IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA-1504-2023 (O&M)
Reserved on: 18.10.2023
Pronounced on : 16.11.2023

State of Punjab and others

..... Appellants

Versus

M/s Arya Industries

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr.Rohit Bansal, Senior Deputy Advocate General, Punjab for the appellants.

Mr.P.S. Ahluwalia, Advocate for the respondent.

Deepak Sibal, J.

1. The State of Punjab has preferred the present intra-Court appeal to challenge therein judgment dated 07.10.2023 passed by a learned Single Judge of this Court through which the respondent's writ petition, filed by it against the denial of allotment of paddy for milling purposes for the season Kharif 2023-2024, has been allowed.

2. The State of Punjab, through its agencies, procures paddy and then in terms of its annually made policy gets the procured paddy milled into rice by rice millers. The milled rice is then delivered to the Food Corporation of India (for short – the FCI).

3. One M/s Kuber Rice & General Mills, Mullanpur (for short – KRM) and the respondent – M/s Arya Industries are rice mills situated in the State of Punjab. For the Kharif season 2021-2022 both the aforesaid mills applied to the State for allotment of paddy for milling purposes but none was allotted to them for the reason that KRM had been declared to be a defaulter

and the respondent was a partner in KRM. Both the respondent and KRM challenged the denial of allotment of paddy by the State before this Court through a joint petition being CWP-24845-2021 – M/s Arya Industries and another vs. State of Punjab and others. Through order dated 19.04.2022 a learned Single Judge of this Court dismissed the said petition qua KRM but allowed the same qua the respondent. KRM as also the State of Punjab filed cross intra-Court appeals to challenge therein the order of learned Single Judge dated 19.04.2022. KRM's intra-Court appeal being *LPA-364-2022 – M/s Kuber Rice and General Mills vs. State of Punjab and others* was disposed of by a Division Bench of this Court on 21.09.2022 by issuing directions that KRM's case for the allotment of paddy be considered according to the existing policy. The State's appeal being *LPA-399-2022 – State of Punjab vs. Arya Industries and others* was also disposed of on 21.09.2022 in terms of the order passed in KRM's intra-Court appeal.

4. A common Special Leave Petition was preferred by the State of Punjab against both the afore referred orders which initially came up for hearing before the Supreme Court on 13.04.2023 on which date the Supreme Court issued notice and in the meanwhile granted interim stay of the orders impugned before it. Thereafter, an application was preferred by the respondent seeking vacation of the interim order of the Supreme Court dated 13.04.2023 which application was disposed of by the Supreme Court on 18.08.2023 through the following order:-

> *"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 for the petitioners/competent authorities herein, to consider the said 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."

5. In terms of the afore quoted order of the Supreme Court dated 18.08.2023 the respondent made an application to the State seeking therein allotment of paddy which application was rejected by the State through an order dated 19.09.2023 on the ground that as per clause 7(v) of the existing policy the respondent was ineligible to be allotted paddy being a partner in a defaulter firm namely KRM. Through a petition being CWP-21699-2023 - *Arya Industries vs. State of Punjab and others* the respondent challenged the order of the State dated 19.09.2023 which petition was disposed of by this Court granting liberty to the respondent to prefer an appeal against the impugned order. In terms of the liberty granted by this Court the respondent filed an appeal which was dismissed by the appellate authority on 03.10.2023 occasioning the filing of another petition challenging therein both the aforesaid orders dated 19.09.2023 and 03.10.2023. A learned Single Judge allowed the respondent's petition primarily on the ground that KRM had been declared a defaulter for its alleged acts done in the khariff season 2013-2014 whereas the respondent was inducted as a partner in KRM only in the year

2015-2016 and that too only after getting prior permission from the State. Therefore, the respondent was not at fault and could not be penalized. The present intra-Court appeal has been filed by the State to challenge therein the said judgment of the learned Single Judge.

6. Learned State counsel has submitted that through its interim order dated 18.08.2023 the Supreme Court had directed the State to consider the respondent's case for allotment of paddy in terms of the existing policy and in terms of such direction the respondent's case was considered and since as per clause 7(v) of the existing policy the respondent was not eligible to be allotted paddy, its claim has been rightly rejected by the State.

7. Per contra, learned counsel for the respondent submitted that the respondent was entitled to be allotted paddy in terms of the order of the Division Bench of this Court dated 21.09.2022 passed in *LPA-399-2022 – State of Punjab and others vs. Arya Industries and others* as in the SLP filed by the State against such order the Supreme Court through its order dated 18.08.2023 has held that the interim stay granted by the Supreme Court on 13.04.2023 would only apply in the case of KRM.

8. Learned counsel for the parties have been heard at length and with their able assistance the record of the case has also been perused.

9. KRM and the respondent are rice millers. For the kharif season 2021-2022 the State of Punjab did not allot paddy to them for milling purposes. The reason for such denial was that KRM had been declared to be a defaulter and because the respondent was a partner in KRM. The denial was as per the terms of the applicable policy made by the State for allotment of paddy. Such denial was challenged by both KRM and the respondent through a joint petition filed before this Court which petition, through order

dated 19.04.2022, was allowed by a learned Single Judge in the case of the respondent but dismissed qua KRM. KRM and the State filed cross intra-Court appeals to challenge the order of the learned Single Judge. *LPA-364-2022 – M/s Kuber Rice and General Mills vs. State of Punjab and others*, which was the intra-Court appeal filed by KRM, was disposed by a Division Bench of this Court on 21.09.2022 after referring to an affidavit dated 19.09.2022 filed before this Court by the Assistant Director, Department of Food, Civil Supplies and Consumer Affairs, Punjab through which this Court was informed that for the allotment of paddy for the kharif season 2022-2023 the State shall adhere to the existing policy formulated by the State and KRM's case would be considered according to such policy. The respondent's appeal being *LPA-399-2022 – State of Punjab vs. M/s Arya industries and others* was also disposed of on 21.09.2022 in terms of the order passed in KRM's appeal. The State preferred a common SLP against both the orders dated 21.09.2022 passed in the aforesaid two intra-Court appeals. The SLPs came up for preliminary hearing before the Supreme Court on 13.04.2023 on which date the Supreme Court issued notice and stayed the operation of the impugned order(s). The respondent then filed an application before the Supreme Court seeking vacation of the interim stay granted qua the respondent by the Supreme Court on 13.04.2023 which application was disposed of by the Supreme Court on 18.08.2023 through the following order:-

> *"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 for the petitioners/competent authorities herein, to consider the said 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."

10. As per the afore quoted interim order of the Supreme Court the case of the respondent for allotment of paddy for the Kharif season 2023-2024 was required to be considered by the State on its own merits and in accordance with law as per the existing policy.

11. Since the present matter pertains to the allotment of paddy to the respondent for the Kharif season 2023-2024, the Punjab Custom Milling Policy for Kharif season 2023-2024 would be the existing policy. The relevant clauses of such policy are 6 (f)(xvii) and 7(v). These clauses are reproduced below for ready reference:-

6(f)(xvii) Registration and/ or allotment of a miller to any SPA, in contravention of the relevant policy in the past years, shall not constitute any right to the miller to claim registration/ or allotment under the present policy and all such mills shall not be considered for registration and/ or allotment unless they satisfy the requirements of this policy.

Provided that where such a miller was not Owner/ Partner/ Trustee/ Member/ Director/ Lessee/ Lessor of the defaulter mill at the time of the said default or at the time of any

> *subsequent default associated with such a defaulter mill, he shall not considered a defaulter in case he ceases to be the Owner/ Partner/ Trustee/ Member/ Director/ Lessee/ Lessor in such a defaulter mill on or before 31.07.2023.*
>
> *xxxx xxxx xxxx xxx*
>
> *7(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. As per clause 7(v) of the policy for the Kharif season 2023-2024 the mill whose owner is a partner of a defaulter mill shall also be considered a defaulter and clause 6(f)(xvii) provides that the cut of date to consider the eligibility under clause 7(v) is 31.07.2023.

13. It is not disputed before us that as on 31.07.2023 KRM was a defaulter in terms of the 2023-2024 policy and that on such date the sole proprietor of the respondent was also a partner in KRM. Therefore, we unhesitantly hold that while considering the respondent's case in terms of the order of the Supreme Court dated 18.08.2023, the State rightly concluded that the respondent was not entitled to be allotted paddy for milling purposes as such conclusion by the State was based on clauses 7(v) and 6(f)(xvii) of the existing policy, especially when there never was or is a challenge by the respondent to clauses 7(v) and 6(f)(xvii) of the policy.

14. The findings returned by the learned Single Judge that the respondent could not be treated as a defaulter because KRM was tagged as a defaulter for an event which took place in the year 2013-2014 and the proprietor of the respondent became its partner in the year 2015-2016 and

thus could not be made to suffer for no fault on its part are also not sustainable as while coming to such a conclusion the learned Single Judge completely lost sight of the cut off date given in clause 6(f)(xvii) of the applicable policy.

15. In the light of the above discussion the present intra-Court appeal is allowed and the writ petition filed by the respondent is dismissed.

16. No costs.

(Deepak Sibal)
Judge

16.11.2023 **(Sukhvinder Kaur)**
gk **Judge**

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