IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

104 CWP-25945-2023 (O&M)
Date of Decision : 21.11.2023

M/S DIVIA SHINE FOODS .... PETITIONER

V/S

STATE OF PUNJAB AND OTHERS .... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

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

Mr. Inderpreet Singh Kang, AAG, Punjab.

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JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of order dated 18.10.2023 (Annexure P-8) and 14.11.2023 (Annexure P-12) whereby its application for final registration of rice mill has been rejected.

2. The petitioner is a partnership firm and is engaged in the business of rice mill. The petitioner has purchased rice mill in open auction from Punjab National Bank under SARFAESI Act. The mill was earlier owned by M/s Bansal Cotton Mills, Lehragaga. The mill was established in 2017 and it was allotted paddy from 2017 onwards to KMS 2021-22. On account of dispute, the bank took over aforesaid mill and put on auction. The petitioner purchased mill in auction on 12.10.2022 and applied for allotment of paddy. The respondent has rejected registration of the

petitioner as well as denied allotment of paddy on the ground that size of land is less than prescribed size. The respondent has treated petitioner mill as a new mill.

3. Learned counsel for the petitioner submits that mill was allotted paddy from 2017 to 2022. During 2022-23, paddy was not allotted on account of taking over unit by bank. The petitioner has purchased aforesaid mill in public auction. The respondent allotted paddy from 2017 to 2022 and as soon as the petitioner applied for allotment, the claim of the petitioner has been rejected on the ground that size of land is less than prescribed size. The petitioner in terms of Clause 13 of the Policy has obtained additional land on lease, however, respondent is not considering said land despite specific provisions in the Policy. The petitioner is having sufficient space in the premises to store allocated paddy, nevertheless, the petitioner has obtained additional land on lease.

The mill prior to 2022-23 was allocated paddy, thus, there was reasonable expectation that paddy would be allocated and there was no reason to believe that unit is installed on a piece of land which is less than prescribed size.

4. With the consent of both sides, the matter is taken up for final disposal.

5. Learned State counsel submits that on account of change in ownership, the petitioner is a new mill in terms of Custom Milling Policy and a new mill was required to have requisite own piece of land as per instructions dated 13.08.2013. The petitioner, as per Custom Milling Policy 2023-24 is a new mill, thus, leased land cannot be considered in terms of instructions dated 13.08.2013.

6. I have heard the arguments of both sides and perused the record.

7. From the perusal of record, it is evident that instructions of 2007 permitted every rice mill to take additional land on lease and it was instruction dated 13.08.2013 which provided that a new mill should be established on own land and cannot be on leased land. The petitioner has purchased mill alongwith land from bank in public auction. The previous owner of the mill was owner of the land and at present, the petitioner is owner of the land. There is no dispute with respect to ownership of the land where rice mill is located. The petitioner is having sufficient plant and machinery which are necessary for 1 MT mill. As per Clause (h) of 13 of the Milling Policy, a rice mill which does not possess adequate land as per its fixed capacity may obtain land on lease within area of 4 kms. The relevant extracts of the said Clause read as :

> "*Without any prejudice to the interest of the State/State Procurement Agencies regarding the security of the stored paddy, wherever the rice millers do not have adequate land as per their fixed capacity and also cannot make the land available immediately adjacent to the mill, they shall be allowed to make owned/leased land available near the rice mill and within an area of Four Kilometer (4 KM) from it, subject to the following conditions:*
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> *i. That such land must be registered as owned/leased in the revenue records in the name of the rice mill or the owner/partner, as the case may be.*
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> *ii. That such land would not be used to make any further enhancement in the already fixed milling capacity of the mill.*

> *iii. That such land would only be used for the purpose of storage of paddy and drying of paddy and in no case, rice would be stored on such land.*
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> iv. *Such premises would be subject to inspection by DFSC and would be duly entered on the https://anaalkharid.in portal by the concerned DM.*
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> v. *Such land shall also be verified and certified by the District Manager of the concerned agency before actual storage of paddy*
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> *vi. It shall be the responsibility of the conceded Miller to safeguard the paddy of the State Procurement Agencies stored at such premises or the rice mills, as the case may be.*
>
> *vii. The additional cost of transporting the paddy to such premises shall be borne entirely by the concerned rice miller.*
>
> *viii. The cost of transporting the paddy from such storage space to the mill premises shall be borne by the miller."*

8. The petitioner unit is established at 8 kanals and 02 marlas land and minimum required land is 12 kanals. The petitioner in terms of aforesaid paragraph of the Policy has obtained more than 16 kanals land on lease. The petitioner is competent to store paddy inside the premises and additional land is quite sufficient for storage of paddy. Clause 13(h) of the Policy does not enjoin that additional land on lease can be obtained only by an existing unit and not by a new unit. In terms of paragraph 10 of the Policy, the petitioner is a new unit though it was installed in 2017 and was allotted paddy till 2022.

9. The respondent allotted paddy in 2017 to 2022 and claim of the petitioner at this stage has been rejected relying upon instructions dated

13.08.2013. The unit was installed in 2017. It means instructions dated 13.08.2013 were in force at that point of time still paddy was allotted to the petitioner. The time is essence in the allocation of paddy. It is a seasonal industry. Few weeks are left for the allotment of paddy and at this belated stage, it would not be just and fair to compel the petitioner to purchase adjoining land which even otherwise seems to be impractical. The petitioner has made categoric statement before this Court that in the subsequent years, he would seek allotment subject to arranging own land as required by Policy in force read with instructions issued by Government.

10. Considering the fact that the petitioner was allotted paddy during 2017 to 2022 and at this belated stage, he cannot be compelled to purchase land coupled with the fact that Policy permits to take additional land on lease, this Court is of the considered opinion that the petitioner deserves to be allocated paddy. Accordingly, the respondent is directed to consider claim of the petitioner for the allotment of paddy. Needful shall be done within two weeks from today.

11. Disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

21.11.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	*Yes/No*