

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

106

CWP-23903-2023 (O&M)

Date of Decision : 02.11.2023

KRISHNA AGRO INDUSTRIES AND ANOTHER

..... PETITIONERS

V/S

STATE OF PUNJAB AND OTHERS

..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Chetan Mittal, Sr. Advocate with
Mr. Shivam Grover, Advocate
Mr. Kunal Mulwani, Advocate
Mr. Ritvik Garg, Advocate
Mr. Daksh Uppal, Advocate
for the petitioners.

Mr. Inderpreet Singh Kang, AAG, Punjab and
Mr. Deepanjay Sharma, DAG, Punjab.

Mr. K.K. Gupta, Advocate for the FCI.

Mr. Vikas Mohan Gupta, Advocate and
Mr. Rishab Kumar Jain, Advocate
for the caveator.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioners through instant petition under Articles 226/227 of Constitution of India are seeking setting aside of order dated 15.10.2023 (Annexure P-1) and proposed miller linking order (Annexure P-2) whereby Jodha Grain Market (Mandi) has been linked with Kila Raipur Milling Centre.

2. The petitioners as well as private respondents are engaged in the business of milling rice. The petitioners are carrying out job work activities for the State of Punjab. The petitioners are dependent upon paddy supplied by State of Punjab. Every year, the State declares milling policy known as Custom Milling Policy. Like previous years, Custom Milling Policy for 2023-2024 was notified on 31.07.2023. As per the policy, each rice mill is attached with a Milling Centre and every Milling Centre consists of a number of mandis. The expression Milling Centre has been duly defined in the policy. The petitioners fall within jurisdiction of Sudhar Milling Centre and private respondents are covered by Kila Raipur Milling Centre. There is a grain market known as Jodha Mandi which is bone of dispute between the parties. The said mandi was attached with Sudhar Milling Centre prior to 2017 and in the year 2017, the State Government decided to attach the said mandi with Kila Raipur Milling Centre from where dispute started between the parties. The petitioners preferred CWP No. 23888 of 2017 before this Court assailing linking of said mandi with Kila Raipur Milling Centre. This Court vide order dated 09.08.2018 disposed of said petition. The relevant extracts of the said order read as :

“The learned State counsel submits that the linkage has been done in pursuance of Item No.5 of the policy for the year 2017-18. She further states that the petitioners never approached the respondents in response to the letter dated 29.09.2017 whereby the petitioners were offered to bear the transportation charges for additional supplies of the paddy. The petitioners instead of sending response to the concerned DFSO sent their response to the procurement agency i.e. MARKFED and PUNGRAIN, however, this statement is controverted by learned counsel for the petitioners.

Learned State counsel, on instructions states that in case the terms and conditions of the policy of 2018-19 remains the same, in that eventuality, the petitioners are free to approach the concerned DFSO with undertaking that they will pay the transportation charges and accordingly the linkage to that extent will be done.”

3. The Food and Supplies Officer, Raikot vide memo dated 18.09.2018 formed an opinion that Jodha Mandi should be linked with Sudhar Milling Center as was linked earlier. The said communication came to be challenged by private respondents before this Court by way of CWP No.32699 of 2018. This Court vide order dated 17.12.2018 disposed of said writ petition with following observations:

“Pursuant to order dated 13.12.2018, passed in the other connected cases, A.S. Saran, Deputy Director (Rice) Food and Supplies, Punjab is present in court. He submits that the case of the petitioners is being considered by the committee. A speaking order shall be passed shortly, in any case not later than 26th December, 2018.

In view of above, the petition is hereby disposed of. Petitioners shall, however, be at liberty to impugn the order, if aggrieved. In case, however, the committee finds the miller eligible for allocation, the District Administration shall take steps forthwith for shifting the paddy, in any case not later than one week.

Disposed of.”

4. The respondent formed a Committee of Senior Officers to look into the matter. The Committee vide its report dated 24.12.2018 opined that High Court has never directed the State to link Jodha Mandi with Sudhar Milling Center and opinion of Food and Civil Supplies Officer is an incorrect opinion. The petitioners herein assailed opinion of the Committee

by way of CWP No.4628 of 2019 before this Court. The respondents herein also preferred CWP No.8047 of 2019 before this Court. Both the petitions came to be dismissed as infructuous vide order dated 24.07.2023.

5. The respondent-State, during the pendency of afore-stated writ petitions, to resolve the issue made an interim arrangement and as per said arrangement, the paddy was allocated to nearest mills either falling under Sudhar Milling Centre or Kila Raipur Milling Centre. The respondent while linking mandis with Milling Centers for KMS 2023-24 linked Jodha Mandi with Kila Raipur Milling Centre. The petitioners assailing linking of Jodha Mandi with Kila Raipur Milling Centre preferred CWP No.22567 of 2023 before this Court which came to be disposed of by way of direction to the Director to look into the matter and pass an appropriate order. The respondent-Director vide impugned order dated 15.10.2023 has passed impugned order whereby linking of Jodha Mandi with Kila Raipur Milling Centre has been justified. The operative portion of the impugned order reads as:

“The perusal of the above clause reveals that mandies should preferably linked to the rice mills within the same milling center. The above clause further provides that where the distance of a rice mill with a mandi of another milling centre is lesser than such a mill shall be linked with nearest mandi. However, such a mill shall be linked to same milling centre unless the miller(s) at that milling centre are ready to pay the cost of transportation. As per the above clause of CMP. mandies are linked to rice mills online automatically through software.

In the instant case, the petitioner mills falls in Sudhar Milling Centre and the software has rightly linked it with the mandies of Sudhar Milling Centre. The Jodha Mandi lies in Kila Raipur Milling Cente and thus,

it could not be linked with Sudhar Milling Centre by the software. Further, the millers at the Kila Raipur milling centre are ready to pay the transportation cost. It is further observed that FSD is at Kila Raipur Centre and if petitioner mills are attached to the mandies of Kila Raipur, it will be backward movement of paddy from Kila Raipur to Sudhar Centre and would cause extra economic burden in form of transportation cost as the resultant rice is again delivered to FSD Kila Raipur.

It is further observed that the centre cut at Kila Raipur Centre is 50% whereas centre cut at Sudhar Centre is 38% and if Jodha Mandi is linked with Sudhar Milling Centre, the centre cut of Kila Raipur will increase to 62% leaving rice mills to 38% of their entitled paddy whereas, the centre cut at Sudhar centre will decrease to 13% leading to enhanced entitlement of of paddy to the rice mills of Sudhar Milling Centre As such the linking of Jodha Mandi to Sudhar Milling Centre will not equitably distribute the paddy rather it would cause economic loss to the mills of Kila Raipur Milling Centre which is against the spirit of the present CMP 2023-24. Therefore, the Jodha mandi has rightly been linked with the Kila Raipur milling centre.

6. In view of the above, I. Director Food Civil Supplies and Consumer Affairs, Punjab, in view of the ibid policy, is of the considered opinion that the claim of the petitioners mill is devoid of merits and the same deserves to be rejected.

6. Learned Senior counsel for the petitioners submits that respondent has linked Jodha Mandi with Sudhar Milling Centre on the basis of decision taken in 2017 which was under-challenge and respondent has wrongly relied upon said letter dated 12.10.2017. Jodha Mandi was linked with Sudhar Milling Centre since 2007. There was no basis to de-link said

mandi from Sudhar Milling Centre and link it with Kila Raipur Milling Centre. The policy candidly provides that every mill should be attached with nearest mandi. The object of attaching a rice mill with the nearest mandi is to minimize cost of transportation and make it convenient for all the stakeholders. The distance between petitioner units from Jodha Mandi is much less than distance between mills attached with Jodha Mandi which are forming part of Kila Raipur Milling Centre. The distance between mills of petitioner from Jodha Mandi is lesser than actually attached mandis, thus, there would be higher cost of transportation which shall be borne by the State of Punjab or Food Corporation of India. As per calculation chart of the FCI, transportation cost is going to increase, however, FCI is wrongly claiming that no difference in the cost would take place. In support of his contention, he produced a calculation chart to indicate that there would be higher cost of transportation to the extent of 11.56 lakhs if Jodha Mandi is linked with Kila Raipur Milling Centre instead of Sudhar Milling Centre. The said chart is taken on record. Mr. Mittal lastly submitted that in the wake of different cost of transportation charts, Director may be asked to look into this aspect.

7. On being asked about the scope of interference in administrative matters, learned counsel cited judgment of Hon'ble Supreme Court in **Suo Motu Writ Petition (Civil) No.3 of 2021, 2021(7) SCC 772.** He further submits that action of respondent amounts to violation of Articles 14, 19 (1)(g) and 21 of the Constitution of India because action of respondent is going to substantially affect business of the petitioner, thus, writ petition is maintainable.

8. Per contra, learned State counsel submits that first and prime

object of the policy is to make equitable distribution because milling capacity of the rice mills in the State is more than available paddy. Most of the milling Center are deficit in quantity. Resultantly, most of the mills are getting lesser quantity than their installed capacity. The petitioner units would get paddy more than 80% of their installed capacity if Jodha Mandi is attached with Sudhar Milling Centre and private respondents would get 38% of their installed capacity. If Jodha Mandi is attached with Kila Raipur Milling Centre, the units falling within the jurisdiction of Kila Raipur Milling Centre would get 51% of their installed capacity and units falling within preview of Sudhar Milling Centre will get 57% of their installed capacity. The mandi in question has been attached with Kila Raipur Milling Centre in terms of letter dated 12.10.2017 and thereafter units have been attached with mandi by the software. There is no human intervention with respect to linking of rice mills with mandis.

9. Learned counsel for the respondent-FCI submits that linking of Jodha Mandi with Sudhar Milling Centre or Kila Raipur Milling Centre would not make substantial difference in total cost of transportation because FCI has to take care of cost of transportation of movement of paddy as well as rice. During the course of hearing, learned counsel produced a calculation chart which is taken on record.

10. Learned counsel for private respondents during the course of hearing produced documents filed before Director at the time of passing of impugned order. The said documents are taken on record. Mr. Gupta submits that petitioners are wrongly claiming that distance between units of Sudhar Milling Centre is on the lower side than distance between units of Kila Raipur Milling Centre from Jodha Mandi. The State has to look at

distance between mandi and Milling Centre and not between mandi and rice mill. The distance between Jodha Mandi and Sudhar Milling Centre is 13 kms whereas distance between Jodha Mandi and Kila Raipur Milling Centre is 8 kms. The petitioner has submitted incorrect data with respect to cost of transportation. The petitioner has calculated cost of transportation with respect to units actually linked with Jodha Mandi. The software has linked 10 mills of Kila Raipur Milling Centre with Jodha Mandi and most of the mandis are at more distance than mills which are falling within Kila Raipur Milling Centre and are near to Jodha Mandi. The cost of transportation should be compared with respect to rice mills which are falling within Kila Raipur Milling Centre and are nearer to Jodha Mandi. The respondents during the course of hearing submitted statement of cost of transportation to indicate that if cost of transportation is calculated in true perspective, the linking of Jodha Mandi with Kila Raipur Milling Centre would not increase cost of transportation. The rice ultimately has to be stored in the godowns of the FCI and there is no storage godown in Sudhar Milling Centre. It is available at Kila Raipur, thus, movement of rice is bound to take place from mills to Kila Raipur Milling Centre. The State is bound to make equitable distribution of paddy and if Jodha Mandi is attached with petitioners, they would get paddy 81% of their capacity and respondents would get 38% of their capacity. There are 32 units in Kila Raipur Milling Centre whereas there are 15 units in Sudhar Milling Centre. There are many mandis which are falling under other Milling Centers but are close to petitioners but they are not claiming linking of those mandis.

11. I have heard the arguments of learned counsel for the parties and perused the record.

12. The conceded position emerging from the record is that the distance between Jodha Mandi and Kila Raipur Milling Centre is 8 kms whereas distance between Jodha Mandi and Sudhar Milling Centre is 13 kms. Jodha Mandi prior to 2017 was linked with Sudhar Milling Centre and in 2017, it was linked with Kila Raipur Milling Centre. Since 2017, dispute is going on between both milling centers and State had made interim arrangement whereby partial quantity was allocated to units of Kila Raipur Milling Centre and partial to Sudhar Milling Centre. For KMS 2023-24, Jodha Mandi has been linked with Kila Raipur Milling Centre. The distance between different mills of Sudhar Milling Centre and Jodha Mandi is less than mills of Kila Raipur Milling Centre which are actually attached with Jodha Mandi. There are few mills of Kila Raipur Milling Centre which are closed to Jodha Mandi than mills of Sudhar Milling Centre. There are 15 rice mills in Sudhar Milling Centre whereas there are 32 rice mills in Kila Raipur Milling Centre. If Jodha Mandi is linked with Sudhar Milling Centre, rice mills of said center would get 81% of installed capacity and rice mills of Kila Raipur Milling Centre would get 38% of their installed capacity. If Jodha Mandi is linked with Kila Raipur Milling Centre, rice mills of Sudhar Milling Centre would get 57% of their installed capacity and rice mills of Kila Raipur Milling Centre would get 51% of their installed capacity.

13. Before delving into the issue involved, it would be appropriate to look at the scope of interference by High Court in the administrative decisions. The petitioners are not assailing custom milling policy whereas they are assailing administrative decision which has been taken by Executive in terms of the policy. It is settled proposition of law that there is

no complete bar in interfering with administrative decision, however, Constitutional Courts can interfere if there is patent illegality on the part of Executive or decision is prima facie arbitrary or violative of fundamental rights guaranteed by Constitution of India.

13.1 A three judge bench of Supreme Court in **Manohar Lal Sharma versus Narendra Damodardas Modi & Ors. 2019 (3) SCC 25** has adverted with scope of judicial review of administrative decisions. The court has held:

7. Parameters of judicial review of administrative decisions with regard to award of tenders and contracts has really developed from the increased participation of the State in commercial and economic activity. In Jagdish Mandal v. State of Orissa and Ors., (2007) 14 SCC 517 this Court, conscious of the limitations in commercial transactions, confined its scrutiny to the decision making process and on the parameters of unreasonableness and mala fides. In fact, the Court held that it was not to exercise the power of judicial review even if a procedural error is committed to the prejudice of the tenderer since private interests cannot be protected while exercising such judicial review. The award of contract, being essentially a commercial transaction, has to be determined on the basis of considerations that are relevant to such commercial decisions, and this implies that terms subject to which tenders are invited are not open to judicial scrutiny unless it is found that the same have been tailor-made to benefit any particular tenderer or a class of tenderers. [See Maa Binda Express Carrier & Anr. v. North-East Frontier Railway & Ors.(2014) 3 SCC 760]

8. Various Judicial pronouncements commencing from Tata Cellular v. Union of India, (1994) 6 SCC 651, all

emphasise the aspect that scrutiny should be limited to the Wednesbury Principle of Reasonableness and absence of mala fides or favouritism.

9. We also cannot lose sight of the tender in issue. The tender is not for construction of roads, bridges, etc. It is a defence tender for procurement of aircrafts. The parameter of scrutiny would give far more leeway to the Government, keeping in mind the nature of the procurement itself. This aspect was even emphasized in Siemens Public Communication Networks Pvt. Ltd. & Anr. v. Union of India & Ors., (2008) 16 SCC 215. The triple ground on which such judicial scrutiny is permissible has been consistently held to be "illegality", "irrationality" and "procedural impropriety".

10. In Reliance Airport Developers (P) Ltd. v. Airports Authority of India [Reliance Airport Developers (P) Ltd. v. Airports Authority of India, (2006) 10 SCC 1] the policy of privatisation of strategic national assets qua two airports came under scrutiny. A reference was made in the said case (at SCC p. 49, para 57) to the commentary by Grahame Aldous and John Alder in their book Applications for Judicial Review, Law and Practice:

“57. ... ‘There is a general presumption against ousting the jurisdiction of the courts, so that statutory provisions which purport to exclude judicial review are construed restrictively. There are, however, certain areas of governmental activity, national security being the paradigm, which the courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the Government's claim is bona fide. In this kind of non-justiciable area judicial review is not entirely excluded, but very limited. It has also been said that powers conferred by the Royal Prerogative are inherently unreviewable but since the speeches of the

House of Lords in Council of Civil Service Unions v. Minister for the Civil Service [Council of Civil Service Unions v. Minister for the Civil Service, 1985 AC 374 : (1984) 3 WLR 1174 (HL)] this is doubtful. Lords Diplock, Scaman and Roskili (sic.) [To be read as “Roskill”.] appeared to agree that there is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject-matter of a particular power, in that case national security. Many prerogative powers are in fact concerned with sensitive, non-justiciable areas, for example, foreign affairs, but some are reviewable in principle, including the prerogatives relating to the civil service where national security is not involved. Another non-justiciable power is the Attorney General's prerogative to decide whether to institute legal proceedings on behalf of the public interest.”

(emphasis supplied)

11. It is our considered opinion/view that the extent of permissible judicial review in matters of contracts, procurement, etc. would vary with the subject matter of the contract and there cannot be any uniform standard or depth of judicial review which could be understood as an across the board principle to apply to all cases of award of work or procurement of goods/material. The scrutiny of the challenges before us, therefore, will have to be made keeping in mind the confines of national security, the subject of the procurement being crucial to the nation's sovereignty.

13.2 A two judge bench of Supreme Court in **Siemens Aktiengesellschaft & S. Ltd. versus DMRC Ltd. 2014 (11) SCC 288** has adverted with scope of judicial interference in government contracts/tenders. The court has elucidated parameters and guidelines which

need to be considered while entertaining writ petition in such matters. The

court has held:

18. Principles governing judicial review of administrative decisions are now fairly well-settled by a long line of decisions rendered by this Court, since the decision of this Court in Ramana Dayaram Shetty v. International Airport Authority of India and Ors. (1979) 3 SCC 489 which is one of the earliest cases in which this Court judicially reviewed the process of allotment of contracts by an instrumentality of the State and declared that such process was amenable to judicial review. Several subsequent decisions followed and applied the law to varied situations but among the latter decisions one that reviewed the law on the subject comprehensively was delivered by this Court in Tata Cellular case (supra) where this Court once again reiterated that judicial review would apply even to exercise of contractual powers by the Government and Government instrumentalities in order to prevent arbitrariness or favouritism. Having said that this Court noted the inherent limitations in the exercise of that power and declared that the State was free to protect its interest as the guardian of its finances. This Court held that there could be no infringement of Article 14 if the Government tried to get the best person or the best quotation for the right to choose cannot be considered to be an arbitrary power unless the power is exercised for any collateral purpose. The scope of judicial review, observed this Court, was confined to the following three distinct aspects:

(i) Whether there was any illegality in the decision which would imply whether the decision making authority has understood correctly the law that regulates his decision making power and whether it has given effect to it;

(ii) Whether there was any irrationality in the decision taken by the authority implying thereby whether the decision is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at the same; and

(iii) whether there was any procedural impropriety committed by the decision making authority while arriving at the decision.

19. The principles governing judicial review were then formulated in the following words:

(i) The modern trend points to judicial restraint in administrative action.

(ii) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(iii) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(iv) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(v) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(vi) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

13.3 In *Union of India v. Harjeet Singh Sandhu*, (2001) 5 SCC

593 at page 624, Supreme Court while adverting with scope of judicial

review in administrative decisions, has held that if two views are possible, court shall not interfere by substitution its opinion for the opinion of authority. The court has held:

42. Exercise of power under Section 19 read with Rule 14 is open to judicial review on well-settled parameters of administrative law governing judicial review of administrative action such as when the exercise of power is shown to have been vitiated by mala fides or is found to be based wholly on extraneous and/or irrelevant grounds or is found to be a clear case of colourable exercise of/ or abuse of power or what is sometimes called fraud on power i.e. where the power is exercised for achieving an oblique end. The truth or correctness or the adequacy of the material available before the authority exercising the power cannot be revalued or weighed by the court while exercising power of judicial review. Even if some of the material, on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some relevant material available on which the action can be sustained. The court would presume the validity of the exercise of power but shall not hesitate to interfere if the invalidity or unconstitutionality is clearly demonstrated. If two views are possible, the court shall not interfere by substituting its own satisfaction or opinion for the satisfaction or opinion of the authority exercising the power.

14. From the above-cited judgments, it can be culled out that High Court in exercise of its writ jurisdiction can interfere with administrative decision if Court finds that administrative decision is arbitrary or violative of fundamental rights or is patently illegal.

In the light of judicial pronouncement, scope of judicial review in the impugned administrative decision is very limited. From the pleadings

and arguments of both sides, this court finds no violation of procedure, arbitrariness on the part of executive and violation of fundamental rights of the petitioner. Setting aside of impugned decision would amount to substituting opinion of the authorities which is impermissible as per settled proposition of law, thus, writ petition may be outrightly dismissed. However, noticing the fact that on earlier occasions, both sides have approached this court and interim orders have been passed as well to rest the litigation which is ensuing since 2017, this court ventures to look at mandate of the policy and status of contesting parties.

15. Clauses 10 and 11 of CMP 2023-24 deal with allocation of paddy to eligible rice mills. As per these Clauses, paddy has to be allocated subject to availability with the Milling Center and authorities are not supposed to arrange shortfall from other Milling Centers. There is no vested or legal right in favour of rice mills to get paddy. The basic principle of linking rice mills with mandis is equitable distribution and minimum transportation cost. The relevant extracts of the policy read as :

10. ALLOCATION OF PADDY TO ELIGIBLE RICE MILL(S):

a. General

- i. Allotment of a mill and allocation of paddy is at the sole discretion of DAC; a miller cannot claim this as a matter of right.*
- ii. As paddy is to be allocated to the miller subject to its availability with the procurement agencies at that particular milling center, the shortfall, if any, will not be arranged from other milling centers or districts as a matter of right and this portion shall be deemed to have lapsed and the miller shall have no claim against it.*

(iii) to (v) *X* *X* *X*

b and c X X X

d. No vested/legal right: *It is made categorically clear that in applying the mechanism o allocation of paddy under this Clause:*

i. The quantity of paddy that may be allocated to a given miller represents the maximum permissible allocable quantity of paddy to such miller. The above Clauses are merely an arithmetical aid to such determination of such maximum permissible allocable quantity of paddy, to such miller, and do not confer any right to a miller for allocation of such or any other quantity of paddy.

ii. Such maximum permissible allocable quantity of paddy, not being a vested and/or other legal right in the miller, may be decreased on pro-rata basis if the arrival of paddy at the concerned milling center is not sufficient. The paddy shall be allocated to all the eligible rice mills in a milling center in proportion to the availability of paddy at the milling center concerned and proportionate cut, if any, will be imposed on the maximum permissible allocable quantity of paddy, on all the rice mills in that paddy deficit milling center.

iii. In no case, paddy in excess of maximum permissible allocable quantity of paddy,(as per above clauses) shall be allocated to any of the mill, even if there is an excess arrival of paddy at that milling center.

iv. No miller can claim allocation of paddy from any particular mandi. It is the prerogative of the Department to decide as to which mandi is to be linked with a mill, keeping in view the equitable distribution and minimal transportation cost.

11. LINKING OF MANDI(S) AND RICE MILLS:

a. While linking the allotted rice mills and mandies, the

equitable distribution and minimal transportation cost of paddy shall be endeavored. Mandies shall be linked with the nearest milling center/storage center keeping in view the availability of milling capacity at the milling/storage center(s) at which paddy is proposed to be stored/milled.

b. Mandies should preferably be linked with the rice mills stated within the, same milling center.

From the perusal of above-quoted clauses, it can be gleaned that allocation of paddy is not a vested or legal right of a miller. Every mill is attached with a Milling Center and every Milling Center is a cluster of mandis. No miller can claim allocation of paddy from a particular mandi. It is prerogative of the department to decide as to which mandi is to be linked with a mill. The basic principle of linking a mandi with rice mill is equitable distribution and minimum cost of transportation. Clause 11(a) of the policy mandates that mandis shall be linked with the nearest milling Center/storage Center keeping in view the availability of milling capacity at the milling/storage Center. The expression Milling Centre has been defined under Clause 2(x) of the policy which is reproduced as below:

x. "Milling Centre" means a definite area within a district for the purpose of linking of the mandies with mills under this policy, and where procurement/storage/milling operations are carried out and the staff of the procurement agencies is posted.

From the perusal of above-quoted definition, it is evident that Milling Centre is a definite area within a District for the purpose of linking of the mandis with mills under the policy. From the conjoint reading of Clauses 2(x) and 11(a) of the policy, it comes out that firstly mandis are linked with nearest Milling Centre and thereafter mills are linked with mandis. Mandis are linked with nearest Milling Centre keeping in view

availability of milling capacity at the milling/storage center and mills are linked with mandis considering equitable distribution and minimum cost of transportation. Mandis are further preferably linked with rice mills situated within the same milling centre.

16. In the case in hand, no rice mill is linked with a mandi which is falling outside the milling center. The dispute is confined to linking of a particular mandi with a milling center. The decision of linking a mandi with a Milling Center is a pure administrative decision. This Court may examine whether respondent has linked Jodha Mandi with Kila Raipur Milling Centre with a *mala fide* intention or in an arbitrary manner or against the policy.

The foremost requirement to link mandi with Milling Center is that mandi should be linked with a nearest milling center, keeping in view availability of milling capacity. There are 32 mills within Kila Raipur Milling Centre whereas there are 15 rice mills within Sudhar Milling Centre. The milling capacity of Kila Raipur Milling Centre is certainly more than milling capacity of Sudhar Milling Centre. The mandi in question has been linked with Kila Raipur Milling Centre and distance between Kila Raipur Milling Centre and Jodha mandi is 8 kms whereas distance between Jodha mandi and Sudhar Milling Centre is 13 kms. It means Jodha Mandi has been linked with a nearest centre and indubitably Kila Raipur Milling Centre is having sufficient milling capacity which is evident from the fact that despite linking Jodha Mandi with Kila Raipur Milling Centre, the rice mills are going to get paddy to the extent of 51% of their installed capacity.

The Kila Raipur Milling Centre is nearer to Jodha Mandi than

to Sudhar Milling Centre and Kila Raipur Milling Centre is having more milling capacity than Sudhar Milling Centre, thus, this Court does not find any illegality or arbitrariness on the part of respondent warranting interference, invoking writ jurisdiction under Article 226 of Constitution of India.

There is another nuance of the matter which needs to be examined. The basic principle governing the allocation of paddy to rice mills is equitable distribution. It is undisputed fact that if Jodha Mandi is linked with Sudhar Milling Centre, rice mills of Sudhar Milling Centre would get 81% of their installed capacity and mills of Kila Raipur Milling Centre would get 38% of their installed capacity. In case of vice-versa, rice mills of Sudhar Milling Centre would get 57% of their installed capacity and rice mills of Kila Raipur Milling Centre 51% of their installed capacity. Thus, linking of Jodha Mandi with Sudhar Milling Centre would be contrary to basic principle of equitable distribution.

17. Applying the principles laid down by afore-cited judgments of Hon'ble Supreme Court, this Court finds that impugned administrative decision of linking Jodha Mandi with Kila Raipur Milling Centre is neither arbitrary nor violative of policy, warranting interference of this court in exercise of its writ jurisdiction under Article 226 of the Constitution of India.

18. In the wake of above findings and conclusion, it is not necessary to consider question of cost of transportation, however, in view of prayer of the petitioners, question of cost of transportation is adverted with. The petitioners have vehemently pleaded that linking of Jodha Mandi with Kila Raipur Milling Centre would increase cost of transportation and state is

bound to consider cost of transportation while linking mills with mandis. The private respondents as well as FCI and State of Punjab have pleaded that linking of Jodha Mandi with Kila Raipur Milling Centre would not increase cost of transportation because godowns of FCI are located at Kila Raipur, thus, cost of transportation of rice from Kila Raipur Mills is much less than cost of transportation from mills of Sudhar Milling Centre. Both the parties have submitted contradictory calculation charts. This Court cannot decide disputed question of cost of transportation. FCI and State have to bear cost of transportation. There is cost of transportation of paddy from mandi to rice mills and rice from mill to godown of FCI. The cost of transportation is one of the factors which needs to be considered while linking mills with mandis.

In the wake of figures of cost of transportation submitted by both the sides which are contradictory to each other, the respondents are asked to look into the matter and find out actual position before taking any decision, in future, with respect to linking of Mandi in question with a milling center.

19. The petition stands disposed of in above terms.

02.11.2023
anju

(JAGMOHAN BANSAL)
JUDGE

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