205

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18743-2020 (O&M)
Date of Decision:25.07.2023

M/S ASHIRWAD INDUSTRIES .... Petitioner

Versus

STATE OF PUNJAB AND OTHERS ..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Yogesh Goel, Advocate for
Mr. Vishal Mittal, Advocate
for the petitioner.

Ms. Shivani Sharma, DAG, Punjab.

Mr. Somesh Gupta, Advocate
for respondents No.6 and 7.

****

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226/227 of the Constitution of India is seeking setting aside of impugned order dated 23.10.2020 (Annexure P-15) whereby respondent No.2 has declined to register the petitioner for the purpose of allotment of paddy in terms of Custom Milling Policy 2020-21.

2. The brief facts of the case which are necessary for the adjudication of present case are that for the crop year 2012-13 respondents allotted paddy to a rice mill known as M/s Jai Maa Kali Rice Mill, Bhairupa, District Bathinda. The said rice mill embezzled 84,477 paddy bags. An FIR No. 91 dated 18.12.2012 came to be registered against Dev Raj and Sudha Rani i.e. partners of M/s Jai Maa Kali Rice Mill. The paddy was allotted by State Agency i.e. Punjab Agro Food

ASGAR ALI
2023.07.26 16:45
I attest to the accuracy and
integrity of this document

Grains Corporation Limited (for short 'PAFC') which initiated arbitration proceedings against rice mill. Learned Arbitrator vide award dated 17.11.2014 passed award of Rs.6.44 crores in favour of PAFC. On the basis of award, PAFC filed execution petition before the Civil Court. Learned Additional District Judge, Bathinda passed recovery order. Naib Tehsildar, Rampura Phul put the mill on auction. A Committee of officers was constituted to auction the mill. The petitioner like other bidders participated in the auction and he was declared highest bidder. The petitioner made payment of auctioned amount i.e. Rs.94.38 lakhs.

3. The PAFC vide communication dated 26.09.2019 informed District Food & Civil Supply Controller, District Bathinda that mill is now named as M/s Ashirwad and may be considered for Customs Milling Policy 2019-20. PAFC vide communication dated 29.10.2019 confirmed that petitioner has no concern with M/s Jai Maa Kali Rice Mill (defaulter) and no dues are pending against proprietor/partner of M/s Ashirwad Industries (petitioner).

4. The petitioner preferred CWP No.10877 of 2020 before this Court seeking direction to respondents to issue no objection certificate to seek registration so as to undertake milling of paddy. This Court vide order dated 14.09.2020 disposed of said petition with a direction that if petitioner moves an application, the Director, Food Civil Supplies and Consumer Affairs, Government of Punjab shall consider on its own merit, duly keeping in mind the observations made by this Court. This Court while disposing of aforesaid petition observed that petitioner has purchased rice mill in open Court auction and there is no possibility of imputing any sham or clandestine transaction.

ASGAR ALI
2023.07.26 16:45
I attest to the accuracy and
integrity of this document

5. Learned counsel for the petitioner *inter alia* contends that petitioner has purchased rice mill in open Court auction and this Court has already observed that there is no sham or clandestine transaction, thus, there is no ground to deny registration.

6. Learned counsel for the respondent- PAFC submits that they have already confirmed in writing that there is no relation between previous owner and petitioner. Despite said fact, the respondent has not registered petitioner for allotment of paddy.

7. Learned State Counsel submits that case of the petitioner does not fall under Clause (i) of paragraph 7 of Customs Milling Policy 2020-21, thus, petitioner was not registered. The case of the petitioner falls within definition of sale, thus, case of petitioner falls under Clause (d) of paragraph 7 of the policy.

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

9. Learned counsel for the PAFC confirms that there is no relation between petitioner and previous owner and petitioner has purchased mill in open Court auction, thus, there was no question of connivance between the parties. He further submits that PAFC has no objection if petitioner is registered and thereafter allotted paddy.

10. The conceded position emerging from the record is that for the crop year 2012-13 paddy was allotted to M/s Jai Maa Kali Rice Mill. The said rice mill embezzled stock of paddy and FIR came to be registered against partners of the firm. Punjab Agro Food Grains Corporation Limited was procuring agency which initiated criminal as well as civil proceedings against M/s Jai Maa Kali Rice Mill as well as its

ASGAR ALI
2023.07.26 16:45
I attest to the accuracy and
integrity of this document

partners. An arbitrator was appointed and award came to be passed in favour of PAFC. In the execution proceedings, the mill came to be auctioned and petitioner was declared successful bidder, accordingly mill was transferred to petitioner. PAFC in its various communication has confirmed that there is no connivance between petitioner and earlier owner of the mill.

11. Before Dwelling into issue, it would be appropriate to look at Clauses (d) and (i) paragraph of 7 of the policy which are reproduced as below:

> *"7. Events of Default- No mill/miller shall be considered for provisional registration/final registration/allocation 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 follow:-*
>
> *(a) to (c) xxxxxxxx*
>
> *(d) If a mill owned, leased or operated by a previously declared defaulter miller is transferred either through sale/lease or any other mode to any other person/miller, then such other person/miller shall also be considered to be defaulter until all the dues of the agency of which such miller was defaulter, are cleared or the default cured and the concerned agency issues an NOC in favour of such defaulter miller and such premises.*
>
> *(e) to (h) xxxxxx*
>
> *(i) If the premises of a defaulter miller is sold by a Bank/financial institution by way of open auction, or otherwise disposed of by such Bank/financial institution, either by adoption of*

ASGAR ALI
2023.07.26 16:45
I attest to the accuracy and
integrity of this document

> *proceedings under the SARFAESI Act or other applicable law after the date of issue of this policy, the purchaser of such premises and the premises itself shall be treated as defaulter unless it is proved that there is neither any sham/clandestine transaction nor any other financial/family relationship between the buyer and the original owner of the mill. (Ref: CWP No.20535 of 2017-M/s Rajesh Trading Co. vs. State of Punjab and others). In all such cases, the registration shall be done after passing of a speaking order by DFS."*

12. From the perusal of above quoted clauses, it is quite evident that if a rice mill is sold or leased or in any other mode is transferred, a subsequent buyer, lessee or tranferee is not entitled to allotment of paddy unless and until concerned agency issues an NOC in favour of such defaulter mill and such premises. As per clause (i) if the mill is sold in terms of SARFAESI Act, the buyer is eligible to get paddy. The stand of the State seems to be pedantic. The authorities have not attempted to read clause (d) and (i) in a holistic and pragmatic manner. They have totally ignored intent and purpose of aforesaid clauses. The object of Clause (d) is to be prevent fraudulent transfer of mill by defaulter by one or another mean. The sale of property under SARFAESI Act has been accepted. If a mill is transferred under SARFAESI Act, the State has no objection to allot paddy to subsequent buyer, however, State has taken a very strange stand that similar benefit would not be extended to a person who has purchased rice mill in an open auction conducted by Court at the behest of State Government agency. The PAFC which is a State procuring agency has categorically stated that there is no connivance between

ASGAR ALI
2023.07.26 16:45
I attest to the accuracy and
integrity of this document

petitioner and previous owners of the mill still respondent is harping on Clause (d) which is not inhibiting respondents from registering the petitioner and thereafter allot paddy.

13. In view of above facts and findings, the present petition deserves to be allowed and accordingly allowed. The impugned order dated 23.10.2020 (Annexure P-15) is hereby quashed. The respondents are directed to register petitioner and consider his case for allotment of paddy in forthcoming years.

14. Pending misc. application(s), if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

25.07.2023
Ali

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

ASGAR ALI
2023.07.26 16:45
I attest to the accuracy and
integrity of this document