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

CWP No.15423 of 2021 (O&M)
Reserved on: 20.07.2022
Pronounced on:05.08.2022

M/s Partapa Ram Rice Mills … Petitioner

Versus

State of Haryana and others …Respondents

Present: Mr. S.S. Dinarpur, Advocate and
Mr. Shubham Verma, Advocate
Mr. Sumit Gujjar, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, Addl. A.G., Haryana.

Mr. K.K. Gupta, Advocate
for respondents No.3 and 4.

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JAISHREE THAKUR J.

1. The instant writ petition has been filed seeking to challenge action of the respondent-FCI, not accepting delivery of the balance stock of Custom Milled Rice (for brevity 'CMR') from petitioner-Firm, with a further prayer to issue a writ in the nature of mandamus directing the respondents to accept the balance stock of CMR.

2. In brief, the facts, as stated are that the petitioner herein is a partnership firm in the name and style of M/s Partapa Ram Rice Mills and engaged in the business of milling paddy and supplying CMR to the central pool of the Food Corporation of India for the past 20 years. The petitioner-firm has never defaulted in the delivery of CMR and always fulfilled its commitments. An agreement dated 08.10.2020 was entered into between the petitioner and respondent No.5 i.e. District Food & Supplies Controller, Kurukshetra for

custom milling of paddy, with a delivery schedule specified therein. In the event of failure to deliver CMR within the stipulated period, the miller was liable to pay interest at CCL rate of interest and would also liable to pay the cost of short quantity of rice @110% of rate of CMR fixed by the Government of India along with interest. The paddy was to be kept in joint custody at the premises of the first party.

3. Pursuant to the agreement, the petitioner was allotted 52,437 quintals of paddy and was required to deliver CMR @67% of the paddy supplied, which came to 35133.29 quintals. Till date, the petitioner had delivered CMR of 3006.196 quintals and was to deliver the balance of 4495.499 quintals. On 11.06.2021, the physical verification (in short PV) of the stock was carried out by joint team of officials of FCI and Food Supplies Department of Haryana and the stock was found in order. However, 4500 quintals of rice, which was to be delivered had been sent to another rice mill namely S.R. Food Jhansa for sortex. This information was supplied to the PV team, which was duly acknowledged by them by putting their signatures on the said report acknowledging this fact. By letter dated 26.06.2021, the Divisional Manager, FCI wrote to Manager (Depot) FCI and requested that delivery of the remaining CMR be accepted by the parties in terms of the report of the PV team, however, the respondent-FCI refused to accept the balance CMR, which has led to the instant writ petition being filed.

4. Learned counsel appearing on behalf of the petitioner would rely upon PV report dated 11.06.2021 (Annexure P-2) wherein there is a noting that 4495.499 quintals is less as per available stock of rice and that the PV team had also noted that 4500 quintals of rice had been sent to S.R. Food Jhansa for sortex. It was submitted that PV team consisted of the miller, procurement

agency and members of FCI and therefore, since all paddy/rice stood accounted for, there was no question of there being any shortage. It was further contended that FCI is not a party to the agreement entered into between the petitioner and the procurement agency. The only role of FCI is to accept CMR to the central pool and if the said CMR is not supplied as per specifications, it can reject the same, if found of sub-standard.

5. Counsel for the petitioner also relied upon letter dated 26.06.2021 (Annexure P-3) addressed by Manager (Procurement) to Manager (Depot), Food Corporation of India to accept delivery of the remaining CMR. It was also submitted that vide instructions dated 28.07.2021 issued by the Ministry of Consumer Affairs, Food and Public Distribution Department, it had been decided that *"FCI may again conduct PV of only those mills, who have sent their stocks for sortex purpose, after verification of the valid documents in respect of their claim that stock was actually sent for sortex purpose. Further FCI was requested to conduct the above exercise in a time bound manner."* It was submitted that the period for delivery of CMR over and above the period as stipulated in the agreement was upto 30.08.2021, which was further extended upto 15.09.2021 vide letter dated 06.09.2021. The CMR was ready for delivery and by not accepting the same, the petitioner herein is being put to heavy loss and would be fastened with liabilities, which would be unjustified.

6. The writ petition has been contested by respondent No.5, District Food and Supplies Controller, Kurukshetra and respondent No.4, Food Corporation of India.

7. Learned counsel appearing on behalf of respondent No.5 submitted that the main grievance of the petitioner is against Food Corporation of India for

not accepting the CMR. However, the counsel would submit that the petitioner has been delivering CMR on regular basis and has never made any default on previous occasions. During PV, it was found that there was shortage of 4500 quintals but the record would reveal that the same had been sent for sortex purpose. It was further clarified that in combined report dated 26.06.2021, it had inadvertently been mentioned that the petitioner-firm had stored its rice at Papneja Traders whereas in fact, it had been sent for sortex to S.R. Food Jhansa.

8. Learned counsel appearing for FCI would strenuously argue that there was shortage of paddy in the premises of the petitioner-firm on the date when PV team reached there. It was argued that there was no permission available on record allowing the petitioner-firm to send the stock outside the mill premises. It was further submitted that FCI is bound by the circular as issued by the Government of India, Ministry of Consumer Affairs, Food and Public Distribution, Department of Food and Public Distribution dated 02.08.2021 by which Government of India had extended the period for milling of paddy and delivery of CMR into the central pool for KMS 2020-2021 upto 30.08.2021, stipulating therein that only such stock which is found available during PV will only be accepted in central pool stock. It was argued that since 4500 quintals of rice were not found in the premises of the petitioner-firm at the time of PV of the stock, the same could not be accepted now.

9. I have heard learned counsel for the parties and have perused pleadings of the case and the documents relied upon. The short question again for consideration would be, whether Food Corporation of India is justified in refusing to accept the CMR of the petitioner-firm by relying upon the circulars as issued by the Government of India.

10. The facts would not be in dispute that the petitioner-firm is engaged in the business of custom milling of paddy supplied to it by the procurement agency. It is also not in dispute that the petitioner-firm has been supplying CMR to the central pool for the past 20 years and has never been a defaulter therein. The petitioner was allotted 52,437 quintals of paddy under the agreement entered into between the petitioner and respondent No.5 and was to deliver the CMR to the central pool of FCI within the time schedule as specified therein. As per the agreement, delivery was to be done up till June, 2021, however, the time was extended by the Government of India till 30.08.2021 vide letter dated 02.08.2021. Such time was later extended by 15.09.2021 vide letter dated 06.09.2021. It is also an admitted fact that when the PV team visited the premises, partner of the petitioner-firm brought to the notice of the said team that 4500 quintals of rice had been sent for sortex purpose. At that time, all the relevant documents were checked both by the members of the procurement agency-respondent No.5 and members of FCI. The said PV team in association with partner of the petitioner-firm noted gate passes, weight of bags, number of trucks etc. for the purpose of verifying the outward movement of the paddy for sortex purpose. In such a situation, when the paddy had been accounted for, it cannot be said that there was a shortfall of paddy.

11. At this juncture it would also be worthwhile to note that FCI is not a signatory to the custom milling agreement entered between the petitioner-firm and the procurement agency. Further, the paddy was lying in the joint custody of both the miller i.e the petitioner and the procurement agency as per clause 6 (a) (v) of the policy and the procurement agency itself has not raised any issue about the shortfall of paddy. Rather, the procurement agency i.e. respondent

No.5 in its written statement has acknowledged that paddy had been sent to SR Foods Jhansa for sortex purpose. In such eventuality, it would be unjustified by FCI to turn around and not accept the CMR by stating it was not found on the premises at the relevant time. In case of failure to deliver CMR within the stipulated period, the miller is liable to pay the cost of short quantity of rice at 110% 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 April, till the date of actual payment and by not being able to deliver the CMR within the stipulated time frame it would be put to financial loss apart from it being declared a defaulter. The role of the Food Corporation of India is to accept the CMR, if found of the specified variety, quantity and specifications. Once the procurement agency itself addressed letter dated 26.06.2021 to FCI to accept the CMR, FCI should have considered the genuine request and not discarded it outrightly. 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 pan 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 letter dated 26.06.2021. There is also a legitimate expectation of a citizen that the State or its agencies would act fairly and not cause any hindrance to the smooth completion of the contract undertaken. In the instant case, the procurement agency itself admitted that in the combined report dated 26.06.2021, inadvertently it had been mentioned that 3500 quintals of the rice of the petitioner mill is stored at Papneja Traders. In fact, as per record, 4500 quintals rice had been sent to S.R. Food Jhansa for sortex purpose. That is exactly the case of the petitioner-firm that 4500 quintals of rice were sent to S.R. Food Jhansa for sortex purpose at the time when PV team carried out verification at the premises of the petitioner-firm, which claim is substantiated by the procurement agency as well. It is neither the case of the procurement agency that the petitioner-firm violated any term and condition of the agreement nor that the petitioner-firm got milled paddy allocated to it from another miller or brought rice from outside to deliver it to the central pool of FCI.

12. It is also apt to highlight that the Manager (Procurement) vide its letter dated 26.06.2021 had requested the Manager, Food Corporation of India to accept the remaining delivery of CMR, meaning thereby, joint custodian of the paddy itself has not raised any issue qua shortfall.

13. What is also interesting to note is that, the Government of India itself has addressed instructions dated 28.07.2021 to the Chairman and Managing Director, Food Corporation of India communicating its decision that FCI may again conduct PV of only those mills, who have sent their stock to another mills for sortex purpose. Therefore, it does not behove FCI to ignore directions as issued vide said communication and rely only on circular dated 02.08.2021 specifying that only such CMR is to be accepted which is found on premises during the Physical Verification done.

14. The argument that the paddy was in a broken condition and cannot be accepted is to be seen when the CMR is delivered. As per the agreement entered into between the petitioner and the procurement agency, the specifications of the Rice to be supplied are detailed which include percentage of broken rice/foreign matter in the rice supplied etc. Therefore, the question

of rejection will only arise when the CMR is checked as to whether the specifications are met or not.

15. In view of the above, the instant petition is allowed. Respondent No.4-FCI is directed to conduct a fresh physical verification of the premises of the petitioner/firm in terms of the instructions dated 28.07.2021 within a period of one week from the date of receipt of certified copy of this order and if the custom milled rice is found as per the specifications, the delivery of the same be accepted with consequential reliefs.

(JAISHREE THAKUR)
JUDGE

August 05, 2022
Pankaj*

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