IN THE HIGH COURT OF PUNJAB AND HARYANA ATCHANDIGARH

CWP-8425-2018 (O&M)
Date of Decision: January 28, 2021

PUPNEJA RICE MILLS ...... PETITIONER(s)

Versus

STATE OF PUNJAB AND ANOTHER ..... RESPONDENT(s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. AalokJagga, Advocatefor the petitioner.

Mr. Abhay Pal Singh Gill, Asst. A.G., Punjab.

Mr. Simardeep Singh Bedi, Advocate for respondent no.2.

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LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.

Prayer in this writ petition is for setting aside impugned order dated 14.03.2018 (Annexure P-17), passed by the Principal Secretary, Department of Food, Civil Supplies and Consumer Affairs, Punjab, in compliance of order dated 20.02.2018 in CWP-3964-2018 (Annexure P-16). Vide order dated 20.02.2018 in CWP-3964-2018, it was directed that petitioner's representation regarding acceptance of its case under one time settlement Policy be decided in accordance with applicable Policy and provisions of law. Principal Secretary, Department of Food, Civil Supplies and Consumer Affairs, Punjab, rejected the petitioner's claim vide impugned order dated 14.03.2018. Aggrieved therefrom present writ petition has been filed.

Brief facts necessary for adjudication of the case are that respondent no.2-Pungrain stored 110079 bags of paddy weighing 41279.625 quintals in rice mills of petitioner. It was agreed that petitioner would supply custom milling rice weighing 27657.35 quintals in the account of Pungrain with the FCI till 30.03.2017, further extended to 30.06.2017. Physical verification of the stock was conducted on 08.03.2017, wherein shortage of 14250 bags weighing 5343.75 quintals was detected. Pursuant to detection of this shortage, remaining 18561 bags of paddy were shifted to other mills. Petitioner was expected to deliver 27657.35 quintals of rice to FCI in account of Pungrain but again there was a shortage of 3581.336 quintals of rice with only 19412.336 quintals of rice being delivered by petitioner. Notice dated 08.03.2017 (Annexure P-1) was issued to petitioner. Petitioner in response thereto furnished security in the form of immovable property belonging to Smt. Asha Rani i.e. wife of one of the partners of petitioner-firm Hari Chand. An affidavit dated 29.03.2017 (Annexure P-2) was submitted by Smt. Asha Rani that she is ready to give her agricultural land measuring 3 acres to be attached in the name of respondent no.2 in order to discharge liability towards shortage of paddy. 20 Kanals of agricultural land owned by Smt. Asha Rani was attached as security for outstanding amount. Property measuring 49 Kanals and 5 Marlas of family members of partners of petitioner was also attached by the Deputy Commissioner, Fazilka vide Roznamcha dated 13.07.2017 (Annexure P-7). FIR No. 63 dated 29.04.2017 was lodged at P.S. City Jalalabad against the miller for misappropriation of Pungrain paddy.

Dispute was referred to the Arbitrator and award dated 17.01.2018 (Annexure P-15) was passed by the Arbitrator holding the petitioner liable to pay a sum of Rs.1,34,91,394/-. Before passing of the said award and during pendency of arbitration proceedings, One Time Settlement Policy (for short 'OTS Policy) was notified by the Government of Punjab, Department of Food, Civil Supplies and Consumer Affairs, on 07.09.2017.An application for being considered under the OTS Policy was submitted by petitioner before passing of the Arbitral award on 26.07.2017 (Annexure P-9). As the same was not considered, CWP-3964-2018 was filed and in compliance with order dated 20.02.2018 therein,thereafter, impugned order dated 14.03.2018 was passed. Aggrieved therefrom, this petition has been filed.

Primary controversy in this writ petition revolves around interpretation of clause of the OTS Policy dated 07.09.2017, regarding mode of payment which reads as under:-

> "MODE OF PAYMENT- The amount so calculated can be paid fully in one go within 45 days or the same may be paid in three equal yearly/half yearly/quarterly installments as per convenience of the miller. In such cases of option to pay in installments, the miller will have to pay it with 10% compound interest."

Petitioner has taken a stand that it was entitled to deposit the amount in question in three equal yearly installments in terms of said Policy, whereas respondents have taken a specific stand that the amount in question was to be deposited within one year itself and not in three years as projected. Learned counsel for the petitioner has argued that respondent No. 1 while passing the impugned order dated 14.03.2018 has not only reproduced the provisions of the policy regarding mode of payment incorrectly but has also interpreted the same in an incorrect manner. Reproduction of the provision/clause regarding mode of payment in the impugned order, reads as under:-

> "Mode of Payment - The amount so calculated can be paid fully in one go within 45 days (without any interest) or the same may be paid in three equal quarterly/two half-yearly/one yearly instalment/s as per convenience of the miller. In such cases of option to pay in instalments, the miller will have to pay it with 10% compound interest."

Learned counsel for the petitioner submits that a bare reading of the provision regarding mode of payment in the Policy reveals that amount as calculated under the OTS Policy could be paid fully in one go within 45 days thereof without interest or in three equal yearly/half yearly or quarterly installments, as per convenience of the miller with interest. Petitioner, it is submitted, had been ready and willing to deposit said amount in three equal yearly installments though, it is prayed in his application dated 21.11.2017 that said three yearly installments be further bifurcated into three installments per year. It is further submitted that the petitioner, has always been ready and willing to deposit the amount in terms of the OTS but it is only due to wrong interpretation of relevant clause by the authorities that petitioner has been made to run from pillar to post and furthermore land of wife of one of the petitioner's partner also stood attached. Bona fides of the petitioner, it is submitted,are not in dispute as land belonging to wife of one of the partners of the petitioner was offered as security. It is thus prayed that this petition be allowed.

Learned counsel for the State, per contra, argues that it has always been the effort of petitioner to delay payment of government dues. The OTS Policy, it is submitted, is to be complied with meticulously within the stipulated time frame and it is not open to the petitioner to give his own interpretation of the Clause, which is abundantly clear and has been correctly interpreted in impugned order dated 14.03.2018 (Annexure P-17), passed by the Principal Secretary, Department of Food, Civil Supplies and Consumer Affairs, Punjab. Learned counsel for the State relies upon decision dated 23.12.2020 in CWP-327-2020, to submit that no relief whatsoever is made out qua petitioner. It is thus prayed that this petition be dismissed.

I have heard learned counsel for the parties and have gone through the file.

Factual aspect of the petitioner submitting an application for being considered under the OTS Policy dated 07.09.2017, during pendency of the Arbitration proceedings is not in dispute. The mode of payment provided in the Policy reads as under:-

> ***<u>MODE OF PAYMENT</u>***- *The amount so calculated can be paid fully in one go within 45 days or the same may be paid in three equal yearly/half yearly/quarterly installments as per convenience of the miller. In such cases of option to pay in installments, the miller will have to pay it with 10% compound interest."*

The Principal Secretary, Department of Food, Civil Supplies and Consumer Affairs, Punjab, has evidently reproduced the said provision in the impugned order dated 14.03.2018 as "*Mode of Payment - The amount so calculated can be paid fully in one go within 45 days (without any interest) or the same may be paid in three equal/quarterly/two half-yearly/one yearly installment/s as per convenience of the miller. In such cases of option to pay in installments, the miller will have to pay it with 10% compound interest.*"

In tune with the reproduction of the provision in his order, learned Principal Secretary held that petitioner's proposal for payment of outstanding amount in three years does not fall within the ambit of Policy promulgated by the State Cabinet and therefore, proposal set forth by the miller being beyond the scope of defined Policy, could not be accepted. It is observed in the impugned order that payment can be made by the defaulter rice millers by way of one annual installment, two equal half-yearly installments or three equal quarterly installments within a period of one year.Such an interpretation is clearly not in consonance with the provision in the Policy which provides for payment to be deposited either in one go within 45 days or in three equal yearly/half yearly/quarterly installments as per convenience of the miller. Plain reading of this provision does not indicate a cap of one year for payment of the dues.

As there is a clear ambiguity on a bare reading of the provision in the Policy itself, further compounded by impugned order dated 14.03.2018, it was considered necessary to look into the process of formulation of the OTS Policy to see if any light could be thrown on this aspect. It is mentioned in the OTS Policy dated 07.09.2017 that Council of Ministers in its meeting dated 24.08.2017 had taken a decision that rice mills whose cases were pending before various Arbitrators/Courts should be given a chance to avail the One Time Settlement facility and the OTS Policy was promulgated accordingly.

Learned counsel for the State was directed on 09.12.2020, to produce a copy of the decision taken in the said Meeting/the Minutes thereof, in order to find out whether a specific period of one year for deposit of dues had been stipulated therein. In response thereto, affidavit dated 21.01.2021 has been filed alongwith a memorandum of the Council of Ministers' Meeting dated 24.08.2017 besides communication dated 25.08.2017 from the Department of General Administration. Mode of settlement as per the memorandum (Annexure R-3), reads as under:-

*"**MODE OF SETTLEMENT**:-*

The mode of settlement of defalcated default amount can be considered as follow:-

1. *Lump sum without any interest component.*
2. *Two instalments with interest component @ 10%.*
3. *Three instalments with interest component @ 10%.*

Memorandum is submitted to the Council of Ministers with regard to the policy of One Time Settlement with defaulter rice mills of the State. The OTS Proposal with one of the options as given in the above Para No. 1.7 may be considered for approval."

Para 1.7 of the said memorandum reads as under:-

In view of deliberations with the stakeholders including the agencies and the millers, following options may be considered for the recoveries from defaulter rice mills:

1. ***RECOVERY IN CASE OF DEFAULTERS BECAUSE OF BALANCE RICE NOT DELIVERED TO FCI IN TIME**-*

> *a) Cost of undelivered rice be deposited on present Custom Milled Rice rates*
>
> *OR*
>
> *b) Any other option which the council of Ministers may deem appropriate.*
>
> *2. **RECOVERABLES FROM THE DEFAULTERS ON ACCOUNT OF OTHER COMPONENTS EXCLUDING RICE**-*
>
> *For amount recoverable against other components (except rice) like Bardana, Quality Cut, Statutory Charges, VAT etc, the option can be:*
>
> *a) Principle Amount+ Simple interest@10%*
>
> *OR*
>
> *Principal Amount+50% Cash Credit Limit Rate*
>
> *b) Or any other option which the Council of Minister may deem appropriate.*
>
> *The recovery amount as per above formula shall be as per attached **Proforma A and B**."*

As per communication dated 25.08.2017 (Annexure R-4), issued thereafter, it is observed therein that subject matter was discussed in the meeting of the Council of Ministers held on 24.08.2017 and it was decided that the amount would be paid in 45 days or in three annual installments with 10% interest. Para 2 of this communication reads as under:-

> *"In the meeting of the Council of Ministers held on 24.08.2017, the subject matter was discussed and the decision taken in this regard is as under:*
>
> *After deliberation of the memorandum dated 24.08.2017 of Department of Food Civil Supplies & Consumer Affairs, while approving the proposal in Para 1.7.1(a) and Para 1.7.2(a), the Cabinet observed that the interest amount shown in Para 1.7.2(a) shall not exceed the principal amount. Regarding the method of payment under Para 1.7, it was decided that the paddy would be allocated to the mill only after recovery of the entire amount.**The amount will be paid in 45 days, or in three annual installments***

> ***with 10 percent interest**. The Chief Minister is empowered to approve the detailed notification of the scheme, including the necessary amendments, at his own level."*

The proposed Policy is attached as Annexure R-3 and mode of settlement of defalcated default amount is stated as under:-

1. *Lump Sum without any interest component.*
2. *Two instalments with interest component @ 10%.*
3. *Three instalments with interest component @ 10%.*

Thereafter, the OTS Policy dated 07.09.2017, was ultimately notified. The entire sequence of events as delineated above reveals that there is no such indication of a cap of one year for deposit of defalcated default amount. In fact as per communication dated 25.08.2017 (Annexure R-4) attached with affidavit dated 21.01.2021, there is a mention of three annual installments with 10% interest, clearly indicating that amount could be deposited in three annual installments which in natural and normal parlance would mean that amount in question could be deposited in three equal yearly installments.

I do not find any merit in the argument raised by learned counsel for the State that details of the notification were worked out at a later stage and it was decided that amount in question would have to be paid within one year whether by way of one installment or two installments or quarterly installments. A bare reading of the provision regarding mode of payment in OTS Policy dated 07.09.2017 does not fall for such interpretation. The words “three equal yearly/half yearly/quarterly installments” cannot by any stretch of imagination mean to read one single installment in one year or two equal installments within one year or three equal installments in one year. Therefore, in my considered opinion, stand taken by the respondents that no benefit could be given to the petitioner under the OTS Policy dated 07.09.2017, is not justified. There is further no merit in the stand taken by respondent-authorities that at this stage, no benefit under the OTS Policy can be offered as the same was for a limited period. The petitioner has been pursuing the matter constantly since notification of the policy on 07.09.2017. It applied under the OTS Policy of 2017 within the stipulated period.When its application was not being decided, the petitioner approached this Court.Its application was rejected vide impugned order dated 14.03.2018 (Annexure P-17). Present writ petition was filed immediately. Land of wife of one of the petitioner’s firm’s partner was offered for security.Thus decision dated 23.12.2020 in CWP No.327 of 2020, which deals with extension of time to deposit the amount in terms of OTS policy, is not applicable in the factual matrix of this case. Gainful reference can in fact be made to a division bench judgement of this court in Anu Bhalla versus DM,Pathankot, 2021(1) RCR (Civil)30. The object of an OTS Policy is to obviate lengthy procedures and ensure quicker deposit of dues, while offering commensurate relief to the debtor as well.In the present case the petitioner has been pursuing the matter since issuance of the policy. Thus in my considered opinion petitioner’s clam cannot be rejected on the ground that stipulated period in the policy has come to an end.

The petitioner has expressed that as per its calculations in terms of OTS Policy, a sum of Rs.1,02,000,00/- is due in case, he is allowed to pay the amount in one go. It is submitted that petitioner is ready and willing to deposit the entire amount in one go. Therefore, he should be permitted to do so even at this stage without any interest being levied. It issubmitted that petitioner had offered to deposit the amount within three years as per the Policy and would have done so in three annual equated installments as well but he has never been given the chance to do so due to the incorrect and wrong interpretation by the learned Principal Secretary. Therefore, now petitioner be permitted to deposit the amount without interest.

Keeping in view the facts and circumstances of the case, while in my considered opinion benefit of OTS Policy should be afforded to the petitioner, I am not inclined to accept the submission on part of the petitioner that it should be permitted to deposit the amount in question without the component of interest. Admittedly, the petitioner had offered to deposit the amount in question in equated installments within three years. In this eventuality, as per the OTS Policy dated 07.09.2017, the petitioner was liable to pay 10% compounded interest.The amount which is admitted to be due even as per the petitioner, has not been deposited till date. Over three years have since passed. At this stage, learned counsel for the petitioner has submitted that calculations in terms of the Policy be given to the petitioner and the amount in question would thereafter be deposited.

I do not find any justification in first directing calculations to be handed over to the petitioner and then affording time to deposit the amount in question. Even as per calculations of the petitioner, a sum of

Rs.1,02,00,000/- is due. Thus, this amount in any case, should be deposited immediately by the petitioner. Impugned order dated 14.03.2018 (Annexure P-17) is accordingly set aside, subject to the petitioner depositing the sum of Rs.1,02,00,000/- within 15 days from receipt of certified copy of this order. It is made clear that the interest component as stipulated in the OTS Policy dated 07.09.2017, in case of three annual equated installments, would have to be deposited by the petitioner. The calculations thereof according to the Department in this respect be intimated to the petitioner within one week of deposit of Rs.1,02,00,000/- and the petitioner shall be liable to pay the same within four weeks thereafter.

It is made clear that in case, amount of Rs.1,02,00,000/- is not deposited by the petitioner within 15 days as above, benefit of the OTS Policy dated 07.09.2017 would not be available to it.

Petition is disposed of accordingly.

28.01.2021 **(LISA GILL)**
Sunil **JUDGE**

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