

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

**CWP No. 24845 of 2021 (O&M)
Date of Decision: April 19, 2022**

Arya Industries and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Chetan Mittal, Sr. Advocate with
Mr. Kunal Mulwani, Advocate,
for the petitioners.

Ms. Deepali Puri, Additional Advocate General, Punjab with
Mr. Ujjwal Bhullar, Advocate.

JAISHREE THAKUR, J.

1. Grievance of the petitioners is with regard to orders dated 25.10.2021, 02.11.2021 and 01.12.2021, Annexures P/8, P/12 and P/14 respectively, by which orders the petitioners have been denied allotment of paddy for milling.

2. In brief, the facts as stated are that petitioner No. 1 is a Rice Sheller having an independent Sheller, and is also a partner with a 5% share in petitioner No 2 *i.e* Kuber Rice and General Mills, Mullanpur. The petitioners applied online for allotment of paddy under the Custom Milling Policy of 2021-2022, which was refused by order dated 09.10.2021 (Annexure P-4) by the District Controller, Food, Civil Supplies and Consumer Affairs, Ludhiana (W). The orders have been challenged on the grounds that the same were passed without giving opportunity of hearing or

calling for comments in respect thereto, on the grounds that the District Manager, Markfed, Ludhiana had informed that M/s K.P. Rice Mills (Lessee) was defaulter of MARKFED Procurement Agency of around ₹06.50 crores and that ownership of M/s K.P. Rice Mills, Mullanpur was with M/s Kuber Rice and General Mill, Mullanpur and, therefore, allotment may not be made to M/s Kuber Rice and General Mill, Mullanpur, for the Kharif year 2021-22, and secondly that Sh. Manjit Singh, Sh. Iqbal Singh and Sh. Rohit Kumar partners of M/s Kuber Rice and General Mill as well as Mills itself i.e. M/s Kuber Rice and General Mills did not satisfy the CIBIL score in terms of Clause 4 (g) of the Punjab Custom Milling Policy for KMS, 2021-22 (hereinafter referred to as “**CMP 2021-22**”). In fact, one of the partners, namely Sh. Iqbal Singh did not satisfy the said clause as he had low CIBIL Score of 546, whereas the minimum CIBIL was to be beyond 600.

3. It is further pleaded that as per Clause 4 (g) of the CMP 2021-22, each individual/partner of a Mill is required to have a CIBIL score of 600, whereas the Mill is required to have a score of less than 6. A complaint was received from one Harmeet Singh resident of Jagraon alleging that Manjit Singh partner of M/s Kuber Rice and General Mills, Mullanpur, was a defaulter of the banks. Sh. Rohit Kumar, partner of M/s Kuber Rice and General Mills, Mullanpur, brought it to the notice of the authorities that two partners of M/s Kuber Rice and General Mill, Mullanpur, namely Manjit Singh and Iqbal Singh, were abroad and the entire responsibility of M/s Kuber Rice and General Mill, Mullanpur was on him and that all the guarantees of M/s Kuber Rice and General Mill, Mullanpur had been given

by M/s Arya Industries i.e. petitioner No.1. However, vide order (Annexure P/4) dated 09.10.2021 petitioner No. 2 was declared a defaulter on the ground that M/s K.P. Rice Mills, a lessor of M/s Kuber Rice and General Mills was a defaulter of Markfed the procurement agency for the year 2013-2014, and since M/s Arya Industries was a partner of M/s Kuber Rice and General Mills, therefore, by virtue of Clause 7 (c) of the Custom Milling Policy 2021-2022, it too would not be eligible for allotment of paddy. Both the Shellers were declared as defaulters for the allotment year of 2021-2022. On appeal, the Director-cum-First Appellate Authority, Department of Food, Civil Supplies and Consumer Affairs, Punjab, set aside order Annexure P/4 dated 09.10.2021 and remanded the matter to the District Allotment Committee, Ludhiana, to proceed afresh in the matter after complying with the principles of natural justice and granting an opportunity of hearing.

4. On remand, the District Allotment Committee, Ludhiana, upheld the order Annexure P/4 vide order Annexure P/8 dated 25.10.2021. The petitioners challenged order Annexure P-8 dated 25.10.2021, by way of Civil Writ Petition No. 21924 of 2021, which was disposed of by this Court vide order dated 29.10.2021, relegating the petitioners to file an appeal in terms of Clause 24 (c) of the CMP 2021-22, with the directions to the competent authority to consider and decide the appeal in accordance with law. Pursuant thereto, the petitioners filed an appeal and the same led to passing of order (Annexure P/12) dated 02.11.2021, dismissing the appeal and upholding order (Annexure P/8) dated 25.10.2021.

5. The petitioners thereafter filed Civil Writ Petition No. 22684 of

2021, challenging order Annexure P/12 dated 09.11.2021, passed by the Director-cum-First Appellate Authority. The aforementioned writ petition was disposed of vide order dated 22.11.2021, by relegating the petitioners to file second appeal, in view of the statement made by the learned Additional Advocate General, Punjab. The second appeal too stood dismissed by order (Annexure P/14) dated 01.12.2021, which is now subject matter of challenge in the instant writ petition.

6. Mr. Chetan Mittal, Senior Advocate appearing on behalf of the petitioners herein would contend that the reason for passing of impugned order (Annexure P/14) holding the petitioners ineligible for allotment is on the ground that M/s Kuber Rice and General Mills have taken M/s K.P. Rice Mill on lease, which is factually incorrect as it was M/s K.P. Rice Mill which took M/s Kuber Rice and General Mills on lease, and, therefore, the entire order proceeds on a wrong assumption and is liable to be set aside on this short ground alone. It is, however, clarified by the learned Senior Counsel that the observation with regard to M/s Kuber Rice Mills having taken M/S K.P. Rice Mills on lease was subsequently corrected vide corrigendum dated 03.12.2021. Learned Senior Counsel contended that the second ground on which the impugned order was passed is that one of the partners of petitioner's No.2 does not fulfill the CIBIL requirement in terms of Clause 4(g) of the CMP 2021-22. It is pointed out, that the impugned order notices the fact that M/s Kuber Rice and General Mills is not a defaulter as it has always delivered milled rice in time, but it could not have been allotted paddy in the first place, since it is lessee of M/s K.P. Rice Mills which was a defaulter and had owed approximately ₹6 Crores to

Markfed. It is submitted that the CIBIL score of the Mill is 2 and only one of the partners is shown as having a less CIBIL Score i.e. 546. It is submitted that the land of the Mill is mortgaged as collateral with PUNSUP. It is submitted that there are several owners of Mills with a low CIBIL score who have been allotted a procurement agency and, therefore, alleged discrimination.

7. It is further argued that a complaint had been made by the partners of M/s Kuber Rice and General Mills against Mr. Jasvir Singh of M/s Rajoana Rice Mills, who had been leased M/s Kuber Rice and General Mills while the partners were in Canada, *inter-alia* on the ground that he had subleased the premises of M/s Kuber Rice and General Mills to M/s K P. Rice Mills without any authority, and on the basis of forged documents had got paddy allotted to M/s K. P. Rice Mills. In the complaint, it was stated that Mr. Jasvir Singh had embezzled a large quantity of paddy and Markfed had been informed about the theft. It was feared that because of the misdeeds of Mr. Jasvir Singh, their Sheller i.e M/s Kuber Rice and General Mills should not be treated as a defaulter for the purpose of milling for the crop year 2014-2015. It is submitted that on the complaint filed, the matter was investigated by Chairman CVC cum Additional Director, Civil Food Supplies & Consumer Affairs Punjab, who came to the conclusion that M/s Kuber Rice and General Mills should not be made to suffer on account of misdeeds of others. DFSC Ludhiana was to satisfy himself about the role of M/s Kuber Rice and General Mills fairly, and to take a decision about allotment of the Sheller to any procurement agency for the crop year 2014-2015. It is argued that since then paddy is being allotted to the Sheller and

there is no default at all on its part.

8. On behalf of petitioner No 1 M/s Arya Industries, it is argued that the said Sheller has been declared as a defaulter only on account of its association with M/s Kuber Rice and General Mills. It is submitted that M/s Arya Industries itself is not a defaulter and before it became a partner with M/s Kuber Rice and General Mills, it had sought permission from the respondents to do so. On 2.10.2015 approval was given by the Head Office and thereafter Rohit Kumar sole proprietor of M/s Arya Industries, became a partner with M/s Kuber Rice and General Mills too. There is no default on the part of M/s Arya Industries in delivering CMR within the specified time to FCI in terms of the policy. It is also argued that all guarantees for M/s Kuber Rice and General Mills have been furnished by Sh. Rohit Kumar.

9. Per contra, Ms. Deepali Puri Additional Advocate General, Punjab, vehemently argues that both the petitioners namely M/s. Arya Industries and M/s Kuber Rice and General Mills have been declared as defaulters on account of a low CIBIL score of Sh. Iqbal Singh, one of the partners of M/s Kuber Rice and General Mills. It is contended that Sh. Iqbal Singh is defaulter of Axis Bank. It is also argued that, the CVC had gone into the complaint filed by the partners of M/s Kuber Rice and General Mills and did not exonerate the said Miller as claimed. In fact, the CVC had directed the Director, Food and Civil Supplies to look into the issue fairly and decide regarding the allocation of the Sheller to a procurement agency. It has been found that there is violation of Clauses 4 (f), (h), 7 (g) of the Custom Milling Policy 2021-2022 which makes both the petitioners defaulters and not eligible for allotment. It is denied that any Mill or partner

thereof who have been allotted paddy are having a low CIBIL Score. All the allotments have been made strictly in accordance with the Custom Milling Policy.

10. I have heard the learned counsel for the parties and with their assistance have gone through the pleadings of the case.

11. What can be discerned from the arguments raised is that the petitioner no. 2 has been held to be a defaulter, as it had leased its Mill to M/s Rajoana Rice Mills through Jasvir Singh (which Mill became defaulter) and then Jasvir Singh sub leased it to M/s K.P. Mills, and the said M/s K.P Mills is a defaulter of MARKFED. The second ground for declaring the petitioner no. 2 ineligible for allotment under the Custom Milling Policy, is that one of the partners has a low CIBIL score. The reason for declaring petitioner No 1 Arya Industries as ineligible for allotment is by virtue of Clause 7 (c) of the policy, which stipulates that a Mill will be considered as a defaulter, *if its owner or any of its partner/member is also an owner/partner/member lessee/lessor of another defaulter mill*. The sole proprietor of petitioner no. 1 is a partner in M/s Kuber Rice and General Mills Ltd.

12. In order to understand the entire controversy, it would be essential to have a look at the clauses in the Custom Milling Policy which have been relied upon to declare the petitioners as defaulters, ineligible for allotment for custom milling. Clause 2 (i) of the CMP 2021-22, which defines defaulter, is reproduced as under:-

"Defaulter" means a miller who failed to supply the entire minimum rice due to him on account of paddy allotted/stored

in his premises for custom milling by the due date (declared by Government of Punjab) of the previous year(s) and/or who fails to settle his amounts with any of the procurement agency/agencies of the previous year(s) and/or is declared as a defaulter as such, under the relevant clauses of this policy."

Clauses 4 (f) (g) and (h) and 7 (c) & (d) of the CMP 2020-2021 are reproduced as under:-

4(f). The rice mill should not be defaulter of any of the state procuring agency including FCI, during the previous year (s).

Provided that, if a defaulter mill had cleared all such previous dues of the Government and procuring agencies for the previous year(s) to the full satisfaction of the Government/agency(ies), it may be considered as eligible for allotment, subject to the condition of producing an NOC from such procurement agency (ies).

4(g). The business entity i.e. the mill as well as its Owner/Partners/Directors/Members/Trustees etc. have to maintain a CIBIL Micro Small and Medium Enterprises (MSME) Rank (CMR) score of 6 and below and a CIBIL score of 600 and above respectively. In case the millers' individual or mills CIBIL Score/CIBIL MSME Rank has been reported to be low due to some past irregular financial transaction and they have now cleared the irregularity with the concerned Bank or have made an arrangement with the concerned Bank for clearance of the said irregularity but the same is not being reflected in their CIBIL score, it is clarified that the Millers, who have cleared their irregularities with the Bank, may be considered for allotment subject to the submission of "Irregularity Clearance Certificate/NOC" from the concerned bank/leader of the Consortium of the banks of the Miller and the concerned bank will have to certify that they would not have any lien on the paddy allotted/stored with the miller by

the state agencies.

In case of lessee mills, the lessee, lessor as well as the other guarantors of the lessee have to satisfy the above criteria.

(4h). The mill premises and the miller should be free from litigation or a legal disputes which attaches to the title, ownership or possession of the mill premises of the miller.

7(c). The miller shall also be considered as defaulter, if its owner or any of its partner/member is also an owner/partner/member lessee/lessor of another defaulter mill.

7(d). If a mill owned, leased or operated by a previously declared defaulter miller is transferred, either through sale, lease or any other mode to any other person/miller, then such other person/miller shall also be considered to be defaulter until all the dues of the agency of which such miller was defaulter, are cleared or the default cured and the concerned agency issues an NOC in favour of such defaulter miller and such premises."

13. The terms of the CMP of 2021-2022 are sacrosanct and are binding upon all parties concerned. The underlying objective of the Policy is to ensure the interest of the State and to weed out such Mills which are defaulters of the State and owe vast sums of money on account of non delivery of CMR/embezzlement etc. The CMP of 2021-2022 is detailed and provides for various clauses under which allotment of paddy can be done and when a Miller will be declared a defaulter. In fact, the clauses have a domino effect. If one Mill is a defaulter and any of its partners are partners of any other Mill, the subsequent Mill too would be deemed as a defaulter. As per the reading of the clauses, as enumerated above, it is clear that both the petitioners cannot be termed as defaulters in terms of Clause 2(i) by

virtue of the fact that they have delivered the milled rice as per the paddy allotted/stored in the premises for custom milling by the due date. However, the said clause has a further stipulation that the Mill/Miller can be declared as a defaulter "*under the relevant clauses of this policy.*" Such would be the case when the CIBIL Score of the Mill or its partners/owners is not maintained as per the policy; the mill/miller is under Litigation; the rice mill should not be defaulter of any of the state procuring agencies, including FCI during the previous year(s); and the mill shall also be considered as defaulter, if its owner or any of its partner/member is also an owner/partner/member lessee/lessor of another defaulter mill.

14. The plea of the counsel for the petitioner No. 2 i.e M/s Kuber Rice and General Mills, that the Mill could not be declared as defaulter on the ground that the CVC had gone into the issue and held them to be innocent, cannot be accepted at the very outset, since there was only an observation to the effect that petitioners No.2 should not be penalized on account of misdeeds of another and a direction had been given to the DFSC to look into the issue and see about the suitability of allotment of paddy for the year 2014-2015. It would be interesting to note that since then, petitioner no. 2 has been allotted paddy and there has been no default at their end on account of non delivery of custom milled rice with the central pool. The impugned order passed holds that petitioner No. 2 was not entitled to delivery of paddy as it had managed to successfully evade disqualification for reasons unknown. This finding is unsubstantiated, as paddy continued to be allotted under various policies and that too after the CVC gave a direction to look into the matter fairly considering the fact that

petitioner no 2 was held to be a whistle blower. No fault can be attributed to the petitioner No 2 without also holding the officials who allotted the paddy as derelict in their duty as well. It is as late as the year 2021-2022, that the DFSC Ludhiana, has held petitioner No 2 to be a defaulter, on the ground M/s K.P. Rice Mills is a defaulter of Markfed (the sub lessee of M/s Rajoana Rice Mills the lessee of Petitioner No. 2). However, it has been brought to the notice of the Court that there are proceedings pending in the Debt Recovery Tribunal against the Mill and, therefore, by virtue of Clause 4 (h) of the Policy of 2021-2022, petitioner No.2 would not be entitled to allotment of paddy. Moreover, the CIBIL score of one of the partners' *i.e* Sh. Iqbal Singh is low and therefore in terms of Clause 4 (f) the Mill becomes ineligible for this year.

15. An argument was raised that there are several mills that have been allocated paddy despite the Mill/partners having a low CIBIL Score. This court summoned the record and has also perused the same. The record produced would reflect that there are some discrepancies. One such glaring Mill is BB Agro with a CIBIL Score of 1, but with a member score of 593, which is well below 600. The Bank certificate attached is unsatisfactory. However, this argument will not be of any benefit to petitioner No.2 as the policy itself stipulates that a CIBIL score of more than 600 has to be maintained of members/individuals/partners.

16. The question whether petitioner No. 1 can be declared as a defaulter and ineligible for allotment of paddy would require consideration keeping in view that petitioner No. 1 itself is not a defaulter of PUNSUP or of any other procurement agency and has a good CIBIL score. It has been

declared ineligible by virtue of Clause 7 (c) alone. It is not in dispute that petitioner No. 1 sought permission from the authorities to become a partner of M/s Kuber Rice and General Mills and on getting the said approval as far back as 2.10.2015, he entered into a new Deed of partnership of M/s Kuber Rice and General Mills, which now consists of three partners i.e. Manjit Singh, Iqbal Singh and Rohit Kumar, (the sole proprietor of M/s Arya Industries). The report of the CVC was well within the knowledge of the authorities when permission was allowed. Despite the CVC report, the Department continued to allot paddy for milling and petitioner No.2 was never declared a defaulter. In fact, it has only now that M/s Kuber Rice and General Mills has been declared a defaulter on account of one of the partners having a low CIBIL score and secondly on account of its lessee being a defaulter. No fault can be attributed to petitioner No. 1 in this regard, as it was prudent enough to forward the CVC report to the Head Office and seek permission to enter into a partnership. It is clear that petitioner No.1 entered into a partnership thereafter, on knowing he was not going to be associated with a defaulter Mill. It will be pertinent to note that Clause 7(c) of the CMP of 2021-2022 which is now sought to be invoked was already a part of the CMP of 2018-2019 and the subsequent ones. Clause 7(c) of the CMP of 2018-2019 may be referred to. Once the said permission has been allowed, the petitioner no. 1 who is successfully delivering custom milled rice since 2014-2015 and therefore, would have a legitimate expectation to be considered eligible for allotment of paddy for the year 2021-2022 as well. Petitioner No. 1 cannot be faulted on the ground that the authorities itself allowed paddy to be issued/allotted for each

successive years i.e. from 2014-2015 to 2020-2021. Therefore, in the opinion of the court, once petitioner No. 1 had been allowed by the respondents themselves to Mill paddy for the past several seasons, despite the existence of Clause 7(c), they cannot be permitted to declare it as a defaulter for this season by virtue of Clause 7 (c) alone. The impugned order qua petitioner No. 1 is hereby set aside.

17. Consequently, the claim of petitioner No. 1 is justified and it is held that the Mill should be allotted paddy under the Custom Milling Policy 2021-2022, in case the same is available. There is a letter dated 25.3.2022 available on the record to show that PUNGRAIN still has paddy lying for milling, which letter may be taken into account.

18. Consequently, the writ petition is partly allowed. The impugned order qua petitioner No. 1 is set aside holding them to be entitled for allocation of paddy, while the writ petition qua petitioner No. 2 stands dismissed.

April 19, 2022.
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No