IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 25879 of 2022 (O&M)
Date of Decision: 14.11.2022

M/s Manda Agro Industries

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. G.S. Madan, Advocate
for the petitioner.

JAISHREE THAKUR, J.

1. The present writ petition has been filed under Articles 226 of the Constitution of India for issuance of an appropriate writ, especially in the nature of Certiorari for setting aside order dated 27.4.2022 (Annexure P/8), vide which allotment of paddy to the petitioner-firm for the procurement season Kharif 2022-2023 has been decided to be withheld. Further for setting aside of order dated 25.10.2022 (Annexure P/11), as passed by the District Controller, Food Civil Supplies and Consumer Affairs, Ludhiana, vide which the representation of the petitioner has been declined with a further prayer for setting aside order dated 2.11.2022 as passed by the first Appellate Authority as well as the order dated 9.11.2022 (Annexure P/16) passed by the Second Appellate Authority-cum-Principal Secretary, Food Civil Supplies & Consumer Affairs, Punjab, vide which the appeal of the petitioner for allotment of paddy to the petitioner-Miil has been declined.

2. In brief, the facts are that the petitioner-firm is a partnership concern under the name and style of M/s Mand Agro Industries, and is in the business of milling paddy. In the year 2018, the petitioner firm was allotted to Markfed Agency for Kharif Milling Season 2018-2019 and in the same year, another concern i.e. M/s Malwa Agro Industries was also allotted to Markfed Agency for custom milling of paddy. Mr. Harinder Singh son of Shri Ishwar Singh, who is partner of the petitioner-firm had given guarantee in favour of M/s Malwa Agro Industries, whereby it had been mentioned that the petitioner-firm would be held liable for any default committed by the said concern i.e. M/s Malwa Agro Industries. M/s Malwa Agro Industries failed to deliver the rice to the authorities for Kharif Milling Season 2018-2019. Consequently, recovery proceedings were initiated by the procurement agency i.e. Markfed invoking an arbitration clause. The claim of the Markfed was dismissed by the sole Arbitrator appointed. Since the petitioner had stood as a guarantor for M/s Malwa Agro Industries, which had defaulted and not supplied the entire CMR to Markfed, the District Allotment Committee, vide its order dated 13.11.2019, considered the petitioner-firm as defaulter as well. The order of the District Allotment Committee dated 13.11.2019 was challenged by the petitioner before the first Appellate Authority i.e. Director, Food, Civil Supplies and Consumer Affairs, Punjab, who dismissed the appeal of the petitioner vide its order dated 28.11.2019. The said order was assailed by the petitioner before the Principal Secretary, Department of Food, Civil Supplies Consumer Affairs, Punjab, who in turn dismissed the appeal preferred by the petitioner, vide its order dated 2.3.2020. Since there was a new Custom Milling Policy for

Kharif 2020-2021, the petitioner offered to pledge land with the procurement agency which was accepted and the petitioner-firm was allotted paddy by the Markfed for milling and the custom milled rice (CMR) was supplied to the authorities well within time. However, for the year 2022-2023, an objection has been raised regarding allotment of the petitioner-firm to a procurement agency for allotment of paddy for Khariff Milling Season 2022-2023. Therefore, vide impugned order dated 27.4.2022 (P-8), the petitioner was not allotted to any procurement agency. Against the said order, a representation was made by the petitioner and as no decision was taken thereon, the petitioner filed **CWP No. 23800 of 2022 tilted M/s Mand Agro Industries Versus State of Punjab and another**. The said writ petition was disposed of by this Court, vide order dated 17.10.2022 by directing the authorities to decide the representation as well as any appeal, if filed. Pursuant to the direction issued by this Court, a decision has been taken and the request of the petitioner for allotment of paddy has been declined.

3. Learned counsel for the petitioner would argue that in fact it has come to his knowledge that an ex-parte award dated 18.4.2022 under the Arbitration Act has been passed in favour of the Markfed and against the petitioner, levying a sum of ₹97,33,391/- along with interest @ 9%. It is contended that the petitioner was never served with the summons in the arbitration proceedings and, therefore, any award that has been passed against the petitioner is not sustainable in law.

4. I have heard learned counsel for the petitioner and have perused the order as passed by the authorities rejecting the claim of the

petitioner for allotment of paddy of custom milling during Kharif 2022-2023. It is an admitted fact that Harinder Singh, partner of the petitioner-firm had applied for custom milling of paddy during Kharif 2022-2023. The said partner gave surety in favour of one M/s Malwa Agro Industries, which was also allotted to Markfed. The said M/s Malwa Agro Industries was declared a defaulter by the Markfed on account of non-delivery of custom milled rice. The arbitration proceedings were initiated against the said M/s Malwa Agro Industries in which an ex-parte award has been passed against the petitioner-firm. Even though it is claimed that the petitioner herein was never served in the arbitration proceedings as on date, the award has not been set aside.

5. Learned counsel for the petitioner herein would argue that in terms of the Punjab Custom Milling Policy for Kharif 2022-23, the petitioner cannot be termed as a defaulter. It is submitted that Clause 2 (i) pertains to definition of "Defaulter". As per this Clause a "defaulter" means a miller who has failed to deliver the entire minimum rice due on account of paddy allocated/stored in his premises for custom milling by the stipulated date (declared by Government of Punjab) of the previous years and/or who fails to settle his accounts with any of the procurement agencies and PAFC of the previous year(s), and/or is declared as a defaulter as such, under the relevant clauses of this policy. It is submitted that the petitioner-firm has always delivered the paddy allotted to it within the specified time and, therefore, cannot be qualified as a defaulter. It is also submitted that Clause 4 (v) of the Punjab Custom Milling Policy for Kharif 2022-23, clearly specified that a rice mill should not be treated defaulter of any of the

procurement agencies including PAFC in case the defaulter mill has cleared all previous dues of the procurement agency and the same be considered for allotment of paddy. It is further submitted that since the petitioner-firm had delivered custom mill rice for the previous year, it is not a defaulter and should be considered for allotment.

6. The argument of the petitioner to set aside the impugned order and to consider the petitioner eligible for allotment of paddy is without any basis. It is an admitted fact that as on date, the petitioner along with M/s Malwa Agro Industries has been held liable to pay an amount of ₹97,33,391/- along with interest @ 9% to the Markfed. Even though the petitioner has raised an argument that the arbitration proceedings were ex-parte and he was never served, still until and unless the arbitration award is set aside qua the petitioner, he would be liable to meet the dues of M/s Malwa Agro Industries, the partner of the petitioner-firm having stood as a surety for M/s Malwa Agro Industries. Clause 7 (a) of the Punjab Custom Milling Policy for Kharif 2022-23 has also clearly specified that no mill/miller shall be considered for provisional registration/final registration/allotment to an agency or for allocation of paddy under this Policy, if it has been declared as a defaulter in any of the previous years and/or is in breach/violation/non-compliance of the following:-

> *"(i) xx xx (viii)*
> *(ix) A Miller(s) who stood guarantor(s) to another miller which has subsequently defaulted and with whom a legal dispute has arisen on account of embezzlement of paddy or non-delivery of custom milled rice or pendency of any other due amount in any of the previous crop year(s) shall also be considered defaulter*

until the final decision is arrived at in such case/cases.

However, if a miller, against whom a legal dispute is pending on account of non-delivery of rice or embezzlement of custom milling paddy or pendency of any other due amount, clears the amount of default along with 100% of such due interest, such a miller may be considered for allotment. Such an allotment shall be without any prejudice to outcome of the pending legal dispute."

7. A reading of the aforesaid clause clearly reflects that in case a miller had stood as a guarantor or surety to another miller, which has subsequently defaulted and with whom a legal dispute has arisen, such miller shall be considered as a defaulter till final decision is arrived in such case. This clause would debar the petitioner herein from being considered for allotment, considering the fact that surety has been issued by the partner of the present firm and an arbitration award dated 18.4.2022 has been passed against M/s Malwa Agro Industries as well as the partner of the petitioner firm.

8. There is no infirmity in the impugned order so passed. The writ petition is dismissed.

14.11.2022 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned : Yes
Whether Reportable : No