IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1572 of 2024 (O&M)
Date of decision: 04.09.2024

State of Punjab and Others

......Appellants

Versus

M/s Ashirwad Industries

.....Respondent

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Ms. Arundhati Kulshreshtha, AAG, Punjab.

G.S. SANDHAWALIA, J (ORAL)

CM No.3677-LPA of 2024

Prayer is for condonation of 316 days delay in filing the appeal.

For the reasons pleaded in the application, which is supported by an affidavit, the same is allowed. Delay of 316 days in filing the appeal is condoned.

LPA No.1572 of 2024

1. Challenge in the present letters patent appeal by the State is to order dated 25.07.2023 passed by the learned Single Judge whereby CWP-18743-2020 filed by the respondent against impugned order dated 23.10.2020 (Annexure P-15) passed by the Director, Food Civil Supplies and Consumer Affairs, Punjab, has been allowed with a direction to the appellants to register the petitioner and consider his case for allotment of paddy in forthcoming years.

The impugned order dated 23.10.2020 was, accordingly, quashed.

2. Learned Single Judge came to the conclusion that the object of Clause (d) was to prevent fraudulent transfer of mill by defaulter by one or other means. It was noted that, however, a window had been kept open, if the sale of property is accepted under the SARFAESI Act, but the benefit had not been granted to a person who has purchased rice mill in an open auction conducted by court at the behest of State government agency and thus such persons were entitled to the allotment of the paddy. It was recorded as such that the State procuring agency i.e Punjab Agro Food Corporation (PAFC) had stated that there was no connivance between the writ petitioner/respondent and previous owners of the mill and in spite of that order had been passed. Learned Single Judge took into consideration clause 7 of the Policy, which provides the bar as such and default aspects of the mill or the miller while coming to the conclusion.

3. A perusal of the impugned order before the learned Single Judge goes on to show that the mill in question had been purchased in open auction conducted by the Revenue Department under the orders of the Addl. District Judge, Bathinda. The previous miller M/s Jai Maa Kali Rice Mill, Bhairupa had misappropriated the paddy bags and on account of that, learned Arbitrator had pronounced an arbitral award for recovery of Rs.6,44,39,245/- in favour of PAFC as per auction proceedings for Rs.94,38,000/-, and the balance which were still to be recovered. It was noticed that the present mill had been purchased by the writ petitioner, who then applied for registration of the mill under the 2020-2021 Policy in the name of M/s Ashirwad Industries, Centre Rampura, Bathinda. The Director, Food Civil Supplies and Consumer Affairs, Punjab as such came to the conclusion that the sale as such would not be considered outside the purview of clause 7(d) of the Policy and the miller was to be considered as defaulter till the amount due had not

been realized and if the mill was allowed to be registered, the very purpose of the Policy would be defeated and would cause financial loss to the state exchequer.

4. The learned Single Judge examined the window, as per clause 7 of the Policy, which was opened for the purpose, which had been sold by way of open auction or otherwise by the Bank and the Financial institution by adopting the proceedings under the provisions of SARFAESI Act or other applicable laws whereby the right of the purchaser of such premises was also treated initially as defaulter unless it is proved that neither there was any sham/clandestine transaction nor any other financial/family relationship between the buyer and the original owner of the mill and in such cases, the registration shall be done after passing of a speaking order by DFS. The clause also referred to an order passed by a Coordinate Bench of this Court. Said clause reads as under:

> *"7. Events of Default-No mill/miller shall be considered for provisional registration/final registration/allocation to an agency or for allocation of paddy under this policy, if it has been declared as a defaulter in any of the previous years and/or is in breach/violation/non-compliance of the follow:*
>
> *(a) to (c) xxxxx*
>
> *(d) If a mill owned, leased or operated by a previously declared defaulter 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.*
>
> *(e) to (h) xxxx*
>
> *(i) If the premises of a defaulter miller is sold by a Bank/financial institution by way of open auction, or otherwise disposed of by such Bank/Financial institution, either by adoption of proceedings under the SARFAESI Act or other applicable law after the date of issue of this policy, the purchaser of such premises and the premises itself shall be treated as defaulter unless it is proved that there is neither any sham/clandestine transaction nor any other financial/family*

> *relationship between the buyer and the original owner of the mill (Ref: CWP No.20535 of 2017-M/s Rajesh Trading Co vs. State of Punjab and others). In all such cases, the registration shall be done after passing of a speaking order by DFS."*

5. Learned counsel for the State has thus stressed upon while falling back upon clause 7(i) to submit that the benefit could only be granted where proceedings have been conducted by way of open auction by the Bank or Financial institution under the SARFAESI Act and there was no such window open for sale by way of Court auction as has been done in the present case and therefore, the learned Single Judge went beyond the terms of the Policy. The purpose to be resolved regarding the default transactions would then stand frustrated.

6. The earlier Division Bench of this Court vide order dated 27.09.2017 passed in bunch of writ petitions with CWP No.20535-2017 titled **M/s Rajesh Trading Co. vs. State of Punjab and another** held that there has to be objectionable relation between the erstwhile defaulting milling owner and the present purchaser and therefore, there should be a justifiable occasion to make this clause operational to deny the allocation of paddy. At that point of time, clause 11 (H)(h) of the Milling Policy 2017-18 was subject matter of consideration by the Coordinate Bench. The order dated 27.09.2017 passed by the Coordinate Bench reads as under:

> *"Reply, filed on behalf of respondent No.3 in CWP No.20816 of 2017 in Court today, is taken on record.*
>
> *This order will dispose of above said writ petitions as common questions of law and fact is involved in them, which can be conveniently dealt with by a common order.*

The petitioner(s) are aggrieved of Clause 11 (H)(h) of the Milling Policy 2017-18, which impacts them adversely as adherence to it would oust them from the process of allocation of paddy for milling. The offensive clause is extracted herebelow:

> *"Clause 11(H)(h) Premises of a defaulter miller auctioned by a financial institution/commercial bank shall not be considered for allotment during KMS 2017-18, if there is any objectionable relation between the buyer and the previous owner as far as allotment of paddy is concerned for Custom Milling purposes. Further if the Agnecy's dues could not be cleared out of the sale proceeds of rice mill/other properties of defaulter miller, in that case also the buyer of this auctioned mill will not be eligible for allotment of paddy during Kharif 2017-18."*

No reply has been filed.

Looking at the urgency of the matter when the milling season is now underway and also for the reason that we have heard learned Addl. AG, Punjab, we deem it appropriate to dispose of the petitions at the motion stage.

Evidently, the purpose of the aforesaid clause seems to be to achieve the laudable objective of weeding out clandestine transactions and discouraging the dubious millers from paddy allocation. It is no secret that the State is confronted with this problem since long and has suffered immensely.

There can, thus, be no quarrel with the latent objective of the condition imposed i.e. to weed out undesirable elements from milling the paddy. State cannot be faulted for the cautious path that it has adopted but at the same time looking at the fact that

> *the petitioners have purchased mills in open auction, which would be largely allay the concern of clandestine and sham transactions, it would be harsh to apply this condition without there being any application of mind by the competent authority to establish what has been described as "objectionable relation between the buyer and previous owner" and similarly the subsequent clause regarding the carry over the burden of the previous defaulters to the present purchasers ought not to be necessarily insisted upon unless such a objectionable relation between previous buyer and owner is established. Indeed if the competent authority comes to the conclusion that there does exist some objectionable relation between the erstwhile defaulting milling owner and the present purchaser there would be a justifiable occasion to make this clause operational to deny the allocation of paddy.*
>
> *So what needs to be stated is the necessity of passing a speaking order by the competent authority in this regard. We, therefore, dispose of the abovesaid petitions with a direction to the respondents that the competent authority shall apply its mind to the facts of the case and the claim set up by the millers to conclude the bonafides of the claimants for allocation of paddy. The needful be done as expeditiously as possible preferably within a period of two weeks*

7. It is, thus, apparent that what had to be seen primarily by the Director, Food Civil Supplies and Consumer Affairs was whether the applicant as such had connection with the previous defaulter. In the absence of any such objectionable

relation and property having been purchased by paying huge amount of Rs.94.34 lacs in court auction, the view which has been taken by the learned Single Judge does not, as such, seem to suffer from any illegality. Once the State has incorporated the right as such of benefit to be granted to a sale conducted through SARFAESI proceedings, we failed to understand as to why the registration should not be held applicable in case of sale through Court auction. It is not the case of the State that the writ petitioner, was in any way, connected to the earlier defaulter. If that had been so, the State was justified in denying the registration.

8. Keeping in view the aforesaid discussion, we do not find any reason to hold that the learned Single Judge in principle has erred in any manner in allowing the writ petition.

9. The present appeal is, accordingly, dismissed.

10. Pending application(s), if any, shall stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

September 04, 2024
manoj

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No