

CWP No.24511 of 2016 (O&M);
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.24511 of 2016 (O&M)
Date of Decision: 03.02.2023

(I)
M/S. HARI CHAND SADHU RAM

....Petitioner(s)

Versus

FOOD CORPORATION OF INDIA & OTHERS

.....Respondent(s)

CWP No.8825 of 2017 (O&M)

(II)
M/s. SOHAN LAL KALRA RICE AND GENERAL MILLS

....Petitioner(s)

Versus

FOOD CORPORATION OF INDIA AND OTHERS

.....Respondent(s)

CWP No.14105 of 2021 (O&M)

(III)
M/S SOHAN LAL KALRA RICE AND GENERAL MILLS

....Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS

.....Respondent(s)

RA-CW-52-2020 in/and
CWP No. 16485 of 2017 (O&M)

(IV)
M/S SANMANN RICE MILLS, MUKTSAR

....Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS

.....Respondent(s)

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CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Daman Dhir, Advocate,
for the petitioner in CWP No.14105 of 2021,
CWP No.24511 of 2016 and CWP No.8825 of 2017.

Mr. Pranav Chadha, Advocate,
for the petitioner in CWP No. 16485 of 2017.

Ms. Akshita Chauhan, DAG, Punjab.

Mr. O.P. Goyal, Senior Advocate with
Mr. K.K. Gupta, Advocate, for the respondent-FCI.

Mr. A.P.S. Mann, Advocate, for
respondent Nos. 4 and 5 in CWP No.14105 of 2021.

JASGURPREET SINGH PURI, J.

1. By way of this order four civil writ petitions filed by rice millers shall be disposed of since the issue involved in all the four petitions is similar and therefore, they have been heard together and are being disposed of together with the consent of learned counsel for the parties.

2. CWP No.24511 of 2016 has been filed by M/s. Hari Chnad Sadhu Ram in which challenge has been laid to Annexure P-1 dated 07.09.2009 and Annexure P-2 dated 11.10.2012 and some other documents and the action of the respondents for taking action against the petitioner by which a ban has been imposed on business dealings/blacklisting of the miller has been challenged.

3. CWP No.8825 of 2017 has been filed by one M/s. Sohan Lal Kalra Rice & General Mills seeking similar relief as in the aforesaid CWP filed by M/s. Hari Chand Sadhu Ram.

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4. CWP No.14105 of 2021 is a second petition filed by aforesaid M/s. Sohan Lal Kalra Rice & General Mills seeking 'No Objection Certificate' for further doing the business dealings with the State Procurement Agencies.

5. CWP No. 16485 of 2017 has been filed by one M/s. Sanmann Rice Mills in which the prayer is slightly different whereby it has challenged the order passed by the respondent-FCI whereby it has been debarred from further business dealings till the time of deposit of the amount by the miller and till the time decision is taken by CBI Court. However, the crux of all the four petitions pertains to the grievance of the petitioners that the respondent-FCI could not have imposed ban upon the petitioners-Mills for an unlimited period.

6. The facts of the aforesaid three writ petitions i.e. CWP No.24511 of 2016, CWP No.8825 of 2017 and CWP No.14105 of 2021 are required to be discussed together, whereas that of fourth writ petition i.e. CWP No. 16485 of 2017 is required to be discussed separately.

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7. For the sake of brevity the facts are taken from CWP No.24511 of 2016.

8. The petitioner has challenged the action of the respondents in issuance of letter dated 07.09.2009 (Annexure P-1) and letter dated 11.10.2012 (Annexure P-2) and various other communications. The issue involved in all the petitions is pertaining to the crop year 2004-2005. The

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process of rice milling in the State of Punjab is done on the basis of Custom Milling Policy which is framed for each Kharif year for the purpose of procurement and milling of paddy by the rice millers in the State of Punjab. There are a number of State agencies namely, Pungrain, Punsup, Markfed, Warehousing Corporation etc. who procure the paddy from the market and thereafter they supply to the different rice millers for the purpose of milling according to their capacity and in accordance with the Custom Milling Policy which is formulated every year. Under the Policy different mandies which are the purchase centres are allocated to different rice mills and they are attached with different State agencies. After the milling of the rice, the rice is supplied and stored in different godowns of Food Corporation of India (hereinafter referred to as 'FCI') since FCI constitutes a central pool in accordance with the Foodgrains Policy of the Government of India. In other words, purchasing of the paddy is done from the market through the State Procurement Agencies and after the milling by the rice millers according to the Milling Policy, the final product of rice goes to the FCI being the central pool and thereafter the FCI distributes the same throughout India in accordance with their own policies and instructions issued from time to time. For the year 2004-2005 as well, the marketing and processing was done and the rice was thereafter stored in different godowns.

9. On 29/30.09.2005 i.e. within a year, the CBI raided various places/godowns in the State of Punjab to check the quality of rice. On the basis of simultaneous raids conducted at different places, the CBI

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recommended prosecution and also blacklisting of various rice millers. Thereafter, for some of the rice millers, CBI investigation is still going on and in some cases report has been presented before the Competent Court and even trial has also started. A statement showing the names of the millers involved in CBI sampling and recommended for prosecution/blacklisting has been attached alongwith writ petition as Annexure P-1. On the basis of the aforesaid list as was prepared by the CBI and sent to the FCI, the FCI wrote to the Director, Food and Supplies, Punjab, Chandigarh in the year 2009 vide Annexure P-1 that for the coming season of KMS 2009, an action be taken for blacklisting/banning the rice millers as recommended/identified by CBI in report dated 31.03.2008 and the State Governments were told not to allot any paddy to these rice millers whose samples were found beyond PFA (Prevention of Food Adulteration Act) and 182 millers whose samples were found BRL (Beyond Rejection Limits). In the list provided by the CBI, the names of all the present four petitioners are mentioned.

10. Thereafter , on 11.10.2012 vide Annexure P-2, the FCI wrote a letter to the Director, Food and Supplies, Punjab, Chandigarh in which it was stated that based upon the representation received from the various forums, the matter relating to lifting of ban on business dealings/blacklisting of these millers was placed before the Board of Directors of the FCI and on the basis of the deliberations, decisions have been taken by the FCI which provided that the millers who had supplied rice beyond PFA, the ban may continue and final decision on the matter be taken by the CBI Court and as regards stocks which were found BRL by the CBI, the proposal for lifting of

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the ban for a period of 3 years w.e.f. the date of imposition of ban has been accepted and on account of mixed condition, the proposal for lifting of the ban for a period of 5 years has been accepted. However, a rider was added to the same in which it was stated that the aforesaid proposals would be subject to condition that the defaulting millers to deposit the loss suffered by the Corporation alongwith penal interest and in cases where the FCI has already effected recovery from concerned State Government and its agencies, the State Government and its agencies should recover the said amount from the defaulter mill under intimation to FCI. The aforesaid letter dated 11.10.2012 is reproduced as under :-

*“The Director
Food & Supplies, Punjab
Chandigarh*

Sub: Ban of the Rice Millers who had supplied BRL/BPFA rice during 2004-2005 as found by the CBI during their surprised inspection...regarding.

Ref: 1. This office letter No.QC.7/CHG-2006A001/2004-05/Vol.1/31 dated 7/8.9.2009.

Sir,

Please refer to the communication cited above on the subject captioned vide which the list of rice millers were forwarded to you for imposing the ban, whose stocks were found BRL/BPFA (mixed condition) and BPFA during KMS 2004-05. Based on the representation received from various forums, the matter relating to lifting of ban on Business dealing/blacklisting of these millers, was placed before the Board of director (BOD), FCI. On the basis of deliberation, following decisions have been taken by FCI.

- 1. The millers who have supplied rice which was beyond PFA limits, the ban imposed may continue. Final decision on the matter may be taken by the CBI Court.*

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2. *As regards the millers whose stocks were found BRL by the CBI, the proposal for limiting the ban to a period of three (03) Kharif Marketing Seasons (KMS) w.e.f. the date of imposition of ban, has been accepted.*
3. *In the case of millers whose stocks were found in mixed condition though the same was found BPFA and were given benefit of doubt by CBI, the proposal for limiting the ban to a period of five (05) Kharif Marketing Seasons (KMS) w.e.f. the date of imposition of ban, has been accepted.*
4. *The proposal of Sl. No.2&3 above, would be subject to conditions that the defaulting millers deposit the loss suffered by the Corporation alongwith penal interest. In cases where, FCI has already effected recovery from concerned State Government & its agencies, the State Government & its agencies should recover the said amount from the defaulter miller under intimation to FCI.*
5. *The cases of lease or ownership transfer will be decided on merit of each case by a Committee of Officers consisting of GM @ Punjab, a representative from Zonal Office (North) and Headquarters after obtaining required verification/report from State Government. The said committee shall see genuineness of each such transaction, subject to Court decision, if any, regulating such decision.*

In the light of above, the ban of those rice millers whose stocks were found BRL by the CBI who completed three (03) KMS ban may be lifted subject to the condition that defaulter millers deposit the losses suffered by the FCI & State Agencies alongwith the penal interest.

The list of the rice millers who completed three (03) KMS of ban is enclsod herewith for taking further necessary action.

Encls: As above

Yours faithfully,

Sd/-

*Asstt. Genl. Manager (QC)
For General Manager (Region)”*

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11. Thereafter the FCI filed a suit for recovery against the petitioner for an amount of Rs. 23,36,997/- including interest but vide Annexure P-3 the civil suit was dismissed on 22.01.2016 being barred by limitation and not maintainable. Thereafter, the FCI preferred an appeal but the appeal was also dismissed vide Annexure P-4. Thereafter, RSA was filed which is pending before this Court. A legal notice was issued to the FCI and the State Government by the petitioner vide Annexuure P-5 dated 25.07.2016 by stating that the suit has already been dismissed and there can no blacklisting for an unlimited period and with a prayer to declare the miller as eligible for further business dealings. Both FCI and the State Government filed their respective replies. The present petitions were filed challenging the action of the respondents especially the FCI whereby according to the learned counsel for the petitioners indefinite ban has been imposed upon the business dealings of the petitioners with a further direction that they be declared as eligible allottees for the coming paddy season.

12. So far as the second petition filed by petitioner-M/s Sohan Lal Kalra Rice & General Mills i.e. CWP No.14105 of 2021 is concerned, the same was filed with a prayer for seeking 'No Objection Certificate'. However, the respondents had taken preliminary objection that the second petition filed by the same petitioner was not maintainable since his earlier petition i.e. CWP No.8825 of 2017 is already pending. Since the ultimate grievance of the petitioner is with regard to seeking lifting of the ban qua

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him and declaring him eligible, this Court, therefore, would not go into the maintainability of the second writ petition and both the petitions can be decided together.

13. Learned counsels appearing on behalf of the petitioners submitted that the action of the respondents especially the FCI was bad in the eyes of law in view of the fact that the CBI had conducted a raid in the year 2005 pertaining to the crop year of 2004-2005 in which various discrepancies were found but now about 17 years have elapsed that the petitioners still continue to be defaulters and blacklisted which cannot be done because blacklisting cannot be done for an unlimited period. They relied upon a judgment of Hon'ble Supreme Court in ***Kulja Industries Limited Versus Chief General Manager W.T Proj., BSNL and others, 2014 AIR (Supreme Court) 9*** in this regard.

14. Another argument raised by the learned counsel for the petitioners was that the respondents had no right to recover any amount from the petitioners which has been assessed by them pertaining to damage/below prescribed parameters from the petitioners because the FCI itself had filed a suit for recovery against the petitioners and that suit for recovery has already been dismissed by the learned Civil Judge and the appeal filed by the FCI was also dismissed. However, RSAs are pending in all the cases before this Court. They submitted that once the suit for recovery itself has been dismissed and the respondent-FCI cannot recover any amount from the petitioners, then there cannot be further blacklisting of the petitioners on the ground that they are liable to pay the amount and

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unless they pay the amount, business dealings will not be resumed. They submitted that Clause 4 of the aforesaid reproduced letter which says that the blacklisting can be lifted only till the deposit of the amount alongwith penal interest has become ineffective in view of the fact that suit for recovery has been dismissed by the Civil Court.

15. On the other hand, Mr. O.P. Goyal, learned Senior Advocate with Mr. K.K. Gupta, Advocate appearing on behalf of respondent-FCI has submitted that the argument raised by the learned counsel for the petitioners that the blacklisting was for unlimited period is misconceived. He referred to Annexure P-2 which has been reproduced above to state that rather on the representation of the rice millers itself the Board of Directors of the FCI has decided that as regards the millers whose stocks were found to be BRL by the CBI, the ban was limited only for a period of 3 years and in case of mixed BRL and PFA, it was for a period of 5 years and for those whose rice was found to be PFA limits i.e Beyond Prevention of Food Adulteration Act, then the ban was directed to be continued till the final decision is taken by the CBI Court. He submitted that the aforesaid ban of 3 years and 5 years have been further subjected to a rider in Clause 4 that the same will be applicable only when the defaulting miller deposits the loss suffered by the Corporation alongwith penal interest. He submitted that in this way the ban for BRL and for mixed BRL and the PFA was only for a period of 3 years and 5 years respectively and thereafter there was no ban for doing business dealings with the State or the FCI. However, the condition for deposit of the amount was to be satisfied. Since the

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petitioners did not deposit the defaulting amount alongwith the penal interest, they have themselves perpetuated the period of ban. He submitted that even now in case the petitioners deposit the amount alongwith penal interest, then the effect of the ban would not be operative qua the petitioners in view of the decision taken by the Board of Directors of the FCI. He further submitted that vide Annexure R-1 attached alongwith reply which has been filed by the FCI in CM No. 11669 of 2021, the Board of Directors of the FCI had taken a specific decision on 10.10.2012 with regard to the tenure of ban which has been forwarded to the State Government vide Annexure P-2. He submitted that the decision of the Board of Directors of the FCI has not been challenged in the present petitions and in the absence of challenge to the decision of the Board of Directors of the FCI, no relief can be granted to the petitioners.

16. He further submitted that FCI is a Public Sector Undertaking which is responsible for the foodgrains in the entire country and constitutes a central pool for the foodgrains which is to be supplied across India and is also responsible for the quality of foodgrains. Once on the basis of raid conducted by the CBI, large foodgrains in different parts of the State were found to be beyond permissible limits and CBI has registered a case not only against the rice millers but also against some of the officials of the FCI under the Prevention of Corruption Act showing connivance, then the millers were bound to make good the loss which has occurred and unless they make good the loss which has been so calculated with regard to each and every miller, they cannot be permitted to have any business relationship

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with the State or the FCI. He further submitted that still on the basis of the representation made by the rice millers, the Board of Directors of the FCI vide Annexure R-1 as aforesaid took a decision to relax the time limit of blacklisting for a period of 3 years and 5 years as aforesaid subject to the condition that they will deposit the loss suffered by the Corporation alongwith penal interest. He submitted that not only the aforesaid decision of the Board of Directors of the FCI has not been challenged but even otherwise also it cannot be said that the ban was for unlimited period whereas in fact it was for a specific period.

17. Learned Senior Counsel for the respondent-FCI further submitted that so far as the argument raised by the learned counsel for the petitioners that once the suit for recovery filed by the FCI has been dismissed by a Civil Court and appeal has also been dismissed by the Appellate Court, the FCI or the State agencies did not have any right to recover the aforesaid amount is concerned, the same is also misconceived. He submitted that although a remedy before the Civil Court has been lost as of now subject to the outcome of the RSA but the right to recover the amount still exists and the same can always be recovered by way of any collateral proceedings or by other methods. He referred to a judgment of Hon'ble Supreme Court in this regard which has been attached as Annexure R-7 alongwith the aforesaid reply to the CM which is titled as '**Punjab National Bank Versus Surendra Prasad Sinha, 1992 AIR (SC) 1815**'.

18. Learned Senior Counsel further referred to a judgment of a Division Bench of this Court in LPA No.1570 of 2011, titled as '**FCI and**

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another Versus M/s. Inder Singh Ajit Singh and others' wherein the dispute was pertaining to crop year of 2008-2009 wherein the stock was categorised as BRL as per the analysis report of the zonal office and rice millers failed to replace the substandard rice despite several notices and were blacklisted. Although the learned Single Judge had allowed the petition but on LPA, a Division Bench of this Court allowed the appeal with a clarification that if a rice miller replaces/replaced the BRL stock of 2008-2009 and/or compensates the FCI to the extent of loss suffered by it after the disposal of the said stock, in that event and subject to other lawful conditions, the appellant-FCI shall consider the desirability of withdrawing the orders of blacklisting of such rice mills.

19. Learned Senior Counsel referred to another judgment of Division Bench of this Court in LPA No. 196 of 2012, titled as ***'Food Corporation of India Versus M/s. Omkar Rice Mill and others'*** (Annexure R-4) wherein the dispute was with regard to the fact that the petitioner of that case was the subsequent owner of the mill and the earlier owner had committed default as the earlier owner namely M/s Govind Rice Mill was also amongst one of the millers whose name is mentioned in the list of CBI raids pertaining to the same financial year of 2004-2005 as that of present case. The learned Single Judge allowed the writ petition on the ground that the subsequent purchaser could not be held to be a defaulter. However, on appeal, the LPA was allowed and it was held that the FCI was fully justified to insist upon the rice miller to make good the loss caused by the earlier rice miller i.e. M/s Govind Rice Mill as a pre-condition for

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allocation of paddy for milling in the subsequent years and so far as the petitioner of that case is concerned, he only stepped into the shoes of M/s. Govind Rice Mill and is obligated to discharge the liability. He also referred to another judgment of Hon'ble Supreme Court in '*Food Corporation of India and another Versus M/s. V.K. Traders and others*', 2020 (4) SCC 60 (Annexure R-6) whereby there were some rice millers who were also a part of the list which was prepared by the CBI of the same crop year of 2004-2005 as that of the present cases and thereafter they were also covered by the decision of the Board of Directors of the FCI dated 10.10.2012 but they executed various lease deeds in favour of other rice millers who stated that since they were not defaulters, they should not be victimized as they had nothing to do with the transactions or default committed by the rice millers from whom they got the lease deeds. However, the Hon'ble Supreme Court observed that even in case where a proprietorship/partnership firm has been in existence for long and took over a milling-default only on onward basis, no right seeking allocation of paddy can be claimed by it unless the liabilities arising out of the previous bilateral agreement are satisfied and therefore, the Hon'ble Supreme Court set aside the orders passed by the High Court whereby the High Court had erred gravely in setting aside the orders through which the FCI declined to allocate paddy to the new lessees of the defaulting rice mills. In the concluding part of the judgment the Hon'ble Supreme Court also observed that the writ petitions filed by the respondent-lessees were dismissed. However, with liberty to pay dues with penalty/interest of the original rice-millers and thereafter on production of

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'No Dues Certificate' seek allocation of paddy for custom milling in accordance with the policy of FCI. Learned Senior Counsel further relied upon another judgment of a Co-ordinate Bench of this Court pertaining to the same crop year of 2004-2005 wherein the petitioner of that case namely M/s. Hemkund Rice Mills was also a part of list of the CBI raid and the stocks were found to be beyond PFA. He had prayed and challenged the blacklisting order for indefinite period and had also prayed that with regard to other rice mills the blacklisting has been lifted. This Court came to the conclusion that so far as the other rice millers are concerned, they had already paid the dues and therefore, the business dealings were restored but the petitioner of this case did not fulfill the promise of money which was more than Rs. 3,44,69,383/- besides pendency of the case before CBI and therefore, it was held that the petitioner cannot seek a *mandamus* for the purpose of directing the FCI to have business dealings with it and that the FCI has rightly blacklisted the petitioner keeping in view its misconduct in the past.

20. Learned Senior Counsel submitted that the present cases are also covered by the aforesaid judgments which were pertaining to the same crop year and they were also blacklisted by the same decision of the Board of Directors of the FCI dated 10.10.2012.. He submitted that the liability of the petitioners is very large running into crores and it is a case where loss has been caused to the National Exchequer and also the foodgrains were found to be below the rejection limits which amounted to national wastage of foodgrains and would also affect the lives and health

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of people and therefore, no leniency can be given to the petitioners in this regard unless they at least deposit the amount as calculated by the FCI so that further business dealings can be considered. The recoverable amount as per learned counsel for FCI runs into lacs of rupees per petitioner.

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21. The prayer in the present petition although pertains to the same subject matter but the facts are slightly different.

22. The petitioner has prayed for issuance of a writ in the nature of *Certiorari* for quashing the order dated 20.03.2017 (Annexure P-15) whereby an order has been passed by the Area Manager, Food Corporation of India, Faridkot by which it was directed to ban all future business dealings of the petitioner which will continue till the outcome of the decision of the CBI Court and further till the loss caused by the petitioner is made good to the FCI and State Government Agencies. The petitioner in the present case was also a part of the list prepared by the CBI wherein recommendations were made for registration of FIR and for blacklisting. The petitioner falls at serial No.22 of the list. In the present case also the FCI had filed a civil suit for recovery which was dismissed on 06.10.2015 vide Annexure A-3 (filed alongwith Review Application No.52 of 2020). The suit was dismissed on the ground that the FCI had no locus standi or cause of action to file a suit and it was also not maintainable in the present form, the suit was also bad for non-rejoinder of necessary parties and suit was also time barred being beyond the period of limitation. Thereafter, the appeal filed by the FCI was also dismissed.

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23. The petitioner of the present case earlier had also filed a writ petition bearing No.5787 of 2008 challenging the orders passed by the Area Manager, Food Corporation of India whereby the petitioner has been blacklisted for further business dealings with the FCI and has been directed to replace the substandard rice given by it during crop season of 2004-2005 and also to make good the lossess suffered by the FCI. The petitioner in that writ petition had confined the scope of the petition qua blacklisting order. A Co-ordinate Bench of this Court vide order dated 14.10.2015 vide Annexure P-10 disposed of the petition by referring to a judgment of Hon'ble Supreme Court in *Kulja Industries Limited (Supra)* that blacklisting cannot be done for an indefinite period. However, it was so observed by the Co-ordinate Bench of this Court that it will not preclude the FCI from passing an appropriate order in accordance with law and in case any adverse order is passed against the petitioner, then it would naturally have the liberty to assail the same, in accordance with law, if so advised. Thereafter, the FCI preferred a review pertaining to the aforesaid order which was however dismissed on 06.04.2016. Thereafter, the FCI preferred an LPA which was also dismissed on 10.11.2016 vide Annexure P-14 with costs. After the aforesaid orders, the Area Manager, Food Corporation of India, Faridkot passed the impugned order on 20.03.2017 whereby it was noticed by the Area Manager that during the random quality checking, the petitioner in connivance with the officials of the FCI succeeded in pushing below specification rice which was detected in the raid conducted by the CBI on 29.09.2005 and 30.09.2005 at Muktsar centre and the quality of

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rice was tested and the same was found to be not complying with the specifications and was even unfit for human consumption. The rice which were delivered by the petitioner was found to be BRL/BPFA by the CBI and the various committees appointed by District Office, Faridkot. Thereafter, the petitioner was given an opportunity to come forward for joint analysis and repeated notices were also issued to him but he never came forward for joint analysis. After investigation the CBI has already presented challan against the petitioner in the CBI Court and the FCI officials who connived with the petitioner were not only subjected to disciplinary proceedings but were also facing trial before the CBI Court, Patiala. Thereafter, the Board of Directors of the FCI had also taken a decision with regard to further business dealings with such kind of millers. The Area Manager thereafter directed that in the given circumstances there will be a ban on all the future business dealings with the petitioner which would continue till the outcome of the decision of the CBI Court and further till the loss caused by the petitioner is made good to the FCI and State Government Agencies.

24. Another prayer has been made in the present petition that passing of the aforesaid order by the Area Manager was contemptuous in nature since the ban which has been imposed was for indefinite period and this Court while passing the earlier order Annexure P-10 on 14.10.2015 had set aside the order in view of the fact that it was indefinite ban while relying upon the judgment of Hon'ble Supreme Court in ***Kulja Industries (Supra)*** and therefore, now again such kind of order could not have been

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CWP No.14105 of 2021 (O&M) and
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passed.

25. I have heard learned counsel for the parties at length.

26. The subject matter of all the petitions pertain to the crop year 2004-2005 whereby on 29/30.09.2005, CBI had conducted raids at different centres of the State of Punjab and found various millers having stock which was found to be BRL and PFA i.e. Beyond the Rejection Limits and Beyond the Prevention of Food Adulteration Act and in this way the foodgrains was not found to be fit for human consumption. The investigation was conducted by the CBI and even the challan was presented against a number of millers. Some of the officials of the FCI were also involved and even the provisions of Prevention of Corruption Act were also invoked. During the course of arguments, learned counsel for the parties have informed this Court that some of the other rice millers have already paid the amount of loss caused and their business dealings have been restored but so far as the present petitioners are concerned, they have not paid the amount till date and therefore they are not entitled to continue the business dealings.

27. The first issue involved in the present case is that what is the effect of the decision of the Board of Directors of the FCI dated 10.10.2012 and the letter issued by the FCI vide impugned order Annexure P-2 in pursuance of the aforesaid decision of the Board of Directors whereby after considering the representations of various millers, the period of blacklisting has been defined subject to a rider. A perusal of the aforesaid decision of the Board of Directors and the impugned order Annexure P-2

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would show that earlier the FCI had initially banned further dealings of all the millers who were involved in the aforesaid raids but thereafter on the representations of various millers, the Board of Directors took a decision for the purpose of limiting the time period. In the aforesaid decision dated 10.10.2012, it was so decided by the Board of Directors of the FCI that so far as the millers whose stocks were found to be BRL by the CBI, the proposal of limiting the ban for a period of three years of Kharif Market Season with effect from the date of imposition of ban has been accepted and in case of mixed condition, it was stated to be five years, which has been accepted. The petitioners in CWP No.24511 of 2016, CWP No.8825 of 2017 and CWP No.14105 of 2021 were found with stocks of BRL and the petitioner in CWP No. 16485 of 2017 was found to be mixed BRL/PFA as per the orders passed by the Area Manager which was impugned in the writ petition. Therefore, a perusal of the aforesaid decision of the Board of Directors of the FCI and the consequent letter Annexure P-2 would show that the period of ban is not for unlimited period but it is for a limited period of three years or five years as the case may be. However, a rider has been imposed upon the same in Clause 4 that it will be subject to the condition that the miller should deposit the loss suffered by the Corporation alongwith penal interest. Such a rider for deposit of the loss suffered by the Corporation which is a part of the National Exchequer cannot be said to be unreasonable or an unjust rider. At the same time, it cannot be said that the period of ban was for an unlimited period. Therefore the argument which has been raised by the learned counsel for the petitioners that the ban was for

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unlimited period is not sustainable and is misconceived. Even otherwise also, with regard to the same crop season of 2004-2005, various other litigations have arisen and learned counsel for the respondent-FCI has referred to various judgements of the Supreme Court and this Court in LPA and writ petition, which have been referred to above in which the millers were directed to deposit the amount of loss caused to the FCI.

28. So far as the grievance of the petitioner in CWP No. 16485 of 2017 that earlier a Coordinate Bench of this Court had allowed the petition and quashed the order of blacklisting but with a liberty to pass a fresh order is concerned, when the Area Manager vide impugned order passed the order, he also directed that the blacklisting will continue till the outcome of the decision of CBI Court and further till the loss caused by the petitioner is made good to the FCI. However, so far as the rider with regard to the time till the loss is paid by the petitioner is concerned, the same was in accordance with the decision of the Board of Directors of the FCI but so far as the other condition with regard to the outcome of the decision of CBI Court is concerned, the same will be considered separately in the succeeding paragraphs. However, it cannot be said that the order passed by the Area Manager was contemptuous in nature because the blacklisting was not directed to be made for unlimited period but it was only till the time of the outcome of the decision of the CBI Court and further till the loss is made good to the FCI. Therefore, this Court is of the view that the ban which has been imposed by the FCI is not for unlimited period but it is for a specific period of three years or five years as the case may be subject to aforesaid

rider.

29. The next issue involved in the present case is with regard to the fact that the FCI had earlier filed civil suits for recovery against the petitioners which have been dismissed by the Civil Court. On appeal by the FCI, the same have also been dismissed by the Appellate Court. However, the RSAs are pending before this Court for consideration.

30. The reference made by the learned counsel for the petitioners to the judgement of the Supreme Court in ***Kulja Industries Limited (Supra)*** also deserves to be considered. The facts of the present cases are distinguishable and the aforesaid judgement will not apply in the present case in view of the fact that the aforesaid judgement in ***Kulja Industries Limited (Supra)*** pertains to permanent blacklisting whereas the present case is not a case of permanent blacklisting but it is only for a period of three years and five years as the case may be subject to the rider of payment of making good the loss caused to the FCI/National Exchequer. Apart from the above, in the aforesaid judgement, the amount was already paid back by the company which was blacklisted and therefore the order of blacklisting was rather affirmed by the Supreme Court and while setting aside the order passed by the High Court, it was observed that the period for which such order remains operative shall be determined afresh by the competent authority on the basis of the guidelines of the Corporation.

31. The argument which was raised by the learned counsel for the petitioners that once the civil suit for recovery itself has been dismissed,

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then such a condition for making loss good by depositing the amount cannot become a condition for lifting the ban is concerned, this Court is of the view that it is a settled law that Law of Limitation bars the remedy and not the right. In other words, by the operation of the Law of Limitation, it is only the remedy before the Courts which is extinguished but the right itself is not extinguished and there can be redressal of the rights by other methods. It is only the remedy before the Civil Court which gets extinguished. The Limitation Act, 1963 is a part of procedural law and is an adjective law. It is not a substantive law so as to create or destroy rights. However, there are two exceptions to the same which are contained in Sections 25, 26 and 27 of the Act. Sections 25 and 26 of the Act pertain to the extinguishment and acquisition of rights by way of easement whereas Section 27 of the Act pertains to extinguishment and acquisition of rights by way of adverse possession. Therefore, these are the two provisions by which the rights are created or extinguished by way of efflux of time and by way of operation of period of limitation and therefore can be called as substantive provisions, but otherwise, the entire Limitation Act is an adjective law. Therefore even if the suit for recovery filed by the FCI was dismissed on the ground of limitation will not mean that the FCI cannot impose a condition pertaining to making good the loss because the right itself still subsists which can be enforced by any other collateral method. The reliance made by the learned Senior Counsel for the respondent-FCI on the judgement of the Supreme Court in ***Punjab National Bank Versus Surendra Prasad Sinha (Supra)*** that the right still subsists whereas the remedy extinguishes is well placed.

32. Apart from the above, there is another aspect which deserves consideration. This is a case where simultaneous raids were conducted by the CBI at different places in the State of Punjab and it found that a large number of millers had stored rice which were found to be BRL and PFA since they were below the prescribed standards. The foodgrains were therefore found to be substandard and rather unfit for human consumption. A perusal of the pleadings which have been made in all the four writ petitions would show that at no point of time the petitioners have ever specifically pleaded that their stocks were not BRL or PFA and there is no averment to the effect that the stocks were not substandard. At some places it has been only averred that there was no fault of the petitioners and there is no evidence with regard to the same. At the same time it is also averred that the stock may get deteriorated with the passage of time. However, there is no denial in clear terms with regard to the allegations pertaining to the deteriorated stock of rice. In other words, the stock which was found by the CBI during the raid was not upto the mark and did not confirm to the specifications. The foodgrains after being processed become a part of the central pool which is coordinated by the FCI and thereafter distributed across the nation so that the same may be consumed by the citizens of India. If the foodgrains are found to be below standards, then it is not only the loss to the National Exchequer but also detrimental to the health of people across India. Still by way of the decision of the Board of Directors, they have permitted the further business dealings after a period of three years or five years as the case may be subject to deposit of the loss suffered

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alongwith penal interest so that millers can continue with the work. As per learned counsel for the parties, some of the other millers have deposited the amount but the present petitioners have not deposited any amount. There is no denial to the quality of the foodgrains being substandard in the pleadings. Therefore, it cannot be said that the condition which has been imposed by the Board of Directors is harsh. Rather the decision of the Board of Directors itself has not been challenged in any of the writ petitions and it is only the forwarding letter Annexure P-2 which has been challenged. In the absence of challenge to the decision of the Board of Directors, no relief could have been claimed by the petitioners even otherwise also. The recoverable amount as per learned counsel for FCI runs into lacs of rupees per petitioner.

33. In the aforesaid totality of facts and circumstances, this Court does not find any merit in any of the four petitions as above and the same are therefore dismissed.

34. However, so far as CWP No. 16485 of 2017 is concerned, in the impugned order it has been so stated in Annexure P-15 dated 20.03.2017 that the future business dealings have been banned till the outcome of the decision of the CBI Court and till the loss caused by the petitioner is made good to the FCI and the State Government Agencies. However, as per the order itself the petitioner was found with mixed BRL/BPFA by the CBI and therefore even as per the Board of Directors' decision, the blacklisting was for a period of five years till the loss caused is deposited by the miller.

Therefore, the first condition which has been imposed by the Area Manager

in the impugned order pertaining to the outcome of the decision of the CBI

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Court is concerned, the same cannot be sustained and therefore the aforesaid order shall be read to mean only to the effect that the future business dealings would be allowed to continue only till the loss caused by the petitioner is made good to the FCI and the State Government Agencies in accordance with the decision of the Board of Directors of the FCI dated 10.10.2012 and the condition pertaining to the outcome of the decision of the CBI Court would not be operative for the petitioner of CWP No. 16485 of 2017.

All the miscellaneous applications, if any, shall be deemed to be disposed of since the main cases have been dismissed.

03.02.2023
rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No