

LPA-287-2022 &
CM-721-LPA-2022

Date of Decision: 5th April, 2022

FOOD CORPORATION OF INDIA AND OTHERS

...APPELLANTS

Versus

M/S GURDIAL MAL & SONS PVT. LTD. AND OTHERS

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. K.K.Gupta, Advocate,
for the appellants.

Mr. Shiv Kumar, Advocate,
for respondent No. 1.

Mr. A.P.S.Mann, Advocate,
for respondents No. 4 and 5.

AUGUSTINE GEORGE MASIH, J.

LPA-287-2022

Challenge in this appeal is to the judgment dated 25.03.2022 passed by the learned Single Judge accepting the writ petition preferred by respondent No. 1 challenging the Physical Verification Report dated 03.06.2021 conducted by the appellants-Food Corporation of India and directing re-conduct a physical verification of the stock lying in the premises of respondent No. 1-Mill within a period of three days and accept the CMR of the stock found within a period of 15 days thereafter. It has further been mentioned that the acceptance of the CMR would be subject to the prescribed specifications as per the Instructions of the Government of

India.

2. Learned counsel for the appellants contends that the conduct of the physical verification dated 03.06.2021 of the premises of respondent No. 1-Mill by a team, which was constituted by the FCI including the representative of the MARKFED, was a special physical verification which was carried out and had to be in the form of surprise check especially in the light of the fact that the time had been extended for delivery of rice, firstly, up to 30.04.2021, thereafter, up to 31.05.2021, 30.06.2021 and 31.07.2021. While doing so, the Government of India had imposed a condition that the FCI may ensure that the paddy/rice is physically available in the premises of the miller before accepting the rice. In the physical verification, which was done, it was reported that 57713 bags of rice were short in the mill premises. His contention is that if the Director of respondent No. 1-Mill was to be associated, the very purpose of surprise checking and physical verification would be foisted and frustrated as there would be an effort on the part of the respondents to bring in the paddy/rice to complete the stocks in the mill premises which would be against the very spirit of the orders of the Government of India.

3. It is the further submission of the learned counsel for the appellants that the reliance on the provisions of Clause 16 of the policy for storage of paddy/rice by the learned Single Judge is misconceived while coming to the conclusion that the representative of the mill was required to be associated at the time of physical verification of the stock of paddy/rice. It is, on this basis, that the counsel for the appellants had sought to assail the judgment passed by the learned Single Judge.

4. We have considered the submissions made by the learned counsel for the appellants and with his assistance, have gone through the

relevant pleadings and the order passed by the learned Single Judge.

5. The submissions of the learned counsel for the appellants cannot be sustained in the light of the fact that as per the admitted position, the storage, handing over and taking over the paddy/rice is governed by the policy which is framed.

6. The agreement, which has been entered into between the parties, is as per the Custom Milling Policy of the Government of Punjab for Kharif 2020-21 (Annexure P-2). According to the said policy, paddy stored in the premises of the miller is to be in the joint custody of the concerned procurement agency and the miller. Clause 16 of the said policy deals with the physical verification of the stock, according to which, it was required to be done fortnightly. Sub-clause (v) of Clause 16 of the policy requires the miller/his or her authorized representative to be mandatorily associated in all the physical verification operations and signatures of the said person on behalf of the miller on the physical verification report(s), so prepared, are also mandatory unless there is a refusal to witness the physical verification or to sign the same. In such a situation where there is a refusal to witness/sign the report of physical verification, the inspecting officer/official shall record the facts regarding the same and such physical verification report shall be valid and final. According to this Clause 16 (v) of the Policy, the requirement of intimation for carrying out final verification of the stock is essential. It is an admitted position that no such intimation had been sent to the authorized representative of respondent No.1-Mill.

7. The stand of respondent No. 1-Mill before the learned Single Judge was that the physical verification was conducted, firstly, without any

intimation to respondent No.1-Mill or its Director or authorized representative nor were the stocks, which were lying locked in the godown, in the processing unit (haudis and bins), taken into account as also the stocks transferred to the other unit of respondent No. 1 at Kapurthala for fortifying the rice, which were also not taken into account. Had the representative of respondent No. 1-Mill been associated with the physical verification done by the FCI, the said fact would have been brought to the notice of the inspecting team.

8. It needs to be added here that the District Manager, MARKFED, Kapurthala, through a letter dated 21.06.2021 (Annexure P-8), was intimated about the said aspect of stock physical verification by the FCI highlighting these aspects, the said request was forwarded by the said authority to the District Controller, Food Civil Supplies and Consumer Affairs, Kapurthala vide communication dated 21.06.2021 (Annexure P-9), who had further forwarded it to the Director, Department of Food, Civil Supplies and Consumer Affairs, Punjab, Chandigarh vide letter dated 23.06.2021 (Annexure P-10). Even the Managing Director, MARKFED also requested the Joint Director(Rice) to conduct the physical verification afresh. Similar request was also made to the District Controller, Food Civil Supplies and Consumer Affairs, Kapurthala and the District Manager, MARKFED, Kapurthala.

9. It needs to be mentioned here that the routine physical verification was carried out by the procuring agency (MARKFED) on 31.05.2021 i.e.three days prior to 03.06.2021 when the stocks were found intact and there was no shortfall and even in the subsequent physical verification done on 21.06.2021 by the procuring agency (MARKFED), no

apparent discrepancies were found in the stocks lying with respondent No.1-Mill.

10. With this factual background especially as per Clause 16 (v) of the Custom Milling Policy of the Government of Punjab for Kharif 2020-21 (Annexure P-2), association of the mill, through its authorized representative, was mandatory and that could only be possible if an intimation to the said effect about the physical verification sought to be carried out had been sent, which, admittedly, has not been done by the appellants. Even the rules of natural justice would demand that a person would be intimated and if the said person opts to join, be associated at the time of carrying out the stock verification. The factual aspect with regard to the godowns having not been checked, being locked, nor the processing unit (haudis), has not been disputed. All this make it apparent and clear as also the aspect that some of the rice, which were lying in the other unit of respondent No. 1-Mill at Kapurthala for fortifying the rice, also having not been inspected/verified. The availability or otherwise of the stocks with respondent No. 1-Mill would have binding effect upon the said Mill, in case the inspection would have been carried out in the presence of the miller/its authorized representative.

11. In the peculiar facts and circumstances of the present case, we are of the considered view that prejudice has been caused to respondent No. 1-Mill in not intimating the said Mill/its authorized representative during the physical stock verification having been carried out by the appellants. It would be necessary to intimate respondent No. 1-Mill/its authorized representative about the carrying out the physical verification of the stocks by the Food Corporation of India-appellants as also associate the procuring

agency in the said exercise.

12. In view of the above, we do not find any ground to interfere in the present appeal and, therefore, dismiss the same.

CM-721-LPA-2022

In view of the dismissal of the main appeal, the present application for stay has been rendered infructuous and the same is disposed of as such.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

**(SANDEEP MOUDGIL)
JUDGE**

5th April, 2022
pj

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No