

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

CWP No.16040 of 2021 (O&M)

Date of Decision: May 6, 2022

M/s Tyagi Rice Mills

...Petitioner

Versus

Union of India and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Arav Gupta, Advocate
for the petitioner.

Mr. K.K. Gupta, Advocate
for respondents No.2 to 4.

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

Mr. Padam Kant Dwivedi, Advocate
for respondents No.7 and 8.

JAISHREE THAKUR, J.

1. The petitioner herein is a rice miller, who has approached this Court seeking a writ in the nature of *mandamus* directing the respondents to accept the custom milled rice (for short, 'CMR') after physical verification.

2. In brief, the facts are that the petitioner-firm is in the business of shelling rice and was set up in the year 2015. The petitioner was being allotted paddy for milling into rice on a regular basis and to date, has not been declared a defaulter. The petitioner-firm entered into an agreement with Haryana State Warehousing Corporation (for short, 'HSWC') i.e.

respondent No.7 on 04.11.2020 and was allotted 19004 quintals of paddy and in turn, petitioner was to deliver 12,732.68 quintals of CMR i.e. 67% of the paddy and deliver the same to the Central Pool House of Food Corporation of India. The delivery schedule of CMR is regulated as per clause 7(iv) of the agreement, with entire delivery to be done by 30.04.2021. In the event of failure to deliver CMR within the stipulated period, the miller, namely, the petitioner becomes liable to pay interest at CCL rates for the delayed period and in the event of failure to deliver CMR by the miller, he is liable to pay cost of short quantity of rice @ 110% per annum of rates of CMR fixed by the Government of India along with interest at the rate of 12% per annum on the actual payable amount from 1st of May till the date of actual payment. The agreement to remain in force till 31.07.2021 or till clearance of the CMR and other dues of the department/procurement agency whichever is later.

3. In terms of the agreement, the petitioner delivered 7,075.18 quintals of CMR and was to deliver the remaining 5,657.5 quintals into the Central Pool. However, the petitioner firm witnessed a technical failure in its Sortex machinery at its premises. The petitioner immediately approached respondent No.8 i.e. District Manager, HSWC, Palwal to get permission for getting the rice sortexed from another mill. The petitioner firm received permission vide letter dated 26.04.2021 and it was specified that the work may be got done urgently, so that rice could be delivered to the respondents at the earliest. In response to the permission received, the petitioner firm duly sent 522 MT of rice for sortex purpose to M/s Bajrang Bali Rice Mill, Hodal, Palwal on various dates from 26.04.2021 to 03.05.2021. Necessary

gate-passes were issued for transporting 522 MT of rice for sortex purpose. The petitioner duly paid to M/s Bajrang Bali Rice Mill an amount of Rs.5 lakhs for the said purpose. The petitioner firm received a letter dated 06.06.2021 regarding physical verification of the paddy/mill rice lying at its premises. The physical verification was conducted on 09.06.2021 and FCI, which was conducting the physical verification, found that stock of 9938.25 quintals of paddy was missing. The petitioner brought it to the notice of the FCI that permission had been sought to take the rice out of the premises for sortex purposes. The petitioner firm brought the entire matter to the notice of respondent No.8, who further wrote letter dated 14.06.2021 requesting respondent No.4-Divisional Manager, FCI, Faridabad to re-verify the stock of petitioner firm and accept the remaining stock in question. Respondent No.7-HSWC itself conducted physical verification of stock and found that 5657.5 quintals of CMR was ready for delivery. On the basis of aforesaid verification, respondent No.8 i.e., District Manager, HSWC, Palwal further wrote a letter dated 30.06.2021 again requesting respondent No.4-Divisional Manager, FCI, Faridabad to accept the remaining CMR in question. As no action was taken by the FCI on the aforesaid request, respondent No.8 again addressed a letter dated 14.07.2021 requesting the Divisional Manager, FCI, Faridabad to accept the balance CMR. As FCI has refused to accept the balance CMR in question from the petitioner firm, the instant writ petition has been filed.

4. Learned counsel for the petitioner would contend that the petitioner is not a defaulter in the previous years when the agreements had been entered into with the HSWC and another procurement agencies to

deliver CMR to the Central Pool i.e. with FCI. The petitioner firm used to deliver CMR on time and as per specifications. It was continued to allot paddy for milling, as was done during Kharif Marketing Season (KMS) 2020-21. It is contended that the petitioner is not a defaulter in any of the agreements entered into in the previous years. It has delivered CMR on time and as per specifications provided. The petitioner mill was allotted paddy for the KMS 2020-21, which was milled and delivered in part. On account of a breakdown of the sortex machinery and to enable the petitioner firm to deliver CMR on time in terms of the agreement entered into, the petitioner firm obtained due permission from the District Manager, HSWC, Palwal by letter dated 23.04.2021 for getting 522 MT rice sortexed from another mill. The necessary permission was given by letter dated 26.04.2021.

5. Learned counsel further argues that the rice was sent for the purpose of sortex, after taking due permission and, therefore, it cannot be said that there is a shortfall of the said paddy/rice lying in the premises of the petitioner firm on the date when FCI and its officials came for Physical Verification. It is submitted that even HSWC has been addressing several letters to FCI to accept the CMR which is lying ready and the refusal to take delivery of CMR is causing huge loss to the petitioner.

6. Mr. K.K. Gupta, learned counsel appearing on behalf of respondents No.2 to 4-Food Corporation of India would argue that as per communication dated 04.06.2021, 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 premises, before extension of time was to be allowed towards acceptance of CMR. It is argued that a team of officers of the respondents including that of the FCI visited the premises of the petitioner on 09.06.2021 for verification of the stock of paddy/rice and on that day, the books of the petitioner were perused, which reflected that the petitioner-firm should have been in possession of paddy amounting to 9943.50 quintals whereas, it was found in possession of 5.25 quintals of paddy and rice amounting to 975 quintals. It is argued that it is not possible to accept rice which was not accounted for at the time of physical verification as the entire stock of paddy was to be milled into CMR by the petitioner itself and there is no provision for subletting 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 CMR can be accepted at this stage during the extended period. It is submitted that the instructions of the Government of India issued from time to time and other terms and conditions contained in the Custom Milling Policy as well as the milling agreement are contractual obligations and the petitioner cannot seek indulgence of the court for substituting the same.

7. On the other hand, Mr. Padam Kant Dwivedi, learned counsel appearing on behalf of respondents No.7 & 8 would submit that due to technical failure in the sortex machinery of the petitioner, permission was granted to it by letter dated 26.04.2021 for getting the balance rice sortexed from another mill. In the physical verification conducted by respondents No.7 and 8 on 28.06.2021, stock of 5657.5 quintals of CMR was lying with

the petitioner firm, however, till date, despite repeated requests, FCI has not taken any steps to accept the same.

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

9. It is not in dispute that the petitioner entered into an agreement dated 04.11.2020 with respondent No.7 to mill 19,004 quintals of paddy and deliver 12,732.68 quintals of CMR to the Central pool i.e with FCI within the stipulated time frame. The petitioner delivered 7075.18 quintals of CMR to FCI, but was unable to complete the rest of the milling on account of a technical failure in the sortex machinery. As delivery of CMR was time bound, permission was sought to get the balance 522 MT of rice sortexed elsewhere, which permission was allowed vide letter dated 26.04.2021. As per the instructions issued by the Government, extension to deliver CMR beyond the period as specified in the agreement could be given in case paddy is found on the premises at the time of Physical Verification. On 09.06.2021, when physical verification was done, the petitioner ought to have had 9943.50 quintals of paddy and he was found in possession of 5.25 quintals of paddy, thereby 9938.25 quintals of paddy was found to be short.

10. 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 firm, there was a shortage of 9938.25 quintals of paddy, whereas the shifting of rice to another Mill for sortex purpose was brought to the knowledge of FCI?

11. In the case of ***M/s Shiv Shankar Rice Mills vs. Union of India and others, CWP No.15315 of 2021, decided on 29.04.2022*** wherein, a similar issue was involved, this court has held that once the HSWC is seized of the situation of breakdown of machinery and has permitted the petitioner-miller to get the paddy milled from a nearby concern, as such, action of the FCI not to accept the CMR is wholly unjustified. Relevant paras are reproduced below:

“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 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.”

12. In the instant case, the situation is similar, as on account of breakdown of the sortex machinery, the petitioner-mill sought permission from HSWC to get the 522 MT of rice sortexed from another mill, which permission was granted vide letter dated 26.04.2021, whereas, the FCI

without due appreciation of the matter, is insisting that they could not accept CMR as it was not found on the premises on the day of physical verification. As such, the instant case is squarely covered by the judgment rendered by this court in the case of ***M/s Shiv Shankar Rice Mills vs. Union of India and others (supra)***.

13. HSWC had given permission to the petitioner mill to get 522 MT of rice sortexed from another mill whereas, on inspection of the FCI officials on 09.06.2021, found 9938.25 quintals of paddy missing (which converted to rice would amount to 6658 quintals of rice on milling based on it being 67% of paddy). The petitioner had 975 quintals of CMR in its premises on the said date. As such, 5683 quintals of rice were not available at the time of physical verification on 9.6.2021 by FCI officials. An amount of 522 MT of rice stand accounted for, as permission had been given to take the same out of Mill premises for sortex purpose. In the subsequent physical verification conducted by respondent No.7-HSWC, it was found that 5657.5 quintals of CMR was lying in the premises of the petitioner-mill in ready condition for delivery. FCI is refusing to accept the balance rice of 5657.5 quintals, which according to it was found missing during physical verification done on 09.06.2021. As such, in view of the judgment rendered by this Court in the case of ***M/s Shiv Shankar Rice Mills vs. Union of India and others (supra)***, the action of the FCI is wholly unjustified in not accepting 522 MT of CMR from the petitioner-mill.

14. In view of the above situation, 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 522MT of CMR

is found as noted by HSWC in the mill premises and it is as per the specification, the delivery of the same be accepted with consequential relief.

May 6, 2022
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes