

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.9258 of 2021(O&M)

Date of Decision: 04.05.2021

M/s Guru Nanak Agro Products and others

...Petitioners

Versus

Union of India and others

...Respondents

CWP No.9267 of 2021(O&M)

M/s Vaishno Rice Mills and others

...Petitioners

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Daman Dhir, Advocate
for the petitioners (in both the cases)

Mr. Ashish Rawal, Advocate
for respondent no.1-Union of India.

Mr. K.K.Gupta, Advocate
for respondent no.2, 3 and 10.

Mr. T.P.S.Chawla, DAG, Punjab
for respondent no.4, 5 and 11 (in CWP No.9258 of 2021) and
for respondent No.4, 5, 13, 14 and 15 (in CWP-9267 of 2021)

ANIL KSHETARPAL, J.

This order shall dispose of Civil Writ Petition No.9258 and 9267 of 2021. Learned counsel appearing for the parties are ad-idem that both these writ petitions involve identical questions of fact and law and therefore, can be disposed by a common order.

1. At the outset, it may be noted that the learned counsels for the respondents have entered appearance pursuant to service of advance notice of the writ petitions and have come forward to address arguments. For convenience, the facts are being noticed from Civil Writ Petition No.9258 of 2021.

2. Through this petition, the petitioners pray for the following substantive reliefs:-

(I) *Issue a writ especially in the nature of certiorari quashing the impugned Letter No.QC.19.R&D/Fortification of Rice/2019/PT dated 16.02.2021 (Annexure P-3) issued by the Respondent No.2, communicating therein to the General Manager(s), Food Corporation of India for procurement of fortified rice stocks by 28.02.2021 and in event of non-supply of the same, suspending the delivery of custom milled rice of Kharif Marketing Season 2020-21;*

(ii) *Further issue a writ in the nature of certiorari quashing the letter dated 24.02.2021 (Annexure P-5) issued by 4th respondent, for procurement of fortified rice stocks for distribution under ICDS/MDM in the states;*

(iii) *Further issue a writ in the nature of certiorari for quashing the letter dated 25.02.2021(Annexure P-6) issued by the State of Punjab and consequent action of the respondents-Food Corporation of India including the State of Punjab in implementation of the impugned*

letters dated 16.02.2021 (Annexure P-3) and 24.02.2021 (Annexure P-5) issued by the 2nd respondent inasmuch as the same is in contradiction of the Custom Milling Policy 2020-21.

- (iv) *Issue a writ in the nature of mandamus directing the respondents to accept of deliveries of custom milled rice of Kharif Marketing Season 2020-21 from the petitioners in view of the short time lines of the crop season immediately during the pendency of the writ petition with a further to allow the petitioners to complete their milling by granting an extension in the milling period.”*

3. The petitioners are rice millers in the State of Punjab. They are aggrieved by the insistence of the Food Corporation of India (for short FCI) to supply the remaining quantity of custom milled rice after fortification. In fortification, the rice derived after de-husking the paddy is required to be mixed with the fortified rice kernels which are manufactured by the Fortified Rice Kernels manufacturers in the State. It is not in dispute that there are number of fortified kernels manufacturers in the northern region and one among them is located in the State of Punjab. The Rice Millers are, additionally, being called to carry out the process of fortification.

4. Some facts are required to be noticed as below.

4.1 Every year, the State of Punjab through its instrumentalities, in order to contribute rice towards the central pool, procures paddy from the grain markets and allocates the same to the various privately owned rice mills for de-husking. For regulating such process, it issues a Custom Milling

Policy each year. Hence, the government on 26.08.2020 circulated the policy for the year 2020-21. Along with the policy, there is a model agreement which every rice miller is required to sign as soon as the paddy for de-husking is allotted. Clause 20(f) of the Policy and Clause 11 of the Model Agreement read as under:-

“Clause 20(f) of The Custom Milling Policy 2020-21

While milling paddy, miller shall ensure that rice extracted out of paddy is as per norms and specifications fixed by GOI and shall deliver the rice at the storage depot of FCI as linked by its area Manager.

Clause 11 of the Agreement

The entire quantity of rice of all varieties delivered by the miller to the Government/Agency shall conform to the specifications laid down in the Levy Order 1983 (as amended from time to time), or in any other order or notification issued by the Govt. of India/State Government from time to time. The stocks of rice not conforming to the specifications so laid down shall be liable to be rejected. The miller shall be required to manufacture rice as per specifications laid down by the Government of India and deliver the same to the Food Corporation of India, at its depots by 31.03.2021.

5. The petitioners-rice millers have been allotted the paddy for custom milling. They have signed identical agreements. The petitioners are required to deliver the processed rice to the FCI to honor the States contribution to the central pool. The milling as per the policy was to start

from December, 2000.

6. In order to achieve the objective of providing nutritional security to the vulnerable and poor sections of the Society, the Government of India came out with a provision of fortification of the rice. In this process, micro-nutritions like Iron, Zinc, Folic Acid and Vitamin B12 are added to the rice. The rice so procured is used in public distribution system as well as for Integrated Child Development Services/mid-day meals. For fortification of rice, a rice miller is expected to mix the rice in the ratio of 100:1 with fortified rice Kernels. In other words, the rice miller is expected to add 1% of the fortified rice kernels in the natural rice derived after de-husking the paddy. The mixing can be either carried out by a blending machine which costs around 15-20 lacs or it can be done manually.

Heard learned counsel for the parties at length and with their able assistance perused the paper book.

7. Learned counsel representing the petitioners contends that the respondents have taken a unilateral decision in the midstream and therefore, such an action is not only unreasonable but also arbitrary. It is contended that delivery of more than 70% of rice has already been completed and therefore, wholly unreasonable obligation is sought to be imposed on the rice millers at the fag end of the season. It is further contended that such an obligation is beyond the scope of the Custom Milling Policy 2020-21.

8. Per contra, Sh. K.K.Gupta, Advocate, who enters appearance on behalf of the FCI while drawing the attention of the court to Clause 11 of the model agreement, which has been extracted above, contends that the Punjab Government or its instrumentalities were informed well in time about the decision and the rice millers are already delivering the fortified rice. He

submits that the petitioners, without any justifiable reason, are creating obstructions in the procurement of fortified rice which is intended to be used to improve the health of the poor sections of the society. He further contends that the petitioners are being paid incremental cost of Rs.0.73 per KG of rice. Hence, he submits that both the writ petitions are liable to be dismissed.

After having evaluated the arguments of learned counsel for the parties, this Bench proceeds to discuss and decide the matter.

9. On a plain perusal of the communication dated 16.02.2021, sent by the FCI to its General Managers, it is evident that the Central Government had been insisting to the States to increase the supply of fortified rice for distribution under the Integrated Child Development Services/Midday Meal Scheme. This letter, in turn, makes a reference to letters dated 27.01.2021 and 10.02.2021. Further perusal of another communication dated 24.02.2021 Annexure P-5, sent by FCI to the Director, Food Civil Supplies and Consumer Affairs, Government of Punjab, it is apparent that the attention of the Director was drawn to the unsatisfactory progress in the supply of the fortified rice. It was requested that the State Government should take concrete steps for delivery of fortified rice to the FCI. In the later communication, the FCI even threatened that if sufficient quantity of fortified rice is not supplied, it will be constrained to suspend the delivery of Custom Milled Rice. Still further, vide a communication dated 25.02.2021, the Government of Punjab wrote to all the Deputy Directors (Field) and District Controllers, Department of Food Civil Supplies and Consumer Affairs to identify the mills who are capable of delivering fortified rice. The document Annexure P-12 is yet another communication dated 16.04.2021, sent by the FCI to the Principal Secretary, Food Civil

Supplies & Consumer Affairs, Punjab, requesting them to ensure the delivery of fortified rice in an expeditious manner failing which the target of delivery of fortified rice i.e. 75000 MT will not be achieved in the month of April, 2021. It is also noticed in the communication that the delivery of fortified rice is limited to a very few divisions/centres located in Ludhiana, Jalandhar, Chandigarh, Sangrur and Hoshiarpur only.

The petitioners have assailed the correctness of the aforesaid communications.

10. On a conjoint reading of Clause 20(f) of the Custom Milling Policy 2020-21 and Clause 11 of the Model Agreement, it is apparent that the millers are required to ensure that the rice extracted after de-husking the paddy is delivered to the FCI as per the norms and specifications fixed/adopted by the Government of India from time to time. From a further perusal of Clause 11 of the Model Agreement, it is apparent that the miller shall be required to manufacture rice as per the specifications laid down by the Government of India from time to time and deliver the same to the FCI. In these circumstances, the miller is contractually bound to deliver the rice as per the specifications notified from time to time. Once the millers have entered into an agreement and received paddy under the agreement, they cannot now turn around and challenge the specifications laid down by the Government of India unless such change in specifications is proved to be arbitrary. As noticed above, by fortification of rice, the nutrition added to the rice derived from paddy. The fortified rice with added micro-nutrients results in improving nutrition level amongst the vulnerable and poor sections of the society including children. Thus, the object sought to be achieved is not only in public interest but laudable in the direction of achieving the

Directive Principles enshrined in the Constitution of India.

11. Still further, it is not the case of the petitioners that such fortification of rice is not possible. As noticed above, a rice miller is only required to mix 1% fortified rice kernels which are available in the nearby areas where the rice is processed.

Now let's examine the arguments of learned counsel for the petitioners.

12. No doubt, the decision of the Government of India is unilateral. However, such a unilateral decision is permitted as per the provisions made in the Custom Milling Policy as well as the Model Agreement. Thus the contract entered between the parties does envisage unilateral change in the specification to which the Rice Millers have already given their consent. The learned counsel for the petitioners although contends that the decision is unreasonable and arbitrary, but has not put forth any material to substantiate the same. The decision is in the interest of public. In the absence of specific pleadings and supporting evidence to the effect that it is not possible to blend the natural rice with the fortified rice kernels to the extent of 1%, the decision cannot be said to be unreasonable or arbitrary. The petitioners are also being paid an incremental cost of Rs.0.73 per KG. It is also apparent that the rice millers of Ludhiana, Jalandhar, Chandigarh, Sangrur and Hoshiarpur have already started delivering fortified rice. In these circumstances, in the considered opinion of this Bench, the decision of the Central Government is neither unreasonable nor arbitrary.

13. Next argument of learned counsel that the petitioners are being forced to carry out unreasonable work at the fag end of the season is also without substance particularly when the other millers, as noticed above, have

already started delivering fortified rice. The petitioners have themselves pleaded that they have already completed 70% supply of rice and that now only 30% of the rice remains to be delivered. The respondents-Union of India has not called upon the rice millers to take back the delivery of the rice which has already been delivered. The rice millers have been called upon to carry out the fortification of the rice which is yet to be delivered. Thus, at this stage, they are only required to process and blend the remaining quantity of the rice and convert it into fortified rice before delivering the same. As per Clause 11 of the Model agreement, the entire quantity of rice to be delivered by the miller to the FCI shall conform to the specifications laid down in the Levy Order 1983 (as amended from time to time), or in any other order or notification issued by the Govt. of India/State Government from time to time. Therefore, the rice miller-petitioners were well aware in advance that both the Central Government and the State Government are entitled to change the specifications from time to time. Hence, it is not possible to hold that a completely unreasonable obligation has been imposed on the rice millers.

14. Last argument of the learned counsel is that the decision taken by the respondents is beyond the scope of the Custom Milling Policy. This aspect has already been examined. However, at the cost of repetition, it is important to note that Clause 20(f) of the Custom Milling Process and Clause 11 of the Model Agreement, which is also a part of the Custom Milling Policy, enable the Government to change the specifications. In these circumstances, this Bench does not find that the decision of the respondents is beyond the purview of the Custom Milling Policy.

15. This matter can further be examined from another perspective.

The communications which are subject matter of challenge in this writ petition are not addressed to the petitioners. The petitioners do not have any privity of contract with the Food Corporation of India. As per the agreement between the petitioners/rice millers and the various instrumentalities of the State, the elected remedy for resolution of disputes is through arbitration. If the petitioners have any grievance with respect to the decision taken by the Punjab Government or its instrumentalities, then their remedy lies before the Arbitrator.

16. Still further, this dispute can be looked from yet another angle. The Central Government has taken a decision which is in the interest of the public. The purpose sought to be achieved by this decision is appreciable and in consonance with the Directive Principles of the State Policy enshrined in the Constitution of India. Therefore, such a decision being in the nature of a policy decision, the scope of judicial review is very limited. This Bench does not find that the decision is arbitrary, illegal or unreasonable in any manner.

17. There is yet another aspect of the matter. The argument of learned counsel representing the petitioner that the decision taken by the Central Government is beyond the purview of the Custom Milling Policy, also, has no substance. As already discussed in the foregoing paragraphs, it has been found to be clearly covered by the policy. However, even if for argument sake, it is assumed that such a decision of the Central Government is beyond the purview of the Custom Milling Policy 2020-21, then the remedy for the petitioners is against the Punjab State or its instrumentalities. The contract entered into between the parties is very much a part of the Custom Milling Policy. As per the aforesaid discussion, any inter-se dispute

between the miller and the instrumentalities of the State is required to be resolved through arbitration. Therefore, the petitioners have an equally efficacious alternative remedy.

18. As noticed above, the communications by the Central Government/FCI are addressed to the Punjab Government and its officers. The FCI has only intimated the Punjab Government to supply sufficient quantity of fortified rice as per the target. It is for the Punjab Government to make arrangements. The rice millers directly have no role to play in the communications between the Centre and the State Government. It is also noted here that the petitioners have not challenged any decision of the Punjab Government or its instrumentalities. The alleged communications which are the subject matter of challenge in the present writ petition are nowhere addressed to the petitioners but to the State Government. Therefore, it is also doubtful whether the petitioners have any locus standi to maintain the respective writ petitions.

Keeping in view the aforesaid discussion, this Bench does not find any merit in the present petitions.

Hence, both the writ petitions are dismissed. However, if the petitioners ultimately choose to invoke the arbitration clause, it is expected that the arbitrator will independently decide the matter.

4th May, 2021
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO