

CWP-21699-2023

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2023:PHHC:126997

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

CWP-21699-2023

Date of Decision:29.09.2023

ARYA INDUSTRIES

..... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. P.S. Ahluwalia, Advocate with
Mr. Vipul Joshi, Advocate
for the petitioner.

Ms. Deepali Puri, Addl. AG, Punjab and
Mr. Navdeep Chhabra, Sr. DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. On 27.09.2023, the following order was passed:

“1. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of order dated 19.09.2023 (Annexure P-1) whereby respondent has declined to allot paddy to the petitioner and directions to respondent No.2 to allot paddy for KMS 2023- 24.

2. The petitioner is engaged in the business of milling rice for more than a decade. The petitioner was not allotted paddy during KMS 2021-22 on account of some default made by M/s Kuber Rice & General Mills, Mullanpur. The petitioner is a proprietorship concern and its proprietor was having 5% share in M/s Kuber Rice & General Mills, Mullanpur, which is a partnership firm. The petitioner on account of nonallotment of paddy during 2021-22 filed CWP No.24845-2021 before this Court which vide order dated 19.04.2022 directed the respondents to allot paddy to the petitioner. The operative portion of the order reads as :

17. Consequently, the claim of petitioner No. 1 is

justified and it is held that the Mill should be allotted paddy under the Custom Milling Policy 2021-2022, in case the same is available. There is a letter dated 25.3.2022 available on the record to show that PUNGRAIN still has paddy lying for milling, which letter may be taken into account.

3. *The respondent preferred LPA No.399 of 2022 before this Court which came up for consideration before a Division Bench of this Court. A Division Bench vide order dated 21.09.2022 disposed of LPA in view of disposal of LPA No.364 of 2022. The respondent-State has filed SLP (Civil) Diary No.8462 of 2023 before Hon'ble Supreme Court which vide order dated 13.04.2023 stayed operation of order passed by the Division Bench of this Court. The said order came to be modified by Hon'ble Supreme Court vide order dated 18.08.2023. 4. The claim of the petitioner is that the petitioner in terms of policy of 2023-24 read with order passed by learned Single Judge of this Court and interim order dated 18.08.2023 passed by Hon'ble Supreme Court applied for allotment of paddy. The matter was considered at Head Office level of the respondents. The Head office examined the matter and passed order as below:*

5. During the current season 2023-24, the facts were reexamined by the head office and the direction reads as under: "Re-examined, on perusal of the office noting, judgments of Hon'ble High Court and Hon'ble Supreme Court of India and other relevant record, it is submitted that In the present case, the department has filed SLP No. 8462 of 2023 against impugned judgments of the Hon'ble Punjab and Haryana High Court dated 21.09.2022 in LPA No. 364 of 2022 and LPA No. 399 of 2022 titled "M/s Kuber Rice & General Mills Vs State of Punjab & Others and

"State of Punjab & Others Vs Arya Industries & Others" respectively. The Hon'ble D.B. of the Supreme Court of India vide orders dated 13.04.2023 while condoning the delay, issued notice to the Respondents granted interim stay of the impugned order passed in the LPAs by the Hon'ble High Court. It has been further clarified by the Hon'ble Supreme Court of India in SLP Nos. 7772-7773 of 2023 relating to these LPAs, vide its orders 18.08.2023, that interim stay is applicable on the impugned order of the Hon'ble High Court for granting benefit to M/s Kuber Rice & General Mills in the LPA. However, it has been made clear that there is no impediment for the competent authority of the department to consider the application filed by M/s Arya Industries on merit in accordance with the law as per the existing policy. However, in view of above situation, the judgment of the Hon'ble High Court dated 19.04.2022 in favour of M/s Arya Industries by setting aside decisions of the Department taken as per policy, may be complied with by the competent authority of the department by issuing office orders. The Hon'ble Apex court has not imposed any restriction in making the compliance of High Court orders in accordance with law."

5. *Despite afore-stated facts, the respondents vide impugned order dated 19.09.2023 has denied to allot paddy to the petitioner. The operative portion of the order dated 19.09.2023 passed by District Allotment Committee reads as :*

DECISION AND ORDERS BY DAC
LUDHIANA (WEST)

7. *M/s Arya Industries has been considered*

defaulter and thus allotment of paddy to the mill has been objected by the concerned procurement agency Markfed for the year 2023-24. Thus applying the clause 7(v) of the policy, the owner/Proprietor of M/s Arya Industries being a partner of defaulter mill M/s Kuber Rice & Gen Mill as per official records, consequent upon the default of M/s KP Rice Mill (lessee) for the crop year 2013-14, been considered as "defaulter" mill for the allotment for the current year 2023- 24 by the District Allotment Committee and allotment to the mill has been rejected under the policy guidelines "The Punjab Custom Milling Policy for Kharif 2023-24.

6. This Court is of the prima facie opinion that respondent District Allotment Committee in disregard of orders passed by this Court as well as its Head Office has declined claim of the petitioner. Bar is abstaining from work, thus, there is no representation of the State. To resolve the issue, the Deputy Director, Food, Civil Supplies and Consumer Affairs, Patiala is directed to be present in Court along with complete record on 29.09.2023 (Friday).

7. Adjourned to 29.09.2023.

8. The Registry is directed to supply copy of this order to the Deputy Director, Food, Civil Supplies and Consumer Affairs, Patiala through office of Advocate General, Punjab."

2. Learned State counsel submits that petitioner has remedy to file appeal in terms of Clause 24 of the Policy and if he files appeal it would be decided within two days.

3. The petition stands disposed of with liberty to petitioner to file appeal before the Appellate Authority. If the petitioner prefers an

appeal, it would be decided within 2 days from the date of filing. The Appellate Authority shall consider order passed by this Court in CWP No.24845 of 2021 as well as interim order dated 18.08.2023 passed by Hon’ble Supreme Court whereby Hon’ble Supreme Court has directed the authorities to consider claim of the petitioner in terms of policy.

4. The petition stands disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

29.09.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>