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

209 (85 cases)

1) CWP-23053-2017 (O&M)
Date of Decision:17.07.2023

M/S MAHA LUXMI RICE MILLS AND ORS .... PETITIONERS

Vs.

STATE OF PUNJAB AND ORS ..... RESPONDENTS

2) CWP-23766-2017

M/S SIRI RAM SINGLA RICE MILLS AND ORS .....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS ......RESPONDENTS

3) CWP-23778-2017

M/S SHREE GANESH RICE MILLS AND ORS. .....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. ....RESPONDENTS

4) CWP-23780-2017

M/S GURU NANAK RICE MILLS AND ORS. ......PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. .....RESPONDENTS

5) CWP-24196-2017

M/S SHREE GURU TEG BAHADUR RICE AND GENERAL MILLS AND ORS. .....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. ......RESPONDENTS

6) CWP-26475-2017

HARGOBIND RICE MILLS AND ORS ......PETITIONERS

Vs.

STATE OF PUNJAB AND ORS ....RESPONDENTS

7) CWP-25243-2017

M/S L.P.RICE AND GENERAL MILLS AND ORS. ....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS .....RESPONDENTS

8) CWP-24982-2017

M/S INTERNATIONAL RICE MILLS & ORS ....PETITIONERS

Vs.

STATE OF PUNJAB & ORS ......RESPONDENTS

9) CWP-28298-2017

M/S VIJAY RICE & GENERAL MILLS & ORS ......PETITIONERS

Vs.

STATE OF PUNJAB & ORS ......RESPONDENTS

10) CWP-27433-2017

M/S UNITED RICE MILLS AND ORS ......PETITIONERS

Vs.

STATE OF PUNJAB AND ORS ......RESPONDENTS

11) CWP-28584-2017

R K RICE AND GENERAL MILLS AND ORS ......PETITIONERS

Vs.

STATE OF PUNJAB AND ORS ......RESPONDENTS

12) CWP-28041-2017

M/S J K ENTERPRISES ...... PETITIONER

Vs.

STATE OF PUNJAB & ORS ......RESPONDENTS

13) CWP-7339-2018 (O&M)

A V INDUSTRIES & ORS. ....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. ......RESPONDENTS

14) CWP-5681-2018

M/S MAA GANGA RICE MILLS AND ORS ......PETITIONERS

Vs.

STATE OF PUNJAB AND ORS ....RESPONDENTS

15) CWP-4766-2018

M/S A.K. RICE MILLS AND ORS. ....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. ......RESPONDENTS

16) CWP-8233-2018

M/S LAKSHMI RICE MILLS AND ORS ......PETITIONERS

Vs.

STATE OF PUNJAB AND ORS ....RESPONDENTS

17) CWP-8234-2018

M/S SUNAM INDUSTRIES AND ORS .....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS ....RESPONDENTS

18) CWP-269-2018

SHREE GANESH AGRO FOODS AND ORS ......PETITIONERS

Vs.

STATE OF PUNJAB AND ORS ......RESPONDENTS

19) CWP-7236-2018

M/S BALAJI PADDY PROCESSING MILLS PVT LTD AND OTHERS

.......PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. ....RESPONDENTS

20) CWP-9947-2018

VOHRA TRADING COMPANY ....Petitioner

Vs.

STATE OF PUNJAB AND ORS. ......RESPONDENTS

21) CWP-10030-2018

M/S SHIVA RICE MILLS AND ORS. ....PETITIONERS

Vs.

STATE OF PUNJAB & ORS. ......RESPONDENTS

22) CWP-11656-2018

M/S RAMA KRISHNA RICE & GEN. MILLS AND ORS

...PETITIONERS

Vs.

STATE OF PUNJAB AND ORS ....RESPONDENTS

23) CWP-9834-2018

M/S R.L. FOODS AND ORS. ......PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. .....RESPONDENTS

24) CWP-12992-2018

M/S GOYAL RICE AND GENERAL MILLS & ORS ....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. ......RESPONDENTS

25) CWP-11488-2018

M/S RADHA RAMAN FOOD PRODUCTS AND ORS

...PETITIONERS

Vs.

STATE OF PUNJAB AND ORS .....RESPONDENTS

26) CWP-10836-2018

M/S BHARRO TRADING CO. ADN ORS ....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS ......RESPONDENTS

27) CWP-10575-2018

GURU NANAK RICE MILL AND ORS. .....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. ......RESPONDENTS

28) CWP-11156-2018

M/S SINGLA RICE MILLS AND ORS ......PETITIONERS

Vs.

STATE OF PUNJAB AND ORS ....RESPONDENTS

29) CWP-9787-2018

M/S SHREE BALAJI AGRO INDUSTRIES AND ORS

.......PETITIONERS

Vs.

PUNJAB GRAINS PROCUREMENT CORPORATION LTD
PUNGRAIN AND ORS

.......RESPONDENTS

30) CWP-13107-2018

M/S GANPATI RICE MILLS & ORS .....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. ......RESPONDENTS

31) CWP-12755-2018

M/S KANSAL AGRO INDUSTRIES & ORS ....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. ......RESPONDENTS

32) CWP-14513-2018

M/S SHREE SUKHMANI FOODS AND ORS .....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS .....RESPONDENTS

33) CWP-23916-2017

M/S SHAH RICE MILLS AND ORS ......PETITIONERS

Vs.

STATE OF PUNJAB AND ORS .....RESPONDENTS

34) CWP-23917-2017

M/S MALWA RICE MILLS AND ORS ......PETITIONERS

Vs.

STATE OF PUNJAB AND ORS .....RESPONDENTS

35) CWP-22633-2017

M/S JAI HANUMAN RICE & GENERAL MILLS AND ORS

.......PETITIONERS

Vs.

STATE OF PUNJAB AND ORS .....RESPONDENTS

36) CWP-142-2018

M/S R.S.RICE AND GENERAL MILLS AND ORS....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. .....RESPONDENTS

37) CWP-146-2018

M/S MODREN RICE MILLS AND ORS. ......PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. ....RESPONDENTS

38) CWP-1276-2018

M/S SATLUJ RICE MILLS AND ORS. ......PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. .....RESPONDENTS

39) CWP-2640-2018

M/S RAM LAL VIJAY KUMAR & SONS RICE MILLS AND ORS.

.....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. ......RESPONDENTS

40) CWP-2802-2018

M/S GANGA RICE MILLS AND ORS. .....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. ....RESPONDENTS

41) CWP-3091-2018

M/S TATA RICE MILLS AND ORS. ......PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. .....RESPONDENTS

42) CWP-8774-2018

M/S SHREE HARGOBIND AGRO INDUSTRIES AND ORS.

.....PETITIONERS

Vs.

STATE OF PUNJAB & ORS. .....RESPONDENTS

43) CWP-16536-2018

M/S GANESH RICE AND GENERAL MILLS AND ORS

..PETITIONERS

Vs.

STATE OF PUNJAB AND ORS .....RESPONDENTS

44) CWP-16241-2018

M/S BAHIA RICE MILLS AND ORS. ....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. ....RESPONDENTS

45) CWP-19374-2018

KRISHNA RICE TRADERS THROUGH ITS PROPRIETOR

......Petitioner

Vs.

STATE OF PUNJAB AND ORS. ......RESPONDENTS

46) CWP-19506-2018

M/S SHRI RAM RICE AND GENERAL MILLS AND ORS

.......PETITIONERS

Vs.

UNION OF INDIA AND ORS. ......RESPONDENTS

47) CWP-18970-2018

M/S RAM NATH DHIR & SONS AND ORS .....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS ....RESPONDENTS

48) CWP-17144-2018

M/S TEG AGRO INDUSTRIES VILLAGE UGGOKE AND OTHERS

.....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. .....RESPONDENTS

49) CWP-17124-2018

J.N. RICE MILLS .....Petitioner

Vs.

STATE OF PUNJAB AND ORS .....RESPONDENTS

50) CWP-17717-2018

M/S SHREE GANESH RICE AND GENERAL MILLS & ORS.

......PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. .....RESPONDENTS

51) CWP-16454-2018

M/S GOYAL RICE MILLS & ORS ....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS ....RESPONDENTS

52) CWP-19466-2018

M/S JAI AMBEY RICE MILLS AND ORS .....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS .....RESPONDENTS

53) CWP-23861-2018

VEE TEE CEMENT P LTD AND ORS ......PETITIONERS

Vs.

STATE OF PUNJAB& ORS .....RESPONDENTS

54) CWP-23629-2018

M/S MODERN RICE MILLS .....PETITIONER

Vs.

STATE OF PUNJAB AND ORS ....RESPONDENTS

55) CWP-18546-2018

JAI HANUMAN RICE MILLS .....Petitioner

Vs.

STATE OF PUNJAB AND ORS ......RESPONDENTS

56) CWP-22812-2018

M/S GANGOTRI RICE MILLS .....PETITIONER

Vs.

STATE OF PUNJAB AND ORS ......RESPONDENTS

57) CWP-29189-2017

M/S SHIV SHAKTI RICE MILLS ..... PETITIONER

Vs.

STATE OF PUNJAB AND ORS ....RESPONDENTS

58) CWP-28096-2017

SHANKAR RICE AND GENERAL MILLS AND ORS

....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS ......RESPONDENTS

59) CWP-28099-2017

BHULLAR RICE & GENERAL MILLS THRU ITS PARTNER
SATNAM SINGH AND ORS. .....PETITIONERS

Vs.

STATE OF PUNJAB THRU ITS SECRETARY AND ORS

.....RESPONDENTS

60) CWP-3445-2018

M/S MODREN RICE MILLS .....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. ....RESPONDENTS

61) CWP-25581-2019

GOYAL FOOD PRODUCTS AND ANOTHER .....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. .....RESPONDENTS

62) CWP-13657-2018

M/S SINGLA AGRO PRIVATE LIMITED THROUGH ITS DIRECTOR ASHWANI SINGLA AND ORS. ....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. .....RESPONDENTS

63) CWP-18665-2021

M/S SHRI KRISHNA AGRO PRODUCTS AND ANR

.....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS .....RESPONDENTS

64) CWP-25024-2017

M/S KOT-KAPURA FOODS PVT.LTD. AND ORS....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS ....RESPONDENTS

65) CWP-13402-2018

M/S SHIV BHOLEY RICE MILL AND ORS. .....PETITIONERS

Vs.

FOOD CORPORATION OF INDIA AND ORS......RESPONDENTS

66) CWP-25189-2018

SIYA RAM RICE & GENERAL MILLS & ANR ...PETITIONERS

Vs.

STATE OF PUNJAB AND ORS ....RESPONDENTS

67) CWP-27129-2018

M/S GANPATI RICE INDUSTRIES AND ORS.....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. ....RESPONDENTS

68) CWP-18889-2022

M/S AMBA RICE MILLS ....Petitioner

Vs.

STATE OF PUNJAB AND ORS. ....RESPONDENTS

69) CWP-18954-2022

M/S KRISHNA RICE INDUSTRIES AND ORS.....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. ....RESPONDENTS

70) CWP-19785-2022 (O&M)

M/S SHIV SHAKAR GRAM UDYOG SAMITI ....PETITIONER

Vs.

STATE OF PUNJAB AND ORS. ....RESPONDENTS

71) CWP-27877-2017

A K ASSOCIATES ..... PETITIONER

Vs.

STATE OF PUNJAB AND ORS ....RESPONDENTS

72) CWP-14926-2018

M/S A WON RICE MILLS AND ORS ...PETITIONERS

Vs.

STATE OF PUNJAB AND ORS ....RESPONDENTS

73) CWP-12558-2018

M/S BHAGAT SINGH RICE MILLS AND ORS. ....PETITIONERS

Vs.

STATE OF PUNJAB & ORS. ....RESPONDENTS

74) CWP-14202-2018

M/S NAVEEN RICE MILL AND ORS. ....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. ....RESPONDENTS

75) CWP-16102-2018

M/S J.R. AGROTECH PVT. LTD. AND ORS. ....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. ....RESPONDENTS

76) CWP-20640-2018

M/S GURU TEG BAHADUR RICE MILLS AND ORS

...PETITIONERS

Vs.

STATE OF PUNJAB AND ORS .....RESPONDENTS

77) CWP-21276-2018

M/S JAI DURGA RICE INDUSTRY AND ORS ....PETITIONERS

Vs.

UNION OF INDIA AND ORS. ...RESPONDENTS

78) CWP-22485-2018

M/S OM AGRO INDUSTRIES AND ORS. ...PETITIONERS

Vs.

UNION OF INDIA AND ORS. ....RESPONDENTS

79) CWP-22871-2018

M/S BALBEHRA RICE MILL & ORS ....PETITIONERS

Vs.

STATE OF PUNJAB & ORS ....RESPONDENTS

80) CWP-24002-2018

M/S SHIV KIRPA RICE & GENERAL MILLS AND ORS.

.....PETITIONERS

Vs.

UNION OF INDIA AND ORS. ...RESPONDENTS

81) CWP-24312-2018

M/S BRAHMAN MAJRA RICE MILLS & ORS ....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS ....RESPONDENTS

82) CWP-25481-2018

M/S A P RICE MILLS AND ORS ...PETITIONERS

Vs.

STATE OF PUNJAB AND ORS ....RESPONDENTS

83) CWP-22085-2018

M/S G R RICE MILLS & ORS ....PETITIONERS

Vs.

STATE OF PUNJAB & ORS ....RESPONDENTS

84) CWP-13367-2018

M/S HERO RICE INDUSTRIES AND ORS. ....PETITIONERS

Vs.

STATE OF PUNJAB AND ORS. ....RESPONDENTS

85) CWP-6064-2019

M/S GANPATI RICE MILLS AND ORS. ....PETITIONERS

Vs.

UNION OF INDIA AND ORS. ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Daman Dhir, Advocate, with
Mr. Raman Dhir, Advocate and
Ms. Poonam Rani, Advocate
for the petitioners in
CWP-23053-2017, CWP-23766-2017, CWP-23778-2017, CWP-23780-2017, CWP-25243-2017, CWP-5681-2018, CWP-4766-2018, CWP-8233-2018, CWP-8234-2018, CWP-10030-2018, CWP-11656-2018, CWP-9834-2018, CWP-10836-2018, CWP-23916-2017, CWP-23917-2017, CWP-22633-2017, CWP-142-2018, CWP-146-2018, CWP-1276-2018, CWP-2640-2018, CWP-2802- 2018, CWP-3091-2018, CWP-8774-2018, CWP-16536-2018, CWP-16241-2018, CWP-19506-2018, CWP-29189-2017, CWP-18665-2021, CWP-18954-2022, CWP-14926-2018, CWP-12558-2018,

CWP-14202-2018, CWP-16102-2018, CWP-20640-2018, CWP-24002-2018, CWP-25481-2018, CWP-13367-2018, CWP-27129-2018, CWP-21276-2018 and CWP-6064-2019.

Mr. J.P.S. Sidhu, Advocate
for the petitioner in CWP No.25024-2017.

Mr. H.P. Singh, Advocate for
Mr. D.S. Malwai, Advocate
for the petitioner in CWP No.19374-2018.

Mr. Shiv Kumar, Advocate
for the petitioner in CWP-10575-2018, CWP-28099-2017 and CWP-24196-2017.

Mr. Karan Gupta, Advocate
for the petitioner in CWP-24982-2017, CWP-28298-2017, CWP-27433-2017, CWP-28584-2017, CWP-269-2018, CWP-23861-2018, CWP-18546-2018 and CWP-28096-2017.

Mr. Rose Gupta, Advocate and
Ms. Garima Modi, Advocate for the PETITIONERS in CWP-19466-2018, CWP-25581-2019, CWP-18889-2022 & CWP-19785-2022.

Ms. Manpreet, Advocate for
Ms. Niharika Gupta, Advocate
for the petitioner in CWP-22812-2018.

Mr. Aman Bansal, Advocate
for the petitioner in CWP-17144-2018.

Mr. Deepak Kumar, Advocate
for the petitioner in CWP No.18970-2018.

Mr. D.D. Bansal, Advocate
for the petitioner in CWP No.26475-2017.

Mr. Sherry K. Singla, Advocate
for the petitioners in CWP-12992-2018, CWP-11488-2018, CWP-13107-2018, CWP-12755-2018, CWP-14513-2018, CWP-16454-2018, CWP-22871-2018, CWP-24312-2018 & CWP-22085-2018.

Mr. Amaninder Preet, Advocate,
for the petitioner in CWP-7236-2018.

Mr. Raghav Bali, Advocate for
Mr. Rajinder Kumar Singla, Advocate,
for the petitioner in CWP-11156-2018.

Mr. Aditya Dassaur, Advocate
for the petitioner in CWP-3445-2018.

Mr. V.P.S. Mithowal, Advocate
for the petitioner in CWP No.9787-2018.

Mr. Maninder Singh, DAG, Punjab.

Mr. Naresh Gopal, Advocate,
for respondent No.1-PUNGRAIN
in CWP-9787-2018.

Mr. Gurinderjit Singh, Advocate
for the FCI in CWP No.22485-2018, CWP No.6064-2019,
CWP No.18889-2022, CWP No.19785-2022 and
CWP No.23053-2019.

Mr.T.S. Sidhu, Advocate,
for respondent in CWP-3091-2018.

Ms. Sukhmani T. Patwalia, Advocate and
Mr. Akshit Pathania, Advocate
for respondent-Markfed in CWP-13402-2018 and CWP-25189-2018.

Mr. Mayank Mathur, Advocate
for the respondent- Punjab Agro in CWP-28041-2017.

Mr. Rajesh Garg, Senior Advocate with
Mr. Rohit Gupta, Advocate
for FCI.

Mr. Aman Sharma, Advocate and
Mr. Chirag Suri, Advocate
for the respondent-PUNSUP in CWP-28099-2017 and CWP-18546-2018.

Ms. Brea Sandhu, Advocate for
Ms. Deepali Puri, Advocate
for respondent-PUNSUP and PUNGRAIN.

Mr. Ravi Mishra, Advocate for
Mr. Karan Singla, Advocate,
for respondent-PSWC and PAFC.

Mr. Charanjit Sharma, Advocate
for respondent No.4- PSWC in CWP No.25024-2017, CWP No.29189-2017, CWP No.142-2018, CWP No.146-2018 and CWP No.269-2018.

Mr. Anil Kumar Sharma, Advocate and
Ms. Deviyani Sharma, Advocate
for respondent No.4 in CWP-27877-2017, CWP-28584-2017, CWP-27433-2017, CWP-24196-2017 and CWP-28041-2017 and for respondent No.6 in CWP-23766-2017.

Mr. Aseem Monga, Advocate for
Mr. Athar Ahmed, Advocate
for respondent No.4 in CWP No.4766-2018 and CWP-5681-2018 and for respondent No. 6 in CWP-23917- 2017, CWP-24196-2017, CWP-25024-2017, CWP-23916-2017 & CWP-16102-2018.

Mr. A.P.S. Mann, Advocate
for respondent No.5 in CWP No.23053-2017.

Mr. T.V.S. Lehal, Advocate
for respondent No.5 in CWP-27877-2017.

Mr. Ankit Kumar, Advocate,
for the respondent No.5 in CWP-14926-2018.

Ms. Reeta Kohli, Senior Advocate with
Ms. Vandana Kohli, Advocate,
for respondent No.5-Markfed.

Mr. H.S. Mander, Advocate for
Mr. H.S. Multani, Advocate,
for respondent No.5- MARKFED in CWP-4766-2018, CWP-2640-2018, CWP-2802-2018, CWP- 29189- 2017, CWP-3091-2018 and CWP-27433-2017.

Ms. Amrit Kaur Mahir, Advocate for
Mr. Gaurav Verma, Advocate,
for respondent No.5 in CWP-7236-2018.

Mr. Birinder Pal, Advocate
for respondent No.6- PUNSUP in CWP-22298, 27433 of 2017, CWP-146 and 269 of 2018.

Mr. J.R. Syal, Advocate,

for respondent No.6- PUNSUP in CWP-24982-2017, 25343-2017, 26475-2017, 28041-2017 and 28096-2017.

Mr. Manbir Singh Baath, Advocate,
for respondent No.6 in CWP-2802-2018, CWP-4766-2018 CWP-5681-2018, CWP-27877-2017 & CWP-142-2018.

Mr. Maninder S. Saini, Advocate
for respondent No.6 in CWP-7236-2018.

Mr. Bhuwan Vats, Advocate,
for UOI in CWP No. 6064-2019.

Mr. Karan Kumar Jund, Advocate
for UOI.

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<u>JAGMOHAN BANSAL, J. (Oral)</u>

1. By this common order, a bunch of writ petitions is disposed of as issue involved in all the petitions is common. For the sake of convenience, the facts are borrowed from CWP No.23053 of 2017.

2. The petitioners through instant petition under Article 226 of Constitution of India are seeking quashing of decision of meeting dated 03.08.2017 (Annexure P-9) and recovery notice (Annexure P-11-colly.) whereby petitioners have been asked to pay Rs. 3/- per quintal towards transportation charges.

3. The brief facts of the case which are necessary for the adjudication of the present petitions are that the petitioners are engaged in the business of milling rice. The petitioners are primarily based upon paddy supplied by State Government. As per procedure adopted by State Government, every year a milling policy known as 'Custom Milling Policy' and 'Draft Agreement' is notified wherein terms and conditions

with respect to supply of paddy to millers are declared. The agreement is signed by miller, procurement agency and State Government.

4. The present matter relates to period running from 2003-04 to 2013-14. The State of Punjab through its procurement agencies supplied paddy to the petitioners who converted paddy into rice and delivered rice at the points of FCI. The procurement agencies, which are owned and controlled by State Government, arranged transportation of paddy from grain marked (mandi) to the mill premises. As per terms and conditions of the policy, the petitioners were paid a sum of Rs.15/- per quintal towards milling charges. They were supposed to deliver recovery @ 67% of paddy supplied. They were entitled to retain by-products i.e. broken rice, paddy husk, rice bran etc. The Custom Milling Policy of 2003-04 to 2012-13 was silent qua transportation charges from mandi to rice mill, however, in the policy of 2013-14, it was clarified that procured agency would bear cost of transportation charges from mandi to storage point. The same term qua transportation charges was inserted in the subsequent policies.

5. There was dispute between Centre and State Government on different issues relating to raw rice and par-boiled rice. On the request of State of Punjab, Centre Government, to resolve different issues, constituted a Committee known as Jha Committee. The Jha Committee in its report dated 22.01.2016 observed that transportation charges of paddy/rice upto 8 kms from mandi are part of normative milling charges. The Committee recommended to consider the request of State

Government to reduce the milling charges to Rs.12/- per quintal for raw rice and Rs.22/- per quintal for par-boiled rice provided State Government arranges for recovery of Rs.3/- per quintal from the millers which was already paid as milling charges by the State Government. The report of the Committee came up for consideration before concerned Ministry of the Central Government which did not approve recommendation of the Committee qua transportation charges and opined not to reopen old matters and take retrospective decisions. It was further observed that as an administrative measure, recovery by State Government from millers may not be feasible.

6. The State Government made various representations to Centre Government to reimburse cost of transportation because State had already borne the cost of transportation and it was running into multi crore. Director, Food, Civil Supplies and Consumer Affairs, Punjab called a meeting of different procurement agencies including FCI. In the meeting dated 03.08.2017, it was concluded that issue regarding settlement of transportation charges with millers should be amicably resolved. A sum of Rs.3/- per quintal of paddy be recovered from millers for the period from 2003-04 to 2014-15 as it was included in the milling charges Rs.15/- per quintal.

7. Mr. Dhir and other advocates representing different petitioners *inter alia* contend that petitioners have processed paddy during 2003-04 to 2014-15 and accounts of these years have already been settled. There are many petitioners who have got rice mill on lease basis,

thus, it is impossible for them to pay a sum of Rs.3/- per quintal. There are also many cases where the petitioners have sold their mills. The respondent at their own arranged transportation from mandi to mill and it was common understanding of both the parties that procurement agency would bear cost of transportation upto the premises of the miller. The letters written by State Government to Central Government indicate that State, at all level, was trying its best to recover transportation charges from Central Government and finding itself unable to recover form Centre Government has turned around to petitioners. The report of Jha Committee has not been approved by Central Government, thus, its contents cannot be relied upon and it cannot be made basis to recover charges from the petitioners. Act of respondent-State amounts to re-opening of concluded contracts. Attempt to recover alleged amount at this belated stage is not only against the principles of reasonable period of limitation but also equity, justice and fair play.

8. Per contra, Mr. Maninder Singh and other counsel except FCI and Union of India would submit that Government of India vide letter dated 08.12.2003 prescribed item-wise charges of rice for the khariff marketing season 2003-04. With respect to raw rice under Column No.7 milling charges were prescribed Rs.15/- per quintal. The Government of India vide letter dated 22.08.2005 clarified item-wise cost of rice for khariff marketing season 2002-03 (revised sanction). Under Column 4, non-statutory charges were disclosed. The milling charges were prescribed Rs.13.20/- per quintal.

9. There were representations on behalf of the millers and in the subsequent years, the milling charges were prescribed Rs.15/- per quintal. The State Government was dependent upon Centre Government and Centre Government has notified milling charges Rs.15/- per quintal and said charges included cost of transportation. The State agencies arranged transportation from mandi to premises of the miller under the impression that it would be reimbursed from Government of India. The State made various representations, however, despite recommendations of Jha Committee, Centre Government did not reimburse cost of transportation, thus, left with no option, the State Government decided to recover transportation charges from the millers. The State Government is facing huge financial distress due to non settlement of various issues by Central Government. There is no delay in the action of State Government.

10. Mr. Gurinderjit Singh, Advocate for FCI and Mr. Bhuwan Vats, Advocate for Union of India submit that no relief has been sought against them. Dispute is between petitioners and State of Punjab and they have been wrongly impleaded as respondents.

11. I have heard arguments of learned counsel for the parties and with their able assistance perused the record.

12. The conceded position emerging from the record is that the petitioners are engaged in the business of milling of rice. The State Government through its agencies during 2003-04 to 2013-14 supplied

paddy to the petitioners who in turn converted paddy into rice and delivered rice to FCI at notified points. The State agencies have incurred cost of transportation from mandi to rice mills. The transportation was arranged by procurement agencies. In the Customs Milling Policy of 2003-04 to 2012-13, the policy was silent qua cost of transportation charges from mandi to rice mills, however, in the policy of 2013-14, it was specifically mentioned that procurement agency shall bear transportation charges from mandi to first milling point. The terms and conditions of 2013-14 policies were identical to 2014-15, however, in the policy of 2017-18, it was clarified that paddy shall be stored at the storage point/rice mill by the miller at its own expenses. The Central Government constituted a Committee known as Jha Committee which recommended recovery of Rs.3/- per quintal from the rice mills. The Government of India, Ministry of Consumer affairs, Food & Public Distribution, Department of Food & Public Distribution did not approve recommendation of Jha Committee qua recovery of transportation charges from the millers. The respondents in its meeting decided to amicably settled the matter with the millers and recover transportation charges from the millers. In terms of decision dated 03.08.2017, the respondent agencies issued recovery notice to the petitioners.

13. From the perusal of record and arguments of both sides, following question arise for the consideration of this Court :

> "Whether respondent-State in 2017 could recover from petitioners transportation charges which respondents have

incurred from mandi to rice mill during 2003-04 to 2013-14?"

14. Before adverting with the issue involved, it would be apt to notice the relevant paragraphs of milling policy which are reproduced as under :

Milling Policy (2007-08)

"***Storage of paddy stocks***

Paddy procured by the agencies shall be stored in the premises of the allotted mills in joint custody as per details given in the subsequent paragraphs on the basis of allotment policy. Bare minimum paddy should be stored in own custody and that too under exceptional circumstances only with the prior approval of the head of the procuring agency. The paddy to be stored in own custody will be stored within 8 kilo-meters of the rice mills from the mills allotted to the procuring agencies. Such paddy stocks are to be got milled from the mills allotted to the agencies at the earliest possible so that agencies do not incur avoidable financial expenditure. The responsibility for quality and quantity for the paddy stored in own custody will be of the concerned agency's staff."

X X X X X

"***9. Payment of milling charges.***

"*The rice millers shall be paid milling charges for custom milling paddy as fixed by the Government of*

India. However, all bye-products viz. broken rice, rice kani (rice husk and rice bran etc.) shall be the property of the rice miller. The rice miller will be bound to follow any change in the policy made by the Government of India or the State Government from time to time."

Milling policy (2013-14)

"*(i)* ***STORAGE OF PADDY STOCKS:-***

Paddy shall be stored at the storage point/rice mill by the agency concerned at its own expenses. Subsequent operations like de-stacking/loading of paddy from storage point/transportation/unloading at haudi/ drying/ re-stacking etc., till the delivery of rice in FCI godowns shall be handed by the miller concerned at his own expenses."

Milling policy (2014-15)

"**8. STORAGE/SHIFTING OF PADDY STOCKS:-**

STORAGE OF PADDY STOCKS:- *Paddy shall be stored at the storage point/rice mill by the agency concerned at its own expenses i.e. charges for loading, transportation and unloading from the trucks and stacking in the mill shall be paid by the agency concerned. Subsequent operations like de-stacking/loading of paddy from storage point/transportation/unloading at haudi/drying/re-stacking etc., till the delivery of rice in FCI godowns shall be handed by the miller concerned at his own expenses.*"

Milling policy (2017-18)

" ***STORAGE OF PADDY STOCKS:-***

Paddy shall be stored at the storage point/rice mill by the miller at its own expenses after the completion of the agreement with the concerned agency. Subsequent operations like de-stacking/loading of paddy from storage point/transportation/unloading at haudi/drying/ re-stacking etc., till the delivery of rice in FCI godowns shall be handed by the miller concerned at his/her own expenses."

15. From the perusal of above quoted policies, it is quite evident that prior to policy of 2013-14, it was not clear that who will bear cost of transportation from mandi to premises of the millers, however, in the Custom Milling Policy of 2013-14, it was made clear that paddy shall be stored at storage point/rice mills at the cost of agency. In the policy of 2013-14 & 2014-15, the agency was specifically made to bear cost of transportation upto the place of millers and for the first time in the policy of 2017-18, it was provided that paddy shall be stored at the cost of millers.

16. The Centre Government vide letter dated 08.12.2003 clarified item-wise cost of rice. In Column No.7, it was provided that milling charges would be Rs.15/- per quintal. The relevant extracts of the letter dated 08.12.2003 read as:

"***Government of India***

Department of Food and Public Distribution Rates of Custom Milled Rice delivered to the Central Pool

during the Kharif Marketing Season 2003-04 in respect of Government of Punjab and its agencies.

Raw Rice

(Rs.qtl.)

Sr. No	***Item of Incidental***	***Common***	***Grade. A***
xxxx	*Xxxx*	*xxxx*	*xxxx*
7.	***Milling Charges*** *(including transportation upto 8 Kms. From the mill to FCI godown on paddy as well as rice.)*	*15.00*	*15.00*

17. The Central Government vide communication dated 22.08.2005 fixed item-wise cost/rate for the khariff marketing season 2002-03. The relevant extracts of the communication dated 22.08.2005 read as :

Government of India

M/O Consumer Affairs, Food & Public Distribution

Department of Food & Public Distribution

New Delhi

22 August 2005

To,

The Secretary,

Food & Supplies Department

Government of Punjab Chandigarh

Sub: Final rates of New B.Twill gunny bags and procurement incidentals of CMR- Government of Punjab & Agencies- Kharif Marketing Season 2002-03 revised sanction.

4.	*Non-Statutory Charges:*		
(a)	*Mandi Labour Charges*	*10.06*	*10.00*
(b)	*Transportation Movement*	*14.73*	*14.73*
(c)	*Driage @ 1 % on MSP*	*5.30*	*5.60*
(d)	*MSP Custody & Maintenance charges @ Rs.0.92 per quintal per month for 4 months and 1 day.*	*3.71*	*3.71*
(e)	*Interest Charges @ 11.30 % per annum till 31.12.2002 and thereafter @ 11.05% per annum for 4 months and 1 day, on MSP + Statutor charges + Mandi Labour Charges*	*23.05*	*24.34*
(f)	*Milling Charges*	*13.20*	*13.20*

18. The State Government raised various issues with Centre Government with respect to its payment. On the representation of State Government, Centre Government constituted a Committee known as Jha Committee. The Committee finalised its recommendation vide report dated 22.02.2016. The Committee apart from other issues considered question of cost of transportation and recommended as below :

9.4 Further, DFPD has again initiated action for those claims which have been pending for long and have been referred to by GOP time and again. The cases in brief and recommendations of the committee thereon are appended as below:-

SL. No.	*Issue*	*Recommendations of the committee to resolve the issue*
1.	*Reimbursement of actual transportation charges of paddy from mandi to mills from KMS 2003-04-KMS-2013-14.*	*As per the principles, transportation charges of paddy/rice upto 8 kms from mandi are part of the normative milling charges. Since GOP has disputed this principles since 2003-04 onwards and insisted for reimbursement of actual cost of transportation of paddy upto 8 kms from mandi to mills, Committee recommends to consider the request of State Government by reducing the milling charges to Rs.12 per quintal for raw rice and Rs.22 per quintal for par-boiled rice provided State Government submits proper proposal and arranges for recovery of Rs.3 per quintal from the millers which have been already paid as milling charges by the State Government. The State Government would have to take consequential action in this matter after a decision is taken in this respect.*

19. The report of Committee came up for consideration before Central Government. The Centre Government considered recommendations of the Committee and vide letter dated 19.05.2016 opined that it would not be appropriate to reopen old matters and as an administrative measure, reimbursement may not be feasible. The relevant extracts of the letter dated 19.05.2016 read as :

> "*No.195(1) 2012-FC A/CS*
> *Government of India*
> *Ministry of Consumer Affairs, Food & Public Distribution*
> *Department of Food & Public Distribution*
> *Room No.295, Krishi Bhawan*
> *New Delhi, May 19, 2016.*
>
> *Subject: Report of the Committee on outstanding CCL for procurement of foodgrains in Punjab- consideration of certain issue as per the recommendations of the Committee.*
>
> *Sir,*
>
> *I am directed to refer to this Department Office Memorandum of even number dated 22.06.2016 vide which the report of the Committee constituted to examine the issue related to settlement of Cash Credit Loan (CCL) accounts of Government of Punjab (Gop) was circulated.*
>
> *2. In its report, the Committee inter-alia gave its recommendations for reconsideration of certain issue raised by Govt. of Punjab. As per the reconsideration of the Committee, the following issues have been examined/reconsidered by the Department and the position in respect thereof has been indicated against each issue.*

S.No.	*Issue*	*Decision of the Department*
1.	*Reimbursement of actual transportation charge of paddy from mandi to mills from KMS 2003-04 to KMS -2013-14.*	*The issue has been examined and it was decided not to reopen old matters and take retrospective decisions. Also as an administrative measure, recovery by State Government from millers may not be feasible to recover. Thus, the proposal is not found admissible."*

20. The Chief Minister of the State vide letter dated 11.07.2017 requested the Prime Minister to look into the matter. In the letter, it was pointed out that Department of Food and Public Distribution, Government of India, vide letter dated 19.05.2016 has rejected all the claims despite recommendations of the Committee. The relevant extracts of the letter dated 11.07.2017 of Chief Minister read as :

> "*Even after recommendations of the committee, the Department of Food & Public Distribution, Government of India vide its letter no. 195(I)/2012-FC A/Cs of 19.05.2016 and No.195(1)-2012-FC A/Cs of 20.09.2016 rejected all the claims without consulting the State Government or giving any opportunity to the state to present its views. The DFPD vide above referred letter has clearly mentioned that the claims so raised were not admissible."*

21. From the perusal of Custom Milling policies of different years in question as well as policy of 2017-18, it is quite evident that prior to policy of 2013-14, question qua transportation charges was silent and State as per its own wisdom in policy 2013-14 clarified that cost of transportation from mandi to premises of millers shall be borne by agencies. From the communications made by State Government to Central Government, it is evident that State Government was of the opinion that cost of transportation has to be borne by Central Government and its agencies. The State, at this stage, was never of the opinion that cost of transportation has to be borne by the millers. The State has heavily relied upon recommendations of the Jha Committee which was constituted by Central Government. The recommendation of Jha Committee qua transportation charges has not been accepted by Central Government rather Central Government has opined not to reopen the old matters and it is not feasible to recover from millers.

22. The State is placing reliance upon letter dated 08.12.2003 of Central Government. As per learned State counsel, the aforesaid letter makes it clear that milling charges included cost of transportation, thus, petitioners were duty bound to bear cost of transportation.

23. From the perusal of column No.7 of the said letter, it transpires that milling charges included transportation charges from mill to FCI godown. The said letter does not support cause of the State. It was State and its agencies who opted to arrange transportation from mandi to rice mills. Even otherwise, in the absence of specific condition, it cannot

be presumed that owner of a product would not bear cost of transportation from his place to place of job worker. The petitioners are the job workers of the State Government and in the absence of any categoric clause, it cannot be presumed that job workers were supposed to bear cost of transportation from the place of supplier to place of job worker. All the communications are making clear that cost of transportation of rice from miller to FCI has to be borne by the millers. The natural corollary of the communication as well as act and conduct of the State is that the State was always of the opinion that procurement agencies would bear cost of transportation. It is not a case of one or two years. It is a case of more than 10 years. Every year, the petitioners submitted their bills which were duly cleared by the State. During the milling session, at no stage, the State raised demand from the millers even though State raised issue with the Centre Government. It does not seem just and fair to ask the petitioners to pay cost of transportation after passing of more than 10 years especially when all the accounts have already been settled.

24. There is another aspect of the matter. The respondent every year besides framing Custom Milling Policy entered into an agreement with the millers. In the Custom Milling Policy as well as contract, terms and conditions including conditions for being eligible to get paddy were prescribed. Policy provided that:

(i) Rice mill must have completed entire milling of paddy stock of previous year and have delivered the resultant rice.

(ii) No defaulter rice mill would be considered for allotment/provisional registration.

(iii) The miller could be declared defaulter on account of any of the reason mentioned in the policy.

(iv) The miller would be entitled to milling charges.

(v) Delivery of rice shall be deemed to have been completed after the stocks are loaded into wagons or delivered into godowns as per directions of the authorized responsible official of the agency.

(vi) All the disputes pertaining to custom milling of paddy between the miller and the agency shall be resolved through arbitration.

(vii) The Managing Director of the agency shall be competent to appoint an arbitrator.

25. The relevant terms and conditions of the policy (source: KMS 2007-08) are reproduced as below :

> ***Storage of paddy stocks***
>
> *Paddy procured by the agencies shall be stored in the premises of the allotted mills in joint custody as per details given in the subsequent paragraphs on the basis of allotment policy. Bare minimum paddy should be stored in own custody and that too under exceptional circumstances only with the prior approval of the head of the procuring agency. The paddy to be stored in own custody will be stored*

within 8 kilo-meters of the rice mills from the mills allotted to the procuring agencies. Such paddy stocks are to be got milled from the mills allotted to the agencies at the earliest possible so that agencies do not incur avoidable financial expenditure. The responsibility for quality and quantity for the paddy stored in own custody will be of the concerned agency's staff.

Allotment of rice mills :

The rice mills which have completed entire milling of paddy stocks during Kharif 2006-07 and have delivered the resultant rice, are to be considered as eligible for allotment of paddy during Kharif marketing season 2007-08. All the allotments of rice mills must be completed before 25.9.2007. After this date, the allotment cases will be sent to Head Office for approval. Allotment made once shall not be changed. Wherever any necessary change is required, it will be done at the level of Director Food and Supplies.

X X X X

No defaulter rice mill shall be considered for allotment/provisional registration. The default may be on the following counts:

i) If a rice mill has to deliver custom milled rice of any agency pertaining to the previous years including 2006-07

II) & (iii) X X X X

iv) If the miller had failed to mill paddy after due notice and the agency had to shift paddy at the cost of *the miller during the previous years such mills will be treated as defaulters.*

v) If the agency reports any case of mis-appropriation of paddy by a miller of the previous years including kharif marketing season2006-07.

vi) to (ix) X X X X

x) The millers with whom FCI has banned its business dealings on account of delivery of rice "Beyond Rejection Limit" (BRL) during the previous years.

Payment of miling charges

The rice millers shall be paid milling charges for custom milling of paddy as fixed by the Government of India. However, all bye-products viz. broken rice, rice kani (rice husk and rice bran etc.) shall be the property of the rice miller. The rice miller will be bound to follow any change in the policy made by the Government of India or the State Government form time to time.

Delivery of rice

(a) to (g) X X X X

h) The delivery of rice shall be deemed to have been completed by the miller after the stocks are loaded into wagons or delivered into the Godowns as per directions of the authorized responsible official of the agency after necessary weighment/inspection and approval of the quantity in accordance with the prescribed procedure of the State Government at the cost of the miller. It will be responsibility of the miller to supply "Acceptance note", weight check memo and all other relevant documents to the concerned agency within 7 days of delivery of rice for claiming payment *from FCI, falling which release order for due quantity of paddy shall not be issued.*

13 (a) All disputes pertaining to custom milling of paddy between the miller and the agency shall be resolved through arbitration by an arbitrator to be appointed by the Managing Director of the agency concerned. There shall be no objection to any such appointment by the miller concerned.

26. Every years, an identically worded contract was executed between miller and State. For the sake of convenience, contents of contract of KMS 2006-07 are hereby noticed. In the agreement, it was provided that contract shall come into force with effect from the date of execution and shall remain in force upto 30.09.2008 or clearance of dues whichever is later. The relevant extracts of the agreement read as:

> *"The contract shall come into force with effect from the date of execution of this agreement and shall remain in force up to and including 30.09.2008 or clearance of dues whichever is later. Thereafter, it may be extended at the discretion of the Director/Managing Director for a further period on the same terms and conditions."*

27. From the perusal of terms and conditions jotted down in the policy as well as agreement, it is quite evident that policy and agreement were very exhaustive where it was categorically provided that the

defaulter shall not be entitled for the allotment of paddy. The period of contract was also specified. The respondents allotted paddy to petitioners year after year. The allotment of paddy in 2004-05 indicated that miller has fully complied with terms and conditions of the contract executed for KMS 2003-04. The petitioners milled paddy from 2003-04 to 2014-15 which indicates that petitioners have fully complied with terms and conditions of the each year policy as well as agreement. They were allotted paddy in the subsequent years. All the dues of the petitioners were cleared. No matter was referred to Arbitrator. Thus contracts executed during 2003-04 to 2014-15 stood discharged.

The contract between the parties was a purely commercial contract. It was not a statutory contract but a contract in terms of Article 299 of the Constitution of India. Parties were covered by terms and conditions of the policy as well as contract. Nobody could travel beyond the terms and conditions of the contract.

A three judge of Hon'ble Supreme Court in ***State of Haryana v. Lal Chand*****, (1984) 3 SCC 634** has explained distinction between a statutory and non-statutory contract. Court has clearly held that contracts executed under a statutory provision like Punjab Excise Act are statutory contracts which are not governed by article 299 of the Constitution of India. The court has held:

> ***"10.*** *There is a distinction between contracts which are executed in exercise of the executive powers and contracts*

which are statutory in nature. Under Article 299(1), three conditions have to be satisfied before a binding contract by the Union or the State in exercise of the executive power comes into existence : (1) The contract must be expressed to be made by the President or the Governor, as the case may be. (2) It must be executed in writing and (3) The execution thereof should be by such person and in such manner as the President or the Governor may direct or authorize. There can be no doubt that a contract which has to be executed in accordance with Article 299(1) is nullified and becomes void if the contract is not executed in conformity with provisions of Article 299(1) and there is no question of estoppel or ratification in such cases. Nor can there be any implied contract between the Government and another person : K.P. Chowdhary v. State of M.P. [AIR 1967 SC 203:(1966) 3 SCR 919:(1967) 2 SCJ 119], Mulamchand v. State of M.P. [AIR 1968 SC 1218 : (1968) 3 SCR 214 : (1968) 2 SCJ 924], State of M.P. v. Rattan Lal [1967 MPLJ 104] and State of M.P. v. Firm Gobardhan Dass Kailash Nath [(1973) 1 SCC 668 : AIR 1973 SC 1164] .

***11.** It is well settled that Article 299(1) applies to a contract made in exercise of the executive power of the Union or the State, but not to a contract made in exercise of statutory power. Article 299(1) has no application to a case where a* *particular statutory authority as distinguished from the Union or the States enters into a contract which is statutory in nature. Such a contract, even though it is for securing the interests of the Union or the States, is not a contract which has been entered into by or on behalf of the Union or the State in exercise of its executive powers. In respect of forest contracts which were dealt with by this Court in K.P. Chowdhary [AIR 1967 SC 203 : (1966) 3 SCR 919 : (1967) 2 SCJ 119] , Mulamchand [AIR 1968 SC 1218 : (1968) 3 SCR 214 : (1968) 2 SCJ 924] , Rattan Lal [1967 MPLJ 104] and Firm Gobardhan Dass [(1973) 1 SCC 668 : AIR 1973 SC 1164] cases, there are provisions in the Indian Forest Act, 1927 and the Forest Contract Rules framed thereunder for entering into a formal deed between the forest contractor and the State Government to be executed and expressed in the name of the Governor in conformity with the requirements of Article 299(1), whereas under the Punjab Excise Act, 1914, like some other State Excise Acts, once the bid offered by a person at an auction sale is accepted by the authority competent, a completed contract comes into existence and all that is required is the grant of a licence to the person whose bid has been accepted. It is settled law that contracts made in exercise of statutory powers are not covered by Article 299(1) and once this distinction is kept in* *view, it will be manifest that the principles laid down in K.P. Chowdhary [AIR 1967 SC 203 : (1966) 3 SCR 919 : (1967) 2 SCJ 119] , Mulamchand [AIR 1968 SC 1218 : (1968) 3 SCR 214 : (1968) 2 SCJ 924] , Rattan Lal [1967 MPLJ 104] and Firm Gobardhan Dass [(1973) 1 SCC 668 : AIR 1973 SC 1164] cases are not applicable to a statutory contract e.g. an excise contract. In such a case, the Collector acting as the Deputy Excise and Taxation Commissioner conducting the auction under Rule 36(22) and the Excise Commissioner exercising the functions of the Financial Commissioner accepting the bid under Rule 36(22-A) although they undoubtedly act for and on behalf of the State Government for raising public revenue, they have the requisite authority to do so under the Act and the rules framed thereunder and therefore such a contract which comes into being on acceptance of the bid, is a statutory contract falling outside the purview of Article 299(1) of the Constitution.*

12. *We are clearly of the opinion that in the case of a statutory contract like the one under the Excise Act, the requirements of Article 299(1) cannot be invoked. In A. Damodaran v. State of Kerala [(1976) 3 SCC 61 : AIR 1976 SC 1533 : (1976) 3 SCR 780] the Court interpreting Section 28 of the Kerala Abkari Act, 1967 which was in pari materia* *with Section 60 of the Punjab Excise Act, 1914 held that even if no formal deed had been executed as required under Article 299(1), still the liability for payment of the balance of the licence amount due could be enforced by taking recourse to Section 28 of the Act. The Kerala High Court rejected the contention of the appellants by holding that the liability to satisfy the dues arising out of a bid was enforceable under Section 28 quite apart from any contractual liability and this view was upheld by this Court on the ground that the word "grantee" in Section 28 has a wide connotation to mean a person who had been granted the privilege by acceptance of his bid. It was further held that the statutory duties and liabilities arising on acceptance of the bid at a public auction of a liquor contract may be enforced in accordance with the statutory provisions and that it was not a condition precedent for the recovery of an amount due under Section 28 of the Act, that the amount due and recoverable should be under a formally drawn up and executed contract. This is in recognition of the principle that the provisions of Article 299(1) of the Constitution are not attracted to the grant of such a privilege to vend liquor under the Act."*

In view of above-cited judgment, contracts in question were non-statutory contracts. As contracts executed during 2003-04 to 2014-15 stood discharged, there was no right to respondents to initiate recovery proceeding.

28. In the case of dispute, parties were free to approach an arbitrator. It is settled law that if a contract stands discharged, the matter shall not be referred to an Arbitrator.

Hon'ble Supreme Court in ***Union of India v. Hari Singh*, (2010) 15 SCC 201** has categorically held that the matter cannot be referred to an arbitrator after discharge of contract because discharge means there is no dispute between the parties. The relevant extracts of the judgment read as:

> ***10.*** *This Court in a relatively recent case has examined the legal position once again in National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd. [(2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117] In para 25 of the said judgment, the Court observed as under: (SCC p. 284)*
>
> *"25. ... Where both the parties to a contract confirm in writing that the contract has been fully and finally discharged by performance of all obligations and there are no outstanding claims or disputes, courts will not refer any subsequent claim or dispute to arbitration. Similarly, where one of the parties to the contract issues a full and final discharge voucher (or no-dues certificate, as the case may be) confirming that he has received the payment in full and final satisfaction of all claims, and he has no outstanding claim, that amounts to discharge of the contract by*

acceptance of performance and the party issuing the discharge voucher/certificate cannot thereafter make any fresh claim or revive any settled claim nor can it seek reference to arbitration in respect of any claim."

***11.** The Court further observed in para 29 as under: (Boghara Polyfab case [(2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117] , SCC pp. 285-86)*

"29. It is thus clear that the arbitration agreement contained in a contract cannot be invoked to seek reference of any dispute to arbitration, in the following circumstances, when the contract is discharged on account of performance, or accord and satisfaction, or mutual agreement, and the same is reduced to writing (and signed by both the parties or by the party seeking arbitration):

(a) where the obligations under a contract are fully performed and discharge of the contract by performance is acknowledged by a full and final discharge voucher/receipt, nothing survives in regard to such discharged contract;

(b) where the parties to the contract, by mutual agreement, accept performance of altered, modified and substituted obligations and confirm in writing the discharge of contract by performance of the altered, modified or substituted obligations;

(c) where the parties to a contract, by mutual agreement, absolve each other from performance of their respective obligations (either on account of frustration or otherwise) and consequently cancel the

agreement and confirm that there are no outstanding claims or disputes."

In this case the Court relied on earlier judgments of this Court and reiterated the legal position which has been crystallised by a series of judgments where both the parties to a contract confirmed in writing that the contract has been fully and finally discharged by the parties and there was no outstanding claim or dispute and thereafter the matter could not have been referred to arbitration.

29. In the case in hand, there was arbitration clause in the policy as well as agreement. The respondents did not opt for arbitration because contract had already been discharged. The respondents cleared all the dues of the petitioners and allotted paddy year after year. As the contract stood discharged without any dispute between the parties, the respondents in view of afore-cited judgment of Hon'ble Supreme Court could not refer the matter to Arbitrator.

30. As noticed above, the respondent on account of conclusion/discharge of the contract could not refer the matter to an arbitrator and respondents opted to issue recovery notice. The State in case of statutory contracts, in exercise of its statutory power, can issue recovery notice, however, in purely commercial contracts, State cannot exercise power of recovery. In the present case, the contract was governed by its terms and conditions as well as KMS Policy. Thus, there was no question to exercise sovereign or statutory power. The

respondents acting beyond their jurisdiction and without legal backing have issued impugned recovery notice (s).

31. In view of above discussion and findings, this Court is of the considered opinion that impugned recovery notice (s) are liable to be set aside and accordingly set aside.

All the petitions are hereby allowed with consequential relief. No order as to costs.

(JAGMOHAN BANSAL)
17.07.2023 **JUDGE**
anju

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