

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

CWP-22933-2023

Date of Decision:13.10.2023

M/S JAGDAMBE RICE AND GENERAL MILLS

..... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Daman Dhir, Advocate and
Ms. Raman Dhir, Advocate
for the petitioner.

Mr. Deepanjay Sharma, DAG, Punjab.

Mr. Vishal Singh, Advocate and
Ms. Ayushi Sharma, Advocate
for the respondents- MARKFED.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of order dated 19.09.2023 (Annexure P-5) whereby District Allotment Committee, Ludhiana has declined to allot paddy to the petitioner for KMS 2023-2024.

2. The petitioner was allotted paddy during KMS 1994-1995. A dispute arose between petitioner and MARKFED which led to passing of an order by Managing Director whereby demand of Rs.9,28,507/- alongwith interest @ 21% per annum was created. The MARKFED filed civil suit before Civil Court pursuant to order passed by Managing

Director of MARKFED. The Civil suit came to be dismissed on merits as well as limitation. The MARKFED filed an appeal which came to be dismissed. The MARKFED has filed RSA against appellate order before this Court which is still pending, however, there is no stay. The petitioner had furnished Bank guarantee of Rs.41 lakhs on account of dispute going on between the parties. The respondent encashed said Bank guarantee. The petitioner preferred CWP No.24501 of 2017 before this Court which came to be allowed vide order dated 27.05.2022. The respondent filed LPA No.1087 of 2022 before this Court seeking setting aside of order passed by Single Judge of this Court. A Division Bench vide order dated 23.02.2023 had dismissed the LPA of the respondent. The operative portion of order dated 23.02.2023 passed by LPA Bench reads as:

“In our considered opinion, a short question only arises in the present appeal that the appellant having lost in the civil proceedings at two stages, could the appellant have encashed the bank guarantee inspite of a finding adverse to it by the Civil Court? The categorical answer has to be 'No' since apparently the appellant has successfully executed the decree which has never been passed in its favour by the Civil Court, by encashing the bank guarantee.

In such circumstances, we are of the considered opinion that once the suit for recovery of `9,28,507/- which was based on the order dated 21.06.2013 passed by the Managing Director had itself been dismissed after a proper trial wherein the Civil Court had held that there was no proof to show that any loss was caused to the appellant-society due to the non-supplying of converted rice and that neither

the paddy was converted into the rice unauthorisedly and mis-appropriated. Rather finding was recorded that the balance paddy left over sold was to the defendants mill on the basis of price of paddy received by the FCI and there was no paddy left to the plaintiff after its purchase. Therefore, the recovery was held not permissible and even on the issue of limitation it was held that the suit, as such was barred as cause of action had accrued on 31.10.1995 and the suit could only be filed up-to 31.10.1998 whereas it was filed on 25.04.2014.

In such circumstances, we are of the considered opinion that the learned Single Judge is well justified in allowing the writ petition. It is however, made clear that in case the Regular Second Appeal is allowed, it is always open to the appellant to execute it, in accordance with law and any observation made in these proceedings will not stand in the way of the appellant.”

3. From the perusal of order dated 23.02.2023 passed by Division Bench of this Court, it comes out that encashment of Bank guarantee of Rs.41 lakhs by respondent has been declared illegal and unjustified. Despite encashment of Bank guarantee of Rs.41 lakhs and dismissal of suit seeking recovery of Rs.9,28,507/-, the respondent is claiming that a sum of Rs.1 crore is outstanding against the petitioner. It is apt to notice here that principal amount is Rs.9,28,507/- and out of Rs.1 crore remaining is interest amount.

4. Learned counsel for the respondents- MARKFED submits that RSA is pending before this Court, thus, claim of the respondent still subsists and petitioner cannot be allocated paddy.

5. Learned counsel for the petitioner submits that petitioner was allocated paddy during KMS 1995-1996 to 2022-2023 and it is astonishing that at this stage, respondent has denied allotment of paddy.

6. Learned State counsel submits that impugned order has been passed at the behest of MARKFED and they have no objection to allot paddy, if MARKFED issues no objection certificate.

7. I have heard the arguments of both sides and with the able assistance of learned counsel have perused the record.

8. From the perusal of impugned order, it comes out that Allotment Committee has not applied its independent mind and acting at the behest of MARKFED has passed impugned order. The Allotment Committee has blindly relied upon communication of MARKFED and totally ignored different orders passed by this Court.

9. It is undisputed fact that as on day there is no crystallized demand against the petitioner rather civil suit for recovery filed by MARKFED as well as first appeal stands dismissed. Mere pendency of RSA does not create any absolute or vested right. The petitioner was supplied paddy from 1995-1996 to 2022-2023 and there is no allegation of default on the part of the petitioner. This Court has specifically held that respondent has wrongly encashed Bank guarantee of Rs.41 lakhs. Despite dismissal of civil suit as well as first appeal and orders passed by this Court, the respondent has denied allotment of paddy to the petitioner. The impugned order apparently seems to be contrary to orders passed by this Court as well as law of the land. It is further apt to notice that while passing impugned order, the respondent has not invoked any particular clause of the policy, permitting the respondent to deny allotment of paddy

to the petitioner. The petitioner was allotted paddy from 1995-1996 to 2022-2023 and dispute relates to KMS 1994-1995, thus, there seems no reason to deny allotment of paddy for KMS 2023-2024.

10. In the wake of aforesaid facts and findings, the present petition deserves to be allowed and accordingly allowed. The impugned order dated 19.09.2023 (Annexure P-5) is hereby set aside and respondents are directed to consider petitioner for the allotment of free paddy.

(JAGMOHAN BANSAL)
JUDGE

13.10.2023
Ali

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