

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

203-1

Date of Decision:01.02.2024

CWP No.26049 of 2022

M/s Hazrat Rice Mill

....Petitioner

vs.

State of Punjab and others

....Respondents

CWP No.29929 of 2022

M/s Friends Rice Mills and another

....Petitioners

vs.

State of Punjab and others

....Respondents

CWP No.25565 of 2022

M/s Baljit Rice Mill

....Petitioner

vs.

State of Punjab and others

....Respondents

CORAM: HON’BLE MR. JUSTICE JAGMOHAN BANSAL

**Present: Mr. Rakesh Chopra, Advocate
Mr. Daman Dhir, Advocate
Mr. Jashan Chopra, Advocate
for the petitioner in CWP- 26049 of 2022**

**Mr. Rakesh Chopra, Advocate and
Mr. Jashan Chopra, Advocate
for the petitioner(s) in CWP Nos. 29929-2022 and
25565 of 2022**

Mr. Inderpreet Singh Kang, AAG, Punjab

Mr. Rakesh Roy, Advocate for
Mr. Abhilaksh Gaiind, Advocate
for respondents No. 5 and 6-MARKFED
in CWP-26049 of 2022

Mr. Raj Partap Singh Brar, Advocate
for respondents No. 7 and 8 in CWP-26049 of 2022

Ms. Sunint Kaur, Advocate
for respondents No. 5 and 6 in CWP- 29929 of 2022
in CWP No. 29929 of 2022

Mr. Ajay Gupta, Advocate
for respondents No.5 and 6 in CWP-25565 of 2022

JAGMOHAN BANSAL, J. (ORAL)

1. By this common order, CWP No. 26049 of 2022, CWP No. 25565 of 2022 and CWP No. 29929 of 2022 are hereby adjudicated as common questions of law and facts are involved. With the consent of both sides, facts are borrowed from CWP No. 26049 of 2022.

2. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of notices dated 31.10.2022 (Annexure P-1) and 10.11.2022 (Annexure P-2) whereby petitioner has been called upon to deposit a sum of Rs. 12,98,858/- awarded by Arbitrator in favour of respondent-MARKFED.

3. The petitioner, a proprietorship concern, is engaged in the business of milling rice. The petitioner during 2000-2001 leased out its premises to M/s Swami Traders, Sirhind (in short “lessee”). The said firm applied for allotment of paddy to State Government. The Paddy was allotted

to lessee and delivery of paddy was made by MARKFED i.e. State agency. The lessee delivered resultant product i.e. rice to FCI. A dispute arose between lessee and MARKFED with respect to cost of gunny bags. The respondent-MARKFED referred the matter to an Arbitrator who vide award dated 05.08.2022 accepted claim of MARKFED and held that lessee is liable to pay a sum of Rs. 12,98,858/-. The relevant extracts of the award dated 05.08.2022 passed by Arbitrator read as:-

“ 7. According to the statement of District Manager, the miller has made payment of the provisional cost of bardana retained by the miller. However, the Director Food and Supplies vide letter Ex.P-3 conveyed the final rate of bardana for the crop year 2000-2001 and the miller is required to pay cost of bardana at the rate of Rs. 14.87. According the statement of recovery produced Ex. P-4 it is evident that, a sum of Rs.1298858/- is the amount to be recovered on account of difference of cost of gunny bags numbering 57595. As the payment of the amount has not been made by the miller, claimant has claimed interest at bank rate which ranges from 9.10 % to 10.30% as calculated and Ex.P-5 contains the details of interest claimed by the claimant from the respondent. Senior Accounts Officer Mr Narinder Kumar has fully proved the calculations made regarding the recovery of principal and interest and there is no reason to disbelieve the same. The respondent did not come to contest the claim petition for the amount claimed by the claimant from the respondent and therefore there is no alternative except to pass an award for a total sum of Rs. 1298858/- on account of principal and interest.

8. In view of the above discussion, the claim of the claimant is accepted and the claimant is entitled to recover a total sum

of Rs.1298858/-(Rupees 204405/- being Principal amount and Rs.1094453/- being interest at bank rate till 31.03.2022) up to 31.03.2022. The claimant will also be entitled to get interest on this amount at the rate of 8% per annum from 01.04.2022 till payment is made. The award on a stamp paper of rupees 120 has been got typed, signed by me and announced and published.

9. A copy of this award be sent to both the parties under registered cover and the original award alongwith file be deposited in the Arbitration Branch of the Markfed.”

4. On the basis of aforesaid award, the respondent vide impugned notices has called upon the petitioner to pay the aforesaid awarded amount. It is apt to mention here that MARKFED has issued notice to the petitioner as well as lessee.

5. Mr. Daman Dhir, Advocate, submits that petitioner had let out its premises to lessee and a dispute arose between the lessee and MARKFED. A reference to Arbitrator was made against lessee and proceedings before the Arbitrator concluded between MARKFED and lessee. The petitioner was not part of proceedings before the Arbitrator. The petitioner had not furnished any undertaking at the time of allotment of paddy, thus, the petitioner cannot be held responsible for any dispute between MARKFED and lessee or liability arising against lessee.

6. Per contra, Mr. Rakesh Roy, counsel for MARKFED submits that respondent has issued recovery notice to petitioner as well as lessee because the mill where paddy was processed was owned by petitioner, thus, respondent has right to recover dues of lessee from the petitioner.

7. On being asked, counsel for MARKFED conceded that petitioner at the time of allotment of paddy to lessee had not furnished any undertaking and petitioner was not part of proceedings before the Arbitrator. He further confirms that there was no clause in the Custom Milling Policy for KMS 2000-2001 creating liability of lessor in case of financial liability arising against the lessee.

8. I have heard the arguments and perused the record with their able assistance.

9. The conceded position emerging from record is that the petitioner let out its premises to M/s Swami Traders. During the crop year 2000-2001, a contract was executed between lessee and MARKFED with respect to allotment of paddy. MARKFED delivered paddy to lessee who in turn delivered rice to FCI. A dispute with respect to calculation of dues arose between the parties and matter was referred to Arbitrator. The dispute was between MARKFED and lessee and petitioner was not part of the litigation. The Arbitrator has awarded a sum of Rs.12,98,858/- in favour of MARKFED. The liability has not been created against the petitioner.

10. Concededly, in the policy of 2000-2001, there was no clause creating liability of lessor in case of any financial liability arising against lessee. As stated by counsel for the petitioner, since 2017-2018, the State has started inserting clause whereby liability of lessor has been created. The parties have placed on record Custom Milling Policy for KMS 2022-23 which includes specific clauses with respect to allotment of paddy to a lessee. The relevant clauses are reproduced as below:-

“5. ALLOTMENT OF A MILLER OF A LEASED MILL:

In addition to the application of Clause 4, a miller who is operating from a leased mill shall only qualify for allotment to an agency provided that:

a. The lease has been executed for a minimum period of 11 months as on the date of allotment to an agency and has been duly registered under the Registration Act, 1908 and has been entered in the Revenue records, with proof of the same furnished by the miller to the DAC.

*b. The Lessee (the Miller) shall furnish the guarantee of the owner of the rice mill (lessor) and guarantee of two other owners of rice mills eligible for custom milling, as per proforma attached with the policy **and duly registered under the Registration Act, 1908.***

The lessee or the lessor shall not be Owner/Partner/Director/Member/Lessee of the two other rice mills offering guarantee of a leased mill.

c. The owners of the leased premises/other rice millers who furnish the guarantee, as above on behalf of the lessee (the Miller) must be duly authorized by a legally valid document to furnish the same i.e. in case of Company, there must be a resolution of the Company, in case of Partnership Firm, a resolution by all the partners and in case of any other Business Entity, by a valid legal document(s).

d. The Lessee (the Miller) and Lessor shall agree and shall furnish a joint undertaking that:

i. If the Lessee (the Miller) fails to complete the milling before the expiry of lease, the lease shall be deemed to stand automatically extended till the date of completion of milling process and delivery of due rice to FCI and this requirement under this policy shall act as a novation of the lease deed between the parties without the need for any further formal documentation.

ii. The properties of the owner(lessors) who stood guarantee on behalf of the lessee shall remain under charge of the concerned

procurement agency(ies) till the liabilities of the lessee are fully discharged.

iii. A leased rice mill already hypothecated/mortgaged with any bank/financial institution/Government agency etc. Shall henceforth not be considered for registration and allotment.

e. Any Owner Rice Mill can furnish guarantee of only one lessee mill at a time.

f. The major responsibility to satisfy itself about the bonafides of the lessee mill and creation of lien on properties in the name of the agency will be that of the concerned DM.

*g. Defaulter mill cannot be taken on lease and any miller who takes and/or has taken in past and continues to take defaulter mill on lease the registration of any **such mill in which he is a Owner/Partner/Director/Member/Trustee/Lessee/Lessor shall be cancelled.***

7. EVENTS OF DEFAULT

XXXX XXXXX XXXX

(v) 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."

11. From the perusal of above-quoted clauses, it is quite evident that by aforesaid clauses liability of lessor has been created and in case of default by lessee, lessor is also responsible as well as he is considered a defaulter.

12. The dispute is confined to crop year 2000-01 and concededly in the policy of 2000-01, there was no clause like afore-stated clause. The petitioner has not furnished any undertaking with respect to liabilities of his lessee. The petitioner was not a signatory to contract executed between MARKFED and lessee. As petitioner had neither furnished undertaking with respect to liabilities of

its lessee nor there was any clause in the Custom Milling Policy for 2000-01 creating liability of lessor in case of financial liability arising against lessee, this Court is of the considered opinion that respondents cannot recover dues of lessee from the petitioner/lessor. The petitioner and its lessee are two independent entities and respondent has not placed on record any documentary evidence disclosing that lessee was face of the petitioner. There is no allegation of camouflage of connivance between the parties. The respondent-MARKFED even before Arbitrator did not make petitioner party.

13. In view of the above facts and findings, the petitions deserve to be allowed and accordingly allowed. The impugned notices qua petitioners are hereby set-aside.

(JAGMOHAN BANSAL)
JUDGE

01.02.2024
paramjit/poonam

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No