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

CWP No.26454 of 2022(O&M)
Reserved on:02.12.2022
Date of Decision.08.12.2022

M/s BGM Enterprises and others ...Petitioners

Vs

State of Punjab and others ...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Gaurav Chopra, Senior Advocate with
Mr. Himani Jamwal, Advocate
for the petitioners.

Mr. Gurminder Singh, Senior Advocate with
Mr. Jatinder Singh Gill, Advocate
for respondents No.1 to 3.

Ms. Deepali Puri, Advocate
for respondent No.4.

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JAISHREE THAKUR J.

1. Learned senior counsel for the petitioners sought not to press the writ petition qua petitioners No.4 and 5. Consequently, the instant petition qua petitioners No.4 and 5 stands dismissed.

2. The present writ petition has been filed for issuance of a writ, order or direction especially in the nature of mandamus directing the respondents to allow the petitioners-millers to mill paddy that was allocated to them in pursuance to the agreement entered into between the petitioners-millers and the procurement agencies.

3. In brief, the facts are that the petitioners-millers are in the business of milling and supplying custom milled rice to the central pool of FCI. The State of Punjab issued the Punjab Custom Milling Policy for Kharif 2022-2023 (in short CMP 2022-2023), pursuant to which the

petitioners-millers applied for allotment of paddy to them, which applications came to be rejected by the District Allotment Committee vide its order dated 04.10.2022 on the ground that FIR No.20 dated 15.09.2022 has been registered against proprietors/partners of the petitioners-mills in relation to tenders of loading-unloading/labour/labour cartage during the year 2019-2020. The District Allotment Committee held that persons mentioned in the FIR have been found to be guilty at initial stage of investigation, while quoting Section 3 (ii) (b) of CMP 2022-2023 that a person shall be ineligible for consideration where the character, conduct or behaviour of the person in conducting business affairs has been declared as detrimental of the interest of any State in India or any of its friendly countries. Moreover, a legal dispute had arisen between the parties and therefore, there would be no justification in allotting paddy to the petitioners herein. This matter was carried in appeal before the 1st Appellate Authority-cum-Director, Food, Civil Supplies & Consumer Affairs, Punjab and vide order dated 18.10.2022, it was observed by the appellate authority that FIR No.20 dated 15.09.2022 has been registered against partners of the appellant-mill but the same is neither related to embezzlement of paddy, any fraud related to custom milling of paddy nor has an FIR been registered by any State procurement agency. Based on the opinion given by legal retainers, conclusion was drawn that Clause 2 (r) of CMP 2022-2023 cannot be invoked in the present case. Consequently, the appeal was allowed and the order of DAC declining to allot paddy to the petitioners herein was set aside.

4. After the order of DAC stood set aside, petitioners herein entered into agreements with the procurement agencies. However, after the

agreements were entered, petitioners have been verbally informed not to mill paddy that had been stored in their mill premises and to stop further allocation of paddy to them. Hence, this writ petition.

5. At this stage, it is worthwhile to mention here that on 18.11.2022 when this matter came up for hearing before this Court along with other connected matters, learned counsel appearing for the respondent-State had submitted that the Principal Secretary was already seized of similar matters regarding cancellation of allotment to millers, who had been nominated as accused in the FIR and therefore, the petitioners herein were directed to put in appearance before the Principal Secretary, who after hearing them declined to give any relief. The said order is under challenge as well.

6. Mr. Gaurav Chopra, learned Senior Counsel assisted by Ms. Himani Jamwal, Advocate appearing for the petitioners would urge that action of the respondents in stopping petitioners-mills from carrying on the work of milling paddy, pursuant to the agreements having been entered into with the procurement agencies, is violative of the principles as enshrined under Article 21 of the Constitution of India and directly affects their right to earn livelihood. It is further urged that the primary ground for stopping the petitioners-mills from milling paddy and further allocation of paddy is on account of the FIR that has been registered against some of the partners of the petitioners-mills. It is also urged that FIR has been registered i.e. FIR No.20 dated 15.09.2022 at Faridkot, which pertains to tenders of loading-unloading/labour/labour cartage, which in fact has nothing to do with the custom milling policy or any of its clauses, since as on date, none of the parties stand arrested and in fact, have been allowed anticipatory bails. It is

submitted that as on date, procurement agencies itself have not declared petitioners as defaulters nor have instituted any criminal/civil proceedings nor invoked an arbitration clause against the petitioners on account of non-fulfilling any terms and conditions of the CMP of previous years. It is further submitted that the respondent-State was well aware of the pendency of the FIR in question when the agreement was executed with the procurement agencies and paddy was allocated. The issue with respect to the lodging of the FIR was dealt with by the Appellate Authority, who clearly opined that as on date, there is no legal dispute pending between the parties pertaining to any clause of the CMP of the previous years. The respondent-State has chosen not to file an appeal against the order passed by the Appellate Authority and therefore, the same has attained finality.

7. It is argued that the petitioners-mills were verbally stopped from milling paddy and as on date, there is no show cause notice issued to the petitioners herein. In fact, a reading of Clause 6 (f) (ix) of CMP 2022-2023 would reflect that an allotment once made shall not be ordinarily changed. In case, such change is to be made, there has to be prior approval of the DFS sought by DAC, explaining the reasons and circumstances leading to such change. It is only if the concerned agency finds some discrepancy in allotment of a rice mill subsequent to allotment of such rice mill, it shall make a reference. As on date, no grievance has been raised by any of the concerned agencies namely the procurement agencies to DAC regarding allotment of petitioners-mills to procurement agencies. It is further argued that the Principal Secretary has gone beyond his brief in looking into the issue by giving an opinion that the petitioners-firms deserve to be blacklisted, while urging that Principal Secretary does not have

jurisdiction to review the order passed by the 1st Appellate Authority, since there was no appeal pending before it and terms and condition of CMP do not permit any such review.

8. Per contra, Mr. Gurminder Singh, learned Senior Counsel assisted by Mr. Jatinder Singh Gill, Advocate, appearing for the respondents would urge that terms and conditions of CMP 2022-2023 are stringent and the policy is to ensure that there is no loss caused to the State. It is further submitted that legal dispute has arisen between the parties and therefore, the respondent-State is well within its right to stop the petitioners-mills from milling paddy. He relied upon Clause 7 (vii) and (viii) to vehemently argue that a miller shall be considered as a defaulter, if a police case is pending against it on account of embezzlement, while further submitting that Clause 7 (vii) holds that if family member of the owner/partner/trustee/member/director/lessor/lessee of a mill is defaulter of any of the agencies in the previous year(s), such miller shall be treated as a defaulter miller. It is argued that petitioners herein cannot raise a dispute that there was no show cause notice or that the order of Appellate Authority dated 18.10.2022 cannot be reviewed, since there is a fresh ground for stopping the petitioners from milling paddy and for further allocation of paddy. It is further argued that with arrest of Krishan Lal and Anil Kumar Jain in FIR No.11 dated 16.08.2022 registered at Police Station, Vigilance Bureau, Ludhiana, there is apprehension that the Vigilance Department would take action against the millers and therefore, it cannot be argued that the Principal Secretary has reviewed the order of the Appellate Authority.

9. I have heard learned counsel for the parties and have gone through the pleadings of the case. The facts are not in dispute to the extent

that FIR No.20 dated 15.09.2022 has been registered relating to tenders of loading-unloading/labour/labour cartage. It is this FIR, which initially became ground for rejection of the applications of the petitioners for allotment of procurement agency but the said order of rejection was set aside by the 1st Appellate Authority after due consideration of various clauses of CMP 2022-2023. Subsequent to the appeal having been allowed, agreements were entered into with the procurement agencies and paddy was allocated to the petitioners to start process of milling, however, they were verbally stopped from milling the paddy and further allocation of paddy stalled. The ground for stopping petitioners from milling paddy was that one Krishan Lal as well as Anil Kumar Jain were arrested in relation to FIRs that were registered by the Vigilance Bureau.

10. The law is well settled to the effect that every contract is to be considered with reference to its objects and the contract has to be read as a whole. The Custom Milling Policy 2022-2023 envisages and lays down conditions regarding the eligibility of a miller to be considered for allotment and allocation of paddy, when a miller will be considered a defaulter and the events leading to even family member being declared ineligible for allotment and allocation of paddy for CMR. The policy has to be read as a whole while interpreting the terms and conditions of the policy. The intent behind the clauses is to be looked into and not to be read in isolation.

11. For proper and correct appreciation of the issue at hand, it would be relevant to note down relevant clauses of CMP 2022-2023. The term ‘defaulter’ has been defined under Clause 2 (i) whereas Clause 2 (r) defines what is ‘Legal Dispute’. Clause 3 pertains to ‘Registration’. A mill will necessarily have to be registered with the department with a condition

that mere fact of registration will not confer any right of allotment under clauses 4, 5 and 6 of the policy. Clause 3 (ii) pertains to the eligibility for registration and any person, whose character, conduct or behaviour has been declared as detrimental to the interest of any State in India or any of its friendly countries will be considered ineligible, as specified in Clause 3 (ii) (B). Clause 4 enumerates the 'Criteria for allotment to State Procurement Agencies' whereas Clause 6 sets out 'Procedure for Allotment to an Agency' and Clause 7 enumerates 'Events of Default'. The relevant clauses are reproduced herein below for ready reference:-

> *"2(i) '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.*
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> *(r) 'Legal Dispute' means the institution, commencement or pendency, whether by way of a notice or proceedings, of any dispute arising out of or in relation to custom milling paddy under this or any previous custom milling policy and includes any litigation, arbitration, criminal proceedings, etc. whether pending before a court, tribunal or other forum, between the miller and the state and/or the procurement agencies and PAFC.*
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> *3(ii) (B) The character, conduct or behaviour (in case of the individuals connected with such person seeking registration) and the conduct of the business affairs (in case of a legal entity*

seeking registration) has been declared as detrimental to the interest of any of State in India or any of its friendly countries.

6 (f)(ix) An allotment once made shall not be ordinarily changed. However, where such change is required, prior approval of DFS would be sought by the DAC, explaining the reasons and circumstances leading to such change.

(x) If any of the concerned agencies finds some discrepancy in allotment of a rice mill subsequent to allotment of such rice mill, it shall make a reference immediately to DAC for its consideration on https://anaajkharid.in portal. The DAC shall within a period of 3 days, decide such reference by passing a detailed speaking order. In case, the DAC fails to consider review of its order the reference will be automatically raised to the level of office of DFS on https://anaajkharid.in. In case the agency is not satisfied by the review orders of DAC, it can make a reference to the office of DFS.

In case the DAC declines the review of its orders, the state level allotment committee in the office of DFS shall examine the reasons of such decline.

7 (vii) If a family member(s) of the Owner/Partner(s)/Trustee(s)/ Member(s)/Director/Lessor/Lessee of a mill is/are defaulters of any of the agencies in the previous year(s), such miller shall also be treated as a defaulter miller. Provided that if such a family member is not jointly occupying and is not having equal access to all areas of a dwelling unit and is functioning as an independent economic unit, such a member shall not be treated as family member. The onus of proof in this regard, to the *satisfaction of the DFS (whose decision shall be final) will lie on the family member(s) of the Owner/Partner(s)/Trustee(s)/Member(s) of defaulter mill in question as well as the miller seeking allocation of agency.*

(viii) 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 dues of any Procurement Agency including PAFC and/or declared blacklisted by the Department/FCI. However, if the miller clears the default of the concerned agency along with interest at the rates for the relevant year(s), as decided by the Government from time to time and there is no pending recovery towards miller, he may be considered for allotment without prejudice to the outcome of the Criminal Case/FIR/Court Case/Arbitration Case pending against him. Provided that such defaulter mills would furnish a NOC from all Procurement Agencies and PAFC, before registration and allotment. Provided further that those mills which are under the currency of blacklisting shall not be considered eligible for registration/allotment."

12. The first and foremost issue that needs to be settled is whether the petitioners-mills are defaulters. In terms of definition of 'defaulter' under Clause 2 (i), the 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 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), shall be declared as a defaulter. There is nothing on record to establish that the petitioners herein had not milled the paddy allocated to them and delivered CMR in the previous years to the central pool of FCI, nor is there any such document available to establish that accounts with any of the procurement agencies are not settled. Since no such default has been pointed out by the respondents, it can safely be held that the petitioners herein are not defaulters under Clause 2(i) of CMP 2022-2023.

13. Further reliance by learned senior counsel appearing for the respondents upon Clauses 7 (vii) and (viii) are misconceived to hold that petitioners herein are defaulters. On a reading of entire Clause 7, and not in isolation, it can be culled out 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 year(s)*** and/or is in breach/violation/non-compliance of the provisions enumerated in CMP 2022-2023. Much stress has been laid by learned senior counsel for the respondents that by virtue of Clause 7 (vii) and (viii), the petitioners-mills are considered as defaulters, which would justify the action of the respondents in stopping them from milling the paddy as stored at their mill premises or for further allocation. A conjoint reading of Clause 7 (vii) and (viii) would establish that if a family member(s) of the owner/partner(s)/trustee(s)/member(s)/director/ lessor/lessee of a mill are defaulters of any of the agencies in the previous year(s), such mill shall be considered as a defaulter mill and the miller shall also be considered as defaulter, if a police case is pending against him on account of embezzlement. It is argued that the minute FIR No.20 dated 15.09.2022 was registered, the persons nominated therein were either partners or family

members of the millers nominated as accused and therefore, based on the said clauses, petitioners herein would not be entitled to continue with work of milling paddy. In the opinion of the Court, as none of the petitioners-mills have been declared as defaulter under Clause 2 (i), would they be considered as defaulters under Clause 7 (vii) & (viii) and the answer is in negative. As stated above, clauses of CMP 2022-2023 cannot be read in isolation. A complete reading of the two clauses, as has already been interpreted by the Appellate Authority, is that a miller shall be considered as a defaulter, if a police case has been registered against him or he is involved in a court case, arbitration case either on account of embezzlement or on account of non-delivery of rice or on account of non-clearance of any dues of any procurement agency including PAFC or declared blacklisted by the Department/FCI. As on date, no procurement agencies nor department or FCI have raised a dispute against the petitioners-mills herein. Merely because a complaint case has been registered against the millers, such complaint would not be a ground to declare the petitioners-mills defaulter under Clause 7 (viii) of CMP 2022-2023. A further reading of Clause 7 (viii) would reflect that in case a miller clears the default with the concerned agency along with interest at the rates for the relevant year(s) and there is no recovery pending towards the miller, he may be considered for allotment without prejudice to the outcome of the criminal case/FIR/court case/arbitration case pending against him. Again, for the sake of reiteration and emphasis, there are no dues pending against the petitioners-mills by any of the procurement agencies. The clauses referred to above clearly enumerate that if any default is rectified and there is no pending recovery against a miller by a procurement agency, even if he is facing a criminal case/FIR, he may be considered for allotment without prejudice to the outcome of the criminal case. Therefore, this Court will conclude that reliance on Clause 7 (viii) is misplaced in so far as holding the petitioners-millers to be defaulters. Clause 7 (vii) again would be of no help to the respondents herein because none of the family members have been declared defaulters on account of any pending dues to the procurement agencies in any of the previous year(s), as rightfully held by the 1st Appellate Authority. Mere pendency of a criminal case would be no justification to deny allotment.

14. The senior counsel appearing for the respondents by relying upon Clause 6 (x) argues that if the concerned agency finds some discrepancy in allotment of rice mill subsequent to allotment of rice mill, it shall make a reference immediately to the DAC for its consideration. Again, no strength can be drawn from the said clause since it is only the concerned agency, meaning thereby a procurement agency, which can raise a reference regarding allotment of a rice mill to it. It is not within the purview of the State, who has framed the policy to take any benefit from the said clause. Moreover allotment to the agency has been done and so has paddy been allocated.

15. The other argument raised for denying allotment is that there is legal dispute pending between the parties. In the opinion of the court, there is no legal dispute pending between it and the State or any other procurement agency. As on date, no legal proceedings have been initiated or are pending either in arbitration or criminal proceedings in the court of law, Tribunal or any other forum between the petitioner and the State/procurement agency *arising out of or in relation to custom milling*

under this or any other previous custom milling policies. Therefore, since the petitioner-mill has not been declared as a defaulter, mere registration of FIR against any partner(s) of the petitioners-mills cannot be a ground to reject allocation of paddy. The allegations in the FIR are related to tenders of loading-unloading/labour/labour cartage, which cannot be held to be proceedings arising out of any Custom Milling Policy. Those are independent proceedings, devoid of any relevance with Custom Milling Policy of current/previous years, therefore, the argument sought to be raised that once there is a legal dispute between the miller and procurement agency/State, allotment of paddy can be cancelled is wholly unjustified. The same view was taken by the Appellate Authority, while setting aside the order as passed by the District Allotment Committee refusing to recommend an agreement being entered into between the miller and the procurement agency. At this juncture, it is also worthwhile to note that orders of the Appellate Authority dated 18.10.2022 are still in subsistence and they are not challenged.

16. As regards argument raised by learned senior counsel for the petitioners that the Principal Secretary could not have gone into the question regarding cancellation of allotment, this Court is of the opinion that it is under order of this Court that the Principal Secretary looked into the issue and passed the order, therefore, the said argument is not sustainable. However, the Principal Secretary was only directed to look into the issue whether the allotment was justifiably cancelled, he could not have gone into forming an opinion that conduct of the petitioners was such that it invited blacklisting. Therefore, the said observation is set aside.

17. In the opinion of the Court, the entire kharif policy is to ensure that work of milling paddy is given to eligible persons, who have not been declared defaulters in previous years for not complying with the provisions as stipulated in any of the policies for the previous years and/or are facing court cases. After the agreement is entered, it is Managing Director of the procurement agency, who has to initiate action, which has not been done in the present case. However, this argument is not available to learned Senior Counsel appearing for the petitioners, since any agreement that is entered into, is to be read in conjunction with Custom Milling Policy.

18. Consequently, the order dated 23.11.2022 is set aside and the writ petition stands allowed. The respondents are directed to allow the petitioners-mills to continue with the work of milling paddy as per the agreements entered into by them with procurement agencies.

(JAISHREE THAKUR)
JUDGE

December 08, 2022
Pankaj*

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