(Proceedings through V.C.)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No. 815 of 2020 (O&M)
IN
CWP No. 17043-2020

Date of Decision: 23.08.2021

Food Corporation of India and another ...Appellant

Versus

M/s New Shakti Rice Mill and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Krishan Kumar Gupta, Advocate
for the appellants.

Mr. Gurminder Singh, Senior Advocate with
Mr. J.S. Gill, Advocate, for respondent No. 1.

Mr. Avinit Avasthi, Asstt. A.G., Punjab.

ASHOK KUMAR VERMA, J.

1. This appeal arises out of the judgment dated 03.11.2020 passed by the learned Single Judge of this Court whereby the writ petition filed by the petitioner-M/s New Shakti Rice Mill, respondent No.1 herein,

challenging a letter dated 30.9.2020 (Annexure P-2) issued by the Food Corporation of India-appellant to the 5th respondent-District Controller, Food Civil Supplies and Consumer Affairs, District- Amritsar, with a direction not to allot paddy to the respondent-Mill from KMS (Kharif Milling Season) 2020-21, has been allowed thereby setting aside the aforesaid letter dated 30.09.2020 as also the letters consequent thereto. Learned Single Judge issued directions to the competent authority under the policy to allot the Respondent-Mill, to a State Procurement Agency and allocate paddy for KMS 2020-21, as per relevant/applicable contingencies.

2. A glance of the facts as taken from the paper book are that the respondent-Mill was established in the year 1970 having milling capacity of 3.5 tonnes. The respondent-Mill has been allotted paddy for milling every year for the last 20 years and the milled rice was always delivered in time. It is the case of the respondent-Mill that no proceedings were pending against the Mill on behalf of the procuring agency for late delivery of rice or otherwise and the Mill has never been declared a defaulter. The State of Punjab, Department of Food, Civil Supplies and Consumer Affairs, issued Policy known as Punjab Custom Milling Policy for Kharif 2020-21 on 26.08.2020 (for short 'the Policy) (Annexure P-1). Surprisingly, vide letter dated 30.09.2020, issued by the Divisional Manager, FCI Amritsar, the respondent-Mill was directed not to be allotted paddy for milling on the ground that the name of the respondent-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. The respondent-Mill refuted the allegations and stated that no proceeding were pending before the CBI vide its representation dated 03.10.2020 (Annexure

P-3). In support of its claim the respondent-Mill annexed letters dated 03.10.2020 (Annexure P-4) issued by the District Controller and the letter dated 05.10.2020 (Annexure P-5) issued by the Divisional Manager, FCI wherein it has been stated that the name of the respondent-Mill does not appear in the report of the CBI nor any FIR has been registered against it or its partners. Since, no further action was taken by the FCI regarding allotment to the respondent-Mill for milling purposes during the ensuing KMS 2020-21, the petitioning-Mill has approached the High Court by filing the aforesaid writ petition which has been allowed by the learned Single Judge of this Court vide the impugned judgment dated 03.11.2020. It is this judgment which has been challenged by the appellants-FCI in this LPA before this Court.

3. Mr. K.K Gupta, learned counsel for the appellants-FCI, inter alia, submits that the judgment passed by the learned Single Judge is erroneous in the eyes of law. The learned Single Judge has wrongly allowed the writ petition filed by the respondent-Mill. Learned counsel submits that the allegations against the respondent-Mill were that the CBI had registered an FIR dated 27.9.2017 as regards misappropriation of food grains and in a CBI report dated 24.9.2019, it has been stated that vehicles carrying food grains (rice) had been despatched from FCI godowns in Punjab to Food Storage Depot (FSD), Kupwara (State of Jammu and Kashmir), but the same had been uploaded at the respondent-Mill. Learned counsel submits that the conduct of respondent-Mill was under cloud in view of the involvement in misappropriation of FCI stock as reported in the CBI report dated 24.09.2019 (Annexure R-1). Learned counsel further submits that the learned Single Judge has failed to notice that the impugned order rejecting

the claim for allotment of paddy is appealable under Clause 24 of the Policy. Instead of remanding the matter to the competent authority in the FCI, the learned Single Judge wrongly allowed the writ petition of the respondent-Mill. Learned counsel submits that the trial is pending before the Special Judge Anti Corruption (CBI Cases), Kashmir, Srinagar wherein the appellants-FCI had already filed an application under Section 319 of the CRPC for arraying the respondent-Mill as co-accused in view of the categoric finding of the Investigating Officer of the CBI in its report dated 24.09.2019 (Annexure R-1) to the effect that the vehicles carrying the rice bags meant for FSD, Kupwara were unloaded in the mill premises of the respondent-Mill and thereby the FCI was caused the loss of crores of rupees for such misappropriation of its stock.

4. Per contra, Mr.Gurminder Singh, learned Sr. Counsel appearing for the respondent-Mill vehemently contends that the allotment of paddy to the respondent-Mill has been declined on the sole ground that the name of the respondent-mill has appeared in a CBI report. It is contended that there is neither any FIR registered by the CBI against the respondent-Mill or its partners and neither the name of the respondent-Mill nor the names of its partners appear in the charge-sheet filed by the CBI nor is it an accused in any CBI proceedings. In this view of the matter, the very foundation for issuance of the letter dated 30.9.2020 (Annexure P-2) is demolished being shaky and non-existent. Learned Sr. Counsel further submits that the respondent-Mill fulfils all the criteria as prescribed in the policy and every year paddy had been allotted and there was no default against the respondent-Mill. Furthermore, the letter dated 30.9.2020 (Annexure P-2) stopping the allotment of paddy to the respondent-Mill entails adverse civil

consequences and no opportunity of hearing has been afforded to the respondent-Mill before issuance of the letter dated 30.9.2020 (Annexure P-2). Last but not the least, learned Sr. Counsel submits that the application under Section 319 Cr.P.C. filed by the appellants-FCI before Court of Anti Corruption (CBI Cases), Kashmir, Srinagar for arraying the respondent-Mill as a co-accused has already been dismissed by its Special Judge vide order dated 27.2.2021. Thus in view of the absence of any incriminating material against the respondent-Mill, the allegations made by the appellants-FCI are bald in nature and have no leg to stand.

5. We have considered the submissions made by the learned counsel for the parties anxiously and perused the paper-book.

6. We cannot countenance the submissions of the learned counsel for the appellants-FCI. It is an admitted fact that Respondent No. 5-District Controller, acting upon the representation submitted by the respondent-Mill, issued memo dated 03.10.2020 (Annexure P-4) to the Area Manager, FCI, Amritsar, stating that every year respondent-Mill has been allotted paddy for government milling and the mill timely completed and delivered the rice. The respondent-mill is not a defaulter of any agency. Vide the aforesaid letter, the District Controller directed the Area Manager, FCI Amritsar, to re-investigate/re-check the matter related to respondent-Mill by informing the respondent No. 5- District Controller. In response to the aforesaid letter, the appellant-FCI issued letter dated 05.10.2020 (Annexure P-5) that on perusal of the CBI report, it is crystal clear that neither respondent-Mill nor any of its partners has been made accused by CBI in its charge-sheet and further no FIR has been lodged by the CBI against the respondent-Mill or its partner. Vide the aforesaid letter, the Divisional Manager, FCI, Amritsar made a

request to seek suitable direction from General Manager, FCI that as to whether paddy may be allotted to the respondent-Mill or not for milling during the ensuing KMS 2020-21. It is explicitly clear that since the respondent-Mill was not a co-accused in the CBI case, the appellant-FCI filed an application under Section 319 of the Cr.P.C before the CBI Court, Srinagar, for summoning of additional accused i.e. one of them being respondent-mill, to face the trial. Vide order dated 14.12.2020, the CBI Court issued notice to the CBI through its P.P for filing objections. Accordingly, the CBI filed objections to the application under Section 319 of the Cr.P.C before the CBI Court. In paragraph-5 of the objections the CBI stated that regarding the involvement of owner of New Shakti Mills (respondent-Mill), no oral and documentary evidence in support to substantiate that the rice which was loaded from Jandiala, Punjab for unloading at FSD, Kupwara was actually unloaded at new Shakti Rice Mills i.e. the respondent-Mill. Vide order dated 27.02.2021, the CBI Court dismissed the aforesaid application filed by the appellant-FCI for summoning of the additional accused, one of them being the respondent-Mill.

We find nothing on record to show at this stage that the respondent-Mill was involved in the aforesaid CBI case and in the absence of any cogent and convincing evidence and any incriminating material, the respondent-Mill cannot be debarred from allotment of paddy for milling. The action of the appellants-FCI is illegal, arbitrary, unjust, irrational and capricious. The learned Single Judge has rightly set aside the arbitrary action of the appellants.

7. The argument of the learned counsel for the appellants that alternative remedy has not been exhausted by the respondent-Mill in spite of the fact that it was having remedy of appeal(s) under Clause 24(c) of the Policy which stipulates a provision of first appeal against the punitive order and thereafter a second appeal, is misconceived and misleading since the appellants-FCI has acted in sheer violation of the principles of natural justice.

Clause 24(a) of the Policy clearly stipulates that "*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".*

Inspite of this clear stipulation under Clause 24(a) of the policy, the appellants-FCI acted in utter violation of its own policy. In the present case, the appellants-FCI have straightaway passed a punitive order dated 30.9.2020 (Annexure P-2) stopping the respondent Mill from allotment of paddy for government milling without giving any show cause notice to the respondent-Mill and without giving an opportunity of personal hearing to the respondent-Mill. There is nothing on record to show that prior to passing of the aforesaid punitive order against the respondent-Mill, the respondent-Mill was ever given any show cause notice or ever afforded any opportunity of being heard in the matter. Undoubtedly, the respondent-Mill has been condemned unheard. The FCI has acted in sheer violation of the principles of natural justice.

It is settled principle of law that before any punitive action is proposed to be taken, the affected party must be given a show cause notice against the proposed action. It is a sine qua non of the right of fair hearing. Any order passed without giving show cause notice to the affected party is against the principles of natural justice and is *void ab initio*. Any order which has been passed in violation of the principles of natural justice would be arbitrary and violative of Article 14 of the Constitution of India and can always be challenged under Article 226 of the Constitution of India. When an order is violative of the principles of natural justice, the plea of alternative remedy would not be a bar to exercise of writ jurisdiction under Article 226 of the Constitution of India.

In the present case, the learned Single Judge has rightly exercised its jurisdiction under Article 226 of the Constitution of India and set aside the punitive action of appellants-FCI against the respondent-Mill.

8. Apart from that, there is nothing on record to show that the respondent-Mill has incurred any disqualification under the policy and admittedly, the respondent-mill is not a defaulter under the policy. Furthermore, it is not disputed that under the policy, the marketing season already commenced from 1st day of October 2020. Remanding the matter back to the FCI authorities would be a futile exercise in view of the fact that the matter involves milling of food grains during Kharif Milling Season-2020-21 which has a short timeline and in such matter time slips away like grains of sand, never to return back.

9. In view of the above, we are of the considered opinion that the impugned judgment dated 3.11.2020 passed by the learned Single Judge of this Court is well-reasoned and we find no illegality, impropriety and

irregularity in the same. Consequently, this LPA is dismissed. Consequent upon the dismissal of the LPA, Miscellaneous Application for stay i.e. CM No. 2270-LPA-2020 shall stand disposed of accordingly.

(ASHOK KUMAR VERMA)	**(AUGUSTINE GEORGE MASIH)**
JUDGE	**JUDGE**

23.08.2021
MFK

Whether speaking/reasoned	*Yes*
Whether Reportable	*Yes*