IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101 (85 Cases)

1) **CWP-20840-2021**
Date of Decision: 17.08.2023

M/s Jagdambe Rice Mill and Others **…Petitioners**

V/S

State of Punjab and Others **…Respondents**

2) **CWP-11066-2022**

M/s The Raikot Rice and General Mills and Others

…Petitioners

V/S

Union of India and Others **…Respondents**

3) **CWP-11725-2022**

M/s Cheema Rice Mills and Others **…Petitioners**

V/S

State of Punjab and Others **…Respondents**

4) **CWP-1187-2022**

M/s Parkirti Rice Mills and Others **…Petitioners**

V/S

State of Punjab and Others **…Respondents**

5) CWP-12032-2022

M/s Guru Nanak Rice Mills and Others ...Petitioners

V/S

State of Punjab and Others ...Respondents

6) CWP-12134-2023

M/s Shree Neel Kanth Agro Mills through its Proprietor
...Petitioners

V/S

Union of India and Others ...Respondents

7) CWP-12266-2023

M/s Naib Singh Rice Mills and Others ...Petitioners

V/S

State of Punjab and Others ...Respondents

8) CWP-13385-2022 (O&M)

M/s Bhagwati Rice and General Mills through its Proprietor/Partner and Others

...Petitioners

V/S

State of Punjab and Others

...Respondents

9) CWP-13939-2022

M/s Mahavir Foods and Others ...Petitioners

V/S

State of Punjab and Others ...Respondents

10) CWP-1471-2023

M/s Shanker Rice Mills and Others ...Petitioners

V/S

State of Punjab and Others ...Respondents

11) CWP-14792-2022

M/s Radha Rice Mills and Others ...Petitioners

V/S

State of Punjab and Others ...Respondents

12) CWP-14982-2022

M/s Tridev Agro Foods and Another ...Petitioners

V/S

Union of India and Others ...Respondents

13) **CWP-1530-2022**

M/s Brar Rice Mills and Others **…Petitioners**

V/S

State of Punjab and Others **…Respondents**

14) **CWP-16254-2022**

M/s Virk Rice and Gen Mills Mairan Road, Bassi Pathana and Others

…Petitioners

V/S

State of Punjab and Others

…Respondents

15) **CWP-17176-2022**

M/s Krishna Rice Mills and Others **…Petitioners**

V/S

State of Punjab and Others **…Respondents**

16) **CWP-17509-2022**

M/s Balaji Rice Mills and Others **…Petitioners**

V/S

Union of India and Others **…Respondents**

17) **CWP-1757-2022**

M/s Gobind Rice and General Mills and Others **…Petitioners**

V/S

Union of India and Others **…Respondents**

18) **CWP-1827-2022**

M/s. Guru Teg Bahadur Rice Mills and Others **…Petitioners**

V/S

Union of India and Others **…Respondents**

19) **CWP-18347-2021**

M/s Shree Ganpati Agro Tech Pvt. Ltd. and Others **…Petitioners**

V/S

State of Punjab and Others **…Respondents**

20) **CWP-18733-2022**

M/s Bhagwati Rice Mills and Others **…Petitioners**

V/S

State of Punjab and Others **…Respondents**

21) **CWP-20238-2022**

M/s Shivam Foods and Others **…Petitioners**

V/S

Union of India and Others **…Respondents**

22) **CWP-2045-2022**

M/s Vishnu Rice Mills and Others **…Petitioners**

V/S

Union of India and Others **…Respondents**

23) **CWP-20548-2022**

M/s Satguru Rice Mills and Ors **…Petitioners**

V/S

State of Punjab and Others **…Respondents**

24) **CWP-20688-2022**

M/s A. D. Enterprises Railway Road, Sirhind, District Fatehgarh Sahib and Others **…Petitioners**

V/S

State of Punjab and Others **…Respondents**

25) CWP-21106-2021

M/s Sunam Industries and Others …Petitioners

V/S

State of Punjab and Others …Respondents

26) CWP-25541-2021

M/s L.P. Rice and General Mills and Others …Petitioners

V/S

State of Punjab and Others …Respondents

27) CWP-25746-2021

M/s Goyal Rice Udog …Petitioners

V/S

Union of India and Others …Respondents

28) CWP-544-2022

M/s Hanuman Rice Udyog Samiti and Others …Petitioners

V/S

Union of India and Others …Respondents

29) CWP-549-2022

M/s Balaji Rice Mills and Others …Petitioners

V/S

State of Punjab and Others …Respondents

30) CWP-964-2022

M/s Jai Ambey Rice Mills and Others ...Petitioners

V/S

Union of India and Others ...Respondents

31) CWP-975-2022

M/s Om Traders and Others ...Petitioners

V/S

State of Punjab and Others ...Respondents

32) CWP-20903-2021

M/s Mahavir Rice Mills and Others ...Petitioners

V/S

State of Punjab and Others ...Respondents

33) CWP-20944-2022

M/s Shiv Shakti Rice Mills and Others ...Petitioners

V/S

State of Punjab and Others ...Respondents

34) CWP-20962-2021

M/s Shiva Rice and General Mills and Others ...Petitioners

V/S

State of Punjab and Others ...Respondents

35) **CWP-169-2022**

M/s Avtar Singh and Sons and Ors **…Petitioners**

V/S

State of Punjab and Others **…Respondents**

36) **CWP-202-2022**

M/s Madhu Sudan Rice Mills and Others **…Petitioners**

V/S

State of Punjab and Others **…Respondents**

37) **CWP-21714-2021**

M/s Shankar Rice Mills and Others **…Petitioners**

V/S

State of Punjab and Others **…Respondents**

38) **CWP-22361-2021**

M/s Shree Balaji Rice Mills and Others **…Petitioners**

V/S

State of Punjab and Others **…Respondents**

39) **CWP-23600-2021**

Lakshmi Food Products and Others **…Petitioners**

V/S

State of Punjab AndOrs **…Respondents**

40) CWP-21105-2022

M/s Dahsmesh Rice Mills and Others ...Petitioners

V/s

State of Punjab and Others ...Respondents

41) CWP-21129-2022

M/s Sahil Rice Mill and Others ...Petitioners

V/S

Union of India and Others ...Respondents

42) CWP-21361-2022

M/s Attapur Rice Mills and Others ...Petitioners

V/S

State Of Punjab and Others ...Respondents

43) CWP-21367-2022

M/s Jai Ambey Rice Mills and Others ...Petitioners

V/S

Union of India and Others ...Respondents

44) CWP-21459-2022

M/s Ganpati Rice Mills and Others ...Petitioners

V/S

State of Punjab and Others ...Respondents

45) CWP-21703-2022

M/s Durga Rice Mills and Others …Petitioners

V/s

State of Punjab and Others …Respondents

46) CWP-21866-2022

M/s Jai Bhagwati Rice Mills and Others …Petitioners

V/S

State of Punjab and Others …Respondents

47) CWP-21917-2022

M/s Jorawar Rice and Gen Mills and Another …Petitioners

V/s

State of Punjab and Others …Respondents

48) CWP-21994-2022

M/s Hari Om Rice Mill and Others …Petitioners

V/s

State of Punjab and Others …Respondents

49) CWP-22127-2022

M/s Guru Nanak Rice and Gen. Mills and Others ….Petitioners

V/S

State Of Punjab and Others …Respondents

50) **CWP-22159-2022**

M/s Laxmi Rice Mills and Others **…Petitioners**

V/S

State of Punjab and Others **…Respondents**

51) **CWP-22208-2022**

M/s Shri Krishna Agro Foods and Others **…Petitioners**

V/S

Union of India and Others **…Respondents**

52) **CWP-22258-2022**

M/s Ajanoda Rice and General Mills and Others **…Petitioners**

V/S

State of Punjab and Others **…Respondents**

53) **CWP-2238-2022**

M/sAmbey Rice Mills and Others **…Petitioners**

V/S

State of Punjab and Others **…Respondents**

54) **CWP-22726-2022**

M/s Ambey Rice Mills and Others **…Petitioners**

V/S

State of Punjab and Others **…Respondents**

55) CWP-22932-2022

M/S G.R. Rice Mills and Others …Petitioners

V/S

State of Punjab and Others …Respondents

56) CWP-23848-2022

M/s Dhesi Rice and Gen. Mills and Others …Petitioners

V/S

State of Punjab and Others …Respondents

57) CWP-24539-2022

M/s Hari Har Rice Mills and Others …Petitioners

V/S

State of Punjab and Others …Respondents

58) CWP-2639-2022

M/s Shiva Rice Mills and Another …Petitioners

V/S

State of Punjab and Others …Respondents

59) CWP-2649-2022

M/s Shiva Rice Mill and Others …Petitioners

V/S

State of Punjab and Others …Respondents

60) **CWP-26978-2022**

M/s Shri Krishna Rice Mills and Others **…Petitioners**

V/S

State of Punjab and Others **…Respondents**

61) **CWP-2698-2022**

M/s Shree Mahavir Rice Mills and Others **…Petitioners**

V/S

Union of India and Others **…Respondents**

62) **CWP-28168-2022**

M/s Sidhu Rice Mills and Others **…Petitioners**

V/S

State of Punjab and Others **…Respondents**

63) **CWP-28405-2022**

M/s Shree Balaji Rice Mills **…Petitioner**

V/S

Union of India and Others **…Respondents**

64) **CWP-28859-2022**

M/s A.K. Rice Mills **…Petitioner**

V/S

State of Punjab and Others **…Respondents**

65) CWP-29020-2022
M/S Sangham Rice Mills …Petitioner

V/S

State of Punjab and Others …Respondents

66) CWP-29165-2022

M/s Mahaluxmi Traders and Others …Petitioners

V/S

State of Punjab and Others …Respondents

67) CWP-2919-2022

M/s Chandermukhi Rice Mills and Others …Petitioners

V/S

Union of India and Others …Respondents

68) CWP-29286-2022

M/s Gupta Industry and Others …Petitioners

V/S

Union of India and Others …Respondents

69) CWP-29297-2022

M/S Rajesh Rice Mills and Another …Petitioners

V/S

Union of India and Others …Respondents

70) CWP-29324-2022

M/s S.S. FOODS …Petitioner

V/S

Union of India and Others …Respondents

71) CWP-30140-2022

M/s Goyal Rice Mills and Others …Petitioners

V/S

Union of India and Others …Respondents

72) CWP-3275-2022

M/s Shiva Rice and General Mills and Others …Petitioners

V/S

State of Punjab and Others …Respondents

73) CWP-3478-2022

M/s Madhav Food Products and Others …Petitioners

V/S

Union of India and Others …Respondents

74) CWP-4440-2022

M/S. MRMC Foods Private Limited and Others …Petitioners

V/S

Union of India and Others …Respondents

75) **CWP-4783-2022**

M/S Ganpati Rice Industries and Others **...Petitioners**

V/S

Union of India and Others **...Respondents**

76) **CWP-4917-2022**

M/s Shyam Rice Mill and Others **...Petitioners**

V/S

State of Punjab and Others **...Respondents**

77) **CWP-5227-2023**

M/s Vaheguru Rice and General Mills and Others **...Petitioners**

V/S

State of Punjab and Others **...Respondents**

78) **CWP-5833-2022**

M/s Guru Kirpa Agro Products and Others **...Petitioners**

V/S

Union of India and Others **...Respondents**

79) **CWP-623-2023**

M/s Neelkanth Rice Mills and Others **...Petitioners**

V/S

Union of India and Others **...Respondents**

80) CWP-6272-2022

M/s United Rice Mills and Others …Petitioners

V/S

Union of India and Others …Respondents

81) CWP-6834-2022

M/s Mohindra Oil Mills and Another …Petitioners

V/S

Union of India and Others …Respondents

82) CWP-7413-2022

M/s Jai Bhole Shanker Rice Mills and Others …Petitioners

V/S

State of Punjab and Others …Respondents

83) CWP-8720-2022

M/s Singla Rice Mills and Others …Petitioners

V/S

Union of India and Others …Respondents

84) CWP-9368-2023

M/s Shivam Rice Mills and Others …Petitioners

V/S

State of Punjab and Others …Respondents

85) **CWP-9726-2022 (O&M)**

M/s Kuber Rice Mills and Others **…Petitioners**

V/S

State of Punjab and Others **…Respondents**

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Daman Dhir, Advocate with
Ms. Raman Dhir, Advocate and
Ms. Poonam Rani, Advocate for the Petitioner(s)

Mr. J.K. Singla, Advocate for the petitioner
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Mr. Harsh Goyal, Advocate with
Ms. Dipsy Gupta, Advocate for the petitioner
(in CWP-28859-2022)

Ms. Ravinder Kaur, Advocate for
Mr. Gurcharan Dass, Advocate and
Mr. Vivek Sharma Vashist for petitioner
(in CWP-12134-2023)

Mr. V.P.S. Mithewal, Advocate for the petitioner
(in CWP-22726-2022)

Ms. Navika Bansal, Advocate for
Mr. Harsh Goyal, Advocate for petitioner

Mr. Rose Gupta, Advocate with
Ms. Garima Modi, Advocate for the petitioners

Mr. Vikas Kuthiala, Advocate for the petitioner
(in CWP-975-2022 and CWP-1530-2022)

Mr. Mohit Garg, Advocate and
Mr. Mohit Saini, Advocate for the petitioners
(in CWP-23600-2021, CWP-21105-2022, CWP-21703-2022, CWP-22932-2022, CWP-22127-2022 & CWP-22258-2022)

Mr. J.P.S. Sidhu, Advocate for the petitioner in CWP-1530-2022

Mr. Ishan Thakur, Advocate for
Mr. L.S. Sidhu, Advocate for the petitioner in CWP-2649-2022

Mr. Shiv Kumar, Advocate and

Mr. Raman Kaplish, Advocate for the petitioners
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Ms. Deepali Puri, Addl. A.G, Punjab
(also representing PUNGRAIN in all cases and MARKFED in CWP-169-2022 & CWP-2639-2022 and for respondent Nos.6&9 in CWP-2935-2020)

Mr. Parvesh Kumar Saini, Senior Panel Counsel
for Union of India-respondent
(in CWP-29165-2022, CWP-29286-2022, CWP-29297-2022, CWP-29324-2022, CWP-30140-2022)

Mr. Sunish Bindlish, Advocate with
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Mr. Sagar Ratusaria, Advocate for Union of India-respondent No.3 in CWP-21106-2021 and CWP-20840-2021 and for respondent Nos.3 & 4 in CWP-29020-2022, CWP-23848-2022, CWP-12266-2023 and for respondent No.1 in CWP-12134-2023

Mr. Vikas Chatrath, Advocate and
Mr. Dharambir Singh, Advocate and
Mr. Rajbir Singh, Advocate for respondent-MARKFED
(in CWP-25541-2021, CWP-28168-2021, CWP-21994-2021, CWP-29297-2021)

Mr. Harish Mehla, Advocate for
Mr. Athar Ahmed, Advocate for respondent-PUNSUP
(in CWP-2639-2022, CWP-4917-2022, CWP-3275-2022, CWP-4440-2022)

Mr. Anil Kumar Sharma, Advocate, for Respondent No.4
(in CWP-6834-2022, for Respondent No.4 to 7 in CWP-5833-2022, for Respondent No.5 in CWPs-20840, 20903, 20962, 21106, 21714, 22361, 23600, 25541, 25746-2021 and CWPs-169, 202, 544, 549, 964, 975, 1187, 1530, 1757, 1827, 2045, 2238, 2639, 2649, 2698, 3275, 4917, 8720, 9726, 11725, 12032, 13385, 13939, 14792, 16254, 18733, 20548, 21459, 21866, 21361-2022, for Respondent No.5 to 7 in CWPs-11066, 17509, 21129-2022, for Respondent No.6 in CWP-4440-2022, for Respondent No.6 to 11 in CWP-20238-2022, CWP-5227-2023 and for respondent Nos.5 to 7 in CWP-12266-2023)

Mr. Naman Jain, Advocate for respondent No.7-PUNSUP
(in CWP-21106-2021)

Mr. Maloo Chahal, Advocate for PUNSUP
(in CWP-21105-2022, CWP-21703-2022)

Mr. Amanpreet (A.P.) Singh, Advocate for respondent No.5

(in CWP-21917-2022, CWP-21994-2022, CWP-22127-2022, CWP-22159-2022, CWP-22258-2022, CWP-22726-2022, CWP-24539-2022 and for respondent Nos.3 & 8 in CWP-23848-2022)

Mr. Anand Vardhan Khanna, Advocate for respondent No.9 in CWP-4440-2022 & respondent No.5 in CWP-4783-2022

Mr. Ranjit Singh Kalra Advocate with
Mr. Randeep Singh, Advocate and
Ms. Gagandeep Kaur Sekhon, Advocate for respondent No.7
(in CWP-20903-2021)

Mr. Aman Sharma, Advocate for respondent No.8
(in CWP No.30749-2019 & CWP-2935-2020)
Mr. Tarunvir Singh Lehal, Advocate for respondent-MARKFED in CWP-12134-2023

Mr. Maninder Singh Saini, Advocate for respondent No.7
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Mr. Gurmanjit Singh, Advocate for respondent No.6-MARKFED in CWP-16254-2022, CWP-11725-2022, CWP-21105-2022 and CWP-14792-2022

Mr. Gaurav Sharma, Advocate for respondent No.6-MARKFED in CWP-28859-2022 & CWP-29165-2022

Ms. Kavita Arora, Advocate for respondent-MARKFED
(in CWP-21129-2022)

Ms. Amrit Mahir, Advocate and
Mr. Gourav Verma, Advocate for respondent No.4 in CWP-21367-2022, respondent No.6 in CWP-21361-2022, CWP-21459-2022, CWP-20944-2022 and respondent No.5 in CWP-29020-2022

Mr. Maherdeep Singh, Advocate for respondent No.4 and 9 in CWP-11066-2022; for respondent No.6 in CWP-202-2022, CWP-4917-2022; for respondent Nos.5 & 7 in CWP-6834-2022; for PUNGRAIN in CWP-1827-2022, CWP-1757-2022)

Ms. Kushaldeep Kaur, Advocate and
Mr. Siddhanth Arora, Advocate for respondent-MARKFED in CWP-22258-2022, CWP-22127-2022 & CWP-22932-2022

Mr. Varun Katyal, Advocate for respondent-MARKFED
(in CWP-2238-2022, CWP-20903-2021, CWP-13385-2022, CWP-13939-2022, CWP-12032-2022, CWP-22726-2022)

Mr. Ashish Rawal, Advocate with
Mr. Jaivir Singh, Advocate for Union of India-respondent

Mr. Ravi Dutt Sharma, Advocate for respondent-PUNSUP

Mr. Shiv C. Bhola. Advocate, for the PUNSUP
(in CWP-21994-2022)

Mr. Karan Singla, Advocate for respondent-Punjab Agro

Mr. Ashish Bansal, Advocate for respondent No.5- PSWC
(in CWP-22932-2022, CWP-21105-2022, CWP-20944-2022, CWP-21703-2022, CWP-26978-2022, CWP-28168-2022, CWP-29165-2022)

Mr. Mayank Mathur, Advocate for respondent-MARKFED
(in CWP-23848-2022)

Mr. Japjit Singh Johal, Advocate for respondent No.7 in CWP-30140-2022 and respondent Nos.5&6 in CWP-22726-2022 and CWP-523-2023

Mr. M.S. Bath, Advocate for respondent No.7
(in CWP-22932-2022, CWP-21866-2022, CWP-29165-2022, CWP-22127-2022, CWP-20545-2022, CWP-20944-2022, CWP-21459-2022, CWP-28168-2022, CWP-20238-2022, CWP- 22159-2022, CWP-21361-2022 and for respondent No.5 in CWP-28859-2022 and for respondent-PUNSUP in CWP-17509-2022, CWP-18733-2022, CWP-8720-2022, CWP-21917-2022, CWP-21866-2022, CWP-22127-2022, CWP-21459-2022, CWP-20238-2022, CWP-28168-2022, CWP-20548-2022, CWP-20944-2022)

Mr. Jastej Singh, Advocate for respondent No.6
(in CWP-20840-2021, CWP-21106-2021, CWP-3275-2022, CWP-2649-2022)

Dr. Puneet Kaur Sekhon, Advocate for respondent No.6-MARKFED in CWP-23600-2021, CWP-21703-2022, CWP-26978-2022, CWP-544-2022 & CWP-5227-2022

Mr. Amrit Singh Kang, Advocate
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Mr. Abhilaksh Gaind, Advocate and
Mr. Rakesh Roy, Advocate for respondent No.6
(in CWP-9726-2022, CWP-21866-2022, CWP-21917-2022,CWP-20548-2022 and for respondent Nos.7 to 12 in CWP-23848-2022)

Ms. Sunint Kaur, Advocate for respondent No.4-MARKFED
(in CWP-22208-2022)

Mr. P.I.P. Singh, Advocate for respondent No.6-MARKFED

(in CWP-1827-2022, CWP-2045-2022, CWP-2698-2022, CWP-2919-2022, CWP-3478-2022, CWP-22361-2022, CWP-21714-2021)

Ms. Sudeepti Sharma, Advocate with
Ms. Mehak Kanwar, Advocate
for respondent No.6-MARKFED in CWP-20962-2021

Mr. Akash Yadav, Advocate
for respondent No.8-MARKFED in CWP-9368-2023

Mr. Animesh Sharma, Advocate for respondent No.6
(in CWP-22159-2022)

Mr. Jatinder Kumar, Advocate for
Mr. Abhinav Gupta, Advocate for
MARKFED in CWP-25746-2022

Ms. Jarnail Kaur Dhaliwal, Advocate
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for respondent No.6 in CWP-24539-2022

Mr. T.S. Sidhu, Advocate for respondent No.7
(in CWP-21714-2021 and CWP-26978-2022)

Mr. Prubjyot Singh Sidana, Advocate for PUNSUP
(in CWP-20962-2021, CWP-23600-2021)

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JAGMOHAN BANSAL, J. (Oral)

1. By this common order, a bunch of writ petitions is disposed of since issue involved and relief sought in all the petitions is common. With the consent of contesting parties and for the sake of convenience, facts are borrowed from *CWP-20840-2021*.

2. The State of Punjab has filed an additional affidavit dated 17.08.2023 which is taken on record. Registry is directed to tag the same at appropriate place.

3. The petitioners through instant petitions are seeking direction to the respondent-State not to recover ₹4.78 per quintal from the petitioners on account of final determination of driage at lower rate for Kharif Marketing Season 2014-15 than provisionally determined. The

petitioners are further seeking quashing of letter dated 12.03.2021 (Annexure P-5) whereby Government of India has finally determined driage @ ₹9.22 per quintal though provisionally it was fixed @ ₹14/- per quintal.

Brief Facts:-

4. 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 rice milling. Business of the petitioners is primarily dependent 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 notified. The agreement is signed by miller, procurement agency and State Government. State Government through its procurement agencies supply paddy to millers and they return rice to Food Corporation of India. Central Government notifies provisional rates under different heads relating to rice milling. Central Government on the basis of data submitted by State Government determines final rates. At the first instance, milling charges are paid by State to millers and State in turn recovers from Central Government.

5. The present matter relates to Kharif Marketing Season ('**KMS**') 2014-15.The State of Punjab through its procurement agencies supplied paddy to the petitioners who converted paddy into rice and delivered rice at the delivery points of Food Corporation of India.

Present case is confined to driage, thus, it is imperative to understand concept of driage. Paddy carries moisture so there is loss of weight when paddy is converted into rice. Central Government has notified 1% of MSP as driage. MSP during KMS 2014-15 was ₹1400/- per quintal, thus, driage came to be ₹14/- per quintal. The millers as per Milling Policy are supposed to deliver rice @ 67% of paddy supplied and they are entitled to retain by-products i.e. broken rice, paddy husk, rice bran etc.

6. The State Government, in terms of provisional rates notified by the Central Government, made payment towards driage @ ₹14 per quintal to the petitioners. The State Government finalized and thereafter in September' 2017 submitted its accounts to the Central Government. As stated in the reply of the Union of India, the claim of the State Government, in respect of finalization of cost of CMR for KMS 2014-15, was examined by the PI Cell and same was forwarded to State Government in May' 2018 and the State was directed to send its comments within 30 days. The State of Punjab submitted its comments in February' 2019 and a meeting between officials of the Central Government and State Government took place in April' 2019. The State was asked to supply additional documents which were supplied by State Government on 30.10.2019. Thereafter, on account of COVID-19 pandemic, matter could not be taken up and ultimately, final rates were conveyed to State of Punjab vide letter dated 12.03.2021 (Annexure P-5). On the basis of rates finalized by the Central Government, the State Government formed an opinion that petitioners were entitled to driage

@₹9.22 per quintal whereas they have already been paid @₹14/- per quintal, thus, rice millers are liable to refund difference between provisional and final rates qua driage. The respondents did not issue any show cause notice or recovery notice, however, started adjustment of aforesaid differential amount from the dues of the petitioners which accrued in the subsequent crop years.

Contention of the petitioners:-

7. A battery of Advocates representing the petitioners, in one voice, submit that petitioners were paid charges @ ₹14/- per quintal in 2014-15 and respondent has no authority to recover alleged differential amount in 2022. There is unexplained delay in the finalization of account on the part of Union and State for which petitioners cannot be made to suffer. The action of respondents amounts to retrospective amendment of policy as well agreement executed between the parties. The life of the agreement executed between the parties was fixed which has already expired, thus, respondent has no authority to recover alleged amount with respect to a contract which does not exist. The respondents in provisional rates had provided for driage @ 1% MSP and respondent has not changed MSP, thus, amount could not be changed. As per Schedule-II prepared by State of Punjab while claiming driage from Central Government, different procuring agencies have claimed different percentage of driage. PAFC had claimed driage @ 1% of MSP whereas other agencies have claimed 0.23% to 0.46% of MSP. The weighted average comes to 0.42% and accordingly weighted average per quintal

comes to ₹5.88. The State has claimed 1% driage from Central Government though procuring agencies have claimed substantially less than 1%. In the case of State of Haryana and State of Tamil Nadu, final rate qua driage has been fixed 1% of MSP whereas in the case of State of Punjab, rate has been fixed ₹9.22/- per quintal. The respondent has created liability without issuing any notice or granting opportunity of hearing, thus, action of respondents amount to violation of principles of natural justice.

<u>Contentions of State of Punjab</u>:-

8. Ms. Deepali Puri, learned State counsel *inter alia* contends that State was supposed to pay as per rates notified by the Central Government. The State has acted as conduit between the Central Government and millers. The job of the State was to procure paddy and hand over rice to the Central Government. The State was supposed to pay to millers whatsoever received from the Central Government. The petitioners were paid ₹14/- quintals on provisional basis and final rates came to be arrived at ₹9.22/- per quintal, thus, State was bound to recover differential amount from the petitioners. The accounts between the petitioners and State were not finalized till 2021. At the time of making payment, in the account statement, it was specifically mentioned that settlement is provisional and petitioners have further furnished affidavit disclosing that they will make payment, if any liability arises. The State is pursuing matter with the Union Government and if State gets any differential amount, it would be passed on to the petitioners,

however, at this stage, State has right to recover differential amount from the petitioners.

9. The State in its affidavit dated 17.08.32023 has asserted that calculation sheet (Annexure P-5) was never prepared by the State Government or its agencies whereas it was prepared by Department of Food and Public Distribution, Government of India. The said Department on its own collected data and formed an opinion that driage in the case of State of Punjab is less than 1%. The State has filed its audited documents vide communication dated 14.09.2017 (Annexure R-6) wherein State has claimed 1% driage. The Central Government has wrongly calculated driage and State vide communication dated 10.05.2021 (Annexure R-10), 05.08.2021 (Annexure R-11) and 25.09.2021 (Annexure R-12) has requested the Central Government to revise driage and make it ₹14/- per quintal.

<u>Contentions of Union of India & Food Corporation of India</u>:-

10. Mr. Sunish Bindlish, Advocate for Union of India and Food Corporation of India submits that there was no provision of driage in the Milling Policy2014-15, which is evident from KMS Policy 2015-16, thus, petitioners are not entitled to driage. The question of finalization of rates is between Union and State. The petitioners have no locus to challenge rates determined by the Union. At the time of execution of agreement, nobody was aware of driage as well as other elements of costs of purchase, thus, tentative rates were fixed. The State submitted its accounts in September'2017 which came to be finalized in 2021. There

is no delay on the part of Union. The Union has finalized rates as soon as data was received from the State. The Central Government has determined final rates on the basis of data submitted by the State Government. The petitioners are attempting to withhold benefit which was wrongly passed on to them and they have no right to retain public money.

11. Mr. Sunish Bindlish, Advocate, during the course of hearing produced communication dated 17.05.2019 whereby Central Government has determined final rates with respect to rice mills located in the State of Haryana. The said communication is taken on record. As per said communication, millers located in Haryana have been paid driage@1% of MSP.

12. From the perusal of record and arguments advanced by both sides, following questions arise for the consideration of this Court:-

(i) Whether there was any provision for driage in the KMS 2014-15?

(ii) Whether respondents have determined final rates within a reasonable period of limitation?

(iii) Whether petitioners are entitled to driage @1% of MSP or lesser amount as determined by Central Government?

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

<u>Discussions and findings</u>:-

Q.No.(i) Whether there was any provision for driage in the KMS 2014-15?

It is an undisputed fact that petitioners and other rice mills are processing paddy for the last more than 4 decades. Every year, State is granting benefit of driage. Till few years back, the petitioners were granted driage @ 2% of MSP and the said rate was subsequently reduced to 1%. Mr. Sunish Bindlish, Advocate pointing out Paragraph 16 of the Custom Milling Policy of KMS 2015-16 asserted that in the policy of 2015-16, it was specifically mentioned that benefit of driage @ 1% shall be given and there was no such provision in the policy of 2014-15, thus, petitioner were not entitled to driage. Paragraph 16 of the policy of 2014-15 as well as 2015-16 are reproduced as below:-

Custom Milling Policy 2014-15

"*16. <u>OUT-TURN RATIO:-</u> The out-turn ratio fixed by the Government of India as applicable shall be as follows:-*

a) 67% for raw rice.
b) 68% for par-boiled rice."

Custom Milling Policy 2015-16

"*16. <u>OUT-TURN RATIO:-</u> The out-turn ratio fixed by the Government of India as applicable shall be as follows:-*

c) 67% for raw rice.
d) 68% for par-boiled rice.

> e) *Benefit of Driage @ 1% shall be given to only those rice millers who completed 100% milling within the stipulated time period allowed by the Government of India. No benefit of driage will be given to those millers who would not complete their milling within the stipulated time and deposit the amount of balance rice with the concerned agency."*

From the perusal of above quoted paragraphs, it can be deduced that as per policy of 2015-16, benefit of driage is permissible only to those millers who have completed 100% milling within the stipulated time period. The said policy is not creating a new right whereas it is simply imposing an additional condition i.e. complete 100% milling within the stipulated time period to get benefit of driage. The petitioners have been admittedly granted driage at a rate lower than 1% of MSP. The Union of India/Food Corporation of India is not disputing payment at lower rate. On the one hand, Union has granted lower rate and on the other hand is calming that there was no provision in the policy of 2014-15, thus, petitioners were not entitled to driage. From the final rates and perusal of policies of 2014-15 & 2015-16, it is clear that policy of 2015-16 is simply creating rider for getting benefit of 1% and not creating any new right and by granting driage at lower rate, respondent has confirmed that petitioners are entitled to driage. The Petitioners were paid driage even during the previous years i.e. prior to 2014-15. Thus, petitioners were entitled to driage during 2014-15.

Q.No.(ii) Whether respondents have determined final rates within reasonable period of limitation?

The petitioners carried out their activities during 2014-15. From the perusal of custom milling policy, it comes out that time was essence of the agreement. The paddy was allotted in a time bound manner. The petitioners were supposed to finish their job, deliver 100% quantity and submit their bills within prescribed time.

It is settled proposition of law that where no limitation period is prescribed, authorities are bound to act within reasonable period of limitation. Every proceeding must take rest. There should be certainty. In contractual matters, every act is governed by terms and conditions of the contract. In the case in hand, in the custom milling policy as well as agreement, no period to determine final rates has been prescribed, thus, respondents were bound to act within reasonable period. What is reasonable period develops upon facts and circumstances of each case. No straightjacket formula can be laid down.

The provisional rates for the KMS 2014-15 were declared on 16.10.2014 (Annexure P-2). As per State's reply, the State collected data from different agencies as well as millers and after conducting audits submitted to Central Government on 14.09.2017. The Central Government raised few queries and State Government after removing deficiencies re-submitted data on 30.10.2019. As per Union of India's reply, there was no delay on their part. Final data was submitted by State in 2019.There was Pandemic during 2020-21 and final rates came to be determined on 12.03.2021. The relevant paragraph of reply filed by Union of India reads as:-

> *"12. In the present case, the Final claims of Khari Marketing Marketing Season 2014-15 were submitted by the State of Punjab in September 2017. Claim of the Punjab State Government in respect of finalization of procurement incidentals and acquisition cost of CMR for KMS 2014-15 was examined by PI Cell and the same was forwarded to the State Government in May, 2018 and they were requested to send their comments within 30 days. State of Punjab had thereafter submitted its comments in February 2019 for KMS 2014-15. A meeting was held in April, 2019 with the officials of Punjab Government pursuant to which additional documents/data and information, as requested in the meeting were received from the State Government on 30.10.2019. Delay was thereafter occasioned due to the Covid-19 pandemic as well. The Final Rates for KMS 2014-15 were conveyed to the State of Punjab vide Letter dated 12.03.2021 (part of Annexure P-5). There is thus no merit in the baseless assertion that finalization of rates is belated and consequential recovery if any would be time barred."*

Mr. Sundish Bindlish, Advocate further submits that Central Government in respect of few items had increased rates and petitioners have enjoyed the benefit of enhanced rates.

With respect to delay in determination of final rates, Ms. Deepali Puri, learned State counsel submits that it is not an isolated case of 2014-15 whereas in the previous years i.e. starting from 2003-04 till date, rates have been determined after a gap of 5-6 years by the Government of India. It is in the hands of Government of India to determine final rates, thus, there is no lapse on the part of State. The State has to collect data of more than 3000 millers which takes time. Thereafter, audit takes place which is also a time consuming process. In these circumstances, data of KMS 2014-15 was submitted in 2017 and thereafter, on account of queries raised by Central Government, final data could be submitted in 2019.

Learned counsels for the petitioners concede that in case of enhancement of rates of gunny bags they have got enhanced rates. They also concede that an affidavit at the time of payment of provisional rate was furnished wherein it was accepted that they would be bound by final rates.

From the State's reply and arguments, it comes out that since 2003-04, final rates are determined after 5-6 years. It is not for the first time that final rates have been determined after 6 years. The petitioners were paid driage and milling charges on the basis of provisional rates. The petitioners at the time of getting payment on the basis of provisional rates have submitted their affidavits disclosing that they would be bound by final rates. They have enjoyed fruit of enhancement of rates under other heads.

In the wake of aforesaid facts, it cannot be concluded that there was unreasonable delay on the part of State or Central Government warranting interference of this Court. It cannot be concluded that there was unreasonable delay and action of the Central/State Government determining final rates after 6 years is barred by reasonable period of limitation.

Q.No.(iii) Whether petitioners are entitled to driage @1% of MSP or lesser amount as determined by Central Government ?

From the perusal of provisional rates, it comes out that respondents have fixed driage @ 1% of MSP. The State in its reply as well as additional affidavit has taken a categoric stand that as per their calculation and data submitted before Central Government, the petitioners are entitled to driage @ 1% and it is the Central Government which has wrongly calculated driage less than 1% of MSP.

It is an undisputed fact that Central Government has granted driage @1 % to rice mills located in the State of Haryana i.e. adjoining State. It is not a case of first time determination of driage. The respondents are paying driage for more than 4 decades.

A Division Bench of this Court in ***M/s Anand Cotton Factory Versus Union of India and Others; 2001 SCC OnLine P&H 1308*** has concluded that petitioners are entitled to driage @ 2% which was provisionally determined though finally reduced to 1%. The relevant extracts of the judgment read as:-

> ***"8.*** *It has not been disputed by the counsel for the respondents that ever since the year 1979 driage*

allowance of 2 per cent has been allowed. Even during the year 1996 the reduction was ordered for the interregnum of only three months. In the post December 1996 period viz., 1997-1998, 1998-1999, the driage allowance has, admittedly, been allowed at even 3 per cent or more. It is, thus, clear that the rice shellers have availed of the driage allowance at the rate of 2 per cent since the year 1979-1880. It has only been denied and recovery on that account was ordered for the period of three months. Why? No explanation, whatsoever, has been offered at the hearing.

9. *It is true that initially the rates are fixed on provisional basis. However, the provisional rates can be altered only for a good reason. None has been disclosed. Even at the hearing learned counsel for the respondents have not been able to refer to any material on the record which may give a clue with regard to the reason for reduction of the driage allowance.*

13. *XXXX XXXX XXXX*

14. *In view of the above, we dispose of these writ petitions with the following directions:—*

i) The reduction of the driage allowance, as ordered by the Government of India vide its letter dated December 3, 1998, a copy of which has been produced on record as Annexure P8 in C.W.P. No. 833 of 2001, is set aside. In other respects, there has been no challenge.

ii) Any orders for recovery on account of reduction in driage allowance shall stand quashed."

As per Union of India, the driage has been determined on the basis of data supplied by the State Government. The State in its additional affidavit has submitted that they have claimed driage @ 1% but Central Government has wrongly determined driage less than 1% of MSP. The relevant extracts of additional affidavit of the State read as:-

> *"4. That it is submitted that Schedule-II appended with writ petition as Annexure P-5 as observed by the Hon'ble Court in the order dated 01-08-2023, the same has not prepared by the Food Civil Supplies & Consumer Affairs, Department of Punjab. This is a calculation made by the Department of Food & Public Distribution, Govt. of India on the basis of Stock Flow Statement and not considering the audited balance sheets submitted by Govt. of Punjab. This Schedule has prepared by Procurement Incidental (PI)Cell of Department of Food & Public Distribution Govt. of India on their own & is forming part of Final Finding report of KMS 2014-15. The State of Punjab has claimed full driage @1% of MSP i.e. Rs. 14.00/qtl in respect of all agencies which is clear from the submission of final claims of KMS 2014-15 submitted vide letter no. PRA PRA-Inci-3-34-2017/1868 dated:-14-09-2017(copy appended as annexure R-6). Further, as required by Department of Food & Public Distribution, Govt. of India, the Principal Secretary, Food Civil Supplies & Consumer Affairs, Punjab and Managing Directors of all State Procuring Agencies had certified that the benefit of driage charges @1% of MSP has already been passed on to millers and same has been reimbursed by FCI for paddy milled during*

KMS 2014-15 for central pool as per provisional cost sheet issued by Govt. of India vide letter no. 192(14)/2014-FC A/cs dated 16th October, 2014, the copy of which was also submitted with final claims to the Govt. of India.

5. That the Department of Food & Public Distribution, Govt. of India vide letter no. 192(14)/2014-FC A/CS dated 16-05-2018 (annexure R-7) issued the provisional finding report on final claims submitted by the State Govt. for KMS 2014-15 in which it is clearly stated at Annexure-I that the State Govt. has claimed the driage charges @1% of MSP i.e. Rs. 14.00/qtl. Further, FCI Regional Office, Punjab also recommended the same driage charges @ Rs.14.00/qtl. Further, as requisite in this provisional finding report of KMS 2014-15, the additional information of driage charges was submitted to Department of Food & Public Distribution, Govt. of India vide letter no. PRA-Inci-3(34A) -2018/ 161 dated: 05-02-2019 (annexure R-8). In this regard, a meeting was held on 25-04-2019 at Krishi Bhawan, New Delhi under the chairmanship of Advisor (Cost), Department of Food & Public Distribution, Govt. of India to discuss the finalization of accounts of KMS 2014-15, in which the State Govt. was asked to submit the driage account for KMS 2014-15 and reconcile the same with their respective annual account. The detailed comments/clarification with respect to this was also submitted to Department of Food & Public Distribution, Govt. of India vide letter no. PRA-Inci-3- (34A)-2019/1460 dated: 10-10-2019 (annexure R-9).

6. That it is further respectfully submitted that the driage has been allowed to millers in two methods:-

> *i) In term of amount i.e. 1% of MSP value:- If millers deliver all the due rice @67% of total quantity of paddy issued to them, then benefit of driage @ 1% of MSP value is given to millers in milling bills of after completion of milling. This financial transaction has been booked under the head driage in balance sheets.*
>
> *ii) In term of quantity i.e. 1% of Quantity of Paddy stored/delivered:- Some millers claim the benefit of driage in form of quantity i.e. the millers deliver the due rice @67% of the paddy after deducting 1% of driage e.g. if paddy allotted to a miller is 100 qtls., he delivers the due rice equivalent to 67% of the 99 qtls. (100-1) of paddy i.e. 66.330 qtl. In this way miller got the benefit of driage by not delivering 670 Kg of rice i.e. miller got benefit of full value of rice, whereas he is entitled for driage on MSP value only. So, the difference of the value of rice and 1% of MSP is recovered from miller.*

XXXX XXXX XXXX

7. That in response to the Final cost sheet (Annexure P-5 appended in Writ petition) issued by Govt. of India in which driage charges were allowed @ Rs.9.09/qtl, the State Govt. has again requested to DFPD, Govt. of India vide letter no.PRA-Inci-3-(34A)-2019/719 dated: 10.05.2021 (annexure R-10), PRA-Inci-3-(34A)-2019/1376 dated: 05.08.2021 (annexure R-11) & PRA- Inci-3-(34A)-2019/1618 dated:-25-09-

> *2021 (annexure R-12) to revise these charges to Rs. 14.00/qtl."*

The State of Punjab had made payment towards driage @ 1% of MSP. It is consistent stand of the State that petitioners are entitled to driage @1%, however, Central Government has wrongly calculated driage less than 1% of MSP. The State by impugned notices is attempting to recover difference between driage paid at provisional rate and final rate determined by Central Government. From the affidavit of State, it is evident that State is pursuing the matter with the Central Government and for the said purpose they have addressed various communications to the Central Government. As per State Government, the Central Government has wrongly determined driage and as per Mr. Sunish Bindlish, learned counsel for Union of India & Food Corporation of India, rates have been determined on the basis of data furnished. Be that as it may, the issue of determination of final rates was between State Government and Central Government. If there is any mis-communication or mis-understanding between the State Government and Central Government, the petitioner cannot be made to suffer. The State has unilaterally initiated recovery proceedings. Neither notice nor opportunity of hearing was granted to the aggrieved parties. The Respondent-State was bound to follow procedure prescribed by law. The State has no authority to initiate recovery proceedings without associating affected parties.

Keeping in view:

(i) State of Punjab itself is of the confirmed opinion that petitioners are entitled to driage @1% of MSP;

(ii) Millers of Haryana have been paid driage @1% of MSP;

(iii) Driage is not a first time issue;

(iv) A Division Bench judgment of this Court in *Anand Cotton Factory (supra)* has set aside order of reduction of driage and further set aside recovery notices;

this Court is of the considered opinion that it would be travesty of justice, arbitrary and illegal if alleged differential amount is recovered from the petitioners.

14. In the wake of above facts and findings, the afore-cited questions are answered as below:-

(i) The petitioners are entitled to driage and dispute is confined to the rate and not their entitlement.

(ii) The final rates have not been determined beyond a reasonable period of limitation.

(iii) The petitioners are entitled to driage @1% of MSP and State cannot recover from miller difference between provisional rate and final rate determined by Central Government.

15. The State Government and its agencies are at liberty to avail remedies in accordance with law with respect to loss, if any, suffered by them on account of difference between provisional and final driage determined and paid by the Central Government.

16. It is made clear that this Court has not expressed any opinion qua accuracy of data furnished by State Government as well as calculations made by Central Government.

(JAGMOHAN BANSAL)
JUDGE

17.08.2023
Mohit Kumar

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