(2011) 08 P&H CK 0114

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No''s. 12877, 12878, 12879 of 2009 (O and M)

M/s Gopal Rice Mills APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Citation : (2011) 164 PLR 753 : (2012) 2 RCR(Civil) 39

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—All the writ petitions contain the same prayer seeking for quashing of the order issued on 28.11.2007 (Annexure P-10) by the Food Corporation of India, stating that the rice supplied to them after milling had been of substandard quality and calling upon them to replace the substandard rice delivered during KMS 2004-05 within a stipulated period. The notice also states that if the replacement had not been done as demanded, the respective petitioners would be blacklisted that would mean the bar of dealing in future with the respective milling Companies. By a subsequent notice issued on 22.12.2008 (Annexure P-14), the respective supplies of the petitioners had been found beyond PFA (Prevention of Food Adulteration) limits. The losses ascertained by resales of the grains themselves were set forth through the said notices and the amounts were called upon to be deposited within a stipulated period.

2. The contention of all the petitioners in the respective cases is that, when the goods had been made ready and dispatched to the authorities, they were all weighed and certified by officers of the Food Corporation of India as conforming to the standard quality and they could not turn around and inform after nearly 2 years that there had been any defects in the goods that could quality for a categorization either as BRL (Below Rejection Limit) or under PFA. The petitioners would rely on the procedure for assessing the quality of the goods supplied, in the manner of taking samples, and carrying out the investigation

regarding the quality of grains supplied. In particular, the petitioners rely on the provisions of the Punjab Rice Procurement (Levy) Order, 1983, (for short, ''the Order, 1983''), that contain the procedure for custom milling of paddy not belonging to the miller after the procurement is done and setting out specification for the rice to be supplied after milling. The provision relating to delivery of levy rice, sub-clause (4) of Clause 7 spells out as follows:-

(4) Three samples of rice shall be taken jointly by the authorized representatives of the Government and Food Corporation the presence of licensed miller or licensed dealer or his authorized agent. Out of the three samples, one sample shall be handed over to the licensed miller or licensed dealer or his authorized agent. The other two samples shall be sent to the Food grains Laboratory established by the Government out of which one sample shall be analyzed jointly by the Government Analyst and the authorized Analyst of the Food Corporation in the said Laboratory and the said sample shall be retained therein.

This procedure shall be done at the time of delivery of paddy and it is not denied that the stocks had been taken by the officials of the Food Corporation of India and duly certified as conforming to the requisite standards. If any of the samples taken did not conform to the standards after an analysis by the Government Analyst and the authorized Analyst of the Food Corporation of India, the same shall be informed to the miller and if the miller disputed the correctness of the result, the Director or an officer duly authorized by him not below the rank of District Food and Supplies Controller, shall arrange to get the other samples retained in the Laboratory, re-analyzed in the presence of the representative of the Government. The procedure as prescribed is set through sub-clause (8) of Clause 7 of the Order, 1983 as applicable to the delivery of custom milled rice of the Government and of its agencies.

3. The first contention of the petitioners was, therefore, to show that, before any stock could be termed to be BRL or beyond PFA limits, the fair procedure as prescribed ought to be followed that would enable a miller, who is aggrieved about an assessment report to challenge the correctness of the report to have the analysis done repeated in the manner provided under the Order. The uniform specifications for Grade-A and common rice are prescribed under the Prevention of Food Adulteration Act through periodical notifications. They give the analysis procedure of how to ascertain the quality of grains and the method of sampling to be followed as given by the Bureau of Indian Standard (BIS) method of sampling of cereals and pulses. In particular, they show that ''brokens'' less than 1/8th of the size of full kernels would be treated as organic foreign matter and inorganic foreign matter shall not exceed 0.25% in any lot. In case of rice prepared by pressure parboiling technique, it will be ensure that correct process of parboiling is adopted and free from encrustation of the grains. Referring to specific guidelines and for sampling and analysis procedure for the marketing season 2001-02 which is supposed to have been repeated for the subsequent kharif season as well, the learned counsel appearing on behalf of the petitioners

points out to clauses 6 and 8 in particular that deals with the manner of recording the moisture content in the acceptance of rice stocks as constituting the final and binding declaration relating to the quality. The said clauses are, therefore, reproduced hereunder:-

6. The moisture content shall be recorded by the Technical Assistant for the lots accepted at the time of acceptance of stocks in the depot, which will be final for all purposes. Moisture meters calibrated for different commodities, raw and parboiled rice etc. should be used at the rice acceptance points.

8. As the acceptance of rice stocks at depot level by Technical Assistant or by A.M.(QC) in the absence of Technical Assistant is final and binding, the quality certificate, acceptance note will be signed by TA or AM (QC) himself and will form the basis along with other relevant documents for release of payment by the District Office.

Similar guidelines have been issued also on 14.10.2005 relating to the procedure for acceptance/purchase of rice stocks during Kharif Marketing Season 2005-06. They contain substantially similar provisions and they are not, therefore, reproduced. It cannot be denied that the procurement order and the scheme for custom milling for various years issued out turn ratio for conversation of paddy into rice. The agreement would also specify the last date from when all the supply had to be made after successfully milling the paddy.

4. When the impugned notice was issued on 28.11.2007 (Annexure P-10) by the Food Corporation of India, complaining of supply of poor quality of rice that fell below the acceptable standards and when the respective petitioners were required to give the replacement of the alleged substandard rice during the KMS 2004-05, it had immediately elicited responses from the petitioners that they all had been received by the Food Corporation of India after due verifications and it had never been complained immediately that there was any defect in the goods supplied. The petitioners would turn the charge on the Corporation to slate that the foodgrains would undergo changes during storage due to various biological and atmospheric conditions during storage and it must be only on account of poor storage procedures adopted by the Food Corporation of India after they had been delivered to it. The Food Corporation of India had engaged the respective petitioners in a series of communication that included a further notice issued on 22.12.2008 (Annexure P-14), that stocks deliveries had been found beyond PFA limits and due opportunity had been provided to the petitioners for inspection/ joint analysis of the stocks. It is not very clear from the tender sales of the stocks that were invited through the notice dated 22.12.2008 as to when the stocks had been offered for inspection or joint analysis.

5. The petitioners had, therefore, responded to the demands requiring the respective millers to make the specific amounts asking for details of the loss alleged to have been occasioned to the Corporation by the alleged poor quality of grains supplied. All the millers, who had been served with notices, contended

with reference to the letter issued on 13.12.2004 (Annexure P-12) by the Food Corporation of India, Regional Office, Punjab, Chandigarh, addressed to the Managing Director, Punjab State Warehousing Corporation (PSWC), Chandigarh, that once the stocks had been delivered and remained in custody of the PSWC, the staff of PSWC would be fully responsible for that. The petitioners complained on the uncontested facts that the rice stocks delivered pertained to the crop year 2004-05 and the so called defects reported only in the year, 2007 i.e. more than two years after the receipt of the stocks without any complaint. The petitioners complained by making reference to the Handbook on QC Operations, published by the Food Corporation of India Headquarters during 1999 that, foodgrains are living biological material and undergo changes during storage due to various environmental factors. The food grains stored in bags arc relatively more susceptible to damage even with all precautions taken. Under suitable dry climatic conditions grains could be held in bags only for a maximum period upto 2 years. In coastal areas, deterioration would be faster. By the impugned notices and the demands for substitution of grains for the alleged substandard quality and in the alternative of quantified sums of damages, the Food Corporation was relying on the reports secured from the Central Bureau of Investigation (CBI) relating to the outcome of alleged inspection for the various samples of stocks procured in the various centres, namely, Tapa, Sunam, Malerkotla, Sangrur and Dhanaula. Along with the written statement, the Food Corporation of India has made reliance on analysis report issued under the joint signatures of the Analyzer, Technical Officer and Assistant Director (S&R) from the Central Grain Analysis Laboratory (CGAL). The report of damaged/sub standard foodgrains with the respective analysis slip show that the samples had been received some time in February, 2007 and the analysis had been carried out on 01.03.2007. The cause for the damaged/sub standard foodgrains has been stated as follows:-

Stocks were accepted as such initially by Sri Salnam Singh, TA-II, Sri Harish Kumar, TA-II and Sri R.S. Sirohi, AM (QC). No other official is responsible for its Downgradation.

It is after these reports, that a volley of notices have emanated from the Food Corporation of India on 28.11.2007, 04.12.2007 and 25.03.2008.

6. It is not sufficient for the Food Corporation of India to show that in quality verification done, it was noticed that there had been substandard rice supplied by the Corporation. When it is an admitted fact that the grains had been received and certified as having passed the quality test by the officials of the Food Corporation of India issuing such certificates, to say later that their own officials had connived with the petitioners and had given false certificate, if such an act of collusion were to be relied on by the respondents, it shall become necessary to associate the petitioners in the manner of carrying out the inspections with opportunity given to the respective millers to join with them in such re-analysis in the manner provided under the levy order and the scheme of inspection, sampling and analysis procedure declared for the respective marketing seasons.

There has been a complete breach to the fair procedure which the Food Corporation of India itself has provided. Food grains are not granite stones to be unaffected by the conditions of weather and time. The goods supplied for the crop season 2004-05 cannot be complained of as being not of merchantable quality and falling below PFA limits by referring to their own reports carried out without involving any of the petitioners in joint inspections. In none of the communications or impugned notices, there is any reference that any joint inspections were done and how the particular amounts specified in the notices had been arrived at. There is a complete arbitrariness in approach by the Food Corporation of India in setting out the analysis complaining of poor quality or demanding amounts to be paid by them. The learned counsel for the Corporation relies on a judgment of this Court in CWP No. 19835 of 2005, dated 20.11.2006, when the challenges were at the instance of some of the persons for the notices issued in the year, 2005, complaining of poor quality and how the challenges had been repelled by the Court as not acceptable, as constituting a precedent value to support the actions of the Food Corporation of India. The judgment has absolutely no bearing to this case, for, those cases were governed by independent facts. From the reading of the judgment, it is seen that, after receipt of milled stocks, they were subject to analysis some time in August, 2005 and as a matter of fact, the judgment records the fact that the petitioners had been given an opportunity to inspect the stocks but they failed to do so. It is also brought out through the judgment that the notices had been issued even in the year, 2005 asking the millers to take back the stocks but they failed to do. That was again a case where the millers were complaining that a degradation of stocks would have been due to the poor storage facilities of the Food Corporation of India and the responsibility of the millers ended immediately after the delivery of the stocks to the Food Corporation of India. The Court rejected such a contention that in the face of express provisions relating to the inspection, sampling and analysis procedures, no miller can wash off responsibility before the analysis revealed that there were serious deficiencies regarding the stocks. In this case, that stocks that had been delivered in late 2004 or early 2005. The first notice that emanates from the respondents is in the year, 2005, referring to some analysis as having been undertaken but it is the report in late 2007 and still later a report in March, 2008 that the respondents were contending that they fell below PFA limits. The facts brought out through this case do not support a situation where the respondents'' action could be supported. The respondents are more guilty in breach in attempting to cast the liability on the petitioners for violation of the terms of the scheme providing for the procedure for inspection than the petitioners who could be said to have supplied poor quality rice. The impugned notices suffer from fundamental vice of violation of principles of natural justice of taking a unilateral decision without involving the petitioners in any way in the inspections. The impugned notices calling for replacement of stocks, demanding the alleged losses and blacklisting them, are untenable and they are quashed.

7. All the writ petitions are allowed.

