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

CWP No.26467 of 2022(O&M)
Reserved on: 23.11.2022
Date of Decision:05.12.2022

M/s Kanav Rice 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.

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

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

Mr. Mehardeep Singh, Advocate
for PUNGRAIN.

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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 are that M/s Kanav Rice Mills is a mill run by HUF, of which Anil Kumar Jain is the Karta. The petitioner-mill is engaged in the business of milling paddy and had applied under the Punjab Custom Milling Policy for Kharif Marketing Season 2022-2023 (for short CMP 2022-2023) for allotment of paddy. The District Allotment Committee considered the case of the petitioner-mill 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 that Anil Kumar Jain, being Karta of the HUF running the petitioner-mill, along with 8 other millers had been nominated by the Punjab 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 foodgrains.

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 the appellant (petitioner herein) 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 petitioner-mill could not be declared as a defaulter. This reasoning was given after appreciation of Clauses 7, 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 on 01.11.2022, an agreement was entered into between PUNSUP and the petitioner-M/s Kanav Rice Mills. After entering into the aforesaid agreement, the petitioner-mill was delivered paddy weighing 324 MT by PUNSUP for the purpose of milling. 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 since the Principal Secretary, Department of Food and Civil, Supplies and Consumer Affairs Punjab was seized of the matter, the petitioner-mill should appear before him. Accordingly, 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 as passed by the Principal Secretary has been taken on record.

6. Mr. Chetan Mittal, learned Senior Counsel assisted by Mr. Kunal Mulwani, Advocate appearing for the petitioner-mill would contend that initially when FIR No.11 dated 16.08.2022 was registered by the Department of Vigilance against Anil Kumar Jain and other millers, the District Allotment Committee did not recommend an agreement to be entered into between the petitioner-mill 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 came to the conclusion that the appeal deserves to be allowed, as conduct of the appellant, there was not detrimental to any of the State procurement agencies. It is argued that there is wrong interpretation of Clause 8 of the CMP 2022-2023 while passing the impugned orders, as the same has been passed without taking into account the fact that petitioner-mill is part of HUF properties and Anil Kumar Jain, being Karta, had duly executed a Special

Power of Attorney (SPA) as well as had given an authorization letter in favour of his wife, who is also a coparcener. The said SPA, which has been issued to run a mill and sign all documents pertaining to the functioning of the mill, cannot be a ground for cancellation of allotment of paddy to the petitioner-mill. The entire basis of cancelling the allotment is that Anil Kumar Jain stands arrested on 03.11.2022 and the SPA issued in favour of Rupali Jain is not appropriate, therefore, the allotment should be cancelled.

7. Learned Senior Counsel appearing for the petitioner-mill would rely upon the SPA executed by Anil Kumar Jain, which duly authorizes Rupali Jain to run and manage the petitioner-mill as he is not able to do so for personal reasons. He argued that there is a wrong interpretation to Clause 8 (f) of CMP 2022-2023. 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 impugned orders of the District Allotment Committee was 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 at that Clause 8 (f) of 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 argued that the same has been issued by Anil Kumar Jain in his individual capacity and not as a Karta of HUF in favour of another coparcener, while submitting that since Rupali Jain is not partner or shareholder in M/s Kanav Rice Mills, the power of attorney could not have been issued in her favour to manage the petitioner-mill. 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 had 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.

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 Karta of HUF stands arrested, the allotment can be cancelled and paddy is to 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 it finds some discrepancy in the allotment of a rice mill subsequent to such allotment. For the sake of repetition, the allotment was done well knowing

that the Karta of the HUF running the petitioner-mill has been nominated as an accused in an FIR. It is only after arrest of Karta, Anil Kumar Jain, that the allotment of paddy has been cancelled since the power of attorney as issued by the Karta 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.*
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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.

(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 an FIR No.11 dated 16.08.2022 was registered against the miller. The Appellate Authority after having obtained legal opinion held that proceedings as initiated under the FIR would have no bearing on the allotment and accordingly 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, had executed a Special Power of Attorney in favour of his wife Rupali Jain and also made out an authorisation letter in his capacity as a Karta of HUF.

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. 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 or 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 and the State/procurement agency *arising out of or in relation to custom milling* under this or any other previous custom milling policy. Therefore, since the petitioner-mill has not been declared as a defaulter, mere registration of FIR against the Karta of HUF/Proprietor cannot be a ground to reject allocation of paddy. The allegations in the FIR are that Anil Kumar Jain 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 appearing for the respondents has laid great emphasis on the reason for cancellation, that once the Karta has been arrested, there is no competent person to run the petitioner-mill and huge loss would be caused to State Exchequer since paddy has to be milled and delivered into central pool of FCI. It is argued that the special power of attorney as issued is not valid and acceptable in terms of Clause 8(f) of CMP 2022-2023. 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*. 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 apprehending his arrest, has not found acceptance with the authorities concerned.

16. The pith and substance of the argument raised by learned Senior Counsel appearing for the respondents is that Rupali Jain is not entitled to run the petitioner-mill either as a Special Power of Attorney or as a Coparcener. The first part of Clause 8(f) of the policy recognizes that a mill can be run by an attorney. It is the second part of the clause, which says that power of attorney to run a mill can be given only to the shareholder or partner of a rice mill and not to any other person. The Special Power of Attorney has been executed by Anil Kumar Jain as a Proprietor of the mill, which is an HUF, in favour of his wife, who is neither a shareholder nor partner of the petitioner-mill and therefore, the Special Power of Attorney issued in her favour would not clothe her with any capacity to run the petitioner-mill under the CMP of 2022-2023. A bar has been imposed under Clause 8(f) of CMP 2022-2023 that 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. Admittedly, Rupali Jain is neither a shareholder nor a partner of petitioner-mill and therefore, the power of attorney executed in her favour cannot be said to be in conformity with Clause 8 (f) of CMP 2022-2023,

which can give her authority to run the mill in the absence of Anil Kumar Jain.

17. The authorization letter, which has been taken on record and marked as ‘X’, which was also available before the Appellate Authority and the Principal Secretary, would reflect that Rupali Jain is a coparcener and has been authorized to act and sign all agreements, applications and documents and do all other acts needed for the business of M/s Kanav Rice Mills and that her actions would be binding on all. The said authorization letter has been issued by Anil Kumar Jain as a Karta. In the opinion of the court, the authorization letter is itself defective, as it would reflect that Rupali Jain is a coparcener whereas the petitioner-mill is an HUF. Rupali Jain is reflected as a coparcener of HUF, of which Anil Kumar Jain is a Karta. It is settled position of law that a wife cannot be a coparcener in HUF and therefore, has no legal qualification to step into the shoes of Karta to run the mill that too on the basis of authorization letter, which has been issued to her in the capacity of a coparcener, which is unknown to law. There is no provision in CMP 2022-2023 that an owner/proprietor can authorize any person to run the mill only by issuing an authorization letter.

18. The cancellation of allotment has been done keeping in view the larger picture of securing the paddy which is a national asset. The authorities concerned came to note that the Miller/Karta had been arrested and was in judicial custody in FIR No 11 dated 16.08.2022 and that would tanatamount to no person being available to manage/control the mill and regulate the supply of CMR. No reason is forthcoming to differ with the view taken by the authorities.

19. In view of the aforesaid findings, the instant petition stands dismissed, being devoid of merit. Orders dated 09.11.2022, 11.11.2022 and 23.11.2022 are upheld.

(JAISHREE THAKUR)
JUDGE

December 05, 2022
Pankaj*

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