

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

205

**CM-14210-CWP-2020 in/and
CWP-22178-2020
Decided on : 23.12.2020**

M/s Mahal Rice Industries

... Petitioner

Versus

Food Corporation of India & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

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

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

Mr.Navdeep Chhabra, DAG, Punjab, for respondents No.3 to 5.

Mr.A.P.S.Mann, Advocate, for respondents No.6 & 7.

(The proceedings are being conducted through video conferencing,
as per instructions.)

G.S. Sandhawalia, J. (Oral)

CM-14210-CWP-2020

Application for placing on record order dated 10.12.2020 as Annexure P-8 is allowed, in view of the averments made in the application, duly supported by affidavit. Said document is taken on record, subject to just exceptions. Office to tag the same at appropriate place.

CM stands disposed of.

CWP-22178-2020

Challenge in the present writ petition, filed under Article 226 of the Constitution of India is to the order dated 08.12.2020 (Annexure P-9) passed by respondent No.2 the Area Manager, FCI whereby delivery of rice has been stopped and request has been made to respondent No.4 to lift the paddy lying with the petitioner-mill.

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It is submitted that no opportunity was given to the petitioner before the impugned order was passed and the petitioner had been allotted paddy for custom milling under the Milling Policy for 2020-2021. Similarly, order dated 10.12.2020 (Annexure P-13) has also been challenged whereby the agency, namely, MARKFED, respondents No.6 & 7 has informed the petitioner-Millers that milling be stopped so that there may not be any change in the figure of paddy/rice found in the joint verification report done on 04.12.2020.

On 21.12.2020, the following order was passed by this Court:

“Counsel *inter alia* contends that the petitioners were allotted the paddy by respondent no. 5 on 08.10.2010 (Annexure P-14) and the agency was Markfed. On account of an FIR being lodged against Harpreet Singh, who was a proprietor in one case and a partner in the other and being a transporter involved in the said case, at Srinagar by CBI on 27.09.2017 (Annexure P-6), the FCI stopped receiving the rice which was allotted for custom milling.

Resultantly, CWP No. 20152 of 2020 was filed, which was disposed of on 10.12.2020 with a direction to accept the already milled rice lying with the petitioner subject to the fulfillment of specifications and norms. However, since the communication had been sent to respondent no. 4, The Director, Food, Civil Supplies and Consumer Affairs, the petitioners were given liberty to challenge the action of the respondents. It is submitted that the impugned order dated 08.12.2020 (Annexure P-9) has, thus, been passed for shifting the paddy from the mills. It is submitted that as per the policy, the defaulter means a miller who had failed to supply the entire minimum rice which was allotted to him for milling and reference to Clause 7(f) of the policy (Annexure P-1) was made that there was no definition of defaulter in case of a police case. It is submitted that FCI was well aware of the status of the partner/proprietor of the petitioner and had participated in the allotment process which is laid down under Clause

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5 of Annexure P-1 and, therefore, at this stage, to take such drastic steps would not be called for. Reliance is also placed upon the letter written on 08.12.2020 (Annexure P-11) by respondent no. 5 to respondent no. 4. It is also contended that no order had been passed by respondents no. 4 and 5 cancelling the allotment while referring clause 5(c)(xi) that it is the Director's decision, which is to be final and binding on all agencies. Reference has also been made to Clause 24 to submit that an opportunity of personal hearing is to be given.

Notice of motion.

Mr. K.K. Gupta, Advocate accepts notice on behalf of respondents no. 1 and 2; Ms. Kanica Sachdeva, AAG, Punjab accepts notice on behalf of respondents no. 3 to 5; Mr. APS Mann, Advocate accepts notice on behalf of respondents no. 6 and 7.

Adjourned to 23.12.2020.

Counsel for the State shall also get instructions as to whether any declaration is supposed to be given by the proprietor/partners of the mills at the time of applying for registration and in case that is so, whether the petitioner-mill had given the necessary declaration. Status quo regarding shifting of the paddy from the mills concerned shall be maintained till the next date of hearing.”

In the short reply filed by respondent-FCI, it has been averred that a false declaration was made by the petitioners on the prescribed performa relating to pendency of CBI case at Srinagar which has culminated into a charge-sheet being filed before the CBI Court, Srinagar. Harpreet Singh who is the proprietor of one of the mills and partner in the other, has been arrayed as accused No.6. It is, thus, submitted that the declaration which was given was not correct when the case was further proceeded for allotment. The argument that once the miller had been allotted the paddy, the respondents could not go back on the said allotment is without any basis. Reference is made to Annexure R-4, the declaration given by Harpreet Singh as proprietor of M/s Mahal Rice Industries wherein

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against Clause 18, it has been written as 'No' against the issue whether the mill was involved in any CBI case.

The said fact has vehemently been opposed by Mr. Shiv Kumar, counsel for the petitioner that there was no false declaration and submits that no opportunity was given to the petitioner to put-forth his case.

State Counsel and counsel for MARKFED admitted the fact that under the procedure for allotment to an agency under Clause of the Policy (Annexure P-1) 5(c)(xi), the Director/respondent No.4 is the person who is to take a decision as to the discrepancy in the allotment. Said clause reads as under:

“(xi) If any of the agencies finds some discrepancy in allotment, capacity fixation, or violation of any clause(s) of this policy, the matter should be brought to the notice of Director immediately and the decision of the Director in this case shall be final and binding on all the agencies.”

On the other hand, reference is made by counsel for the petitioner to Clause 24(a) that before any order is to be passed, the Miller is to be given a written notice of the proposed action.

Accordingly, keeping in view the above and the fact that decision making is to be done by the competent authority and it is only on account of the impugned communication addressed by the FCI, the shifting of the paddy is being sought. Thus, it would be appropriate that respondent No.4, Director, FCS & CA takes a decision on the said issue by associating the petitioners and the officials of the FCI and the concerned State agency, namely, MARKFED. Let the said exercise be carried out in the week commencing 28.12.2020 and a decision be taken in the said week, after observing the principles of natural justice.

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With the above directions, the present writ petition stands disposed off. In the meantime, paddy shall not be shifted from the mill by all the parties concerned and the status quo order shall continue till the decision by respondent which was granted on 21.12.2020.

DECEMBER 23, 2020
sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No