

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

CWP No.15315 of 2021 (O&M)
Date of Decision: April 29, 2022

M/s Shiv Shankar Rice Mills

...Petitioner

Versus

Union of India and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sunil Chadha, Senior Advocate with
Mr. Rahul Bhargava, Advocate
for the petitioner.

Mr. K.K. Gupta, Advocate
for respondents No.1 to 4.

Ms. Upasana Dhawan, AAG Haryana
for respondents No.5 and 6.

Mr. Padam Kant Dwivedi, Advocate
for respondents No.7 to 9.

JAISHREE THAKUR, J. (Oral)

1. The instant writ petition has been filed for issuance of a writ in the nature of *mandamus* directing the respondents to accept the supply of custom milled rice (for short 'CMR') of the petitioner weighing 4142.364 quintals, after proper physical verification, as the stock of the petitioner is lying ready with the petitioner after milling.

2. Facts, which need to be briefly noted, are that the petitioner is

engaged in the business of rice milling and other allied businesses since 1980 and has never defaulted in the delivery of the stocks of the milled rice in any manner. As per the agreement dated 8.10.2020 entered between the petitioner and respondent no 7, the Haryana State Warehousing Corporation ('HSWC' for short), the petitioner was allotted a total of 1,03,261.125 quintals paddy and was required to deliver the milled rice @ 67% as per agreement, which comes to 69,184.95 quintals.

3. The petitioner delivered 65,042.586 quintals of milled rice to the Central Pool by the first week of March 2021, leaving only 7500 quintals of paddy to be milled by the end of March 2021. In the month of March, 2021, the petitioner witnessed major machinery breakdown, due to which the work in the Mill came to a standstill. The petitioner immediately wrote a letter dated 10.03.2021 to respondent No.9-Incharge, HSWC, Indri Mandi, Panipat seeking due permission for getting the said paddy milled from other Mill, which was not engaged in the business of rice milling, rather, doing job work.

4. In response to the said letter dated 10.03.2021, the petitioner received permission vide letter dated 11.03.2021. As a result of the said permission, the petitioner entered into an agreement with one M/s Bala Sundri Foods at village Galab Kheri Taraori, District Karnal, for getting 7500 quintals of paddy milled. The work of milling of the remaining paddy was completed by M/s Bala Sundri Foods on 30.03.2021 for which the petitioner made the payment amounting to Rs.4,04,250/- to the M/s Bala Sundri Foods on 30.03.2021 itself.

5. A joint physical verification of the paddy/milled rice lying in

premises of the petitioner was conducted on 09.06.2021 by the officials of FCI and HSWC in the presence of the representative of the petitioner, during which the entire stock allocated to the petitioner was found to be complete, as also the fact of delivery of aforesaid 7500 quintals of paddy to the other Mill was duly noticed.

6. However, FCI refused to accept the CMR to the tune of 4142.364 quintals that was got milled from another, after obtaining due permission. Respondent No.9-Incharge, Indri Mandi, wrote a letter dated 26.06.2021 to respondent No.4-Divisional Manager, FCI Karnal, regarding acceptance of balance CMR of the petitioner, since the petitioner had done everything possible in the extraordinary and unforeseen circumstances resulting from mechanical breakdown and that too, after obtaining due permission from HSWC. Thereafter, respondent No.7-Haryana State Warehousing Corporation, conducted another physical verification of the petitioner Mill on 30.06.2021 and found stocks of 4142.4 quintals of rice lying with the petitioner. After that, petitioner wrote a letter dated 05.07.2021 to respondent No.8-District Manager, Haryana State Warehousing Corporation, Panipat requesting for accepting the balance CMR of 4142.364 quintals, on which respondent No.8 vide email dated 06.07.2021 requested respondent No.4-Divisional Manager, FCI Karnal, to accept the balance CMR, however, respondent No.4 wrote a letter dated 06.07.2021 to AGM (Procurement), HRO, Panchkula, seeking instructions regarding acceptance of said CMR.

7. Since milled rice being a perishable item, the petitioner again wrote a letter dated 05.07.2021 to respondent No.8 requesting for

acceptance of balance CMR of 4142.364 quintals. Thereupon, respondent No.4, Divisional Manager, FCI, Karnal, and AGM (Procurement), HRO, Panchkula, vide email dated 12/14.07.2021, had informed that FCI has not conducted physical verification of CMR of the petitioner. The petitioner had again written a letter dated 20.07.2021 to respondent No.5-Addl. Chief Secretary, Food and Supplies Department, Haryana, Chandigarh, requesting for accepting the balance CMR of 4142.364 quintals. Thereafter, respondent No.7-Managing Director, Haryana State Warehousing Corporation, wrote a letter dated 30.07.2021 to the Director, Food Supplies and Consumer Affairs, Department, Haryana, Chandigarh, accepting the position of the petitioner as genuine and requesting for accepting the balance CMR, after conducting the necessary physical verification. The time schedule for delivery of CMR was extended till 30.08.2021. However, as FCI was adamant in not accepting the custom milled rice, despite the fact that the same is lying with the petitioner. The petitioner has approached this court seeking necessary relief of a direction to be issued to FCI to accept the milled rice.

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

9. Mr. Sunil Chadha, learned senior counsel appearing on behalf of the petitioner, assisted by Mr. Rahul Bhargava, Advocate would argue that the petitioner, vide letter dated 10.03.2021, sought necessary permission from respondent No.7-HSWC, the procurement agency, to get paddy milled from a Mill at Taraori, on account of a breakdown of the machinery, and when the necessary permission was given, the petitioner

entered into an agreement dated 13.03.2021 with M/s Bala Sundri Foods at Taraori for milling of balance paddy weighing 7500 quintals.

10. It is further contended that on 09.06.2021, while the physical verification of the petitioner Mill was done, it was brought to the notice of the officials of the respondents that after taking due permission of respondent No.7, balance paddy of 7500 quintals had been sent for milling to another miller namely M/s Bala Sundri Foods and the said plea stood incorporated in the physical verification report. It is pointed out that on 30.06.2021, another physical verification was conducted by respondent No.7, during which 4143.4 quintals of rice was found lying in the Mill premises of the petitioner as by that time, the petitioner got the stock of rice in its own Mill premises from Taraori. It is argued that despite various communications by the petitioner to respondent No.7 and by respondent No.7 to the FCI or to the Director, Food, Civil Supplies and Consumer Affairs Department, Haryana to take up the matter with GM, FCI, Haryana Region, Panchkula, no action has been taken in the matter. It is also pointed out that petitioner has done custom milling for the year 2021-22 and as per the latest physical verification report dated 18.01.2022, over and above the resultant rice of the paddy, which was allotted to the petitioner firm during the Kharif Marketing Season 2021-22, custom milled rice of 4142.364 is still lying stored in excess in the Mill premises of the petitioner. It is submitted that FCI is now refusing to take delivery of the CMR causing a huge loss to the petitioner.

11. Mr. K.K. Gupta, learned counsel appearing on behalf of respondents No.1 to 4-Food Corporation of India would argue that as per

communication dated 4.6.2021, received from Government of India, Ministry of Consumer Affairs, Food and Public Distribution, Department of Food and Public Distribution, New Delhi, the physical verification of stock of Paddy/Rice for KMS 2020 – 2021 was to be done at the Millers premises, before extension was to be allowed towards supply of CMR. It is also submitted that by virtue of letter dated 16.7.2021, the FCI had been requested to accept CMR limited to the stock found during PVR. It is argued that a team of officers of respondent No.6 and that of the FCI visited the Mill premises of the petitioner on 09.06.2021 for verification of the stock of paddy/rice and on that date, the petitioner took the plea that 7500 quintals of paddy for milling through some other miller on behalf of the petitioner was admitted, which part of milling was not accepted by the physical verification team (PV), as the entire stock of paddy was to be milled into CMR by the petitioner itself and there is no provision of sub-letting of the contract in favour of any third party. It is argued that because of this reason, the balance quantity of paddy had been treated as shortfall and no supply of any rice can be accepted at this stage during the extended period. It is argued that the instructions of the Government of India issued from time to time and other terms and conditions contained in the Custom Milling Policy and the milling agreement are contractual obligations and the petitioner cannot seek indulgence of the court for substituting the same.

12. On the other hand, Mr. Padam Kant Dwivedi, learned counsel appearing on behalf of respondents No.7 to 9 would submit that due to technical defect in the machinery of the petitioner, it wrote a letter dated 10.03.2021 to respondent No.9 seeking permission for milling and sortex of

balance paddy from other Mill, which permission was granted by respondents No.8 and 9 vide letter dated 11.03.2021 with a direction to transfer the paddy for milling at the earliest, so that CMR may be delivered to FCI within the prescribed limit. It is contended that in the physical verification conducted on 09.06.2021, the factum of sending of 750 MT of paddy to M/s Bala Sundri Foods, Taroari, after due permission, was specifically observed in the report. In the physical verification conducted by respondents No.8 and 9 on 30.06.2021, stock of 414 MT of rice was lying with the petitioner, however, till date, despite repeated requests, the FCI has not taken any step to accept the said stock.

13. I have heard learned counsel for the parties, apart from perusing the pleadings of the case and going through the documents placed on record.

14. It is not in dispute that the petitioner entered into an agreement dated 8.10.2020 with respondent No. 7 to mill 103261.125 quintals of paddy and deliver 69184.95 quintals of CMR to the Central pool *i.e* with FCI within the stipulated time frame. The petitioner delivered 65042.568 quintals of CMR to FCI, but was unable to complete the rest of the milling on account of a technical breakdown in the machinery. As delivery of CMR was time bound, permission was sought to get the balance 750 MT of paddy milled elsewhere, which permission was allowed vide letter date 11.03.2020. As per the instructions issued by the Government only that CMR is to be accepted of stock which was found on the premises at the time of Physical Verification. On 09.06.2020, when physical verification was done, 750 MT of paddy was found short, as it had been sent to another Mill.

The question that comes up for consideration is whether FCI is being unreasonable in not accepting the CMR as stated only on account of the fact that when physical verification was done of stock on the premises of Petitioner Mill, there was a shortage of 7500 tons of paddy, while the shifting of remaining stock to another Mill for milling was within the knowledge of FCI?

15. There is no privity of contract between the Food Corporation of India and the petitioner, who is the miller herein. The agreement is *inter se* the petitioner and the procurement agency i.e. HSWC in which the schedule of delivery is specified and the last consignment of CMR was to be delivered by April 2021. In case of failure to deliver CMR within the stipulated period, the miller was liable to pay the cost of short quantity of rice at hundred and 10% per annum of the rates of CMR fixed by the Government of India along with interest at 12% per annum on the actual payable amount from 1st May, till the date of actual payment. The agreement was to remain in force till 31st of July 2021 on the clearance of CMR and other dues of the Department/procurement agency, whichever is later. The terms and conditions of the milling agreement are stringent and various penalties are levied upon the miller to ensure that there is no pilferage, loss or damage to the stock, which would eventually result in a loss being caused to the state exchequer and the public.

16. The petitioner has been diligent in milling the paddy as per the agreement entered into, but faced a sudden and unexpected crisis with a major breakdown of machinery at its Mill, which resulted in part of the paddy not being milled by the petitioner. Consequent to the breakdown, due

permission was sought to have the balance paddy shifted out of the premises and delivering for milling to a nearby concern, which was not engaged in the business of rice milling. Permission was granted by HSWC, and that is why, the paddy was shifted to another premise for completion of the milling process. The procurement agency, from whom the permission was sought to have the paddy milled from another Miller, has raised no objection at any stage and in fact is one with the petitioner that CMR should be accepted by FCI. In fact, there is a letter dated 26.6.2021 addressed by respondent No. 9 i.e. the In-charge of HSWC, Indri Mandi, Panipat to FCI, requesting it to accept the balance custom milled rice of the petitioner. The petitioner herein is not in default of any of the clauses of the agreement entered into with HSWC, but would still be faced with penalties on account of short supply of custom milled rice to the Central pool in case it is unable to deliver the rice to FCI due to its obdurate refusal to accept the remaining CMR. In fact, the petitioner is not a defaulter of any of the clauses of the agreement dated 8.10.2020 as would be evident from the fact that for the year 2021-2022 there has been fresh allocation of paddy for milling by HSWC to the petitioner firm.

17. From the narration above, it would be evident that both the Corporations *i.e* Food Corporation of India and Haryana State Warehousing Corporation, who would be deemed as State authorities within the meaning of Article 12 of the Constitution of India, are at variance with each other and that too, at the cost of the miller. The interest of both the Corporations would be to ensure that there is no loss caused to the State exchequer by the petitioner, who has been allocated and supplied paddy for milling. The

agreement entered between the petitioner by HSWC ensures at least that much freedom to avoid loss as is sufficient to act in a fair and reasonable manner and in the public interest. FCI would have been justified in not accepting the CMR of the stock not found on the premises during PV, but it also cannot ignore the fact that 750MT of paddy had been sent out of the Mill premises after getting necessary permission from the procurement agency itself and the fact was known to it. The essence of the contract between the two parties would stand completed with the petitioner ready to deliver CMR to FCI within the extended time frame, but with FCI refusing to accept the same the completion of the contract is being frustrated.

18. Though there are instructions issued by the Government of India not to accept CMR of stock not found in the Millers premises on day of Physical Verification, but such instructions have also to be applied judiciously and pragmatically and the FCI cannot be permitted to act unreasonably and arbitrarily. Breakdown of machinery is a significant factor to be taken into account as to why the entire milling could not be done in the premises of the petitioner firm, necessitating the shifting of paddy to another Mill after getting due permission. It is nobody's case that the breakdown of machinery was a ploy for gain.

19. The object of entering into an agreement with the miller is to ensure timely delivery of standardized CMR and failure on the part of the miller to do so invites penalties and even blacklisting. FCI has no contract with the miller and is to accept CMR as per specifications and in terms of the schedule provided. Once the procurement agency itself permitted the paddy to be shifted elsewhere for milling and is seen addressing several

letters to FCI to accept the same while stating clearly that non-acceptance will cause immense loss to it, FCI should have considered the genuine request and not discarded it out of hand. It is expected of the Corporations to act in consultation with each other, especially when one corporation is the procurement agency, and the other is to receive the CMR for all India distribution of food grain. There is a great deal of public interest involved in this arrangement which far outweighs any strict construction and a narrow or restrictive view to be taken by FCI based on the letters dated 04.06.2021 and 16.07.2021. In the instant case, the petitioner for no fault of his is caught in the middle of crossfire between a willing HSWC and unwilling FCI. With refusal to accept, it would be the case of one State exchequer causing loss to another, apart from the fact that loss of CMR and its inevitable deterioration exposed to the elements would certainly not be in the interest of the nation.

20. It is expected of the Corporations to act in the best interest of all parties concerned by taking positive steps as and when warranted. HSWC seized of the situation of breakdown of machinery, permitted the miller to get the paddy milled from a nearby concern. Whereas, FCI without due appreciation of the present case, is insisting that they could not pick what was not milled by the petitioner on its premises, which action is wholly unjustified.

21. In view of the above, the instant petition is allowed. Respondent No.2-FCI is directed to conduct a fresh physical verification of the premises of the petitioner within a period of one week and if the custom milled rice is found as per the specification, the delivery of the same be

accepted with consequential reliefs.

April 29, 2022
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes