IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

216 **CWP-29128 of 2022**
Date of Decision:31.01.2023

M/s Aman Agro Foods

....Petitioner(s)

Versus

The State of Punjab and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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Present: Mr. Vikas Kumar, Advocate,
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

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JASGURPREET SINGH PURI, J. (Oral)

The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *certiorari* for quashing of the order dated 23.09.2022 (Annexure P-5) passed by the Director, Food, Civil Supplies and Consumer Affairs, Punjab, i.e. respondent No.2 vide which the representation of the petitioner mill for allotment of paddy for milling purposes as per the Punjab Custom Milling Policy for Kharif 2022-23 has been rejected on false and bogus grounds by raising the issue of dues pertaining to the year 2010-11 of another firm M/s Luxmi Rice and General Mills, Hambran, District Ludhiana.

The brief facts of the present case are that there was one rice mill in the name of M/s Jai Dev Rice Mills which was owned and run for the

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purpose of milling of rice and that mill was not allotted paddy by the Government for the purpose of milling in spite of the fact that he was not disqualified in any terms of the agreement and at that point of time the State had taken an objection that one Noor Rice Mill had been guilty of misappropriation of paddy and it was expected that the misappropriatted stock had been stored in the petitioner's rice mill and that Noor Rice Mill was run by Gurmail Singh. The aforesaid M/s Jai Dev Rice Mill filed a Civil Writ Petition No. 23159 of 2012 and this Court vide Annexure P-1 allowed the writ petition on 06.10.2014 by observing that no disqualification was attached to the aforesaid petitioner, i.e. M/s Jai Dev Rice Mill. Thereafter, the aforesaid M/s Jai Dev Rice Mill was sold to one Pawan Kumar on 24.09.2015 and according to learned counsel for the petitioner, he was given an allotment of paddy in the year 2015 but he did not avail the same because he had gone abroad. Thereafter, the aforesaid Pawan Kumar sold the same rice mill to the present petitioner, i.e. M/s Aman Agro Foods and the present petition has been filed through its sole proprietor Sandeep Kumar. The challenge in the present petition was that the present petitioner was also not allotted the milling of the paddy and on his application to the District Controller, Food, Civil Supplies and Consumer Affairs, Ferozepur, a recommendation was made by the aforesaid authority vide Annexure P-3 on 29.10.2021 that provisional approval be granted to the present petitioner on the ground that there was no disqualification attached to the aforesaid M/s Jai Dev Rice Mill and the miller did not submit any other document thereafter with regard to any disqualification and consequently such recommendation was made by the District Controller, Food, Civil Supplies and Consumer Affairs, Ferozepur.

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Thereafter, despite the recommendation which was made by the aforesaid District Controller, Food, Civil Supplies and Consumer Affairs, Ferozepur, the petitioner was not allotted the paddy and therefore he filed Civil Writ Petition No. 20050 of 2022 which was decided by this Court vide Annexure P-4 on 06.09.2022 and at that point of time since the paddy season was over and fresh policy had come into effect, the petitioner was required to file a fresh application/representation for allotment of paddy for the Karif season of 2022-23 and it was directed that let expeditious decision be taken on the application so filed in accordance with the new policy. Thereafter, in pursuance of the aforesaid order passed by this Court on 06.09.2022, the impugned order was passed vide Annexure P-5 by the Director, Food, Civil Supplies and Consumer Affairs, Punjab by which the claim of the petitioner for allotment of paddy was rejected being devoid of merit. The Director, Food, Civil Supplies and Consumer Affairs, Punjab rejected the claim of the petitioner by giving detailed history of the petitioner mill and the predecessor-in-interest of the present petitioner and after tracing the entire history, the Director, Food, Civil Supplies and Consumer Affairs, Punjab relying upon Clause 7(vi) of the policy rejected the claim on the ground that the petitioner had purchased the mill from one Pawan Kumar and the aforesaid Pawan Kumar is a partner in one M/s Luxmi Rice & General Mills, Hambran, District Ludhiana which was a defaulter of Pungrain and PSWC during the year 2010-11. As per the said clause, if a person who is a defaulter even in some other mill and sells the mill to some other person and the preceding person/firm is also deemed to be defaulter. The Director also referred to an earlier judgment passed in the case of M/s Jai Dev Rice Mill

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and stated in the order that the same mill was sold to Pawan Kumar who is a defaulter of Pungrain and PSWC and therefore while referring to the aforesaid clause rejected the claim of the petitioner. Thereafter, the petitioner filed a representation which he gave to the Principal Secretary, Department of Food, Civil Supplies and Consumer Affairs, Punjab who also dismissed the representation which is purported to be in the nature of second appeal vide order dated 17.11.2022 (Annexure P-6).

Learned counsel for the petitioner submitted that as per the custom milling policy in case the person from whom the petitioner had purchased the mill was a defaulter of some other mill that may render the aforesaid person to be defaulter but by no stretch of imagination it can be said that the petitioner who had purchased the mill and was a bonafide purchaser for consideration could also be rendered disqualified. He submitted that the reliance placed upon Clause 7(vi) of the aforesaid custom policy 2022-23 was misplaced and the rights of the petitioner have been prejudiciously affected by passing of the impugned orders which are liable to be set aside and quashed.

On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab while referring to the reply by way of an affidavit filed by the State of Punjab submitted two fold arguments. Firstly, the petitioner was disqualified for being granted the allotment/registration for the purpose of milling of paddy and secondly, even otherwise also the procurement of paddy for the year 2022-23 is already over and the milling has already started with effect from 01.12.2022 and therefore no allotment can be granted to the petitioner even if

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otherwise he is held to be eligible for the same and for that matter the subject matter of the present writ petition is only academic in nature.

While substantiating her arguments and referring to the first argument, she referred to the paragraph 4 of the affidavit filed by the State of Punjab wherein the relevant clause of custom milling policy for the year 2022-23 has been reproduced. For the sake of ready reference, the aforesaid clause is reproduced as under:-

> "*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.*"
>
> *Further Clause 7(vi) of CMP 2022-23 reads as under:*
>
> *"If a mill owned, leased or operated by a previously declared defaulted miller is transferred either through sale/lease or any other mode to any other person/miller, then such other person/miller shall also be considered to be defaulter until all the dues of the agency of which such miller was defaulter, are cleared or the default cured and the concerned agency issues an NOC in favour of such defaulter miller and such premises."*

She submitted that as per Clause 7(v), the mill shall also be considered as a defaulter if its owner etc. is also defaulter of another mill and as per Clause 7(vi), the person/mill who succeeds from a mill who is otherwise a defaulter then the person who succeeds shall also be deemed to be defaulter till the time the amount of default is cleared and cured. She submitted that in the present case the predecessor-in-interest of the petitioner from whom he purchased the mill was one Pawan Kumar and this Pawan

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Kumar was already defaulter of one M/s Luxmi Rice and General Mill which has been so stated in the impugned order passed by the Director, Food, Civil Supplies and Consumer Affairs, Punjab and in the event of subsistence of such a disqualification the aforesaid Pawan Kumar was also disqualified for allotment of paddy in terms of the Clause 7(v). Thereafter, while applying Clause 7(vi) since the petitioner was a subsequent purchaser from the aforesaid Pawan Kumar who was a defaulter then by virtue of Clause 7(vi) the petitioner is also a defaulter and therefore he could not have been allotted the paddy. She submitted that the aforesaid provisions are mandatory and there is no challenge to the aforesaid provisions in the present petition.

While substantiating her second argument, she submitted that even otherwise also in view of Clause 10(a)(iv) whereby it has been so provided that after the closure of the procurement in the linked Mandies, will have no right with the miller to claim allocation of paddy. The relevant portion of the same is reproduced as under:-

> "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 centre, the shortfall, if any, will not be arranged from other milling centres 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) While calculating the eligibility of rice mills, the figures of actual purchase of paddy during KMS 2021-22 shall be

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considered. Any increase or decrease in the arrivals in the listed mandies is an Act of God.

(iv) The entitlement of a mill for custom milling of the entitlement of paddy shall accrue only from the date of Stage II allotment of the mill or the start of procurement in the linked mandies of the concerned milling centre, whichever is later and shall only be till the closure of procurement in the linked mandi of the concerned milling centre. There shall be no right with the miller to claim allocation of paddy after the closure of procurement in the linked mandies of the concerned milling centre where the mill is located or to claim the paddy to the reserved at any stage it being a perishable commodity."

Learned Deputy Advocate General, Punjab further submitted that in view of the aforesaid position, the present petition is liable to be dismissed.

I have heard the learned counsel for the parties.

The claim of the petitioner was that he was only a successor-in-interest of one Pawan Kumar and only for that reason he should not be penalized for the purpose of declaring him to be a defaulter. However, the entire controversy would rest upon the provisions of Section 7(v) and (vi) which have been reproduced as above. A perusal of the aforesaid provisions would show that as per Clause 7(v) when an owner etc. of a mill is a defaulter of some other mill then he shall be a defaulter in this mill as well. In other words, he will be defaulter of both the mills by virtue of the fact that an owner etc. of a mill is a defaulter of some other mill. As per Clause 7(vi), if the aforesaid mill of which an owner is a defaulter even as per Clause 7(v) and he sells the mill to some other person, then the aforesaid other person

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shall also be deemed to be a defaulter because he has purchased the mill from a defaulter and he will continue to be a defaulter till the time the dues are cleared. In the present case, the petitioner had purchased the mill from one Pawan Kumar who was stated to be a defaulter of another mill namely M/s Luxmi Rice and General Mill.

It is not the case of learned counsel for the petitioner that Pawan Kumar is not a defaulter of M/s Luxmi Rice and General Mill as of today, but his case is that by virtue of Pawan Kumar being defaulter, the petitioner should not be penalized.

The argument raised by learned counsel for the petitioner seems to be attractive but does not cut any ice. The provisions of Section 7(v) and (vi) are not under challenge in the present case and the petitioner is seeking his claim under the provisions of the Custom Milling Policy of 2022-23 which comprises the aforesaid two clauses, i.e. 7(v) and (vi). As per the aforesaid two clauses, the petitioner being successor-in-interest from a defaulter mill as per Clause 7 (v) was therefore by virtue of the same, deemed to be a defaulter under Clause 7(vi) and therefore no illegality or perversity is found in the impugned order passed by the Director, Food, Civil Supplies and Consumer Affairs, Punjab. Another argument which was raised by learned State counsel was that even otherwise also the subject matter of the present writ petition has become an academic exercise in view of the fact that the paddy season is already over and by virtue of Clause 10(a)(iv) of Custom Milling Policy 2022-23, no right is vested in the petitioner also carries weight.

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In view of the aforesaid facts and circumstances, this Court does not find any merit in the present petition and the same is hereby dismissed being devoid of any merit.

(JASGURPREET SINGH PURI)
JUDGE

January 31, 2023
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Whether speaking : Yes/No
Whether reportable : Yes/No

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