IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-24348-2021
Date of decision: 01.12.2021

M/s Waheguru Agro Industries …... Petitioner

V/s

State of Punjab and ors. ...Respondents

CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr.H.S. Brar, Sr. Advocate,
with Mr. Kanwal Goyal, Advocate, for the petitioner.

Ms. Deepali Puri, Additional Advocate General, Punjab.

Mr. Prabhjot Singh, Advocate,
for respondent No.3-Corporation.

Mr. Gaurav Goel, Advocate, for respondent No.6-Bank.

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<u>M.S. RAMACHANDRA RAO, J. (Oral)</u>

Notice of motion.

Ms. Deepali Puri, Additional Advocate General, Punjab for respondents No.l and 2, Mr. Prabhjot Singh, Advocate for respondent No.3 and Mr. Gaurav Goel, Advocate, for respondent No.6-Bank, have put in appearance and accept notice. .

Keeping in view the urgency explained by learned counsel for the parties and the nature of the matter, case is heard and disposed of today itself.

In this writ petition, petitioner has challenged (a) order dt. 12.11.2021 (Annexure P-7) passed by respondent No.1 to the extent the respondent No.1 has remitted back the matter to respondent No.2-Director, Food, Civil Supplies and Consumer Affairs, Punjab; (b) order dt. 01.11.2021 (Annexure P-4) passed by respondent No.2 as well as (c) the consequential proceedings including order dt. 02.11.2021 (Annexure P-5) blacklisting the petitioner for allotment of paddy for Custom Milling, and directing the paddy already allotted to the petitioner-Mill to be shifted to another Mill. Petitioner also seeks issuance of a writ in the nature of Mandamus directing respondents No.1 and 2 to allot the paddy to the petitioner as per its entitlement/capacity for the year 2021-2022 as per scheme for Custom Milling of Kharif 2021-2022.

Petitioner is a partnership firm.

The subject-Mill was originally owned by respondent No.7, and had been mortgaged to respondent No.6-Bank.

In a public auction conducted by respondent No.6, the petitioner had purchased it, and a sale certificate was issued to the petitioner on 08.04.2021 stating that the sale made to the petitioner by respondent No.6 was “free from all encumbrances”.

Respondent No.2 had issued a Custom Milling Policy (for short ‘CMP’) for the year 2021-22 on 19.09.2021.

The petitioner applied and its Mill was allotted 1652.5 MT of paddy vide letter dt.06.10.2021/09.10.2021 by the DAC, Moga. After said allotment order was issued, 24150 bags equivalent to 905.625 MT of paddy, were shifted to the petitioner-Mill.

Respondent No.3-Corporation, however, preferred an appeal under Clause 24(c) of the CMP before respondent No.2 challenging the said allotment made to the petitioner. It relied on Clause 7(d) of the milling Policy and contended that petitioner, having purchased the Mill from a defaulter (respondent No.7), and not having cleared the dues of the defaulter, cannot be permitted to get any allotment. It was contended that attachment had been secured by respondent No.3 on 11.07.2018 and vide a *Rapat* No.366, a note was also added in *jamabandi* of the attached property. It was contended that the allotment of the petitioner-Mill had been made without affording an opportunity to respondent No.3, which is an affected party.

In the appeal, proceedings which were held by respondent No.2, the petitioner had pointed out that nowhere did respondent No.3 raise any apprehension as to the nature of transaction being a sham and a clandestine one, that the property has been purchased by the petitioner in an auction process conducted by respondent No.6, and not from the defaulter miller, and as per the provisions of SARFAESI Act, 2002, the petitioner had secured title "free from all encumbrances", and the provisions of said statute had overriding effect on any other law. Even the Chairman of DAC had stated before respondent No.2 that the allotment to the Mill purchased by the petitioner was as per the provisions of the CMP.

Respondent No.2 passed an order dt. 01.11.2021 noting that there is no challenge either under the provisions of SARFAESI Act to the transfer of the property to the petitioner, but the challenge is to the registration of the petitioner with the department and subsequent allocation of paddy to the Mill, and Clause 7(d) of the CMP would disentitle the petitioner from getting any such allotment. He, therefore, set aside the allotment order dt.09.10.2021 passed by DAC, Moga and directed the DFSC, Moga, to shift the paddy, if any, stored in the petitioner's Mill within three days to a Mill allotted to the SPA to which the petitioner was allotted in the manner that the entitlement of the Mill is also maintained as per the provisions of the CMP.

The next day i.e. on 02.11.2021, the District Controller, Food and Civil Supplies and Consumer Affairs, Moga, issued proceedings to the District Manager, PUNSUP, Moga, directing the latter to shift 24150 bags equivalent to 905.625 MT of paddy from the premises of the petitioner.

Against this order dt. 1.11.2021 of respondent No.2, appeal was preferred by the petitioner to respondent No.1.

In the appeal, the petitioner had contended that Clause 7(d) of the Policy was wrongly applied by respondent No.2, and the case of the petitioner falls under Clause 7(i) of the said Policy, and even the said Clause will not operate and disentitle the petitioner because there is no plea or material placed on record by respondent No.3 before respondent No.2 to show that the sale in favour of the petitioner by respondent No.6-Bank, was a sham and a clandestine transaction, or that there was any financial or family relationship between the petitioner and the original owner of the Mill i.e. respondent No.7.

On 12.11.2021, respondent No.1 held that respondent No.2 had wrongly applied Clause 7(d), but instead of allowing the appeal, he remitted the matter back to respondent No.2 to pass fresh speaking orders in accordance with Clause 7(i) of the Custom Milling Policy (CMP).

Assailing the same, this writ petition has been filed.

It is contended by learned counsel for the petitioner that the paddy season is almost over, and that respondent No.2 has now fixed the date of hearing of the matter, after remand, on 03.12.2021; and in the absence of even a pleading by respondent No.3 or material placed on record by it that there was any illegality in the sale of the Mill to the petitioner, or that it was a sham or a clandestine transaction, or that there was any financial or family relationship between the petitioner and respondent No.7, respondent No.1 himself ought to have granted relief to the petitioner and permitted the petitioner to mill the paddy allotted to it by setting aside the order passed by respondent No.2.

Ms. Deepali Puri, Additional Advocate General, Punjab, appearing for respondents No.l1 and 2 contends that the *mandis* have been shut from 11.11.2021 in the State of Punjab pursuant to directions issued at the instance of Central Government, and that respondent No.2 will proceed to decide the matter as per the directions issued in the order dt. 12.11.2021 by respondent No.1, on 03.12.2021, and there is no necessity for this Court to interfere with the orders passed by respondents No.1 and 2. She, however, stated that only 5400 bags out of 23850 bags of paddy have been removed after the order was passed on 01.11.2021 by respondent No.2.

Mr. Prabhjot Singh, learned Standing counsel for respondent No.3, contended that Clause 7(d) of the Policy would apply and the petitioner has to be treated as a defaulter, particularly, because the attachment order was recorded in the revenue record, that the petitioner cannot claim that it was unaware of the said liability/dues of respondent

No.7 to respondent No.3, and the very allotment order issued to the petitioner cannot be sustained.

We have noted the contentions of learned counsel for both the parties.

We may point out that the sale certificate issued to the petitioner by respondent No.6-Bank on 08.04.2021 specifically recorded that the sale of the Mill to the petitioner was "free from all encumbrances" known to the secured creditors.

Admittedly, there has been no challenge to the sale by any third party including respondent No.3 on the ground that the dues of respondent No.7 to respondent No.3 had not been indicated by respondent No.6 while selling the Mill to the petitioner under the SARFAESI Act, 2002. Therefore, it cannot be said that the liability of respondent No.7 to respondent No.3 had been passed on to the petitioner and that the petitioner was bound to clear the dues of respondent No.7 to respondent No.3 as well.

In ***'M/s Isha Marbles versus Bihar State Electricity, 1995(2) SCC648',*** the Supreme Court had dealt with a case where appellant was a purchaser in an open auction sale held by Bihar State Financial Corporation of an industry. When the appellant got possession of said industry, the electrical connection of premises was disconnected and the appellant was called upon to discharge all the liabilities of the previous owner. The Supreme Court held that it is impossible to impose on the purchasers a liability which was not incurred by them, and thus, auction purchasers were not liable to meet the liability of the previous owner in order to secure reconnection of electricity connection to the said industry.

In our opinion the principle laid down in the said judgment would apply in this case as well. The petitioner, when it bid for the purchase of the Mill, had not been informed about the dues/liability of respondent No.7 to respondent No.3. So it had not bargained to accept the said liability. So, it cannot be fastened on the petitioner.

If respondent No.3 has any grievance that its dues to respondent No.7 were not indicated in the sale notice issued by respondent No.6, the only recourse which respondent No.3 has, is to proceed against respondent No.6, and it cannot compel the petitioner to pay the liability which respondent No.7 has to discharge towards it.

It is also not open to respondent No.3 to insist that Clause 7(d) would apply disentitling the petitioner to get any allotment of paddy, for the reason that order dt. 12.11.2021 passed by respondent No.1 has not been questioned by respondent No.3 in this Court or elsewhere. The only point which remained for respondent No.2 to decide, post-remand of the matter by respondent No.1, was to pass a fresh speaking order in accordance with Clause 7(i) of the CMP. In such a proceeding before respondent No.2, it is not open to respondent No.3 to argue that Clause 7(d) of CMP would apply.

Learned counsel for respondent No.3 has not been able to show any pleading raised in the appeal filed by respondent No.3 before respondent No.2 or material to establish such a plea about the sale in favour of the petitioner by respondent No.6 being a sham or clandestine transaction or that there was any financial or family relationship between the petitioner and respondent No.7, which was the original owner of the Mill.

In the absence of such a plea taken by respondent No.3, and in the absence of any material in support of it placed before respondent No.2, there was no necessity for respondent No.1 to have remitted the matter back to respondent No.2 merely to pass a fresh speaking order in accordance with Clause 7(i) of the CMP. Since the season was coming to a close, it was expected what respondent No.1 himself to decide the matter in the light of material available on record since he is an appellate authority, and has all the powers of original authority and nothing prevented respondent No.1 to give the said finding.

So in our opinion, the very remand by respondent No.1 to respondent No.2, in the circumstances, was unnecessary, and has caused a serious prejudice to the petitioner.

We also do not see any point in asking respondent No.2 to pass any fresh speaking order at this point of time because by the time he does so, the rest of the paddy available with the petitioner would be taken away and allotted to another miller, and the respondent No.3 would then say that petitioner cannot now be allotted any paddy as the *Mandis* are closed. This would render the whole proceedings a futile exercise.

So, in the interests of justice and for the aforesaid reasons, we modify the order dt.12.11.2021 passed by respondent No.1 by setting aside the last paragraph of the said order and allow the appeal filed before him by the petitioner, and direct that the petitioner be permitted to mill 18750 bags of paddy which are admitted to be in the possession of the petitioner as on date, without any interference by the respondents.

Liberty is given to respondent No.3 to initiate action against respondent No.6 for loss allegedly caused to it, if it is so advised.

(M.S. RAMACHANDRA RAO)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

December 01, 2021
sukhpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No