

213
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-26840-2022 (O&M)
Date of Decision: 21.02.2023

M/S SHRI TULSI RICE MILLS AND OTHERS

....Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Daman Dhir, Advocate, for the petitioners.

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

Mr. A.P. Singh, Advocate, for respondent Nos. 5 and 7.

Mr. Naresh Goyal, Advocate for
Mr. Mehardeep Singh, Advocate, for respondent No.9.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Article 226 of the Constitution of India seeking a writ in the nature of *Certiorari* for quashing of the action of the respondents in violating the clauses of the Punjab Custom Milling Policy for Kharif 2022-2023 (Annexure P-1) especially Clause 13.

Mr. Daman Dhir, learned counsel for the petitioners has submitted that it is a case where the respondents have violated the Custom Milling Policy on their own and therefore the present petition has been filed challenging the action of the respondents. He submitted that for each crop

Custom Milling Policy are binding upon both the parties. There is contract between the rice miller and the concerned agency and the rights are governed by the aforesaid Custom Milling Policy. The relevant Custom Milling Policy in the present case is of the year 2022-2023. He submitted that there is a specific provision vide Clause 13(b) of the Custom Milling Policy which provides that the paddy shall be allocated to all the eligible rice mills in a milling centre subject to the availability of paddy at the milling centre concerned and cut, if any, will be imposed on the quantum of allocation in ratio and proportion on all the mills at that particular milling centre and further the paddy in all the rice mills/millers at the milling centre will be stored proportionately in five rounds of 20% each of the millers' actual allocation. He submitted that in this way vide Clause 13(b) there is a provision for distribution of paddy proportionately to all the rice millers depending upon their linkage with the mandies. He further submitted that there is another provision which is under Clause 11 (b) of the Custom Milling Policy which provides that in case a rice miller is having any grievance with regard to disproportionate allocation of paddy then an alternate dispute resolution has been provided where he can raise a dispute pertaining to disproportionate distribution of paddy to the DDF-cum-Chairman DAC. Against the order of the aforesaid DAC, an appeal is also provided which lies to the FDS and even a second appeal has also been provided which lies with the Administrative Secretary of the Department.

He further submitted that vide Annexure P-8, 17 rice millers in the State of Punjab had served legal notice out of which 9 have filed the present petition. The legal notice was served to Principal Secretary, Department of Food Civil Supplies and Consumer Affairs, Punjab, Director,

Department of Food Civil Supplies and Consumer Affairs, Punjab and other authorities/agencies including DAC and the date of legal notice is 10.11.2021, although it is not so mentioned in the legal notice which is appended with the present petition to the effect that in the State of Punjab there had been disproportionate allocation of paddy and as per Clause 13(b) of the Custom Milling Policy, various parameters have been provided for equitable distribution but the agencies of the State of Punjab have not complied with the terms and conditions of the Custom Milling Policy in pursuance of Clause 13(b) and therefore action should be taken against them because they have failed to perform their duties. In addition to the same, it is also stated in the legal notice that even the DAC has completely failed to perform its part of duty and has not been maintaining synchronization of the purchase of paddy amongst different procurement agencies at the same procurement centre and a request was made to the addressees to look into the matter and Clause 13(b) of the Custom Milling Policy 2022-23 may be complied with in letter and spirit so that the petitioners alongwith other rice millers may be allocated the paddy as per their share in the common pool by way of synchronization of the purchase of paddy and that necessary instructions to the officials may also be issued in this regard to match the ratio of paddy already purchased by other agencies.

He further submitted that the said legal notice although was referring to Clause 13(b) of the Custom Milling Policy but after the receipt of the legal notice, the concerned DAC ought to have taken action and would have decided the dispute raised by the petitioners under Clause 11(b) because Clause 11(b) is to be read alongwith Clause 13(b) which the

respondent-DAC has not done. He submitted that the result of the same was that there had been disproportionate allocation of paddy in the State of Punjab which affected the rights of the petitioners and therefore the present petition has been filed challenging the action of the respondents in this regard.

On the other hand, Ms. Deepali Puri, learned Additional Advocate General, Punjab has submitted that the prayer of the petitioners is misconceived. She has today filed an affidavit of the Principal Secretary, Department of Food Civil Supplies and Consumer Affairs, Punjab in pursuance of the directions issued by this Court on 10.02.2023. The said affidavit is hereby taken on record and a copy has already been supplied to the learned counsel for the petitioners who has perused the same.

While referring to the affidavit, learned Additional Advocate General, Punjab submitted that Clause 13(b) of the Custom Milling Policy provides for a method as to how the paddy is to be distributed equitably among the rice millers on the basis of linkage of mandies. The grievance of the petitioners and the other rice millers who had served legal notice vide Annexure P-8 was that the aforesaid provisions have not been properly complied with in the State of Punjab and the entire legal notice was a generalised legal notice seeking implementation of the provision of Clause 13(b) of the Custom Milling Policy so that there can be an equitable distribution of paddy. She submitted that on the basis of the legal notice, District Controller, Food Civil Supplies and Consumer Affairs, Barnala in whose jurisdiction all the petitioners fall, vide Annexure R-1 dated 16.11.2022 immediately wrote to all the agencies and the concerned officer in District Barnala for meticulous compliance of Clause 13 (b) of

the Custom Milling Policy of 2022-2023 and that it should be ensured in letter and spirit so that paddy in equal proportion can be stored in rice mills of district Barnala. She submitted that in response to the legal notice issued by the petitioners, an immediate action was taken by the District Controller, Food Civil Supplies and Consumer Affairs, Barnala by issuance of directions to all the agencies vide Annexure R-1 which has been attached alongwith the affidavit which has been filed today and therefore the grievance of the petitioners had been redressed at that stage only. She submitted that thereafter in case there was any grievance of any of the rice millers, then appropriate method was to raise a dispute by way of a claim by invoking Clause 11(b) of the Custom Milling Policy which has not been done in the present case. She submitted that once in the Custom Milling Policy itself an alternate dispute resolution mechanism has been set forth which is binding upon the parties, the petitioners in case, they were so aggrieved, ought to have invoked the aforesaid provision which they have not done but instead of doing the same, a legal notice was sent through an Advocate by way of a generalised grievance for the purpose of implementation of Clause 13 (b) of the Custom Milling Policy only regarding which necessary directions were already issued immediately thereafter. She further submitted that in case a rice miller is aggrieved with regard to disproportionate allocation of paddy, then the remedy lies for invoking Clause 11(b) and filing a complaint before the District Allotment Committee and against the order of the District Allotment Committee even an appeal lies before FDS and thereafter even a second appeal lies before Administrative Secretary of the Department and in this way, an inbuilt and inherent mechanism has been provided in the Custom Milling Policy for

the redressal of the grievances which has not been done in the present case and therefore the entire grievance of the petitioners was misconceived and contrary to the Custom Milling Policy which had binding effect upon the petitioners as well.

I have heard the learned counsel for the parties and also perused the reply which has been filed by the Principal Secretary, Department of Food Civil Supplies and Consumer Affairs, Punjab in the Court today.

The grievance of the petitioners in the present case was that the petitioners alongwith the other millers had issued a legal notice which has been addressed to the Principal Secretary, Department of Food Civil Supplies and Consumer Affairs, Punjab, Director, Department of Food Civil Supplies and Consumer Affairs, Punjab and other authorities/agencies including DAC by raising a grievance that the millers have not been given the proportionate allotment of paddy and there is violation of terms and conditions of Clause 13(b) of the Custom Milling Policy. From a perusal of the legal notice it appears that a generalised grievance has been made on behalf of the rice millers but no specific instance has been mentioned in the legal notice. The prayer clause of the legal notice is reproduced as under:-

“So, by virtue of this legal notice, I hereby call upon you all the addressees to look into the matter and clause 13(b) of The Punjab Custom Milling Policy for Kharif 2022-23 may kindly be complied in its letter and spirit and my clients may be allocated paddy as per their share in the common pool and you the addressees are further called upon to synchronize the purchase of paddy amongst the different procurement agencies at Tapa Dist. Barnala. You are also supposed to issue necessary instructions to the

officials of all agencies to stop any further purchase of paddy till deficient agencies match the ratio of the paddy already purchased by other agencies. In case of failure to do the needful, then you the addressees will be solely responsible for the consequences arisen on account of aforesaid situation. You all the addressees are also called upon to do the needful within 5 days from the receipt of this legal notice, otherwise I have standing instructions from my clients to take legal action against all of above addressees in the competent court of jurisdiction and in that event, it will be your sole responsibility and my clients will be at liberty to recover the costs of litigation from you all.”

As per the prayer clause in the legal notice, it has been so demanded from the concerned agency that Clause 13(b) of the Custom Milling Policy 2022-2023 may be complied with in letter and spirit and also to issue necessary instructions to the officials of all the agencies to stop any purchase of paddy till deficient agencies match the ratio of paddy already purchased by other agencies. Therefore, it is clear from the aforesaid legal notice that the same has been served through an Advocate to the Principal Secretary, Department of Food Civil Supplies and Consumer Affairs, Punjab, Director, Department of Food Civil Supplies and Consumer Affairs, Punjab and other agencies in a generalised way and there is nothing in the legal notice to state that any particular dispute has been raised by way of making a claim or demand in pursuance of Clause 11(b) of the Custom Milling Policy. On the receipt of the aforesaid legal notice, as per Annexure R-1 immediately the concerned DFSC has issued instructions to all the agencies for meticulous compliance of Clause 13(b) of the Custom

Milling Policy and to ensure that the same is implemented in letter and spirit. Therefore, the letter which has been issued vide Annexure R-1 redresses the grievance of the rice millers who had issued legal notice and the prayer made in the legal notice.

Thereafter, in case any of the millers were aggrieved by any action of the agencies to have disproportionately allotted paddy to them, the remedy for the individual rice miller was to raise a claim/dispute before the DAC in pursuance of Clause 11(b) of the Custom Milling Policy which according to the learned counsel for the respondents have not been raised by any of the petitioners. In fact a perusal of the Custom Milling Policy would show that Clause 13(b) is an enabling provision which provides for the rights of the rice millers that they are entitled to proportionate and equitable distribution of paddy and other parameters provided in Clause 13(b) which creates rights and binding effect upon both the parties. Clause 11(b) provides for the redressal mechanism and also provides appeal thereon and therefore in case where a miller is aggrieved by the action of the State or the agency, then he has to invoke the provision of Clause 11(b) by raising a dispute which has not been done in the present case.

Therefore, this Court is of the view that the present petition is devoid of any merit and the same is hereby dismissed.

21.02.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No