



Judgment

wp6674.23

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

WRIT PETITION No. 6674 OF 2023.

Om Rice Mill, Kharabi,
a proprietary firm, through
its Proprietor Dinesh Sitaram
Acharya, Aged about 41 years,
Occupation – Business, resident
of Kharbi, Tahsil Tumsar,
District Bhandara.

... **PETITIONER.**

VERSUS

1.Divisional Commissioner,
Nagpur Division, Nagpur.

2.The District Supply Officer,
Bhandara, Tahsil and District
Bhandara.

3.District Rice Milling Co-ordination
Committee, Bhandara, through
its Chairman, Bhandara,
Tahsil and District Bhandara.

... **RESPONDENTS.**

Mr. A.M. Ghare, Advocate for the Petitioner.
Mr. N.R. Patil, A.G.P. for Respondents.

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CORAM : VINAY JOSHI AND
M.S. JAWALKAR, JJ.

CLOSED FOR JUDGMENT ON : 13.06.2024
JUDGMENT PRONOUNCED ON : 28.06.2024

JUDGMENT (PER VINAY JOSHI, J.) :

Heard. Rule. Rule is made returnable forthwith and with consent of the learned Counsel appearing for the parties, the matter is taken up for final disposal.

2. The petitioner, a Rice Mill Owner has been blacklisted for a period of two years by the respondent Authorities. The petitioner has questioned the said action of the respondent by invoking writ jurisdiction of this Court.

3. The State in the capacity of an agent of Union of India has formulated a scheme for procurement of Paddy and Wheat. Food Corporation of India and Marketing Federation of State of

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Maharashtra are monitoring the smooth functioning of purchase of Paddy from farmers. The Paddy is purchased from various farmers stored with the cooperative societies which are known as Paddy Procurement Center. The respondent Authority used to authorize the rice mill owners to lift the stored paddy from the procurement center and after completing milling activities, to deposit the same with the Food Corporation India or Government Godown for the purpose of further distribution. In accordance with that an agreement has been executed on 12.12.2022 by the Authority with the petitioner – rice mill owner.

4. The petitioner was served with a show cause notice dated 30.05.2023, principally alleging breach of Clause Nos.7.7 and 7.8 of the Government Resolution dated 21.11.2022. In particular, it is alleged that on 19.05.2023, the petitioner – rice mill owner has lifted the goods for processing, but, had not deposited the same with the Maharashtra State Warehousing Corporation Godown at Tumsar. It is alleged that the petitioner in connivance with the warehouse employees facilitated to directly dispatch the goods for further distribution by avoiding the process of lab quality assurance. During

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inspection, it was revealed that the concerned empty truck bearing registration No.UP-72-BT-4990 was initially weighed at 11.03 a.m. at Manikchand Weigh Bridge, Mangli, Bhandara and then after loading of processed rice, it was again weighed at the very same place at 2.24 p.m. It was revealed that the said empty truck was again weighed at 2.35 p.m. at Usha Weigh Bridge, Bhandara Road, Khapa. In view of that, it is practically impossible to unload a vehicle, i.e. truck with the godown within a span of 11 minutes, since at 2.24 p.m. the loaded truck before depositing the processed rice was weighed at Mangli, and after unloading at warehouse it went to Khapa, where the empty truck was weighed at 2.35 p.m.

5. Clause 7.8 of the Government Resolution dated 21.11.2022, speaks that it is the responsibility of the rice miller to submit the milled rice to the government godown. There was hardly 11 minutes difference in between the weighing of the loaded truck and weighing of empty truck at different place which is practically impossible to unload the entire goods in the government godown and then again weigh the empty truck at different place. It is alleged that the loaded truck without unloading at government godown by

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avoiding quality check was directly sent forward. It is also alleged that thus there is clear violation of Clause 7.8 of the government resolution dated 21.11.2022. Moreover, it is alleged that in terms of Clause 7.7 the milling center should have CCTV cameras and recording of CCTV should be made available as and when required. It is submitted that on demand, the petitioner failed to produce the CCTV footage and thus, there is violation of Clause 7.7 also.

6. On receipt of reply to the show cause notice, the matter was referred to the duly constituted District Coordination Committee, which after evaluation, recommended for blacklisting of the petitioner and forfeiture of earnest money. In turn respondent no.2 has passed the impugned order dated 16.06.2023, by which the petitioner has been blacklisted for two years for violation of the terms and conditions. The matter was taken up in appeal, however, respondent no.1 dismissed the said appeal vide order dated 31.08.2023.

7. The learned Counsel appearing for the petitioner would

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urge that the responsibility of mill owner comes to an end as and when the processed rice has been deposited with the government godown. He would submit that the warehouse record bears an entry regarding deposit of the processed rice (Custom Milled Rice) on 19.05.2023, therefore, the petitioner cannot be held responsible for further events. It is also contended that fair opportunity was not given to the petitioner, and thus, there is breach of violation of principles of natural justice. The learned Counsel for the petitioner has produced a receipt showing that the goods were deposited with the government godown and, therefore, the action is perse illegal. Moreover, it is submitted that the concerned authority is not empowered to pass the order of blacklisting and the reason for taking the impugned action is not in consonance with the government resolution dated 07.06.2023.

8. We have gone through the entire material along with the godown register maintained by the government warehouse. Apparently, the record has been tampered by overwriting after use of whitener. Overwriting is about the concerned truck bearing

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registration No. UP-72-BT-4990. It is the contention of the respondent that on the basis of inspection report, show cause notice was issued to the godown manager Shri Gedam, who was in-charge and has tampered the record. The respondent has taken a specific stand that the petitioner in connivance with the godown manager has tampered the record for which already action of suspension was taken against him. The relevant documents have been tendered on record.

9. It is further contention of respondent that the time frame of weighing petitioner's loaded truck with CMR before depositing the goods with the government godown and the time after unloading and weighing the unloaded truck itself demonstrates that within a short span of 11 minutes, the said exercise is next to impossible. It is demonstrated before us that the loaded truck bearing registration No. UP-72-BT-4990 was weighed at Manikchand Weigh bridge at 2.24 p.m., from where it was supposed to reach the government godown, Tumsar, which is at a distance of 1.6 kms. Thereafter the truck was to be unloaded and then it went to Usha Weigh Bridge,

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which was at a distance of 3 kms. where it was weighed within 11 minutes. It is argued that for the purpose of unloading of fully loaded truck at least a period of 2 to 3 hours would be required. Moreover, the loaded truck would certainly take considerable time to travel from Manikgarh Weigh Bridge to warehouse and after unloading again reach to Usha Weigh Bridge, at a distance of 3 km. In support of said contention, receipts of weigh bridge with truck number and specific time has been tendered, which are not denied. Therefore, it is apparent that though the record shows deposit of goods, however, it falsifies in view of above sequence of events and documents. Though the petitioner has relied on godown register and receipts, however, they cannot be trusted for the simple reason of manipulation and follow up action taken by the authorities against the concerned godown manager.

10. It is not in dispute that the petitioner was served with a show cause notice dated 30.05.2023. Admittedly petitioner has filed reply on 31.05.2023, explaining his stand. Bare perusal of the reply denotes that besides the contention that the petitioner has deposited

the CMR in the godown, there is no explanation coming forward regarding the time frame and it's impossibility as demonstrated in the show cause notice. In other words, there is no explanation to the material aspect brought to the notice of the petitioner. Moreover, the reply admits that the CCTV footage was not available.

11. We have also gone through the minutes of the meeting of the District Coordination Committee, which has duly considered the reply submitted by the petitioner to the show cause notice. Thus, in our view a fair opportunity has been given to the petitioner to put his case, and therefore, the action cannot be stated to be in violation of principles of natural justice.

12. Clause 121 of the agreement dated 12.12.2023 clearly conveys that in case of failure of rice miller in depositing the CMR with the government godown within the specified period, he would be blacklisted. Thus, we see no force in the contention that the authority has no power to take action of blacklisting against the petitioner. The procedure has been duly followed. By way of

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service of show cause notice, the petitioner was made to understand the precise case against him. The show cause notice bears a specific allegation, however that has not been responded.

13. As per standard procedure, the rice miller use to deposit the CMR in the warehouse, which was duly checked by the quality control department and then it was forwarded to the government godown. It is apparent that in connivance with the godown manager, the goods were directly sent to Mumbai by same truck. The act of the petitioner of not depositing the CMR within the stipulated period, and facilitating to directly forward the CMR to Mumbai itself violates Clause 121 of the agreement. Condition no.21 of the agreement authorizes the Authority to cancel the permission of milling owner in case of failure to comply with the conditions to maintain CCTV footage.

14. In above facts the impugned action of blacklisting is well justified. The petitioner was blacklisted for a period of two years i.e. for the year 2023-24 and 2024-25. The action taken by the respondent is quite proportionate with the nature of act committed

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by the erring mill owner. The entire action was based on the inspection report, verification of documents and after considering petitioner's response. In view of above, there is no merit in the petition, the same is dismissed. Rule discharged. No costs.

JUDGE

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