IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14772 of 2021 (O&M)
Date of Decision: March 25, 2022

M/s Gurdial Mal and Sons Pvt. Ltd.

...Petitioner

Versus

Union of India and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sushant Kareer, Advocate
for the petitioner.

Mr. Kanisth Ganeriwala, AAG Punjab.

Mr. K.K. Gupta, Advocate
for the FCI.

Mr. A.P.S. Mann, Advocate
for the MARKFED.

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JAISHREE THAKUR, J.

1. The instant writ petition has been filed for issuance of an appropriate writ in the nature of *certiorari* for quashing the Physical Verification dated 03.06.2021 conducted by respondents No.2, 3 and 7-Food Corporation of India, being arbitrary, incomplete and violative of principles of natural justice.

2. In brief, the facts are that the petitioner-miller had been allotted paddy for custom milling under the policy framed by the Govt. of Punjab vide letter dated 26.08.2020 and the agreement was executed between the

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petitioner-miller and respondent No.8-District Manager, MARKFED, Kapurthala. As per the agreement, the petitioner-miller was bound to deliver the resultant rice to respondent No.7-FCI within the prescribed period i.e. not later than 31.03.2021, as per Clause 12 of the agreement. The period for delivery was extended firstly upto 30.04.2021 and thereafter upto 31.05.2021, 30.06.2021 and 31.07.2021. The Government of India, while allowing the extension, had imposed the condition that the FCI may ensure that the paddy/rice is physically available in the premises of the miller before accepting the rice. On 03.06.2021, the Branch Manager of the FCI along with other members visited the mill for physical verification of stock. As per the physical verification done, it was reported that 57713 bags of rice were short in the mill premises.

3. Counsel for the petitioner assails the physical verification report dated 03.06.2021 stating that the said physical verification was conducted in an arbitrary manner and the stock lying locked in the godown, lying in the processing unit (Haudis) and transferred to the other unit of the petitioner at Kapurthala for fortifying the rice, was not inspected/verified. It is submitted that no one from the petitioner's Mill was present at the time of physical verification as done by FCI personnel. Thereafter, the petitioner vide letter dated 21.06.2021 informed respondent No.8-District Manager, MARKFED, Kapurthala that on the day of 03.06.2021, when the physical verification was conducted by the team of the FCI, none of the Directors was present and no physical verification of one godown was done, paddy lying in the processing unit and the stock sent to the other unit, was also not inspected/verified, as such, requested that physical verification of the stocks

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may be conducted afresh. The said request of the petitioner was forwarded to respondent No.9-DFSC Kapurthala by respondent No.8 thereby requesting to conduct the physical verification afresh, which letter was further forwarded by respondent No.9-DFSC, Kapurthala to respondent No.5-Director, Food Civil Supplies and Consumer Affairs, Punjab. Respondent No.6-Managing Director, MARKFED, also requested the Joint Director (Rice) to conduct the physical verification afresh, apart from requesting respondents No.8 and 9 to conduct a fresh physical verification. As per the physical verification dated 21.06.2021, there is no shortage in the mill. Thereafter, respondent No.8-District Manager, MARKFED requested respondent No.9-DFSC Kapurthala to take immediate action for acceptance of delivery of 760 MT paddy to FCI found lying during the physical verification. Respondent No.8-District Manager, MARKFED also requested respondent No.7-FCI to accept 760 MT of paddy found lying in the premises of the petitioner at the time of physical verification. Even respondent No.9-DFSC Kapurthala also requested respondent No.7-FCI to accept the rice. It is submitted that respondent No.7-FCI vide letter dated 22.07.2021 allowed the delivery of rice only to the extent of 760 MT paddy and did not accept the rice out of the paddy allegedly found short to the tune of 57713 bags whereas, the said paddy was not short, but was lying in the processing unit, godown and transferred to other unit for the purpose of fortification of the rice. It is further submitted that the Joint Director (Rice) of respondents No.4 and 5 also requested respondent No.3-FCI informing that the entire paddy/rice lying in the bins and haudis was not conducted and subsequently, MARKFED conducted the physical verification of the

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petitioner on 21.06.2021 and found no discrepancy and requested to re-conduct the physical verification. The physical verification dated 03.06.2021 has been assailed in the instant petition.

4. Notice of motion was issued in the matter, pursuant to which appearance has been caused on behalf of the respondents.

5. Learned counsel appearing on behalf of the petitioner-Miller would argue that the impugned physical verification was conducted by the FCI without the presence of any director of the petitioner-mill. It is contended that the petitioner-miller wrote a letter to the District Manager, MARKFED that during the aforesaid physical verification done by the FCI on 03.06.2021, no director was present, one godown was locked and the paddy lying in the processing units was also not taken into account, as they were not kept in a countable manner. It is argued that thereafter on 21.06.2021, a physical verification was done by the MARKFED through its In-charge, as per which there was no shortfall. It is also contended that the agreement was signed only between the petitioner-miller and the MARKFED and the MARKFED being satisfied of the petitioner's storage of paddy, there can be no case for the FCI to intrude into bilateral and inter-se relationship between the petitioner and the procuring agency.

6. Learned counsel appearing on behalf of respondents No.1 to 3 and 7-FCI would submit that the physical verification conducted on 03.06.2021 of the petitioner's mill was by the team constituted after following the due procedure including the representative of the MARKFED. It was a special physical verification, as such, miller was not required to be intimated in advance. It is also argued that in the physical verification done

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on 03.06.2021, representatives of the petitioner were associated with the said process and whatever was found at the time of physical verification, was accepted by MARKFED as well. It is submitted that now the shortfall in the stocks has been arranged, which cannot be accepted by the FCI being violative of the policy instructions of the Govt. of India. It is contended that the petitioner-miller is taking different pleas for non-availability of the stock at the time of physical verification, which being disputed questions of facts, cannot be accepted in the writ jurisdiction. In support of his arguments, learned counsel relied upon judgments rendered by the Apex Court in *Joshi Technologies International Inc. vs. Union of India and others, 2015(7) SCC 728, Union of India and others vs. M/s Puna Hinda, Civil Appeal No.4981 of 2021, decided on 06.09.2021 and by this Court* in *M/s Satkartar Enterprises vs. State of Punjab and others, CWP-1707-2016, decided on 15.01.2018.*

7. Learned counsel appearing on behalf of respondents No.6 and 8-MARKFED would argue in tone of the reply submitted. It is also submitted that in terms of Clause 16 of the policy, the physical verification is to be done fortnightly and as per Clause 16(v) of the policy, when the physical verification is to be done, the miller/his authorized representative has to be associated and they are to sign the physical verification report. It is also contended that while doing the physical verification on 03.06.2021 by the FCI, this procedural compliance was not made as per Clause 16 of the policy, as the miller or his authorized representatives were not associated with the physical verification and apart from that, no such procedural compliance has been recorded in the physical verification done on

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03.06.2021. It is also argued that in the subsequent physical verification done by the MARKFED, no shortage of paddy/rice was found in the stocks of the petitioner-miller.

8. I have heard learned counsel for the parties, apart from perusing the pleadings of the case and case laws cited.

9. The short grievance of the petitioner-miller herein is that physical verification dated 03.06.2021 (Annexure P-7) conducted by respondents No.2, 3 and 7-FCI is arbitrary, incomplete and in violation of principles of natural justice and the same is liable to be quashed.

10. A categoric stand has been taken by the petitioner-miller from the very beginning that when the impugned physical verification was done by the FCI on 03.06.2021, none of the directors of the petitioner-mill was present; no intimation or communication was sent to the petitioner prior to conducting the said physical verification; one godown was lying locked; the paddy lying in the processing units (haudis and bins) was also not taken into account, as it was not in countable manner; and that the paddy which was sent to other unit of the petitioner at Kapurthala for fortifying the rice, as a new unit was set up by the petitioner there, was also not taken into account. As per the stand of the FCI, the physical verification done on 03.06.2021, is as per the policy framed (regarding extension of time to accept CMR), and whatever was found at the time of physical verification, has been accepted by the FCI. It is the contention of the FCI that the stock now being arranged by the miller, is in connivance with the State agency. Whereas as per the stand of the MARKFED, on the request of the petitioner-miller, a fresh physical verification was done of the paddy/rice lying in the mill

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premises of the petitioner on 21.06.2021 and it was found that the petitioner-miller was right insofar as availability of the rice and paddy in the mill premises was concerned. No apparent discrepancies were found in the stocks lying with the miller. It is also the stand of the MARKFED that the physical verification is done by the MARKFED at its own level after every fourteen days and in the instant case, last physical verification was done on 31.05.2021 i.e. 3 days prior to the physical verification done by the FCI and even at that time, the stocks were found intact and there was no shortfall.

11. The custom milling policy of the Government of Punjab for the Kharif 2020-21 is available on record as Annexure P-2 . It is to be kept in mind that the paddy stored in the premises of the miller is to be in the joint custody of the concerned procurement agency and the miller. The procedure for physical verification of paddy lying in the Mill premises is laid out in Clause 16 of the policy and as per the said clause physical verification is to be done fortnightly. As per sub-clause (v) of Clause 16 of the said policy, *the miller/his or her authorized representative shall be associated in all the physical verification operations and he/she will sign the physical verification report(s) so prepared. Provided that if the miller or his/her authorized representative refuses to witness the physical verification or sign the physical verification report, the inspecting officer/official shall record the facts regarding the same on the physical verification report and such a physical verification report shall be valid and final.*

12. In the instant case, even as per the stand taken by the FCI, no prior intimation was sent to the petitioner-miller regarding the physical verification conducted on 03.06.2021. Thereafter, on 21.06.2021 (Annexure

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P-8), the petitioner-miller explained the position regarding availability of stock to the procuring agency i.e. respondent No.8-MARKFED that a physical verification was done by the FCI on 03.06.2021, on which date, none of the four directors of the petitioner-mill was present at the time of said physical verification nor there are signatures of any employee. It was also stated in the said letter that FCI officials did not inspect a godown in the mill, because the same was lying locked, besides stating that huge quantity of paddy was lying in the storage tank, which was not in countable condition, paddy stored in the storage tanks (haudis) was also not looked into and that some of the stock of rice was transferred to the second unit of the mill at Kapurthala unit. It is also the stand of the petitioner-mill that they have been doing the work of milling of MARKFED since the past twenty to twenty five years and have always completed the milling of MARKFED on time. A perusal of the physical verification report dated 03.06.2021 (Annexure R-3/11) would show that it does not bear the signatures of any of the employee or representative of the petitioner-miller, as the same only bears the signature of AFO, MARKFED, Inspector PUNGRAIN and two officials of the FCI. Furthermore, when the routine physical verification was done by the procuring agency (MARKFED) on 31.05.2021 i.e. three days prior to 03.06.2021, 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 the petitioner-miller. No explanation is forthcoming as to why there would be a shortfall in three days and that too of such a vast quantity, especially when the millers know that the extension of time for

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supplying CMR would be dependent upon stock being present on physical verification.

13. The petitioner has a privity of contract with the procurement agency and is bound by the terms and conditions therein. It is to mill paddy and deliver it to FCI within the time allowed. As per clause 16 of the policy, the physical verification report is to be signed by the miller, which signatures are not available in the instant case when FCI did its own physical verification of stock available at the petitioner's Mill. Even the rules of natural justice would demand that a person would be associated at the time of doing any stock verification. The plea that a videography was done by the FCI and in the presence of the official of MARKFED is not sustainable in the light of the fact that no one from the petitioner side was present, nor any due information was given regarding checking of the stocks at the petitioner's mill. It is also interesting to note that both MARKFED and the Director, Civil Food Supplies have been addressing several letters to FCI to revisit the premises and the conduct a fresh physical verification of stocks lying in the above said mill, which letters have been totally ignored.

14. The judgments as relied upon by the counsel for FCI are distinguishable and not relevant for the issue in hand. The judgment rendered in *Joshi Technologies' case (supra)* as relied upon by the counsel would not be applicable, as in part it pertains to whether a mandamus can be issued by courts to parties to amend a contract. It has to be borne in mind that there is no privity of contract between FCI and the petitioner's Mill.

15. In view of the foregoing discussion, this court is of the considered opinion that the impugned physical verification dated

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03.06.2021 (Annexure P-7) is not sustainable in the eyes of law and the same is set aside.

16. As a consequence thereof, the FCI is directed to re-conduct a physical verification of the stock lying within a period of three days and accept the CMR of the stock found within a period of 15 days thereafter. Acceptance of the CMR would be subject to the prescribed specifications/as per the Government of India Instructions.

17. The writ petition stands allowed accordingly.

(JAISHREE THAKUR)
JUDGE

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

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