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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-3746-2023
Date of Decision:14.09.2023**

M/S DASHMESH RICE MILLS .... Petitioner

Versus

STATE OF PUNJAB AND OTHERS ..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Daman Dhir, Advocate
for the petitioner.

Mr. Deepanjay Sharma, DAG, Punjab.

Mr. K.K. Gupta, Advocate
for respondent No.5.

Mr. Deepak Gupta, Advocate
for respondent No.6.

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JAGMOHAN BANSAL, J. (Oral)

1. Mr. Deepak Gupta, Advocate has put in appearance on behalf of respondent No.6 and filed his power of attorney. The same is taken on record. Registry is directed to tag the same the appropriate place.

2. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of order dated 20.12.2022 (Annexure P-7) whereby respondents have denied to allot paddy to the petitioner on the ground that petitioner falls within definition of 'defaulter' contemplated by Customs Milling Policy.

3. The petitioner is a partnership firm consisting of two

partners namely Gurmeet Singh and Harmandeep Singh. During the year 1994-95, there were three partners of the aforesaid firm. The third partner was Barinder Kaur wife of Gurmeet Singh. The petitioner instead of itself carrying out job work for the State, decided to lease out its premises to M/s Kumar Trading Company. Barinder Kaur who was partner of the petitioner was also partner of Kumar Trading Company. Kumar Trading Company defaulted in supply of CMR. Accordingly, Kumar Trading Company was declared defaulter and FCI initiated proceedings against Kumar Trading Company. An Arbitrator was appointed who passed award in favour of FCI. On the one hand, FCI initiated proceedings against Kumar Trading Company and on the other hand, State Agencies continued to allot paddy to Dashmesh Rice Mills, though, as per Customs Milling Policy, petitioner as well as Kumar Trading Company were defaulter and could not be allotted paddy. It is apt to mention here that as per procedure followed by the respondents, paddy is allotted by District Allotment Committee and delivery of paddy is made by State Agency. The job worker after carrying out its activities has to return output i.e. rice to FCI. In case of short delivery or non-delivery of rice, FCI takes action against the defaulter.

4. In the case in hand, admittedly, there was default on the part of Kumar Trading Company and Barinder Kaur was partner of Kumar Trading Company as well as Dashmesh Rice Mills. The respondent continued to allot paddy to Dashmesh Rice Mills from 1995-96 to 2021-22. The respondent all of sudden in the year 2022-23 formed an opinion that petitioner is not entitled to allotment of paddy because it falls within definition of 'defaulter'.

5. Learned counsel for the petitioner submits that Barinder Kaur is no more partner of Dashmesh Rice Mills, thus, it is contrary to the policy to deny allotment of paddy to Dashmesh Rice Mills.

6. Learned State counsel does not dispute the fact that Dashmesh Rice Mills was allotted paddy during 1995-96 to 2021-22, though submits that no paddy was allotted to Kumar Trading Company after the year 1994-95. As per paragraph 7 of the policy, the petitioner falls within definition of defaulter, thus, petitioner has been rightly denied allotment of paddy.

7. Learned counsel for respondent No.5 submits that FCI has initiated recovery proceedings against Kumar Trading Company and Arbitrator has passed award in its favour. The execution proceedings are pending in District Court. Learned counsel expressed his inability to controvert that paddy was allotted to Dashmesh Rice Mills during 1995-96 to 2021-22 and FCI regularly received rice and made payment.

8. I have heard the arguments of both sides and with the able assistance of learned counsel have perused the record.

9. Para 7 of the Customs Milling Policy envisages status of defaulter and enjoins that no paddy shall be allotted to a defaulter. The relevant extracts of para 7 of the Customs Milling Policy for KMS 2022-23 read as:

> ***"7. EVENTS OF DEFAULT -***
>
> *(a) 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:

xxxxx xxxxx

(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(i)/Member(s) of defaulter mill in question as well as the miller seeking allocation of agency.

xxx xxxx xxxx

(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.*"

10. From the perusal of above quoted paragraph of the policy, it is quite evident that petitioner falls within definition of defaulter and he is not entitled to allotment of paddy. Barinder Kaur wife of Gurmeet Singh was partner of Dashmesh Rice Mills- petitioner during the period in question. She was also partner of Kumar Trading Company. Dashmesh Rice Mill was lessor and Kumar Trading Company was lessee. Virtually, the lessor and lessee were same. As per the Customs Milling Policy, the lessor was supposed to furnish undertaking to the effect that in case of default by lessee, the lessor would be responsible.

11. In the case in hand, Kumar Trading Company was lessee and Barinder Kaur being partner of lessor i.e. Dashmesh Rice Mill stood guarantor and she furnished surety. The case of the petitioner squarely falls within four corners of para 7 of the policy, thus, petitioner cannot be allotted paddy till the petitioner is declared non-defaulter.

12. Before parting with the order, I would hasten to add that it is a classical case of misuse of official position and abuse of process of law. There seems active connivance of officials of FCI and Food, Civil Supplies and Consumer Affairs, State of Punjab. Despite specific provision in the policy, the officials of FCI and Food, Civil Supplies, Punjab allotted paddy for a quite long time i.e. from 1995-96 to 2021-22 to a defaulter unit and all of sudden they have woke up from slumber and denied paddy to the petitioner. This is not first case and this Court has come across with many cases where FCI and State Agencies have taken similar action after more than decade.

It is a case of active connivance on the part of officials of

FCI and Food and Civil Supply, thus, this Court finds it appropriate to direct Managing Director of FCI to take an appropriate action against its erring officials. Similarly, Director, Food, Civil Supplies and Consumer Affairs, Punjab is directed to take an appropriate action against its erring officials. The needful shall be done within 3 months from today.

13. The petition stands disposed of in the above terms.

(JAGMOHAN BANSAL)
JUDGE

14.09.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	*Yes/No*