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

CWP No.26466 of 2022 (O&M)
Reserved on: 23.11.2022
Date of Decision:05.12.2022

Shree Krishna Rice Mills ...Petitioner

versus

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.

Ms. Deepali Puri, Addl. A.G., Punjab.

Mr. Gurminder Singh, Senior Advocate with
Mr. Jatinder Singh Gill, Advocate
for the respondents.

Mr. Abhinav Gupta, Advocate
for PUNGRAIN.

-.-

JAISHREE THAKUR J.

1. The present writ petition has been filed under Article 226/227 of the Constitution of India seeking to challenge orders dated 09.11.2022 (P-9) and 11.11.2022 (P-10) passed by the District Allotment Committee and the Appellate Authority respectively, cancelling the allotment of paddy to the petitioner-mill.

2. In brief, the facts as pleaded are that Shree Krishna Rice Mills is a mill run by the sole proprietor Anil Kumar Jain. The petitioner-mill is engaged in the business of milling paddy and had applied under the Punjab Custom Milling Policy for Kharif 2022-2023 (for short CMP 2022-2023) for allotment of paddy. The District Allotment Committee considered the case of the petitioner for allotment of paddy and decided that the petitioner-mill

could not be recommended for allotment of paddy for milling during KMS 2022-2023 on account of the fact Anil Kumar Jain, being proprietor of the petitioner-mill, along with 8 other millers had been nominated by the Vigilance Bureau in FIR No.11 dated 16.08.2022 registered under Sections 409, 420, 468, 471, 120-B IPC and Sections 7, 8, 12, 13 (2) of the Prevention of Corruption Act, 1988 alleging fake/bogus billing of paddy and transportation, labour and cartage of food grains.

3. Aggrieved against the said decision of the District Allotment Committee, the matter was taken up in appeal by the petitioner-mill along with other millers. The Appellate Authority looked into the issue and came to the conclusion that reasoning of the District Allotment Committee rejecting the allotment of paddy was unjustified, as the conduct or any act of proprietor did not seem to be detrimental to the said procurement agency or harmful for the financial interest of the State. It was also held that the mill could not be declared as a defaulter. This reasoning was given after appreciation of Clauses 7 and 8(i) of the CMP 2022-2023. Opinion of the legal retainer was also sought, who gave opinion in favour of the miller. Vide order dated 22.10.2022, the Appellate Authority set aside the order as passed by the District Allotment Committee.

4. It is thereafter that an agreement was entered into on 01.11.2022 between PUNSUP and the petitioner-mill/Shree Krishna Rice Mills. After entering into the aforesaid agreement, the petitioner-mill was delivered paddy weighing 696 MT by PUNSUP for the purpose of milling. Sh. Anil Kumar Jain was arrested on 03.11.2022 and on his arrest, the District Allotment Committee stalled further allotment of paddy and made a correspondence in this regard. The petitioner-mill replied to the said

communication and approached the DAC against the cancellation. The District Allotment Committee vide order dated 09.11.2022 formally cancelled the allotment of paddy and the appeal filed against the said decision was rejected, consequent to which the instant writ petition has been filed.

5. The matter was taken up for hearing by this Court on 18.11.2022 and since the counsel for the respondents submitted that the Principal Secretary was seized of the matter, the petitioners were directed to appear before him. The parties appeared and the order has been passed on 23.11.2022 again rejecting the prayer of the petitioner-mill to set aside the order of cancellation. The order of passed by the Principal Secretary upholding cancellation of allotment is taken on record.

6. Mr. Chetan Mittal, learned Senior Counsel assisted by Mr. Kunal Mulwani, Advocate appearing for the petitioner would contend that initially when FIR No.11 dated 16.08.2022 was registered by the Department of Vigilance against the petitioner and other millers, the District Allotment Committee did not recommend an agreement to be entered into between the miller and the procurement agency. An appeal was filed before the Director, Food, Civil Supplies and Consumer Affairs, Punjab, who obtained legal opinion and after considering various clauses of CMP 2022-2023 came to the conclusion that the appeal deserves to be allowed, as conduct of the petitioner was not detrimental to any of the State procurement agencies. It is argued that there is wrong interpretation of Clause 8(f) of the CMP 2022-2023 while passing the impugned orders.

7. It is further submitted that the impugned orders have ignored the fact that Smt Rupali Jain is a Manager of the Mill and competent to look after the

day to day business of the propertiorship firm. Learned Senior Counsel would rely upon the SPA issued by Anil Kumar Jain, which duly authorized Rupali Jain to run and manage the mill as he is not able to do so for personal reasons. He would rely upon definition of 'Miller' as defined under Section 2 (w) of the said policy. It is argued that at the very outset, when the District Allotment Committee had refused allotment, the Appellate Authority had gone into the issue as to whether the denial of allotment of paddy was justified or not and the order of the District Allotment Committee were set aside. It is further argued that mere arrest of Anil Kumar Jain would not disentitle the petitioner-mill from allotment of paddy, especially when the petitioner-mill is capable of performing its part of the contract in delivering paddy on time.

8. Per contra, Mr. Gurminder Singh, learned Senior Counsel assisted by Mr. Jatinder Singh Gill, Advocate appearing for the respondents vehemently opposed the writ petition by contending that the matter has been considered at various levels and that a conclusion has been arrived that Clause 8 (f) of the CMP 2022-2023 does not permit any attorney holder to run a mill, who is not a partner or shareholder thereof. It is argued that the Special Power of Attorney as issued in favour of Rupali Jain is not in consonance with Clause 8 (f) of the CMP 2022-2023 since a special power of attorney can be given only to a shareholder or partner of a rice mill and not to any other person. It is further argued that Clause 2 (r) of the said policy defines a 'legal dispute' and in case any dispute has arisen, then the mill would be disentitled for allotment of paddy. Further, as per the guidelines of evaluation enunciated in sub-clause (f) of Clause 6 i.e. procedure for allotment to an agency, if the District Allotment Committee comes to a conclusion that there

is some discrepancy for allotment to a rice mill, a reference can be made to DAC for consideration. In the present case, an issue has been raised by PUNSUP itself regarding arrest of Anil Kumar Jain and therefore, allotment stands cancelled to protect interest of the State, as charges levelled against him are serious in nature. It is also argued that in the absence of Anil Kumar Jain the sole proprietor, the mill would become non functional and huge loss would be caused to the State exchequer.

9. I have heard learned counsel for the parties and have perused the paper book.

10. Learned Senior Counsel for the respondents has taken strength from Clause 6 of CMP 2022-2023 to argue that once the sole proprietor stands arrested, the allotment can be cancelled and paddy should be allotted to another miller so as to ensure that the paddy is milled in time and delivered to the central pool of Food Corporation of India. The said clause allows reference to be made by procurement agencies to DAC for its consideration in case they find some discrepancy in the allotment of a rice mill subsequent to such allotment. For the sake of repetition, the allotment was done with the knowledge that Anil Kumar Jain, proprietor of the petitioner-mill, has been nominated as accused in an FIR. On his arrest, the allotment of paddy has been cancelled on the ground that in his absence, no one is available to run the petitioner-mill and loss will be caused to the State Exchequer, since the power of attorney as issued by the proprietor is not acceptable as it is in violation of Clause 8(f) of the CMP 2022-2023.

11. The Custom Milling Policy for KMS 2022-2023 is a comprehensive document wherein, terms *'defaulter', 'miller' and 'legal dispute'* have been specifically defined in Clauses 2 (i), 2 (r) and 2 (w) respectively. Clause 6 of

the aforesaid policy specifies the procedure for allotment to an agency and Clause 8 details about who can enter into an agreement between the procurement agency and the miller. The relevant clauses relied upon the counsel appearing for the parties are reproduced as under:-

> *"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.*
>
> *(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.*
>
> *(w) 'Miller' means the person registered under clause 3 of this policy and includes the Owner(s) / Partner(s)/Manager(s)/Trustee(s)/Lessor(s)/ Lessee(s) of a business entity and includes any person who manage(s) and has an ultimate control over all the affairs of such 'business*

entity' and/or is responsible for day to day affairs/operations of the mill/rice mill in question.

6 (f)(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.

8 (b) In case of sole proprietorship mills, the agreement shall be signed necessarily by the Owner/Proprietor. In case of Partnership firms, Companies, Trusts, Societies agreement shall be signed by all the Partners/Directors (in case of companies)/Members (in case of Trust or Society), as the case may be, or any one of them duly authorized by all Partners/Directors/Members/Trustees. Both the miller and DM of the concerned agency will sign on each page of the agreement in the manner, as prescribed by law. The signature of all the owners/proprietors/

Partners/Directors/Members/Trustees (as the case may be) of all the rice mills shall be got verified from his banker by the concerned DM. The concerned DM shall ensure that the signature put on agreement match with the signature verified by the banker.

8(f) In case a mill is run by an Attorney holder, the original owners shall also be responsible for all the obligations/liabilities under the agreement. The Power of Attorney to run a rice mill can be given only to the shareholder or partner of a rice mill and not to any other person. Transfer of Power of Attorney to any person other than shareholder or partner shall tantamount to fraud and shall invite penal action as per law. The DM of the concerned agency shall ensure the same. No GPA shall be entertained for signing the agreement."

12. The facts are not in dispute to the extent that the petitioner mill was allotted paddy as an agreement dated 01.11.2022 came to be executed between the petitioner-mill and the procurement agency. This agreement came into effect after the Appellate Authority set aside the order of the District Allotment Committee, which refused to allot paddy to the petitioner-mill on the ground that FIR No.11 dated 16.08.2022 was registered against the miller. The Appellate Authority after having received legal opinion held that proceedings as initiated under the FIR would have no bearing on the allotment and set aside the order of the District Allotment Committee. It is thereafter that the agreement was entered into but the allotment of paddy is now sought to be cancelled on arrest of Anil Kumar Jain. Anil Kumar Jain

apprehending his arrest, as a precautionary measure, has executed a Special Power of Attorney in favour of his wife Rupali Jain.

13. As per CMP 2022-2023, a defaulter mill is not entitled to allocation of any paddy. The term *'defaulter'* stands defined in Clause 2 (i), which reads that 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 of the previous years and/or who fails to settle his accounts with any of the procurement agencies and PAFC of the previous years and/or is declared as a defaulter as such under the relevant clauses of the policy, would be termed as defaulter. In the event of being a defaulter, Clause 7 would prohibit allocation of paddy.

14. Learned counsel appearing on behalf of the respondent-State has not been able to point out that there is violation of any sub-clause of Clause 7 of the Policy and that petitioner-mill failed to comply with terms and conditions of any agreement entered into in the previous years. Moreover, there is no legal dispute pending between it and the State and any other procurement agency. As on date, no legal proceedings have been initiated or pending either in arbitration or criminal proceedings in the court of law, Tribunal or any other forum between the petitioner-mill and the State/procurement agency *arising out of or in relation to custom milling* under this or any other previous custom milling policies. The allegations in the FIR are that the sole proprietor of the petitioner-mill along with other millers was involved in fake/bogus billing of paddy and transportation, labour and 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 order of the Appellate Authority dated 22.10.2022 is still in subsistence and is not challenged in further appeal.

15. Learned Senior Counsel for the respondents has laid great emphasis on reason for cancellation, that once the proprietor has been arrested, there is no competent person to run the mill and huge loss would be caused to State Exchequer since paddy has to be milled and delivered to the central pool of FCI. It is argued that power of attorney as issued is not valid and acceptable. A reading of Clause 8 (f) of the CMP 2022-2023, clearly specifies that in case a mill is run by an attorney holder, the original owner shall also be responsible for all obligations/liabilities under the agreement. The power of attorney for the purpose of running a rice mill can be given only to the shareholder or partner of a rice mill and not *to any other person*. The *transfer of power* to attorney to any person other than the shareholder or partner shall tantamount to fraud and shall invite penal action. The Special Power of Attorney executed by Anil Kumar Jain in favour of his wife Rupali Jain on his arrest, has not found acceptance with the authorities concerned, as Rupali Jain is none of the above i.e. neither a shareholder nor partner of the petitioner-mill, therefore the power of attorney is not in consonance with the clause referred to above and there is no infirmity in the order passed in this regard.

16. As per Clause 2 (w) of the CMP, *"Miller"* means Owner /Partner/ Manager/ Trustee / Lessor /Lessee of a business entity and includes any person who manage(s) and has an ultimate control over all the affairs of such 'business entity' and/or is responsible for day-to-day affairs/operations of the mill/rice mill in question. In other words, a person without being an owner who wears the mantel of being a Manager and is controlling or responsible for day-to-day affairs and operations of a mill, will be deemed to be a *"Miller"* for all intents and purposes. In case of sole proprietorship, managed and run from out of the State, District or Country, where it is not possible for the sole proprietor to be present on all occasions, a Manager is duly authorized to run day-to-day affairs and operation of mill. It cannot be said that all operations would cease in case the owner/proprietor is not available on the premises. The impugned order as passed by the District Allotment Committee and that of the Appellate Authority upholding the order of cancellation of allotment have failed to take into consideration that Rupali Jain is the Manager of the petitioner-mill. She has been shown as Manager of Shree Krishna Rice Mills as per books of Employees' State Insurance Corporation and thus, falls within the four corners of definition "Miller" which includes even a person who manage(s) and has an ultimate control over all the affairs of such "business entity" and/or is responsible for day to day affairs/operations of the mill/rice mill in question. Therefore, being a Manager of the petitioner-mill, it can be said that Rupali Jain has control over the affairs of Shree Krishna Rice Mills. She would have the competence to ensure that the paddy is milled and delivered as per the agreement entered into.

17. The only concern of the procurement agency is that the paddy is milled and CMR delivered as per the terms and conditions of agreement/CMP, the paddy being a perishable item, but procurement agency/State cannot in anticipation reject allocation of further paddy on the premise that since the proprietor has been arrested, the mill would not be able to perform its part of contract. Default can be committed by any mill whether the owner/proprietor is available on the premises or not and in that eventuality, there are sufficient penal provisions available in CMP 2022-2023 to take action against defaulters. In the instant case, there is already a Manager appointed to run the mill and as per the definition 2 (w), a Manager is also defined to be a Miller. So, cancellation on the ground that there is no competent person to run the mill would be factually incorrect.

18. In view of the aforesaid finding, the writ petition is allowed and the impugned orders dated 09.11.2022, 11.11.2022 and 23.11.2022 (passed during the pendency of writ petition in pursuance to order passed by this Court) are set aside. The respondents are directed to allocate paddy to the petitioners-mill as per its capacity in terms of agreement entered by the petitioners-mill and the procurement agency forthwith. Needless to say if the terms and conditions of allotment/agreement are not complied with, it is open for the authorities to cancel the same after giving due opportunity of hearing to the petitioner-mill.

(JAISHREE THAKUR)
JUDGE

December 05, 2022
Pankaj*

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