

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

CWP No.24501 of 2017 (O&M)

Reserved on:19.05.2022

Pronounced on:27.05.2022

M/s Jagdambay Rice and General Mills and another ...Petitioners

Versus

The Punjab State Co-operative Supply & Marketing Federation Ltd.

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR.

Present: Mr. Akaant Kumar Mittal, Advocate
for the petitioner.

Mr. A.S. Walia, Advocate
for the respondent.

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JAISHREE THAKUR J.

1. The petitioners have approached this Court under Article 226/227 of the Constitution of India seeking issuance of an appropriate writ, order or direction specially a writ in the nature of certiorari for quashing letter dated 05.10.2017(Annexure P-8) passed by the respondent instructing the petitioners to furnish another bank guarantee for an amount of ₹41 lakhs in view of the demand of the petitioners for refund of the amount already withdrawn by them with a further prayer to refund the amount of ₹41 lakhs given by petitioner by way of conditional bank guarantee along with interest.

2. Few facts need to be noted, which have led to the filing of the instant writ petition. The petitioner No.1 herein is a Rice sheller and approached the respondent for allotment of paddy for the crop year 2016–2017 for shelling and delivery of custom milled rice. The respondent refused to allot paddy on account of alleged recovery against the petitioners as a civil suit had been

filed. The procurement agency i.e Markfed, addressed a letter to the Department of Food, Civil Supplies and Consumer Affairs to stop any allotment of paddy to the petitioner on account of pendency of a civil suit. In fact, parties had entered into an agreement for custom milling rice during the crop year 1994 –1995. On account of a dispute having arisen regarding custom milled rice, the matter was referred to the arbitrator who passed an award of ₹23,06,616/- in favour of Markfed and against the petitioners. The award of the arbitrator was challenged in a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 and the award was set aside by the District Judge Ludhiana with liberty to Markfed to refer the matter to the Managing Director for decision in terms of clause 6 (iii) of the agreement. A claim petition for recovery of ₹9,28,507/- was prepared in accordance with the revised policy of the government and the matter was referred to the Managing Director, Markfed for decision. In terms of the award dated 21.6.2013, the petitioners were to pay an amount of ₹9,28,507/- to Markfed. Despite Markfed addressing several letters requesting for payment, the petitioners failed to do so, which led to Markfed filing a civil suit for recovery of ₹9,28,507/- along with interest and future interest against the petitioners. The suit was contested by filing written statement. In order to survive in business, the petitioners sought allotment of paddy for custom milling for the crop year 2016-2017. In order to release paddy, Markfed (during the pendency of the civil suit) asked the petitioners to furnish a bank guarantee to the tune of ₹41 lakhs in lieu of the interest accumulated over the years on the principal amount allegedly due from the petitioners. The amount claimed was over and above a cheque already given for a sum of

₹9,28,507/-, in lieu of the principal amount alleged to be recovered from the petitioners. The Bank Guarantee dated 21.10.2016 was valid uptill 31.3.2017 and was given under protest with conditional terms. However, during the pendency of the civil suit, the respondents unilaterally withdrew the bank guarantee without the consent of the petitioners. On being asked to refund the amount withdrawn unilaterally and without prior approval, the petitioners have been asked to deposit another bank guarantee for the same amount by Annexure P-8 dated 5.10.2017. Aggrieved against this demand the writ petition has been filed seeking to set aside Annexure P-8 and refund of the amount withdrawn.

3. Mr. Mittal, learned counsel appearing on behalf of the petitioners submitted that the respondent Markfed had filed a suit for recovery of ₹9,28,507/- along with interest. During the pendency of the suit, the petitioner deposited the principal amount of ₹9,28,507/- under protest and they were also asked to furnish a bank guarantee of ₹41 lakhs in order to satisfy the component of interest in case Markfed was successful in its claim. The bank guarantee was furnished under protest as the petitioners were seeking to have paddy allotted to it for custom milling for the crop year 2016-2017. It is submitted that without prior approval, the bank guarantee of ₹41 lakhs has been encashed and respondent-Markfed is refusing to return the same without another bank guarantee being furnished for an equivalent amount. It is submitted that the civil suit filed by Markfed claiming ₹9,28,507/- along with interest and future interest stands dismissed by the trial court vide judgement and decree dated 18.12.2017 and the appeal preferred against the same also stands dismissed by the Additional District

Judge, Ludhiana by an order dated 28.2.2019. It is submitted that there is no occasion for the respondents herein to illegally retain the amount encashed or to demand a fresh bank guarantee for releasing the same. It is also submitted that the petitioners have successfully milled the paddy allotted within the time frame provided.

4. Per contra, Mr. Walia, learned counsel appearing on behalf of Markfed submits that there is no illegality in the order so passed. It is submitted that Markfed would have no objection to refund the amount so encashed by it, in case a fresh bank guarantee is issued.

5. I have heard the counsel for the parties and with their assistance have perused the pleadings of the case.

6. The sole grievance of the petitioners is the encashment of the bank guarantee unilaterally and now the illegal retention of the amount despite the fact that the civil suit filed by the respondent stands dismissed. It is worthwhile to note that the appeal too stands dismissed.

7. On the asking of Markfed, the petitioners made out a Bank Guarantee in favour of the respondent. A reading of Annexure P-4, a letter addressed to the District Manager, Markfed, Ludhiana would show that the bank guarantee for a sum of ₹41 lakhs was being furnished under protest as a guarantee for the payment of interest amount. It was stipulated *‘in case the suit is dismissed Markfed would pay back the amount deposited by the firm and would also release the deed of bank guarantee but in case the suit is decreed Markfed would be entitled to get the amount of interest realized from the bank after notice to M/s Jagdambay Rice and General Mills. The bank will pay the money only after consulting the firm.’* Further, as per

clause 2 of the deed of guarantee, it was stipulated that the guarantee is issued with the condition that the liability of the bank under this guarantee is limited to a maximum of Rs.41 lakhs, which shall remain in force upto 31.03.2017 and cannot be invoked otherwise than by a written demand of claim under this guarantee served on the bank on or before 31.03.2017 (last date of claim). The terms of the bank guarantee are extremely material. Since the bank guarantee represents an independent contract between the bank and the beneficiary, both the parties would be bound by the terms thereof. The invocation, therefore, will have to be in accordance with the terms of the bank guarantee, or else, the invocation itself would be bad. In the instant case, the Bank Guarantee stood encashed by the Markfed unilaterally in the absence of any decree from the court which was condition precedent, which fact stands acknowledged, as the respondent is willing to refund the amount on a fresh bank guarantee being furnished for the same amount and thus, the invocation of the bank guarantee at the instance of Markfed is bad.

8. A bank guarantee serves as a promise from a commercial bank that it will assume liability for a particular debtor if its contractual obligations are not met. In other words, the bank offers to stand as the guarantor on behalf of a business customer in a transaction. The act of the respondent invoking the Bank Guarantee without notice and thereafter retaining the said amount is highly unreasonable considering the fact, it has lost its civil suit to recover the amount of ₹9,28,507/-along with interest and future interest as awarded in two courts. It is another matter that the principal amount stands paid under protest. It would appear that Markfed had insisted on a Bank Guarantee

being furnished to secure the amount of interest allegedly due to them on the recovery sought of ₹9,28,507/-, as a condition precedent to allot paddy for the crop year 2016-2017.

9. The respondent Markfed would have been justified in encashing the Bank Guarantee in case it was successful in the civil suit filed, but without a decree in its favour, retention of the said amount is wholly unjustified. The counsel for the petitioner has not been able to justify the retention of a sum of Rs.41 lakhs, other than stating that they would refund the same in case a fresh bank guarantee is furnished. The written statement too is silent as to the circumstances the bank guarantee was encashed without notice or a court decree. The paddy allotted for the said year of 2016-2017 stands delivered and no dispute arises therein. This court fails to comprehend under which provision of law the amount could be retained by Markfed and the said illegal action is further compounded by the demand for another bank guarantee in order to release the amount encashed.

10. It is expected of the State and any instrumentality of the State to act fairly towards the public, who would have a legitimate expectation of being dealt with a fair hand. In this regard reference may be made to this well settled principle in the judgment of the Supreme Court in **Food Corporation of India v. Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71** wherein it has been held as under:-

“ 7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is ‘fair play in action’. Due

observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.”

In the case of **New Horizons Limited and another v. Union of India and others 1995 SCC (1) 478**, the Supreme Court while dealing with the case of awarding of contracts for printing, binding and supply of specified number of telephone directories in English for Hyderabad clearly enunciating the principle that while dealing with public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and like a private individual, held as under:

*“17. At the outset, we may indicate that in the matter of entering into a contract, the State does not stand on the same footing as a private person who is free to enter into a contract with any person he likes. The State, in exercise of its various functions, is governed by the mandate of Article 14 of the Constitution which excludes arbitrariness in State action and requires the State to act fairly and reasonably. The action of the State in the matter of award of a contract has to satisfy this criterion. Moreover, a contract would either involve expenditure from the State exchequer or augmentation of public revenue and consequently the discretion in the matter of selection of the person for award of the contract has to be exercised keeping in view the public interest involved in such selection. The decisions of this Court, therefore, insist that while dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and like a private individual, deal with any person it pleases, but its action must be in conformity with the standards or norms which are not arbitrary, irrational or irrelevant. It is, however, recognised that certain measure of "free play in the joints" is necessary for an administrative body functioning in an administrative sphere [See: **Ramana Dayaram Shetty v. International Airport Authority of India** SCR p. 1034 : SCC pp. 50506, para 12; **Kasturi Lal Lakshmi Reddy v. State of J & K***

SCR p. 1355 : SCC pp. 1112, para 11; **Fasih Chaudhary v. Director General, Doordarshan** SCR p. 286 : SCC p. 92; **Sterling Computers Ltd. v. M & N Publications Ltd.; Union of India v. Hindustan Development Corporation** at p. 513.]

11. In view of the finding rendered above, the action of the respondent herein in invocation of the bank guarantee of Rs.41 lakhs unilaterally in the absence of any decree from the court and further to ask for fresh bank guarantee of the like amount in lieu of refund of Rs.41 lakhs withdrawn by it, is wholly arbitrary and against the principles of legitimate expectation and fair play. Consequently, the instant petition is allowed and the letter dated 05.10.2017 (P-8) is quashed. The respondent is directed to refund the amount of Rs.41 lakhs to the petitioners herein within a period of eight weeks from the date of receipt of certified copy of this order along with interest @7% per annum from the date of encashing the bank guarantee by it till the date of refund and in case, the amount is not refunded within the period as stipulated above, respondent shall be liable to pay interest @9% per annum.

(JAISHREE THAKUR)
JUDGE

May 27, 2022
Pankaj*

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