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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1) CWP-20143-2023
Date of Decision:15.09.2023

M/S MAHAVIR RICE AND GENERAL MILLS Petitioner

Versus

STATE OF PUNJAB AND OTHERS Respondents

2) CWP-20620-2023

M/S SWASTIK ENTERPRISES Petitioner

Versus

STATE OF PUNJAB AND OTHERS Respondents

3) CWP-20614-2023

M/S AMS RICE MILLS ...Petitioner

Versus

STATE OF PUNJAB AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Mohit Garg, Advocate
for the petitioner
in CWP-20143-2023.

Mr. Daman Dhir, Advocate with
Ms. Poonam Rani, Advocate
for the petitioner
in CWP-20614-2023 & CWP-20620-2023.

Mr. Deepanjay Sharma, DAG, Punjab.

Mr. K.K. Gupta, Advocate
for the Food Corporation of India.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order CWP Nos. CWP-20614-2023, CWP-20620-2023 and CWP-20143-2023 are disposed of since issue involved in all the petitions and prayer sought is common. With the consent of parties and for the sake of brevity, facts are borrowed from CWP-20143-2023.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 02.09.2023 (Annexure P-12) whereby respondent-State on the basis of letter of Food Corporation of India has directed the agencies not to allot paddy during KMS 2023-24 to the petitioner.

3. The petitioner is engaged in the business of processing of rice. The petitioner is dependent upon paddy supplied by respondent-State. The Government of India with intent to improve quality of rice introduced scheme of fortification of rice. As per said scheme, 1 kg Fortified Rice Kernels (for short 'FRK') is mixed with 100 kg normal rice i.e. CMR. The processor of paddy is not engaged in the manufacture of FRK. As per standard operating procedure, circulated vide letter dated 15.03.2022 of the Government of India, there are notified manufacturers of FRK and a rice miller can buy FRK only from a notified manufacturer. At the time to delivery of FRK, the manufacturer has to furnish test report certifying contents of the FRK. The rice miller is supposed to install specific machinery to blend FRK with CMR. The petitioner as per SOP has installed requisite machinery. The petitioner during 2022-23 received

paddy from State Agencies and converted into rice. The petitioner purchased FRK from notified manufacturers and blended with CMR. The petitioner supplied blended stock to FCI. It is relevant to notice that no sample was drawn at the time of movement of stock from factory premises of the petitioner to depot of FCI and FCI while stock was lying in their premises drew samples and got tested samples from notified laboratories. Three samples were drawn and test reports of all the samples are disclosing different outcome/results.

4. Learned counsels for the petitioners relying upon letter dated 23.08.2022 of FCI submit that FCI has asked State Government to continue allocation of paddy to concerned rice mills because millers may not be at fault for quality of FRK. The said letter relates to KMS 2022-23, however, it is relevant because it indicates that petitioners may or may not be responsible for failure of samples because FRK is not manufactured by the petitioners. The petitioners have purchased FRK from notified manufacturers and there is no evidence disclosing that petitioners have diverted FRK received from notified manufacturers and purchased spurious FRK from third parties. The role of the petitioners is confined to blend in the ratio of 1:100, thus, they cannot be held responsible for any defect or deficiency in FRK. They could be held responsible, had they not blended in the prescribed ratio or they have not purchased FRK from notified manufacturers or they have diverted FRK purchased from notified manufacturers. The denial of paddy for KMS 2023-24 would amount to closure of their units. There is no investigation at the level of State Government or FCI to conclude that petitioners are

responsible for any defect/deficiency in FRK.

5. Learned counsel for the respondent-FCI submits that FCI had drawn samples on receipt of material in their premises. The samples were sent to notified laboratories and different contents have been found in different reports. It shows that the reports are different from each other qua quality of FRK. The samples have been tested at appellate stage also and reports are against the petitioners. The petitioners are duty bound to replace fortified rice. FCI is not supposed to conduct investigation and find out persons responsible.

6. Learned State counsel submits that they have stopped allotment of paddy on the basis of letter received from FCI. The State has further issued letter dated 13.09.2023 whereby millers have been asked to furnish undertaking to the effect that petitioners would replace BRL/failed fortified rice stock before 15.12.2023 and as per said letter they are supposed to file undertaking by 14.09.2023.

7. Learned counsel for the respondent- FCI as well as learned State counsel on being asked concede that neither there is evidence of diversion of FRK on the part of petitioners which was purchased from notified manufacturers nor there is any evidence of non-receipt of FRK from notified manufacturers. They further concede that none of the agency has carried out independent investigation to find out whether petitioners are guilty for the alleged defective stock or not. Counsel for FCI simply claims that they have received stock from miller, thus, miller is liable.

8. From the perusal of record and arguments of learned counsel for the parties, it comes out that as per policy of Government of India, the petitioners had purchased FRK from notified manufacturers. They have blended FRK with CMR. Neither there is allegation nor evidence on record disclosing that millers have violated condition *qua* ratio of FRK and CMR. There is no evidence disclosing that the petitioners have purchased FRK from a manufacturer other than notified manufacturers. Petitioners concededly have installed machinery to blend FRK with CMR as prescribed by Union of India. None of the respondent-Agency has carried out independent investigation to find out persons responsible for the below standard FRK. The only argument of FCI is that they have received stock from millers so millers are responsible. The contention of learned counsel for the respondent- FCI is contradictory from communication dated 23.08.2022 whereby FCI itself has opined that millers may not be at fault for quality of FRK. The petitioners are not admittedly manufacturers of FRK.

9. In the wake of aforesaid facts and circumstances, this Court is of the considered opinion that it would be unjust, unfair and violative of Articles 14 and 19 (1) (g) of the Constitution of India, if petitioners are denied allotment of paddy on the ground of defective fortified rice when there is no defect in the CMR and defect in the forfeited rice is on account of low quality of FRK and FRK has not been manufactured by them.

10. In view of the aforesaid facts and findings, the respondents are directed to consider case of the petitioners for allotment of paddy for

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KMS 2023-24 subject to furnishing of undertaking by petitioners to the effect that if during the course of investigation or inquiry, if any, conducted by respondents, it is found that they are guilty for the alleged defect, they would replace BRL/defective stock or in alternative pay the cost of stock with interest. The respondents shall do the needful within two weeks from today. It is made clear that till the conclusion of inquiry to find out actual culprits, no recovery shall be made from the petitioners with respect to fortified rice supplied during KMS 2022-23.

11. The petitions stand disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

15.09.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>