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

104

**CWP No.22643 of 2023
Date of Decision:07.10.2023**

M/s Arya Industries

….Petitioner

vs.

State of Punjab and others

….Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Preetinder Singh Ahluwalia, Advocate
for the petitioner

Ms. Deepali Puri, Addl. A.G., Punjab

***

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of order dated 03.10.2023 (Annexure P-1) whereby appellate authority has dismissed appeal of the petitioner assailing order dated 19.09.2023 whereby the respondents have declined to allot paddy to the petitioner 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 (for short "KRM"). The petitioner is a proprietorship concern and its proprietor was having 5% share in KRM, which is a partnership firm. The petitioner on account of non-

allotment 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.

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 of this Court vide order dated 21.09.2022 disposed of LPA in view of disposal of LPA No.364 of 2022. The respondent-State filed SLP (Civil) Diary No.8462 of 2023 before Supreme Court which vide interim order dated 13.04.2023 stayed operation of order passed by Division Bench of this Court. The said order came to be modified by Supreme Court vide order dated 18.08.2023.

4. 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. The respondents by order dated 19.09.2023 denied to allot paddy to the petitioner. The operative portion of the order dated 19.09.2023 passed by District Allotment Committee reads as :

<u>DECISION AND ORDERS BY DAC LUDHIANA (WEST)</u> 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 MilI 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. The petitioner preferred CWP No. 21699 of 2023 before this Court which came to be disposed of vide order dated 29.09.2023 with liberty to petitioner to prefer an appeal before appellate authority. The appellate authority vide impugned order dated 03.10.2023 (Annexure P-1) has dismissed appeal of the petitioner.

7. Counsel for the petitioner inter alia contends that KRM is a partnership firm. In 2013-14, KRM leased out its premises and lessee further leased out said premises. The sub-lessee namely M/s K.P.Rice Mills got paddy from MARKFED but defaulted in supplying rice. The petitioner is a proprietorship concern. The proprietor of the petitioner was not partner/proprietor of either KRM or K.P.Rice Mills or Rajona Rice Mills during 2013-14 as well as subsequent year 2014-15. The petitioner became partner of KRM during 2015-16 and he became partner after getting prior approval from respondent authorities. The default made by KRM or its lessee/sub-lessee relates back to 2013-14 and at that point of time, the petitioner was not directly or indirectly connected with the aforesaid entities, thus, petitioner cannot be connected with a defaulter firm. The MARKFED initiated arbitration proceedings against KRM and its lessee/sub-lessee. No recovery with respect to defaulted amount either had been or could be made from the petitioner. This Court while passing order dated 09.04.2023 in CWP No. 24845 of 2021 has considered all these

aspects and while rejecting claim of KRM has allowed claim of the petitioner and respondents were directed to allot paddy to the petitioner.

8. Counsel for the respondents submits that respondent has challenged order dated 21.09.2022 passed in LPA No. 399 of 2022 before Supreme Court. Hon'ble Court vide order dated 13.04.2023 stayed operation of order dated 21.09.2022 passed by Division Bench of this Court. Supreme Court by order dated 18.08.2023 has modified its earlier order to the extent the respondents have been directed to consider claim of the petitioner in accordance with existing policy. The proprietor of the petitioner is one of the partners of KRM and as per petitioner himself, he remained partner till 31.07.2023, thus, for all purposes, he is partner of KRM which is a defaulter firm. The respondent applying Clause 7(v) of the policy has rejected claim of the petitioner. The respondent does not dispute the fact that petitioner became partner of KRM after obtaining approval of the department, however, submits that case of the petitioner is covered by clause 7 (v) of the policy, thus, he is not entitled to allotment of paddy. The petitioner is as good defaulter as KRM. The policy is quite clear that if a proprietor/partner/member of an entity is also proprietor/partner/member of another entity which is a defaulter entity, both the entities would not be entitled to allotment of paddy. The petitioner has alternative remedy of second appeal, thus, he should be relegated to avail remedy of appeal.

9. I have heard counsel for both sides and perused the record.

10. The conceded position emerging from record is that KRM was a partnership concern during 2013-14. It leased out its manufacturing unit to M/s Rajona Rice Mills which in turn further leased out to M/s K.P. Rice

Mills. The MARKFED initiated arbitration proceedings against K.P. Rice Mills and KRM. Award stands passed and further proceedings are pending. No recovery proceedings are pending against the petitioner. The petitioner was declared by this Court vide order dated 19.04.2022 entitled to allotment of paddy. The respondent preferred LPA assailing aforesaid order before Division Bench of this Court. LPA No. 399 of 2022 was disposed of vide order dated 21.09.2022. The respondents preferred SLP before Supreme Court which vide order dated 13.04.2023 stayed operation of impugned order. The petitioner preferred an application seeking recalling of interim order and Hon'ble Supreme Court declined to vacate interim order, however, directed petitioner as well as competent authorities to consider application of the petitioner on merits and in accordance with law as per existing policy.

11. The respondent has denied allotment of paddy invoking Clause 7(v) of KMS 2023-24. The said clause is reproduced as below:-

> *"7. **EVEN EVENTS OF DEFAULT**-*
>
> *a. No mill/miller shall be considered for provisional registration/final registration allotment to an agency or for allocation of paddy under this policy, if it has been declared as a defaulter in any of the previous years and/or is in breach /violation/ non-compliance of the following:*
>
> *xxx xxx xxx*
>
> *v. The mill shall also be considered as defaulter if it's Owner/Partner/Director/Member/Lessee/Lessor/Trustee is also an Owner/Partner/Director/Member,Lessee/Lessor/Trustee of another defaulter Mill."*

12. A Co-ordinate Bench of this Court while dealing with question of entitlement of the petitioner has held that the petitioner is entitled to

allotment of paddy. The petitioner became partner after getting approval of respondent authorities. The respondents opted to allot paddy to KRM as well as petitioner during 2015-16 to 2020-21. There is no default on the part of petitioner. The relevant extracts of the aforesaid judgment read as:-

> "*The question whether petitioner No. 1 can be declared as a defaulter and ineligible for allotment of paddy would require consideration keeping in view that petitioner No. 1 itself is not a defaulter of PUNSUP or of any other procurement agency and has a good CIBIL score. It has been declared ineligible by virtue of Clause 7 (c) alone. It is not in dispute that petitioner No. 1 sought permission from the authorities to become a partner of M/s Kuber Rice and General Mills and on getting the said approval as far back as 2.10.2015, he entered into a new Deed of partnership of M/s Kuber Rice and General Mills, which now consists of three partners i.e. Manjit Singh, Iqbal Singh and Rohit Kumar, (the sole proprietor of M/s Arya Industries). The report of the CVC was well within the knowledge of the authorities when permission was allowed. Despite the CVC report, the Department continued to allott paddy for milling and petitioner No.2 was never declared a defaulter. In fact, it has only now that M/s Kuber Rice and General Mills has been declared a defaulter on account of one of the partners having a low CIBIL score and secondly on account of its lessee being a defaulter. No fault can be attributed to petitioner No. 1 in this regard, as it was prudent enough to forward the CVC report to the Head Office and seek permission to enter into a partnership. It is clear that petitioner No.1 entered into a partnership thereafter, on knowing he was not going to be associated with a defaulter Mill. It will be pertinent to note that Clause 7(c) of the CMP of 2021-2022 which is now sought to be invoked was already a part of the CMP of 2018-2019 and the subsequent ones. Clause 7(c) of the*

CMP of 2018-2019 may be referred to. Once the said permission has been allowed, the petitioner no. 1 who is successfully delivering custom milled rice since 2014-2015 and therefore, would have a legitimate expectation to be considered eligible for allotment of paddy for the year 2021-2022 as well. Petitioner No. 1 cannot be faulted on the ground that the authorities itself allowed paddy to be issued/allotted for each successive years i.e. from 2014-2015 to 2020-2021. Therefore, in the opinion of the court, once petitioner No. 1 had been allowed by the respondents themselves to Mill paddy for the past several seasons, despite the existence of Clause 7(c), they cannot be permitted to declare it as a defaulter for this season by virtue of Clause 7 (c) alone. The impugned order qua petitioner No. 1 is hereby set aside."

13. The respondent has preferred LPA which was followed by SLP (Civil) Diary No(s). 8462 of 2023. The Hon'ble Supreme Court vide order dated 18.08.2023 has directed the authorities to consider claim of the petitioner in accordance with law and as per existing policy. The relevant extracts of the order dated 18.08.2023 read as:-

> *"Though, at this stage, we see no reason to entertain the application seeking vacation of the interim order, taking note that the interim order was granted in the circumstance where there was a direction to grant the benefit to the M/s Kuber Rice & General Mills and in that light, the interim order is operating, keeping in view the fact the M/s Arya Industries has filed an application and the same is pending consideration, we make it clear that the interim order will not be an impediment petitioners/competent authorities herein, application on its own merits and in accordance with law as per the existing policy.*

Learned counsel for the petitioners seeks four weeks time to file rejoinder to the petitions. Time, as sought for, is granted. List the matters thereafter on a non-miscellaneous day after four weeks.

With the said observation, application (IA No. 135970/2023) stands disposed of."

14. From the perusal of afore-mentioned order of Supreme Court, it is evident that respondent is supposed to consider claim of the petitioner in accordance with existing policy. The respondent has denied claim of the petitioner relying upon Clause 7(v) of the policy. From the perusal of aforesaid clause, it is evident that a mill is considered as defaulter if its owner is also an owner/partner of another defaulter mill. The petitioner is a proprietorship concern and its proprietor during 2013-14 was neither directly nor indirectly connected with KRM and its lessee. Sub-lessee of KRM defaulted during 2013-14. KRM is responsible for default because mill was owned by KRM and there was surety of KRM with respect to act and conduct of its lessee.

15. It is settled proposition of law that a person is responsible for act and conduct of a partnership firm for the period during which he had remained partner or has taken over responsibilies of earlier partnership firm. A person cannot be held responsible as partner for the period during which he was not a partner. It is not a case of the respondent that there was camouflage on the part of petitioner. The respondent could have a case, had petitioner been partner prior to 2013-14 and thereafter became partner during 2015-16. It is undisputed case of both sides that petitioner became partner of KRM for the first time during 2015-16 and he became partner

after getting prior permission from respondent authorities. It is apt to notice that respondent on the basis of report received from CVC alloted paddy to KRM during 2015-16 to 2021. The petitioner became partner at a point of time when paddy was allotted to KRM. The respondent has conceded the fact that no recovery proceedings are pending against the petitioner or its proprietor. The recovery proceedings are pending against KRM its erstwhile partners and lessee/sub-lessee of KRM. The respondent is interpreting policy in such a way that petitioner would be debarred from allotment of paddy till KRM is treated as defaulter. The petitioner has resigned from KRM, however, resignation letter is post 31.07.2023 i.e. the date prescribed by policy, thus, resignation letter of the petitioner cannot be taken care of, however, it is undisputed fact that petitioner joined KRM during 2015-16 that too after obtaining permission from respondents and default committed by sub-lessee of KRM relates to 2013-14. The petitioner was partner of KRM to the extent of 5%. The petitioner was allotted paddy in previous years and there was no default on his part.

16. The respondent has raised question of alternative remedy. Claim of the petitioner was rejected by District Allotment Committee and pursuant to policy, petitioner preferred appeal before first appellate authority. The allotment of paddy is a time bound process and it is a question of existence of petitioner entity. The petitioner is dependent upon allotment of paddy and in case petitioner is not allotted paddy, certainly its business would be ruined. It is a case of fundamental rights guaranteed by Articles 14, 19(1)(g) and 21 of the Constitution of India. It is settled proposition of law that despite alternative remedy, High Court can entertain writ petition where

there is violation of fundamental rights. It is further apt to notice that petitioner has already availed one alternative remedy and if petitioner is relegated to another alternative remedy, the purpose of pursing the matter would be defeated, thus, contention of the respondent needs to be rejected.

17. In the wake of aforesaid facts and circumstance, this Court is of the considered opinion that the present petition deserves to be allowed and accordingly allowed. The impugned order dated 03.10.2023 (Annexure P-1) is hereby set aside and the petitioner is held entitled to allotment of paddy.

(JAGMOHAN BANSAL)
JUDGE

07.10.2023
paramjit

Whether speaking/reasoned: Yes
Whether reportable: Yes/No