



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 2175/2024

(MAHESHWARI AGRO INDUSTRIES **VERSUS** UNION OF INDIA & OTHERS)

WITH

WRIT PETITION NO. 2179/2024

(SHREE SAI RICE MILL **VERSUS** UNION OF INDIA & OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri Manish R. Joharapurkar, counsel for the petitioners.

Shri Nandesh S. Deshpande, Deputy Solicitor General of India for the respondent no.1.

Shri Devendra V. Chauhan, Government Pleader for the respondent nos.2 to 4.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : APRIL 02, 2024

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The respondent no.1-Union of India had floated a scheme viz. The Decentralized Procurement Scheme (DCP) for procuring quality food-grains. Accordingly, the Standard Operating Procedure (SOP) for monitoring the quality of food-grain stocks procured under the DCP scheme came to be formulated by the Department of Food and Public Distribution. Under the said DCP scheme, rice was one of the commodities that was to be procured.

2. The respondent no.1 as such had issued the SOP *vide* communication dated July 16, 2021 to be adhered to by the respondent-State Government in strict sense so as to provide good quality food-grains to the beneficiaries.

3. The petitioners in both these writ petitions are questioning the orders impugned dated September 27, 2023 produced at Annexure-1 to the writ petitions whereby based on the report of the Regional Public Health Laboratory wherein the samples procured from the petitioners' godown were sent for analysis and the same were found to be not conforming the standards as per the parameters laid down under the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 (hereinafter referred to as 'the Regulations of 2011' for the sake of brevity) and as such directing the blacklisting of the petitioners.

4. The petitioners claim that based on the aforesaid SOP notified on July 16, 2017, the Government Resolution dated October 14, 2021 came to be issued and to implement the said scheme, the District Coordination Committee headed by the District Collector came to be formed. Accordingly, vide the Government Resolution dated December 23, 2021 a third party agency for Quality Checks Control of Custom Milled Rice came to be appointed. For the Kharip season 2022-23 and Rabi season 2023-24, the petitioners entered into an agreement with the Maharashtra State Cooperative Marketing Federation Limited and the District Supply Officer, Gadchiroli on December 15, 2022 for milling of the paddy. The petitioners as such were not only required to conduct themselves in accordance with the terms of the agreement but also as per the SOP as was notified in the abovereferred Government Resolutions.

5. It appears that the samples were procured from the godowns of the petitioner-Firms and forwarded to the Regional Public Health Laboratory, Nagpur. Amongst others, samples bearing nos.5, 10, 13, 14 and 19 were found to be not conforming with the standards as laid down in the Regulations of 2011. As a sequel of above, the petitioners were caused with a show cause notice based on the aforesaid report of the Food Analyst to the Regional Public Health Laboratory. Since the explanation tendered by the petitioners was not found to be satisfactory, the order impugned blacklisting the petitioners came to be passed.

6. We have heard the learned counsel for the parties at length.

7. Shri Manish Joharapurkar, learned counsel for the petitioners would urge that the order impugned is required to be interfered with particularly when (a) the milled rice which was deposited in TDC Godown after the Quality Control Officer has certified the same; (b) the batch of the rice which was stacked was not found to be conforming with the standards as prescribed, same was replaced and fresh sample was forwarded for testing on April 27, 2023 to the TDC Godown, Armori; and (c) the milled rice being a perishable commodity, its quality was deteriorated because it was stocked for a longer period of time and the petitioners had offered to replace the entire batch of stocked rice which was found to be sub-standard.

8. It is the further contention of the counsel for the petitioners that the petitioners had requested to resend the samples as they had doubted the report forwarded by the Regional Public Health Laboratory and as such it was incumbent on the part of the respondents to send other samples of the same batch for re-testing. He would claim that in another similar case, fresh samples which were sent in relation to other rice mill owners were found to be fit for consumption and accordingly the order of blacklisting therein was withdrawn.

In the aforesaid backdrop, the counsel for the petitioners would urge that the respondent-Authorities have failed to apply their mind to the aforesaid issues and has passed an unsustainable order of blacklisting the petitioners which will not permit the petitioners to carry out similar operations for next three years. That being so, he would claim that the impugned orders are liable to be quashed and set aside and further directions need to be issued to the respondents to re-send the samples afresh for the analysis to the Regional Public Health Laboratory.

9. As against above, Shri Nandesh Deshpande, learned Deputy Solicitor General of India for the respondent no.1 and Shri Devendra Chauhan, learned Government Pleader for the respondent nos.2 to 4 would urge that the order impugned in both the writ petitions is just and proper in the facts and circumstances of the case.

The learned Government Pleader would urge that the impugned order is based on the communication dated August 14, 2023, the report received from the Regional Public Health Laboratory thereby analyzing the samples which were collected from the Godowns of the petitioner-Firms. He would further urge that the petitioners had initially accepted the report and had submitted to the respondents that they are willing to replace the entire batch of the rice. According to him, since it was not open for the petitioners to subsequently claim that the samples need to be resent for fresh analysis, the writ petitions are liable to be dismissed.

10. We have considered the rival submissions.

11. The fact about the drawing of samples from the Godown of the petitioner-Firms is not a fact in dispute. Such samples were sent for analysis and the analysis of the same was carried out. In all, it appears that twenty samples were drawn from the Godown of the petitioner-Firms. The samples in question, which were collected from the Godown of the petitioner-Firms, were not meeting the requisite standards as are prescribed not only in the SOP but also the Regulations of 2011. The samples collected were containing 'Chalky Kernel' which should not have been more than five percent. Some of the samples were also containing rodent hair and excreta. As a sequel of above since the samples were not meeting the standards, a show cause notice was caused on the petitioners on September 11, 2023 calling upon them to submit their explanation. Accordingly, the petitioners submitted their first

explanation on September 14, 2023 thereby showing willingness to replace the entire stock which was supplied by the petitioners. The aforesaid conduct of the petitioners as reflected in the communication dated September 14, 2023 apparently reflects that the petitioners have accepted the report and the allegation made against them in the show cause notice. As a sequel of this, the petitioners had undertaken to replace the entire stock which was supplied by them having found to be not only as per the standards but also not fit for human consumption.

12. On November 23, 2023, i.e. almost after a period of more than two months, the petitioner-Firms issued another communication stating that the samples from the same batch may again be sent for analysis to the Regional Public Health Laboratory. Such plea was raised by the petitioners by way of an afterthought, particularly when the petitioners had already accepted that the batch of the rice which was supplied by them was not meeting the standards as prescribed.

13. As such, in our opinion the respondent-Collector was justified in not adhering to the prayer of the petitioners for re-sending the balance samples drawn from the very same batch for fresh analysis. Apart from above, since the petitioners had undertaken to replace the entire batch of rice that was supplied by them by itself speaks of the acquiescence, the report and the inference drawn by the Collector in relation to the standards of rice supplied by the petitioners cannot be faulted with. In that view of the matter, it

cannot be said that the order impugned thereby blacklisting the petitioner-Firms suffers from any illegality or material irregularity so as to warrant interference.

14. It is further to be noted that merely because the samples with regard to the other rice mill owners were re-sent for analysis by itself would not entitle the petitioners to claim the same relief, as it cannot be inferred from the record that such rice mill owners had initially agreed to replace the entire batch of rice. In this background, it cannot be inferred that the orders impugned suffer from arbitrariness or illegality. That being so, since both these writ petitions lack merit, the same stand dismissed.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)