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

CWP No.25130 of 2022(O&M)
Reserved on:30.11.2022
Date of Decision.05.12.2022

M/s Kuber Rice & General Mills ...Petitioner

Vs

State of Punjab and others ...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Chetan Mittal, Senior Advocate with
Mr. Kunal Mulwani, Advocate
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

Mr. Gurminder Singh, Senior Advocate with
Mr. Jatinder Singh Gill, Advocate
for respondents No.2 to 5.

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JAISHREE THAKUR J.

1. This writ petition has been filed under article 226/227 of the Constitution of India seeking issuance of a writ in the nature of certiorari for quashing order dated 07.10.2022 (P-20) whereby petitioner-mill has been denied allotment of paddy (as uploaded on official portal of respondents) as well as impugned orders dated 14.10.2022 (P-22) passed by respondent No.3 and order dated 28.10.2022 (P-24) passed by respondent No.2 whereby claim of the petitioner-mill for allotment of paddy has been rejected.

2. In brief, the facts are that the petitioner was not allotted paddy even for the previous Kharif Marketing Season 2021-22, for which the petitioner approached this Court by way of CWP No.24845 of 2021 titled as M/s *Arya Industries and another Vs. State of Punjab and others* raising challenge to the orders as passed, whereby both the petitioners-mills had been denied allotment of paddy for milling. The writ petition qua M/s Arya

Industries was allowed holding that the petitioner-mill would be entitled to be allotted paddy under the Custom Milling Policy 2021-2022, however, the writ petition qua M/s Kuber Rice and General Mills, petitioner in the present writ petition, was dismissed on the ground that CIBIL score, which was required to be maintained was not adequate. One of the partners namely Iqbal Singh did not satisfy clause 4 (g) of the Punjab Custom Milling Policy for KMS 2021-2022, as he had a low CIBIL score of 546 whereas the minimum CIBIL score that was required to be maintained was 600 and beyond. Aggrieved against the said decision, M/s Kuber Rice and General Mills filed an LPA No.346 of 2022, which was disposed of vide order dated 21.09.2022 with the observations that'*the respondents shall adhere to the policy which has been formulated for Punjab Custom Milling Policy for Kharif 2022-2023. In case, any relaxation is to be granted, it shall enure to all the millers and not in a selective manner. The earlier certificates which have been taken into consideration and utilized/used for granting benefits selectively will not be permitted. The case of the appellant shall also be considered according to the present policy and proceeded with in pursuance thereto."*

3. The petitioner-mill for the current kharif season of 2022-2023 applied afresh for allotment of paddy to its capacity and in compliance of the order passed by this Court in LPA No.364 of 2022, an inspection of the petitioner-mill was got conducted by the concerned authorities for allotment, as is evident from letter dated 22.09.2022 addressed by District Controller, Food, Civil Supplies and Consumer Affairs, Ludhiana to the present petitioner, whereby it was found that one partner of the mill namely Iqbal Singh has CIBIL score of below 600, therefore, the petitioner-mill was asked to submit *'Irregularity Clearance Certificate/NOC' from* the concerned bank that they would not have any lien on the paddy allotted/stored with the miller by the procurement

agencies so that the petitioner-mill could be considered in the District Allotment Committee's meeting for allotment. In response to the aforesaid letter dated 22.09.2022, the petitioner-mill responded that the partner, who is at default, had low CIBIL report even before his inducement as partner in the firm. For the said default, the PUNSUP agency has got land mortgaged in its favour having a valuation of Rs.5.76 crores. Apart from that, M/s Arya Industries gave a surety bond for the same since 2015-16 to 2020-21. Even a certificate has been issued by HDFC Bank. Therefore, the petitioner-mill requested for allotment to it for KMP 2022-2023. However, vide impugned order dated 07.10.2022, registration of the petitioner-mill has been rejected owing to non-uploading of complete requisite documents and due to non-payment of the fee for registration. It was also reasoned that the petitioner-mill was a defaulter mill in previous years and registration of defaulter mill will be a violation of the provisions of the Punjab Custom Milling Policy for Kharif 2022-2023 and therefore, rejection of registration of the petitioner-mill is not improper. Another ground for rejection is that CIBIL score of one of the partners of the petitioner-mill is still below the prescribed standard . The aforesaid impugned order has been upheld vide orders dated 14.10.2022 and 28.10.2022. Hence, the writ petition.

4. Mr. Chetan Mittal, learned Senior Counsel assisted by Mr. Kunal Mulwani, Advocate appearing for the petitioner-mill would argue that concession has been given to several mills, whose partners or the mill itself have a low CIBIL score, one of them being M/s Grewal Rice Mills where the proprietor Mr. Devender Singh son of Jarnail Singh has low CIBIL score of 555 on the date when the *Irregularity Clearance Certificate (NOC)* was issued by the State Bank of India. It is argued that the certificate as issued by State Bank of India is not in conformity with Clause 4 (viii). It is argued that despite

a low CIBIL Score, the District Allotment Committee has allocated PUNGRAIN as a procurement agency to the said mill. An agreement has already been entered into between M/s Grewal Rice Mills and PUNGRAIN. It is further argued that till such time as the CIBIL score is not updated and maintained at 600, allotment of paddy to it was *de hors* the policy. It is further argued that the petitioner-mill would be entitled to the same concession as has been allowed to M/s Grewal Rice Mills by virtue of the order passed in LPA No.346 of 2022. Furthermore, it is argued that in terms of policy itself, there is a condition for allowing allotment of paddy to certain, mills, which have in fact hypothecated their mills itself to avail credit facilities. It is further argued that the Department of Food, Civil Supplies and Consumer Affairs, Punjab has issued a directive to all Deputy Directors (F) including DFSCs that the paddy may be allotted to rice mills which are hypothecated/mortgaged/pledged for availing credit limits/loans. It has been specified that those rice mills having working capital limit, which have mortgaged the property of the mill premises, hypothecated the same or pledged, can be given allotment in case there is guarantee of two mills given having no loan/lien/credit limit against the property or bank guarantee equal to 25% of the average paddy allocation to the mill during the previous year based on their tonne capacity or insurance cover equivalent to the cost of maximum paddy allocation to the mill in the name of the department to indemnify the department in case of any loss to paddy including default/declaration by the miller. Exemption has also been allowed to be given to millers, who have availed term loan in order to establish mills and take benefit of subsidy under Government schemes. It is submitted that since the petitioner-mill herein has already mortgaged its land valued at Rs.5.76 crores with PUNSUP itself, which would be akin to have mortgaged/hypothecated its property to avail working capital limit, therefore, petitioner-mill who is on better footing deserves to be considered under the said policy as well. Learned Senior Counsel would further urge that there is non-compliance of the provisions of Clause 4 (a) (viii) of the policy qua eligibility criteria, which is required to be checked before allotment by the State Procurement Agency.

5. Mr. Gurminder Singh, learned Senior Counsel assisted by Mr. Jatinder Singh Gill, Advocate appearing for respondents No.2 to 5 would submit that the petitioner-mill herein had failed in the earlier writ petition on account of the fact that one of the partners had not been able to maintain a CIBIL score of 600. The LPA that was filed seeking to challenge non-allotment of rice on account of low CIBIL score, was disposed of by stating that in case any relaxations are allowed to any other miller, same relaxation would be extended to the appellant therein as well. It is submitted that the partner has not been able to rectify the low CIBIL score and the Irregularity Clearance Certificate as issued by HDFC Bank would have no relevance considering the fact that it is not the lead bank and the default had to be cleared by the Axis Bank alone. It is also argued that once an Irregularity Clearance Certificate has been issued by the concerned bank, clauses of the policy allow allotment to be made since it takes some time for the CIBIL score to be upgraded. It is also submitted that certificate issued by the HDFC Bank cannot be considered for treating the CIBIL score of the partner as compliant and as on date, there is no certificate issued by Axis Bank. It is submitted that as far as the allegations raised that allocation/allotment has been made without adhering to Clause 4 (a) (viii) of the policy qua eligibility criteria is concerned, the same is unsubstantiated as each Mill/miller was duly verified.

6. I have heard learned counsel for the parties and have perused the paper book and various affidavits as have been filed during the course of proceedings.

7. At the very outset, before dealing with merits of the case, it needs to be noted that initially there was a dispute whether the petitioner-mill had been able to upload its documents within time. Learned Senior Counsel for the petitioner-mill has submitted that despite uploading all documents, the matter was being treated as if the petitioner-mill was unable to do so and therefore, could not be considered for allotment. A reading of the reply filed by the respondents on 14.11.2022 would reflect that non-uploading of documents was made basis for denying allotment of paddy. However, when arguments were being addressed in this Court, primary thrust of contest was that one of the partners of the petitioner-mill does not have CIBIL score of 600 and above and therefore, cannot be considered for allotment. Thus, firstly; this Court is seized of the question as to whether the petitioner-mill has wrongly been denied allotment of procurement agency on the ground of low CIBIL score whereas M/s Grewal Rice Mill has been allowed the concession of low CIBIL score and secondly; whether the petitioner-mill can be considered for allotment taking into account that land worth Rs.5.76 crores already stands mortgaged with PUNSUP.

8. The petitioner-mill herein is drawing strength from the order as passed by the LPA Bench to contend that in case any relaxation is to be granted, it shall enure to all the millers and not in a selective manner. A categoric stand has been taken by the petitioner-mill that M/s Grewal Rice Mills had low CIBIL score of 555 as on 22.08.2022 and the Irregularity Clearance Certificate as issued was not in conformity with Clause 4 (a) (viii) of the Custom Milling Policy 2022-2023. It is argued that a reading of Irregularity Clearance Certificate as issued by the Branch Manager stated that '*the account of said person is not NPA. We also certify that bank would not have any kind of charge/lien on govt. allocated/stored paddy or its bi-product of the said person (sic) and he is not availing any kind of personal property credit limit, due to*

which CIBIL is down. The person of tractor loan has paid amount so the cibil is improve in early as possible within a month (sic).” As per the aforesaid certificate, the CIBIL was likely to improve within a month but it never improved even till the time when the agreement was entered on 14.10.2022. Reliance has been placed upon Section 21 (3) of the Credit Information Companies (Regulation) Act, 2005, according to which, on request of borrower or client, the credit information company or the specified user or the credit institutions, as the case may be, shall take appropriate steps to update the credit information within thirty days after being requested to do. However, in the case of M/s Grewal Rice Mills, the CIBIL score was not updated even till execution of agreement with the procurement agency. Learned Senior Counsel appearing for the petitioner-mill has further laid stress that even after entering into agreement, a fresh Irregularity Clearance Certificate in respect of the said mill dated 03.11.2022, as sought to be produced, would reflect that CIBIL score has improved from 555 to 589 and therefore, being below 600, the same is in violation of Clause 4 (a) (viii) of CMP 2022-2023 and if such benefit is given to M/s Grewal Rice Mill, same benefit ought to have been given to the petitioner-mill. It was also argued with vehemence that Irregularity Clearance Certificate as issued by the State Bank of India in favour of M/s Grewal Rice Mills does not specify the irregularity, which became the basis of downgrading of CIBIL score.

9. Respondents herein were asked to produce in Court the record pertaining to allotment of paddy to M/s Grewal Rice Mills for the current Kharif Marketing Season and the same has been filed. Initially, in the last year, CIBIL score of Devinder Singh son of Jarnail Singh, proprietor of M/s Grewal Rice Mills, shown to be 555, continued till 2022. A reading of the Irregularity Clearance Certificate dated 21.08.2022 would reflect that said Devinder Singh

had given a guarantee for tractor loan and on the loan account becoming irregular, his CIBIL score came down. However, on guarantee of the tractor loan being taken over by some other person, the account was held to be regular. The certificate further mentioned that the CIBIL score of Devinder Singh would improve within a month.

10. To understand the controversy, it would be appropriate to take note of Clause 4 (a) (viii) of the CMP 2022-2023, which is reproduced as under:-

> "*The business entity i.e. the mill as well as its Owner/Partner/Directors/Members/Trustees etc. have to maintain a CIBIL Micro Small and Medium Enterprises (MSME) Rank score of 6 and below and a CIBIL score of 600 and above respectively. In case the millers' individual or mill's 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 all the bank/leader of the consortium of the banks of the miller in which he maintains the account 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 Procurement Agencies.*
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> *In case of lessee mills, the lessee, lessor as well the other guarantors of the lessee have to satisfy the aforementioned criteria.*
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> *A District Level Scrutiny Committee under the chairmanship of the Deputy Commissioner with the Lead Bank Manager of the District Level Bankers Committee (DLBC), DMs of the procurement agencies as members and with DFSC as convenor shall examine the irregularity clearance*

> *certificates/NOCs submitted by the millers in order to (1) To verify the genuineness of the irregularity clearance certificate/NOC. (2) To verify the genuineness of all Bank guarantees (3) To verify the hypothecation of rice mill, including leased mill. (4) To verify the hypothecation of properties disclosed by the miller. (5) Verification of signature verification certificate issued by the Bank. This committee shall send its report to the DAC.*
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> *The District Level Scrutiny Committee, where a miller is repeatedly submitting the "Irregularity Clearance Certificate/NOC", should exercise due caution w.r.t. Genuineness of the certificate/NOC by cross-checking with the concerned bank/leader of the consortium of the banks issuing such a certificate and should also try to analyse, from sources, as deemed fit, the nature and reasons of repeated irregularity by the loanee-miller."*

11. On a reading of the said clause it is clear that a business entity i.e. mill as well as its Owner /Partners /Directors /Members /Trustees/ Lessees have to maintain a CIBIL Micro Small and Medium Enterprises (MSME) Rank score of 6 or below and a CIBIL Score of 600 or above respectively. The clause further reads that if the miller, whose CIBIL score had been reported to be low due to some past irregular financial transactions, has cleared the irregularity with the concerned Bank, or an arrangement has been made with the concerned bank for clearance, but such clearance of irregularity has not been reflected in the CIBIL score, such mill *may* be considered for allotment, subject to the Irregularity Clearance Certificate issued from the bank. Admittedly, the petitioner-mill has not been able to establish that as on date, on uploading documents, CIBIL score of one of its partners namely Iqbal Singh has been upgraded, nor was there any Irregularity Clearance Certificate issued by the Axis Bank as per Clause 4 (a) (viii) of CMP 2022-2023. Relevance of

Irregularity Clearance Certificate as issued by the HDFC Bank cannot be taken into account since the irregularity was with Axis Bank.

12. The entire thrust of argument of the petitioner-mill is that it has to be treated at par with mills, which have been given benefit of allotment of paddy despite having low CIBIL score, by relying upon an agreement entered into with M/s Grewal Rice Mills. The argument, as raised that M/s Grewal Rice Mills could not have been allotted paddy since even on the date of agreement, its CIBIL score was low, cannot be taken into consideration since Clause 4 (a) (viii) itself allows District Allotment Committee to take into consideration the Irregularity Clearance Certificate, which in the present case has clearly stated that CIBIL score will improve within a month and the account is no more NPA, further certifying that the Bank would not have any kind of charge/lien on government allocated/stored paddy. The certificate further gives the reason as to why the account was irregular and therefore, the argument as raised by the Senior Counsel for the petitioner-mill that the reason for irregularity is not mentioned is not sustainable (it was on account of standing as a guarantor for a tractor loan, even though the certificate is not happily worded). The Irregularity Clearance Certificate as issued in favour of M/s Grewal Rice Mills by the State Bank of India is in consonance with Clause 4 (a) (viii) of the policy and therefore, once the decision has been taken to allot paddy to M/s Grewal Rice Mills, the same concession cannot be given to the petitioner-mill herein automatically, having not been able to produce an Irregularity Clearance Certificate from the relevant bank i.e. Axis Bank stating that the irregularities have been removed.

13. Learned Senior Counsel appearing for the petitioner-mill has laid great stress on Clause 4 (a) (viii) of CMP 2022-2023 that there was non-compliance by stating that a Committee was to be constituted to verify the genuineness of

the Irregularity Clearance Certificate. Learned Senior Counsel appearing for the respondents has filed an affidavit in Court (after the matter was reserved) on the asking of the Court whether there has been compliance in regard to verification of the Irregularity Clearance Certificate as submitted by the millers. The affidavit furnished by Narinder Singh, Convener-cum-District Controller, District Allotment Committee, Malerkotla, Food, Civil Supplies and Consumer Affairs, Malerkotla was taken on record and a copy of the same has been furnished to the counsel appearing for the petitioner. In the said affidavit, it is stated that the District Level Scrutiny Committee consisting of Deputy Commissioner-Chairman, Lead Bank Manager of the District Level Bankers Committee-Member, District Manager of PSWC-Member, District Manager of PUNSUP-Member, District Manager of Markfed-Manager, DFSC as Convener/Member, sent the Irregularity Clearance Certificate dated 22.08.2022 issued by the SBI Amargarh in reference to the CIBIL score of Devinder Singh, proprietor of M/s Grewal Rice Mills, which was submitted by the miller, to the office of Lead District Manager (LDM) through a messenger. The LDM, Malerkotla verified the Irregularity Clearance Certificate and it was only on due verification, the District Allotment Committee, allotted procurement agency to the said miller and an agreement was executed. The affidavit would further reflect that the procedure was followed to verify the CIBIL score of M/s Grewal Rice Mills and once the State Bank of India gave a certificate that it would have no lien on the government stored paddy and the account is not irregular, the District Allotment Committee allotted M/s Grewal Rice Mills to a procurement agency. It is also stated that in the affidavit filed on 01.12.2022 that as per the report obtained from the concerned bank i.e. SBI Amargarh, as on date, the CIBIL score in respect of Mr. Devinder Singh, proprietor of M/s Grewal Rice Mill is 629.

14. In view of the aforesaid position, claim of the petitioner-mill to be treated at par with M/s Grewal Rice Mills with regard to low CIBIL score, has no merit. Moreover the petitioner-mill has not been able to establish that any other mill has been given relaxation of CIBIL score/Irregularity Clearance Certificate. The affidavit filed of Convener-cum-District Controller, District Allotment Committee, Malerkotla is specific to the extent that the Irregularity Clearance Certificate of M/s Grewal Rice Mills was duly verified from the LDM, Malerkotla. Consequently, the impugned orders to that extent are upheld.

15. The other argument that has been raised by the petitioner-mill is that it would also be entitled to be considered for allotment by taking into consideration the fact that land having a value of Rs.5.76 crores already stands mortgaged with PUNSUP, which would be akin to having the land hypothecated/mortgaged for availing credit limits/loans with bank/financial institutions. It is also submitted that when the mills, which have already mortgaged their property, can be considered for allotment, the same benefit should be extended to the petitioner-mill herein, considering the fact that as on date, case of the petitioner-mill for one time settlement with Axis Bank has been forwarded for approval to the Head Office. In order to show its bona fide, a demand draft of Rs.23,10,000/- has also been drawn in favour of Axis Bank in lieu of one time settlement. In the opinion of this Court, the aforesaid argument on behalf of the petitioner-mill should be considered and decided in terms of the policy and the instructions issued. Therefore, in case the petitioner-mill approaches the concerned authority within a period of three days from the date of receipt of certified copy of this order for considering its case as per the Circular issued by the Department of Food, Civil Supplies and Consumer Affairs, Punjab to all Deputy Directors (F) and all DFSCs regarding allotment

of rice mills, property of whose premises is hypothecated/mortgaged/pledged, since the land belonging to petitioner-mill/partner already stands mortgaged with PUNSUP and the case of One Time Settlement with Axis Bank has been forwarded for approval to the Head Office, case of the petitioner shall be considered as per the aforesaid circular and decided within a period of one week thereafter by passing a speaking order.

16. The writ petition stands disposed of with the aforesaid observations.

(JAISHREE THAKUR)
JUDGE

December 05, 2022
Pankaj*

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