, PSWC & PAFC and FCI) and the Rice Millers and their successors/legal heirs, and all other stake holders in the paddy procurement/milling process.

e. Marketing Season commences from the 1st day of October each year or as per the dates notified by the Government of India.

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2. DEFINITIONS*: - Unless there be something repugnant in the subject or context, the terms defined in policy are used in the sense explained hereunder:-*

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e. xxx xxx xxx xxx xxx

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h. xxx xxx xxx xxx xxx

i. "Defaulter" means a miller who failed to supply the entire minimum rice due to him on account of paddy allotted/stored in his premises for custom milling by the due date (declared by Government of Punjab) of the previous years and/or who fails to settle his accounts *with any of the procurement agency/agencies of the previous year(s) and/or is declared as a defaulter as such, under the relevant clauses of this policy.*

j. "Director" means Director, Food, Civil Supplies and Consumer Affairs, Punjab.

k. "District Allotment Committee" means the District Level Committee formed in each district as per the relevant clauses of the policy, for allotment of various mills in the district to the Procurement Agencies and allocation of Custom milling paddy to rice millers as per this policy.

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***4. ELIGIBILITY CONDITIONS FOR ALLOCATION TO AN AGENCY**:*

A miller shall be considered as eligible for allocation to an agency under this policy, upon fulfilling of all of the following conditions to the satisfaction of the DAC. It is made explicitly clear that a mere fulfilment of these conditions does not entitle the miller any right to allocation to any agency nor the allocation of any quantum of paddy. The eligibility conditions for allocation are:

a. *Only millers who have a valid registration, as on the date of such allocation shall be considered for allocation to a procurement agency for custom milling of paddy for Kharif 2020-21.*

b. *The miller should have completed 100% custom milling of paddy for the previous Kharif seasons, delivered all the due rice to FCI on or before last date of milling (as fixed by Government for each KMS) and also must have cleared the pending/outstanding dues of the concerned agency (ies) to the satisfaction of the Department and/or the procurement agency in question.*

c. *If the Miller had availed 1% driage in terms of quantity of rice during any previous KMS, he must have Milled and delivered the entire rice due on paddy after deducting 1% driage & must have deposited/cleared statutory charges payable on such paddy, as per instructions of the Government, in this regard.*

d. *If a Miller, who was allotted paddy for custom milling during Kharif 2019-20, failed to deliver entire due rice on Custom Milling Paddy/R.O., on or before 31.07.2020 & has deposited the acquisition cost of the balance paddy fixed vide letter No. RP1(48/2007)-2019/1083-1084 dated 03.06.2020 along with interest @ 12%, up to the date of such payment, he shall submit an NDC from the DM of the concerned agency in this regard prior to his being considered for allotment for Kharif 2020-21.*

e. *Each Rice Mill/Unit of Rice Mill must have an independent operational electricity connection in the name of the mill or its owner or proprietor on or before the date of its applying for allotment without which no allotment shall be made.*

Provided that where common electricity connection for more than one unit is installed in the same premises (having a common boundary), such connection shall be considered for allotment of only that unit in which such connection is physically installed.

Provided further that where more than one unit are situated within same complex having well marked boundaries and entries, under the same Management, each such unit shall be treated as an independent mill for the purpose of allotment. This would be subject to the condition that all such units shall have a separate operational electricity connection, consent letters issued by Punjab Pollution Control Board (as per norms of

PPCB) and licences issued by Punjab Mandi Board (as per norms of Punjab Mandi Board). However, they shall be allotted to a single procurement agency.

f. *The rice mill should not be defaulter of any of the state procuring agency including FCI, during the previous year(s).*

> *Provided that, if a defaulter mill had cleared all such previous dues of the government and procuring agencies for the previous year(s), to the full satisfaction of the Government/agency(ies), it may be considered as eligible for allotment, subject to the condition of producing an NDC from such procurement agency(ies).*

g. *The business entity i.e. the mill as well as its Owner/Partners/ Directors/Members/Trustees, etc. have to maintain a CIBIL Micro Small and Medium Enterprises (MSME) Rank (CMR) score of 6 and below and a CIBIL score of 600 and above respectively. In case the millers' individual or mill's CIBIL Score/CIBIL MSME Rank has been reported to be low due to some past irregular financial transaction and they have now cleared the irregularity with the concerned Bank or have made an arrangement with the concerned Bank for clearance of the said irregularity but the same is not being reflected in their CIBIL Score, it is clarified that the Millers, who have cleared their irregularities with the Bank, may be considered for allotment subject to the submission of "Irregularity Clearance Certificate/NOC" from the concerned bank/leader of the consortium of the banks of the miller and the concerned Bank will have to certify that they would not have any lien on the paddy allotted/stored with the miller by the State Agencies.*

In case of lessee mills, the lessee, lessor as well the *other guarantors of the lessee have to satisfy the above criteria.*

h. *The mill premises and the miller should be free from litigation or legal disputes which attaches to the title, ownership or possession of the mill premises of the miller.*

i. *The Miller shall not be in breach/violation/ non-compliance of the conditions set out in Clause 3, 5, 6 or 7 of this policy*

j. *The mill premises must have suitable and working Fire-fighting equipment and CCTV arrangements in the premises, covering the area where paddy stocks are stored and milled. The Miller shall also keep the video footage of at least three months of these CCTV cameras and shall provide such video footages to the DM of the concerned agency as and when required. If the above equipment is not found present and working during any of the PVs of the Rice Mill, such Rice Mills shall face immediate special allocation cut of 20% in the present purchase/milling season and it shall face cancellation of registration from the next season for misrepresentation of the facts. The Managing Director/District Manager of the concerned agency shall be mandatorily provided the Live Feed of CCTV of the concerned Rice Mill, regarding which the arrangement for linking the same to the https://anaajkharid.in portal of this department i.e. by providing continuous high speed web access shall be made by the rice miller in consultation with the concerned SPA. The live feed shall always be available on https://anaajkharid.in portal of this department and alerts regarding any disruption in the live feed shall be made to the District Manager who shall act against the rice mill in such an eventuality in consultation with the*

DAC.

k. The miller should have a plot/land area and plant & Machinery as required by Punjab Government, Department of Food Civil Supplies & Consumer Affairs (Rice Branch) notifications/letters issued from time to time i.e. at the time of the establishment of the mill. Reference may be made to notifications/letters issued vide number 1734 dated 12.08.03, No. 2678-2679 Dated 21.08.07, No. 2823-2824 Dated 10.09.07, No 2871-2872 Dated 17.09.2007, No. 2843 Dated 20.08.2010, No. 2770-71 Dated 01.08.2013, No. 2909-2910 Dated 13.08.13 and No. 3262 Dated 30.08.13.

l. The Rice Millers which are allocated paddy shall ensure that the instructions issued by the various Departments/Corporations/Boards/Regulatory Authorities of Punjab State which are mandatory to be followed for functioning of a rice mill, are actually followed in totality. The staff of SPAs will make sure that all such instructions are followed in letter and spirit.

m. All the documents and/or reports required and issued in respect of any miller for its registration and/or allotment shall be scanned and uploaded by the concerned miller on the Anaaj Kharid Portal of this Department (https://anaajkharid.in/) and verified with original by the concerned DFSC/DAC/DM before such registration/allotment.

5. PROCEDURE FOR ALLOCATION TO AN AGENCY:

a. *Composition of the District Allotment Committee: -The DAC shall comprise of DMs of all the State Procuring Agencies and FCI in each district and the District Mandi Officer (DMO) of the Punjab Mandi Board in the District, under the chairmanship of the* *concerned DDF.*

b. *Schedule for Allocation: The DAC shall strictly adhere to the following schedule of time for this purpose. In case of non-compliance to this schedule, the DAC shall be held responsible:-*

Activity	**Date by which to be completed**
Registration of rice millers	17th September,2020
Preparation of list of eligible and defaulter rice millers	21st September, 2020
Scrutiny of the list(s)	23rd September, 2020
Issuance of list of miller allocated for custom milling	24th September, 2020
Signing of agreement and deposit of security (ies) as per provisions of this policy	27th September,2020

Provided that DFS has the powers to extend the date of registration and allocation by a general or special order.

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7. ***EVENTS OF DEFAULT*** - *No mill/miller shall be considered for provisional registration/final registration/ allocation to an agency or for allocation of paddy under this policy, if it has been declared as a defaulter in any of the previous years and/or is in breach /violation/ non-compliance of the following:*

a. *Any of the conditions set out in Clause 3 to 6 above;*

b. *If the miller in question has not milled the allotted paddy and/or has not delivered 100% rice due, on behalf of any of the procuring agency in previous year(s) and/or not deposited the acquisition cost of balance paddy/rice due with interest to the concerned agency, such a mill/miller shall be treated as defaulter. Regarding the recovery of interest for KMS 2012-13 and 2013-14, the cases of such rice mills where the procurement agencies have already received the interest from FCI for the disputed period regarding late delivery of rice to FCI* *and where there is no other recovery/default in respect of these mills, can be considered for allotment of paddy with the condition that the recovery of interest shall be subject to the decision of Hon'ble Punjab and Haryana High Court and/or any other court of law in the pending cases.*

c. *The miller shall also be considered as defaulter, if its owner or any of its partner/Member is also an owner/partner/member/lessee/lessor of another defaulter Mill.*

d. *If a mill owned, leased or operated by a previously declared defaulter miller is transferred either through sale/lease or any other mode to any other person/miller, then such other person/miller shall also be considered to be defaulter until all the dues of the agency of which such miller was defaulter, are cleared or the default cured and the concerned agency issues an NOC in favour of such defaulter miller and such premises.*

e. *If a family member (s) of the owner/partner(s)/trustee(s)/member(s) of a mill is/are defaulters of any of the agencies in the previous year(s), such miller shall also be treated as a defaulter miller. Provided that if such a family member is not jointly occupying and is not having equal access to all areas of a dwelling unit and is functioning as an independent economic unit, such a member shall not be treated as family member. The onus of proof in this regard, to the satisfaction of the DFS (whose decision shall be final), will lie on the family member (s) of the owner/partner(s)/trustee(s)/member(s) of defaulter mill in question as well as the miller seeking allocation of agency.*

f. *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. However, if the miller clears the default of the concerned agency alongwith interest at the rates for the relevant year (s), as decided by the Government from time to time and there is no pending recovery towards miller, he may be considered for allotment without prejudice to the out-come of the Criminal Case/FIR/Court Case/Arbitration Case pending against him. Provided that such defaulter mills would also furnish a NOC from all Procuring Agencies including FCI, before registration and allotment. Further provided that those mills whose blacklisting period has not got completed shall not be considered eligible for registration/allotment.*

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.*

h. *The Miller against whom an arbitration award has* *been passed but has failed to deposit the amount awarded against him, shall be treated as defaulter, until he deposits the entire awarded amount with the concerned agency.*

i. *If the premises of a defaulter miller is sold by a Bank/fmancial institution by way of open auction, or otherwise disposed of by such Bank/fmancial institution, either by adoption of proceedings under the SARFAESI Act or other applicable law after the date of issue of this policy, the purchaser of such premises and the premises itself shall be treated as defaulter unless it is proved that there is neither any sham/clandestine transaction nor any other financial/family relationship between the buyer and the original owner of the mill. (Ref: CWP No. 20535 of 2017-M/s Rajesh Trading Co. vs. State of Punjab and others). In all such cases, the registration shall be done after passing of a speaking order by DFS.*

Note: - In order to ensure the interests of the procuring agency(s) the DM of the concerned agency will ensure that all the properties of a defaulter miller(s) are attached in the name of the state agency(ies) prior to such auction by the financial institutions/banks etc.

j. *The miller who has been banned by FCI for all business activities on account of delivery of rice "beyond rejection limits" (BRL) and/or beyond PFA specifications and/or mixed stock in the previous year(s) shall also be treated as defaulter miller.*

k. *If any agency reports any case of misappropriation of paddy of the previous year(s) by the miller.*

l. *If a miller is an owner/partner of more than one mill & it comes to notice at any stage, that only one mill is used to mill paddy and deliver rice on behalf of his other mills, it would be considered as an infringement of policy and* *accordingly all such mills shall be liable to be blacklisted.*

m. *In case a miller has been found/detected committing a fraudulent act by showing in official documents running of a mill under some name without having its separate independent premises or machinery or electricity connection thereat under the same name just to get extra paddy allocation in any Kharif season in the past, regardless of delivery of rice against the same paddy allocation, the miller shall be termed defaulter for all the mills for which he/she has been either a partner or proprietor.*

10. ALLOCATION OF PADDY TO ELIGIBLE RICE MILL(S)

a. *General:*

(i) Allocation of a mill and Allocation of paddy is at the sole discretion of DAC, a miller cannot claim this as a matter of right.

(ii) (ii) *As paddy is to be allocated to the miller subject to its availability with the procurement agencies at that particular milling centre, the shortfall, if any, will not be arranged from other milling centres or districts and this portion shall be deemed to have lapsed and the miller shall have no claim against it.*

(iii) *While calculating the eligibility of rice mills, the figures of actual purchase of paddy during KMS 2019-20 shall be considered and hypothetical increase of 10% shall not be assumed.*

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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 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. *Any notice issued by the competent authority to the Rice Miller under this policy would clearly lay down the omissions and commissions and the proposed remedial measures/punishment, if the reply is not submitted by the miller in time or is not found satisfactory.*

c. *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.*

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Under the policy the marketing season for KMS 2020-21 commences w.e.f. 1st day of October, 2020. The procedure as also allocation for paddy as also the schedule laying down a time frame has been given in clause (5). Clause (4) lays down the eligibility conditions for allocation of a miller to an agency. Clause (7) defines the events of default and in the eventuality of which no mill/miller is to be considered for allocation of paddy under the Policy. Allocation is to be made by a District Allotment Committee. Clause (24) lays down an alternative dispute resolution mechanism against any order that may be passed under any of the provisions of the Policy. A provision of first appeal against the orders passed by the District Allotment Committee and thereafter a second appeal is also provided.

FCI is seeking to justify the issuance of the impugned letter dated 30.09.2020 (Annexure P-2) directing the District Food & Civil Supplies (DFSC), District Amritsar/Tarn Taran not to allot paddy for the current Kharif 2020-21 season by placing reliance upon a CBI report dated 24.09.2019 wherein it was stated that vehicles which were actually supposed to carry rice food grains from Punjab to Food Storage Depot, Kupwara had been unloaded at the premises of the petitioner-mill. However, the aspect which has been overlooked is that the investigation process has culminated in the filing of the final report/challan dated 26.12.2019 (Annexure P-7) in which neither the petitioner-mill nor any of its partners have been nominated as an accused. To fall within the mischief of clause 7(f) of the Policy it is only if a police case/court case/arbitration case is pending against a miller on account of embezzlement and/or on account of non-delivery of rice that such miller would be viewed as a defaulter. Mr. K.K.Gupta, learned counsel representing FCI even though conceding that the petitioner-mill as of date has not been challaned and is not facing trial, contends that FCI is contemplating moving of an application before the competent court for summoning the petitioner-mill to face trial as an additional accused. Even if that be the case, issuance of the impugned letter dated 30.09.2020 (Annexure P-2) cannot sustain. The right vested in the petitioner-mill of consideration for allotment of paddy for KMS 2020-21 crystalised in the last week of September as per schedule contained in the Policy. In relation to such period of time the petitioner-mill had not incurred any disqualification under the Policy so as to be termed as a defaulter. A blanket prohibition regarding allotment of paddy cannot be imposed by FCI merely on account of steps it proposes to take and are within the realm of contemplation.

The stand taken by State of Punjab, Department of Food, Civil Supplies and Consumer Affairs is found to be rather intriguing. Under the Policy it is the District Allotment Committee which is the competent authority for allotment of various mills in the district to the procuring agencies and allocation of Custom Milling Paddy to rice millers. The composition of the District Allotment Committee has been defined in clause 5 and as per which the District Allotment Committee would comprise of DMs of all the State Procuring Agencies and FCI in each district and the District Mandi Officer (DMO) of the Punjab Mandi Board in the district under the chairmanship of the concerned DDF (Deputy District Field). Clause 10 specifically recites that allocation of a mill and allocation of paddy is at the sole discretion of the District Allotment Committee and a miller cannot claim this as a matter of right.

On a specific query having been put, learned State counsel concedes that no deliberations have taken place by the concerned District Allotment Committee as regards allotment of paddy to the petitioner-mill. The denial of allotment is solely on the basis of the directive/prohibition contained in the impugned letter dated 30.09.2020 (Annexure P-2). In the considered view of this Court such course of action tantamounts to an abject surrender of the decision making process by the competent authority i.e. DAC insofar as the petitioner-mill is concerned. Since no orders have been passed by the DAC as regards allotment of paddy to the petitioner-mill for

KMS 2020-21, the petitioner-mill has been denied even the opportunity to avail of the Alternate Dispute Redressal Mechanism envisaged under Clause 24 of the Policy. This Court would have no hesitation in holding that the action of the respondent-authorities allotting paddy to other millers for KMS 2020-21 and denying to the petitioner-mill even consideration for allotment under the Policy is completely unjust, unfair, illegal, arbitrary and violative of Article 14 of the Constitution of India.

For the reasons recorded above the letter dated 30.09.2020 (Annexure P-2) issued by FCI as also the subsequent orders dated 23.10.2020 passed by FCI and dated 28.10.2020 passed by the District Controller, Food, Civil Supplies and Consumer Affairs, Amritsar during the pendency of the instant petition are held to be bad in law.

Under normal circumstances this Court would have remanded the matter back to the District Allotment Committee to take a decision as regards allotment of paddy. The facts of the present case are, however, peculiar. Under the Policy the marketing season commences from the 1st day of October, 2020. More than four weeks have already gone by. State counsel has otherwise admitted that the petitioner-mill has not incurred any disqualification under the Policy and does not come within any of the events of default delineated under clause 7 of the Policy. Such stand is even discernible from the order dated 28.10.2020 passed by the District Controller, Food, Civil Supplies and Consumer Affairs, Amritsar and duly placed on record.

In view of the above, while setting aside the impugned letter dated 30.09.2020 (Annexure P-2) as also subsequent orders dated

23.10.2020 passed by the General Manager (R), FCI, Regional Office, Punjab and order dated 28.10.2020 passed by the District Controller, Food, Civil Supplies and Consumer Affairs, Amritsar, directions are issued to the competent authority under the Policy to allot the petitioner-mill, to a State Procurement Agency and allocate paddy for KMS 2020-21 as per relevant/applicable contingencies. Such directions be carried out forthwith.

Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

03.11. 2020
sunita

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No