

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.18380 of 2020(O&M)

Date of Decision: 26.03.2021

M/s Sran Rice Mills

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Ms. Lavanya Paul, AAG, Punjab
for respondent no.1 to 3, 5 & 10.

Mr. Deepali Puri, Addl. A.G., Punjab
for respondent no.4.

Mr. Aditya Partap Duggal, Advocate
for respondent no.7.

ANIL KSHETARPAL, J.

Through this writ petition, the petitioner seeks a writ in the nature of certiorari to quash the order dated 04.05.2020, passed by the District Allotment Committee, which has been affirmed in appeal by the Director, Food, Civil Supplies and Consumer Affairs, Punjab, vide order dated 08.06.2020 and further affirmed by the Principal Secretary, Transport Department, Government of Punjab, Chandigarh, vide order dated 30.09.2020 in the Second Appeal.

In the State of Punjab, de-husking of paddy can be broadly divided in two different categories. One is Custom Milling whereas the

other is Levy Rice. In Custom Milling, the paddy is purchased by the State Government or its instrumentalities and thereafter allocated to various rice mills for de-husking. After de-husking, the rice is supplied to the Central Government through Food Corporation of India (FCI) or other agencies. Similarly, FCI can itself purchase the paddy and get it de-husked. In this method, the rice millers, in fact, do a job work. In other words, the rice miller de-husk the paddy against some payment. Since the quantity of paddy to be de-husked is huge, therefore, every year the State of Punjab comes out with a policy which is known as the Punjab Custom Milling Policy for paddy as known as KMS policy (Kharif Marketing Season Policy for the relevant year)

In the other category, the rice miller after purchasing/procuring the paddy, de-husks it. After de-husking, the processed rice is subject to a fixed percentage of levy which the rice miller is required to supply to the government at a pre-determined price as per the Control Order issued by the Government in exercise of its powers under The Essential Commodities Act, 1955. The miller after contributing a fixed percentage of levy rice to the government, is entitled to market the remaining rice.

In the present case, we are concerned with Custom Milling for Kharif Marketing Season (hereinafter referred to as KMS 2019-2020). The question which has arisen for consideration is:-

“Whether the order passed by the Principal Secretary, modifying the order of punishment while upholding the petitioner's black listing is correct or not?”

The petitioner-mill was black listed by the District Allotment Committee for a period of 2 years for violation of the terms of the policy

which is a part of the contract entered into between the parties. The District Allotment Committee, apart from cancelling the registration and allotment of the mill for KMS 2019-2020, black listed the petitioner mill for a period of 2 years beside shifting the paddy belonging to the of PUNGRAIN from the petitioner Rice Mill. In Second Appeal, the Principal Secretary has reduced the period of black listing to one year. Thus, in fact, the period of punishment as imposed by the second Appellate Authority has almost come to an end because the season is going to come an end within a month. However, learned counsel for the petitioner contends that as the order still adversely impacts the petitioner-mill because now his mill would be treated as a new mill, therefore, the writ petition is required to be decided on merits.

Some facts are required to be noticed.

On physical inspection/verification of the petitioner's rice mill on 03.11.2019, it was found that apart from the paddy allotted to the petitioner-mill, there was an excess stock of 33130 bags of paddy. The entire stock of paddy was intermingled and there was no segregation. The petitioner-mill also failed to produce the proof of purchase of the aforesaid excess paddy, its transportation and payment of the market fee. The petitioner-mill stated that it has purchased the paddy in October, 2019. After a show cause notice, the District Allotment Committee, as noticed above, passed an order. No doubt, subsequently, the petitioner claimed that he purchased the paddy on 06th/07th November, 2019 and paid the market fee of approximately 14,00,000/-. It was found that subsequently the paddy is shown to have been purchased through a commission agent firm owned by the mother of the proprietor of the petitioner-firm. At the time when the

paddy belonging to the government agency was shifted, it was found that there is shortage/discrepancy of 1835.715 quintals.

This Bench has heard learned counsel for the parties at length and with their able assistance perused the paper book.

Learned counsel for the petitioner has submitted that the petitioner-mill could not be penalized as the petitioner-mill has not violated Clause 12(e) and Clause 16(b) of the policy. Thus, the aforesaid two Clauses need closer look and hence extracted as under:-

“ 12(e)The miller shall not mix any other paddy with Custom milling paddy lying in his premises. The custom milling stocks must be kept separate by well defined partitions/boundaries/fencings etc. All such paddy stocks shall be subject to Physical Verification/Inspection by the officials/officers of the concerned agencies, at any time. The miller shall provide suitable access to the entire paddy stock at the time of PV/ Inspection. If such an access is not given by the miller, he shall be blacklisted for three years and the paddy stored at his mill premises shall be shifted at his risk and cost, after giving him due written notice of the proposed action.

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 would be stored and marked separately from the OMR paddy as per relevant clauses 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.”

It may be noted here that the learned counsel has not assailed the factual finding arrived at by the District Allotment Committee, affirmed in the first appeal and the second appeal with reference to intermingling of the paddy of the Government agency and privately owned paddy, failure to produce necessary documents at the time of inspection and subsequent shortage of paddy while shifting.

Learned counsel while referring to Clause 12(e) of the policy submitted that there is no allegation that the petitioner-mill did not provide access to paddy to the members of the raiding party and therefore, the petitioner-mill could not be black listed. He further submitted that de-barring the firm has serious consequences and therefore, the punishment imposed is disproportionate to the mistake, if any.

Per contra, learned counsel appearing for the respondents while referring in extenso to the order passed by the second Appellate Authority submits that in fact, the rice millers often indulge in the immoral trade practice of purchasing the crop directly from the farmers at a price lower than the minimum support price and that also, without paying the market fee. She contend that subsequently, no doubt, the petitioner paid the market fee, rural development fund and interest to the extent of Rs.14,42,000/- but initial effort was to defraud the government of its dues. The millers usually pay some advance to the farmers and thereafter purchase their produce at a lesser rate, thus, depriving the government and its instrumentalities of its market fee and rural development fund etc. apart from fleecing the poor farmers. The rice millers also indulge in illegal mixing of the stock and thus, supply rice of inferior quality to the FCI. Sometimes, the rice which is meant for public distribution system or which has been procured from other

illegal channels is also mixed. Hence, she contends that this court should not interfere.

It may be noted here that this Bench is not going into the aforesaid aspect of the matter, particularly when learned counsel for the petitioner has restricted his arguments only to interpretation of Clauses 12(e) and 16(b) which have been extracted above.

No doubt, in the first blush, on reading of Clause 12(e), the argument of learned counsel for the petitioner appears attractive, however, found without substance on a deeper scrutiny. Under Clause 12(e), the black listing is linked to the failure of the mill to provide access to paddy stock by the miller to the Physical Verification Committee. However, there is no doubt that the miller is not permitted/allowed to mix any other paddy with the paddy allotted for custom milling. On con-joint reading of Clause 12(e) and 16(b), it is apparent that the miller is duty bound to separate the paddy allotted for custom milling from privately owned other paddy. There has to be well defined partition/boundaries/fencing etc., so as to rule out the chances of mixing of the various types of paddy. This is one of the conditions for storage of paddy at the premises of the mill. The Physical Verification Committee did find that there was intermingling of the entire stock. There are also allegations that when the paddy was finally shifted from the petitioner-mill, 1835.715 quintals of custom milling paddy owned by the instrumentality of the State was found missing. Further clause 16(b) of the policy make it mandatory for the miller to produce the documents supporting the purchase of the privately owned paddy like bills/invoices/transportation and proof of deposit of market fee, RDF etc. It is also provided that for such unaccounted paddy or rice so found, the mill

will attract a penal action including cancellation and blacklisting of the Rice Mill. In the present case, initially 33130 bags of paddy were found to be unaccounted. Sub-clause (b) also provides for blacklisting of the mill. Therefore, the action of the respondent is in accordance with the policy. Still further, the High Court while exercising its extra-ordinary jurisdiction under Article 226/227 of the Constitution of India, does not sit in appeal over the orders passed by the authorities. The writ of certiorari can be issued only if the order passed suffers from a patent illegality or perversity of such a nature which goes to the root of the matter. In the present case, learned counsel for the petitioner has failed to make out any such ground. It may be noted here that for shortage of paddy, a separate proceedings have been initiated against the petitioner and therefore, any observation made shall not be treated as an expression of opinion on the afore-said aspect.

With these observations, the writ petition is dismissed.

26th March, 2021
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO