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

CWP No.23771 of 2022 (O&M)
Date of Decision:31.10.2022

M/s Thind Brothers Rice Mills …Petitioner

Versus

Food Corporation of India and others …Respondents

2. **CWP No.23989 of 2022 (O&M)**

M/s J.R. Rice Mills …Petitioner

Versus

Food Corporation of India and others …Respondents

3. **CWP No.24004 of 2022 (O&M)**

M/s Momi Rice Mills …Petitioner

Versus

Food Corporation of India and others …Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. G.K. Mann, Senior Advocate with
Mr. Gursewak Singh, Advocate
Mr. Gursharan Singh, Advocate
Ms. Simrat Kaur, Advocate
for the petitioner in CWP No.23771 of 2022.

Mr. Daman Dhir, Advocate
for the petitioner in CWP No.23989 of 2022.

Mr. Chetan Mittal, Sr. Advocate with
Mr. Kunal Mulwani, Advocate and
Mr. Ritvik Garg, Advocate
for the petitioner in CWP No.24004 of 2022.

Mr. K.K. Gupta, Advocate
for FCI.

Mr. Sehajbir Singh Aulakh, AAG, Punjab.

JAISHREE THAKUR J. (ORAL)

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C.M. No.17162 of 2022 in CWP No.23771 of 2022
C.M. No.17155 of 2022 in CWP No.23989 of 2022
C.M. No.17152 of 2022 in CWP No.24004 of 2022

Applications are allowed.

Annexure R-5 is taken on record.

Main Cases

1. Replies filed in all the writ petitions on behalf of respondents No.2 to 5 are taken on record. Replication filed in CWP No.23771 of 2022 to the written statement of FCI, is also taken on record.

2. This order of mine shall dispose of all three writ petitions bearing CWP Nos.23771, 23989 and 24004 of 2022 as identical issue for consideration is involved. The facts are being enumerated from CWP No.23771 of 2022.

3. The instant writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned letters dated 30.09.2022 and 07.10.2022 issued by respondent No.6 wherein the FCI has issued a letter to the District Food and Supplies Controller to ensure that the petitioner rice mill is not recommended for allotment of paddy during the Kharif Marketing Season 2022-2023, with a further request that authorities of the Anaj Kharid portal be communicated the same.

4. The petitioner-mill herein has pleaded that it has been engaged in the business of milling paddy and supplying rice to the FCI godowns for the past 30 years and as on date, has not been declared a defaulter. It had applied under the Punjab Custom Milling Policy for Kharif 2022-23 for being registered as a mill and the District Allotment Committee had allocated a

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procurement agency to the petitioner. However, despite the fact that the Committee had allocated the petitioner-mill to a procurement agency, it has not been permitted to lift paddy for milling purposes on account of letter dated 30.09.2022 issued by the FCI to the said Committee.

5. Mr. Chetan Mittal and Ms. G.K. Mann, learned senior advocates and Mr. Daman Dhir, Advocate appearing for the petitioners would submit that after the petitioners-mills had supplied the entire milled paddy, there was a CBI raid which took place at the godowns of FCI itself in the year 2019-2020 and certain samples of rice were taken, which on an analysis was found BRL. The petitioners-mills were asked to replace the BRL in July 2022, which they did in terms of the policy itself. It is submitted that once the petitioners-mills were informed about the BRL to be replaced, they duly did it. Without taking these facts into account, FCI has addressed a letter to the Committee asking them not to allot paddy till they replace the BRL. It is further submitted that this action took place only on account of an internal investigation that was done viz-a-viz the misconduct of FCI officials, who have purportedly liquidated BRL without prior permission of higher official and departmental proceedings were initiated against them. It is submitted that once the petitioners have already replaced the BRL, there will be no cause for FCI to ensure that petitioners herein are not allotted paddy.

6. Learned senior advocates would further submit that an amount of Rs.20 lakhs each has already been transferred by the petitioners-mills into the account of FCI as security to ensure that the entire BRL is replaced, in terms of their own policy, which in turn would allow them to lift stacks of BRL and

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replace the same and once the entire BRL is replaced, they would be entitled to refund of said amount which is still lying with FCI.

7. Learned counsel appearing for the FCI would submit that there is active connivance between the petitioners and officials of FCI as would be evident from the enquiry that was conducted. It is submitted that the petitioners have not been able to establish before the DGM (Quality Control), Regional Office, Chandigarh (before whom the representatives of petitioners-mills appeared pursuant to order dated 21.10.2022) that BRL had been replaced. It is argued that there is a definite fabrication of documents since some of the documents as relied upon in the writ petition itself show that the same have been signed whereas documents that were furnished and in possession of FCI would reflect that there are no signatures thereon. There is no CCTV footage to establish whether there were any trucks brought in or brought out in the depot carrying BRL. Statement of the labour at the godown was recorded to the effect that '*rice stock was issued from SOMA PEG Patti as per verbal order of FCI officers on 13.08.2022 and 14.08.2022 from Stack No.7A-614, 7A-624, 7C-640, 29A-1606. The said rice was issued to Rana Sugars Ltd. Total 50 trucks loaded (16080 bags) on 13.08.2022 and 46 trucks (14672 bags) loaded on 14.08.2022 through our labour parties.'* It is submitted that a reading of said statement would reflect that rice stock was liquidated and sent to Rana Sugars Ltd. The counsel for FCI would also rely upon an observation that has been made on page 6 of the enquiry report to the effect that there is no correspondence received from PEG SOMA Patti to the effect that BRL stood replaced. In such a situation, counsel for FCI would submit that as BRL was never replaced and there are allegations of fraud and

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fabrication of documents, therefore, the petitioners are not entitled to mill paddy for the current season.

8. Learned counsel appearing on behalf of the respondent-State would submit that allotment as on date stands cancelled by the District Allotment Committee in terms of Annexure R-3 of the reply filed in the Court today.

9. On the asking of this court of the counsels appearing before it, the court is informed that as on date, there is no formal order declaring the petitioners-mills as defaulters, however, counsel appearing for the respondent-FCI would rely upon Clause 7 (xii) with heading Events of Default and Clauses 10, 11 and 12 of the Custom Milling Policy for Kharif 2022-2023. Clause 7 (xii) reads as "*the miller who has been banned by FCI for all business activities on account of delivery of rice "beyond rejection limits" (BRL) and/or beyond PFA specifications and/or mixed stock in the previous year(s) shall also be treated as defaulter miller.*" In terms of the said clause, since BRL was not replaced within time, the petitioners are defaulters.

10. At this point, Mr. Chetan Mittal and Ms. G.K. Mann, learned senior advocates would point out that the enquiry report pertained to an investigation done against the officials of FCI without associating the petitioners herein, as no show cause notice was ever served upon them. The basic enquiry was pertaining to missing stacks and liquidation of BRL rice to Rana Sugars Ltd. without prior approval. It is submitted that as per the enquiry report itself, the stacks were available on 12.08.2022 and since CCTV footage of the godown pertaining to 13.08.2022 and 14.08.2022 is not available, therefore, the enquiry held is without all documents being made

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available before the enquiry officer for him to conclude that petitioners are involved. It is also submitted that the Assistant Manager, Weigh Bridge Operation has stated that bags were received from the millers and subsequently issued to Rana Sugars Ltd. It is further submitted that without affording any opportunity of hearing or in the absence of any show cause notice and without adhering to the principles of natural justice, petitioners herein cannot be denied allotment of paddy for milling for the current kharif season. It is also argued that once paddy stands allotted, the same cannot be cancelled in terms of the policy without adequate reasons or giving opportunity of hearing to the millers.

11. Reliance in this regard has been placed upon the judgment rendered by the Hon'ble Supreme Court in ***M/s Southern Painters Vs. Fertilizers and Chemicals Travancore Ltd. and another AIR 1994 SC 1277*** and the judgment rendered by Division Bench of Calcutta High Court in ***State of West Bengal and others Vs. Rashmi Metaliks Limited and another AIR 2015 (Calcutta) 57.*** Further reliance has been placed upon judgment rendered by Jharkhand High Court in ***Ms. Ankur Chemfood Limited Vs. The State of Jharkhand and others 2015 (22) RCR (Civil) 334*** to contend that mere pendency of a writ petition or of a reference for a vigilance enquiry cannot be made a ground for disqualifying a tenderer in the technical bid itself.

12. This Court has gone through the pleadings of the parties and has also taken note of the orders as passed by the DGM (QC), Regional Office, Chandigarh whereby the authority after giving an opportunity of hearing to

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the millers to prove that BRL was replaced, has come to the conclusion that the documents as supplied are false and fabricated.

13. The question for consideration before this Court - would be whether or not to allow the petitioners herein to lift the paddy as stood allotted to them and whether the order as passed by FCI requesting the agencies to ensure that rice mills are not recommended for allotment of paddy during KMS 2022-2023 is to be set aside? Admittedly, in a CBI raid and on taking samples, it was found that there was BRL and the petitioners herein were asked by FCI to replace the same. The contention raised by the petitioners herein is that they furnished a security of Rs.20 lakhs each and replaced the BRL. As per the enquiry report relied upon by FCI, an internal investigation took place wherein it was found that BRL had not been replaced but the same had been liquidated to Rana Sugars Ltd. without prior approval. FCI officials were found derelict in their duty. Based on the finding that the officials were derelict in their duty regarding liquidation of BRL rice without approval, this court cannot answer the question whether or not the petitioners herein had connived with FCI officials and fabricated documents. The enquiry report itself would reveal that no show cause notice had been issued nor were the petitioners herein associated with the said enquiry. Though it would be pertinent to record that one such opportunity had been allowed to the petitioners-mills by this very Court vide its order dated 21.10.2022 to satisfy the DGM (QC), Regional Officer, Chandigarh regarding their involvement/the fact that they had replaced BRL, which personal hearing has not satisfied DGM (QC). The said order was passed by the Court keeping in mind that the enquiry report (wherein names of four millers were clearly

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mentioned whose stocks had been declared BRL by CBI) mentioned that the millers were called to show their original documents but the same could not be produced. It is in this background, this Court allowed them to put an appearance and produce the relevant original record, which documents have not been found to be satisfactory.

14. Clause 7 (a) (ii) of the Custom Milling Policy for Kharif 2022-2023 provides a condition for a miller to be declared as defaulter and the same reads as under:-

> *"(ii) If the miller in question has not milled the allocated paddy and/or has not delivered 100% rice due, on behalf of the procurement agency in previous year(s) and/or nor deposited the acquisition cost of balance paddy/rice due with interest to the concerned agency, such a mill/miller shall be treated as defaulter."*

15. However, a reading of Clause 7 (a)(viii) of the CMP for Kharif 2022-2023 would reflect that the miller shall be considered as a defaulter if a police case/court case/arbitration case is pending against the miller on account of embezzlement and/or on account of non-delivery of rice and/or on account of non-clearance of any procurement agency including PAFC and/or being declared blacklisted by the department/FCI. There is a rider to the said clause, which permits a miller to clear the default of the concerned agency along with interest at the rates for the relevant year(s) and in case it clears the default, it may be considered for allotment without prejudice to the outcome of the criminal case/FIR/court case/arbitration case pending against it, with a further proviso that such defaulter mill shall also furnish an NOC from all

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procurement agencies. In the opinion of this Court, Clause 7 (a) (viii) envisages a situation, which would permit the miller to deposit an amount equivalent to the amount so alleged due along with interest thereon so that the interests of both parties are secured. The deposit would be made pending any proceedings initiated against the said miller. In the instant case, apart from internal enquiry report of FCI qua the role of its own employees, the petitioners have not been served a show cause notice as on date nor any of the millers facing any criminal proceedings, even though the DGM (QC), Regional Office, Chandigarh has clearly opined after giving an opportunity of hearing to the petitioners herein, that there is fabrication of documents.

16. At this stage, learned counsel for the respondent-State would submit that show cause notice dated 16.10.2022 was issued to the petitioners regarding cancellation of allotment for custom milling of rice during KMS 2022-2023 and the allotment stands cancelled as on date. It is submitted that in terms of the CMP for kharif 2022-2023, the remedy of an appeal and second appeal is available under Clause 24 (a), (b) and (c).

17. It is relevant to note that this Court also draws support from the judgment rendered by the Hon'ble Supreme Court in ***M/s Southern Painters*** (supra) where name of the petitioner-company was deleted from the list of contractors and it had been blacklisted for a period of 10 years. The basis for blacklisting it was the vigilance report. The company argued that no prior notice or opportunity of hearing had been given before blacklisting and that was denial of principles of natural justice, considering the fact that both professional and personal reputation of the company was at stake. The High

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Court vide its judgment had dismissed the writ petition, which was set aside by the Hon'ble Supreme Court holding that:-

> *"9. The deletion of the appellant's name from the list of approved contractors on the ground that there were some vigilance report against it, could only be done consistent with and after the compliance of the principles of natural justice. That not having been done, it requires to be held that withholding of the tender form from the appellant was not justified. In our opinion, the High Court was not justified in dismissing the writ petition."*

18. Similarly, the Jharkhand High Court in ***Ms. Ankur Chemfood Limited (supra),*** has held that mere pendency of a writ petition or a reference for a vigilance enquiry cannot be made a ground for disqualifying the tenderer. The Calcutta High Court in ***State of West Bengal and others Vs. Rashmi Metaliks Limited and another*** (supra) was seized of a matter whereby two clauses as incorporated in the tender were challenged. As per the clause of the tender, it was specified that in case of pending FIR/charge sheet against the tenderer, tender shall be cancelled summarily without assigning reasons whatsoever. The High Court held that this clause would affect the principles of natural justice and would violate the fundamental right guaranteed under Article 19 (1) (g) of the Constitution of India, which permits citizens of India to carry on free trade that is permissible in law. The clause was quashed being *ultra virus* the Constitution of India.

19. In the instant case, the entire basis of impugned letter sent by FCI to District Allotment Committee to ensure that the petitioners-millers are not allotted paddy is a communication, which will directly affect the right of the petitioners to carry on free trade, which is guaranteed under Article 19 (1)

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(g) of the Constitution of India. The enquiry held by FCI, on the basis of which the impugned communication was addressed, was primarily against its own officials for liquidating BRL rice without prior approval of the higher authorities. No show cause notice was issued to the petitioners-millers herein regarding non-supply of BRL as demanded by FCI. That was not the subject matter of the enquiry that was conducted. Even the report as submitted by DGM (QC) is based on a summary appraisal of documents. As submitted by the learned senior advocates appearing for the petitioners, though documents were submitted by petitioners-millers, they were not given any opportunity to rebut the finding of the said official.

20. Be that as it may, to do substantial justice between the parties, it is within the discretion of this Court, especially keeping in view the fact that no criminal case/FIR/arbitration case is pending against the petitioners-millers; there being a dispute between the parties regarding BRL having been replaced or not, coupled with the fact that cancellation of allotment of paddy to the millers for the current kharif season would seriously affect the livelihood of the petitioners as well as the labour associated with the millers, that recourse is taken to Clause 7 (a) (viii) of the Policy for Kharif 2022-2023. Therefore, the petitioners-millers are directed to move an application before the competent authority of the FCI, offering to deposit the entire value of the BRL with interest in terms of said clause. On doing so, the competent authority shall consider the same and pass a speaking order thereon within a period of two days thereafter. It would be expected of such authority i.e. FCI to look into the matter, keeping in mind that their interest is secured in case the petitioners are found to be in connivance with the FCI officials. Prima

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facie, as on date, there is no connivance established. The petitioners have to be given an opportunity of fair hearing before FCI comes to a conclusion that petitioners herein actively connived with the FCI officials and have not replaced BRL as claimed by them. Since there has to be a decision, whether or not the petitioners have connived with FCI officials, and not replaced the BRL, it would be expedient by the FCI to hold a detailed enquiry in this regard, which ought to be concluded as expeditiously as possible, preferably within a period of six months by giving fair opportunity of hearing to the petitioners-millers. In case it is found that the petitioners have not connived with FCI officials and have replaced the BRL, they would be entitled to refund of their deposit within a period of one month thereafter.

21. As the District Allotment Committee has already passed an order cancelling the allotment, which is not under challenge, even though the orders were passed after filing of the present writ petition, the petitioners have a remedy available to them under Clause 24 (c) of the Kharif Policy for the year 2022-2023. Any appeal filed by the petitioners herein against the said cancellation will be decided by the competent authority within a period of two days after the decision has been taken by FCI.

22. With these observations, all the three writ petitions stand disposed of.

(JAISHREE THAKUR)
JUDGE

October 31, 2022
Pankaj*

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

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