

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

CWP No. 25759 of 2021 (O&M)

Date of Decision: 22.12.2021

M/S APJ RICE MILLS

.....Petitioner

V/s.

STATE OF PUNJAB AND OTHERS

.....Respondents

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

Present: Mr. Yogesh Goyal, Advocate,
for the petitioner.

Mr. Pankaj Gupta, Additional Advocate General, Punjab.

M.S. RAMACHANDRA RAO, J. (Oral)

CM-19331-CWP-2021

Having regard to the reasons assigned in the application, the same is allowed and letter dt. 14.12.2021 (Annexure P-13) is taken on record.

CWP No. 25759 of 2021

In this Writ Petition, the petitioner challenges the order dated 03.12.2021 (Annexure P-10) passed by respondent No.2 consequential to the remand order dated 12.11.2021 passed by respondent No.1 under the Custom Milling Policy for the years 2021-22 of the State of Punjab.

Heard learned counsel for both the sides.

The petitioner had purchased rice mill i.e. M/s Swami Agro Foods in a sale under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 conducted by a

secured creditor on 22.09.2020 and obtained a sale certificate on 26.10.2020.

The petitioner submitted an application to the District Food Supplies Controller and Consumer Affairs, Barnala for registration of its mill with the department and allotment of paddy under the Custom Milling Policy for the years 2021-22 (hereinafter referred to as “the Policy”) which was issued on 20.09.2021.

The application of the petitioner for allotment of paddy was rejected by respondent No.2 vide order dated 03.11.2021 by applying Clause 7(d) of the Policy.

Petitioner preferred an appeal against the said order to respondent No.1.

Since respondent No.1 was not deciding the issue, the petitioner filed CWP No. 22713 of 2021 which was allowed on 09.11.2021, and a direction was issued to the respondent No.1 to decide the petitioner’s representation at the earliest keeping in mind the fact that procurement of paddy would be over by 15.11.2021.

Thereafter, respondent No.2 passed the order dated 12.11.2021, accepting the plea of the petitioner that Clause 7(d) of the Policy does not apply in view of Clause 7(i), but instead of granting relief to the petitioner straight away, respondent No.1 remanded the matter to respondent No.2 again directing him to pass fresh speaking order in accordance with Clause 7(i) of the Policy.

Thereafter, respondent No.2 passed the impugned order on 03.12.2021, holding that the very registration of the petitioner as Miller has become infructuous since *mandis* in the District of Barnala were already closed on 12.11.2021.

Learned counsel for the petitioner contends that respondent No.1 ought to have allowed the appeal in *toto* instead of remitting the matter back to respondent No.2, and because of delay and disposal of the appeal by respondent No.1 also petitioners suffered prejudice because the *mandis* came to be closed by the date of disposal of the appeal by respondent No.1. He, however, pointed out that though the *mandis* have been closed, the Rice Millers Association of Barnala has given a letter to respondent No.2 on 14.12.2021 that they would supply paddy to the petitioner, and requested for issuance of allotment orders to the petitioner so that it can work in the year 2021-22 and would be able to provide salaries to its staff.

Reply-affidavit has been filed by the respondents stating that no paddy is left in the *mandis* of the State of Punjab for allotment to the petitioner, that paddy has already been allotted to the millers and paddy stored in any rice mills is a property of the concerned State Procurement Agency, and no miller can shift the paddy to whomsoever he pleases and such shifting of paddy can only be as per Clause 15 of the Policy.

We have noted the submissions of both the sides.

Once respondent No.1 has held that respondent No.2 has erred in his order dt. 03.11.2021 in applying Clause 7(d) of the Policy, and that he

ought to have applied Clause 7(i), we fail to understand why respondent No.1 had to remand the matter to respondent No.2 to pass the speaking order in accordance of Clause 7(i) of the Policy. As the first appellate authority, respondent No.1 itself could have passed appropriate orders in that regard.

Also as on the date when respondent No.2 passed the order dt. 03.11.2021, admittedly the *mandis* in the State of Punjab were open and had respondent No.2 correctly applied Clause 7(i) of the Policy, undoubtedly, the petitioner's rice mill would have been registered with the department and allocation of paddy would have been made to him on that day. But for the incorrect application of the Policy by respondent No.2, the petitioner would have been able to mill the paddy which he would have been allotted.

Merely because prior to the order passed by respondent No.1 the *mandis* got closed, the petitioner cannot be made to suffer because the claim of the petitioner for allocation of the paddy ought to be considered on the date of its application which is much prior to 03.11.2021 when respondent No.2 pass the order.

In any event, since respondents are not particularly concerned as to who mills the paddy, and since the Rice Millers Association of Barnala has given a letter to respondent No.2 that they would give certain paddy to the petitioner and requested respondent No.2 to issue allotment order to the petitioner's rice mill so that it can work in the season 2021-2022, we see no impediment why respondents cannot permit the members of the Rice Millers Association Barnala to allot a portion of the paddy

allotted to them to the petitioner, and no prejudice would be caused to the respondents in any way if such course of action is adopted.

Accordingly, in the facts and circumstances of the case, the Writ Petition is allowed and orders dt.03.11.2021 (Annexure P-7) passed by respondent No.2 and orders dt.12.11.2021 (Annexure P-9) of respondent No.1 (insofar as respondent No.1 remitted the matter back to respondent No.2) as also the order dt.03.12.2021 (Annexure P-10) of respondent No.2, are all set aside.

The finding of respondent No.2 in the order dt. 03.12.2021 (Annexure P-10) that new registration application of the petitioner has been rendered infructuous, is also set aside; the respondents are directed to consider the request of the Rice Millers Association Barnala vide their letter dt. 14.12.2021 to give paddy to the petitioner for the season 2021-22, and issue appropriate orders permitting shifting of paddy from the mills of members of the said Association to the petitioner's mill within one week from the date of receipt of certified copy of this order.

Respondents are also directed to register the Mill of the petitioner subject to any compliances.

Pending application, if any, shall stand closed.

(M.S. RAMACHANDRA RAO)
JUDGE

December 22, 2021
Ess Kay

(JASJIT SINGH BEDI)
JUDGE

<i>Whether speaking / reasoned</i>	:	<i>Yes /No.</i>
<i>Whether Reportable</i>	:	<i>Yes/No</i>