(2012) 09 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No''s. 4179 and 4463 of 2012

M/s. SID Rice Mills APPELLANT

Vs

State of Punjab and Others
 M/s. Harman Rice Pvt. Ltd. and Another Vs F.C.I. and Others RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Citation : (2013) 2 RCR(Criminal) 37

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Advocate : Aman Bansal and Mr. Vikas Behl, for the Appellant; P.S. Thiara, Additional A.G. Punjab, Shri Hari Pal Verma and Shri B.S. Walia, for the Respondent

Judgement

Mahesh Grover, J.—By this order, I am dealing with C.W.P. Nos. 4179, 4178 and 4463 of 2012.

Facts are being taken from C.W.P. No. 4179 of 2012.

Although the petitioner has come up with a seemingly innocent prayer seeking directions that the Food Corporation of India (hereinafter referred as F.C.I.) be directed to lift and accept the paddy milled by the petitioner-firm, but the F.C.I. is resisting it on the ground that the petitioner-mill is supposedly the successor-in-interest of a firm named M/s. Baba Vir Giri Rice Mills which stood blacklisted and hence they were not obliged to deal with such a firm. The petitioner as a measure of assertion of its rights, refers to the milling policy which is on record as Annexure P-8 with particular reference to clause 11, the relevant portion of which is extracted here below:-

11. ALLOTMENT OF RICE MILLS:

a. Allotment of rice mills will be made by a district level committee comprising all district heads of the procuring agencies headed by the Deputy Director (Field) of the division concerned. District Managers of procuring agencies will be equally responsible in case of wrong allotment. If any agency finds any discrepancy in allotment, capacity fixation or any violation of the policy, they will bring these facts to the notice of the Director Food & Supplies, Punjab for necessary action and her decision will be final.

d. All the allotments of rice mills would be completed before 15.9.2011. After this date, the allotment cases will be sent to Head Office for approval. Allotment made once shall not be changed. Wherever any necessary change is required, it will be done at the level of Director Food and Supplies.

h. (v) If the owner/partner/director of a lessee/owner rice mill becomes defaulter and is a owner/partner/director of a new/lessee/owner rice mills, the mill and mill premises in question declared as defaulter will not be considered for allotment, if transference of rice mill, either through selling out or through leasing out, is found to be sham. Besides, any family member of a defaulter rice mill, unless living separately will also be treated as a defaulter. In such a case, proof of separate residence/separate family will be required to the effect that his project is not being financed/promoted by his defaulter family members/blood relations. The Director Food & Supplies will examine such cases and his decision will be final and binding to all concerned.

On the bases of the above milling policy, learned counsel for the petitioner contends that it is the Director, Food & Supplies who is competent to look into a plea whether a firm is entitled to receive paddy for milling or not and that the F.C.I. is not empowered to look into this.

2. The F.C.I., on the other hand, justifies its action on the premise that the paddy is given to the miller by the State agencies clandestinely overlooking the sham transactions involving blacklisted firms and the F.C.I. is burdened with liability to lift the rice which is often short of specifications and which leaves them with the burden of spending huge amount in order to make it conform to the specifications as contemplated in the Food Adulteration Act and bear the consequent loss. Since these are quite a substantial transactions, the loss often runs into crores.

3. The F.C.I. has rather projected before this Court that it is a case involving serious ramifications where the officers of the Punjab Food & Supplies Department are in league with the millers and overlook certain transactions of sale/transfer intended to circumvent the provisions of law and the policy dictates requiring no dealings with firms which are blacklisted or are operating from the premises where such black-listed firm existed.

4. I have perused the petition and the entire material on record.

5. There is sufficient material on record which indicates that officials of the Food & Supplies Department of the State of Punjab have either worked in collusion or have through their clandestine actions helped certain erring firms in order to circumvent the policy where blacklisted firms or those purported to be acting on

their behalf by either registering a sale or showing a change in constitution of the partners of the firm have successfully got the contracts for milling the paddy. In the case of the petitioner, the relevant material can be noticed in Annexure P-11 where the concerned Committee constituted to look into the veracity of sale transactions executed by a mill which has been blacklisted, in favour of the petitioner indicated to the petitioner certain deficiencies which are extracted here below:-

(1) Registered sale deed dated 31.8.2006 is as per CMR Policy 2010-11.

(2) The applicant party has still not submitted the photocopies of Ration Cards issued to the partners of defaulter Rice Mills M/s. Baba Vir Giri Rice mill, Tapa, namely Sameer Kumar s/o Shri C. Markanda, Sanjeev Kumar s/o Shri Megh Raj, Naresh Kumar s/o Shri Bachna Ram and Muneer Mittal son of Shri Naresh Mittal showing full details of family members on the back of title page so as to ascertain their relationship with the partners of the applicant party.

(3) The applicant party has submitted the partnership deed dated 6.9.2004 of the defaulter rice mill M/s. Baba Vir Giri Rice Mill, Tapa on 19.9.2011, as per which they are four partners namely Sameer Kumar son of Shri C. Markanda, Sanjeev Kumar son of Shri Megh Raj, Naresh Kumar son of Shri Bachna Ram and Muneer Mittal son of Shri Naresh Mittal.

(4) The party had not submitted the latest report by the DFSC regarding the actual functioning of the Rice Mill. You are requested to get this report from DFSC, Barnala.

In view of Sr. No. 2 and Sr. No. 4, the party will become eligible only after it submits requisite/relevant documents.

DISCUSSION-

TODAY ON 22.9.11 THE PARTY HAS SUBMITTED DOCUMENTS MENTIONED AT POINT No. 3. THE RATION CARDS OF PREVIOUS OWNERS AND CURRENT OWNERS HAVE BEEN MATCHED. NO RELATIONSHIP IS ESTABLISHED WITH THE APPLICANT PARTY.

6. But at the time of enquiry, the explanation offered by the petitioner was accepted indicated at point (3) above without even remotely referring to other deficiencies and holding the petitioner eligible to receive the paddy for custom milling. Strangely enough, the very same Department has intimated to the F.C.I. by virtue of Annexure R-4/1 the name of the firms which stand blacklisted and the successor firms existing and operating on the premises of these blacklisted firms. This list was given by the District Food & Supplies Controller on 10.2.2012. Similarly, what is intriguing is that even then the petitioner insisted that it has nothing to do with the predecessor-firm which was a blacklisted firm and the Food & Supplies authorities granted the paddy for custom milling to the petitioner. At the same time vide letter dated 7.3.2012 which is on record as Annexure R-4/3, the consignment given to the petitioner has been shifted to

another rice mill i.e. Chintpurni Rice Mill, Tapa.

7. It is evident that all is not well with the system that is prevailing where the Punjab Government and its agencies offer paddy for custom milling to the rice mills and then obligating the F.C.I. to lift the same and when the rice is found to be defective, it has to meet the burden from its own pocket. Evident from the record is also the fact that gross mischief has been played by the officials of the Food & Supplies Controller who have rampantly cleared certain firms operating from the premises of the defaulting firm either by showing a sale in their favour or by a change in the constituents of the firm. There is no explanation forthcoming from the respondent/State regarding the blacklisted firm, a partial list of which has been appended as Annexure R-4/1 given recently in February, 2012 and yet giving the consignment of paddy to be milled by the petitioner in the year 2011. If the predecessor of the firm was a blacklisted firm, then without duly establishing the credentials, the paddy could not have been given to such firms and in the instant case the Committee by way of Annexure P-11 merely bye-passed even its own objections. Since the issue raised in the petition is of a vital importance, I am of the opinion that the matter needs to be referred to the Central Bureau of Investigation to probe the following aspects:-

(1) The entire list of blacklisted firms indicated in Annexure R-4/1 as also all the blacklisted firms existing today and the transactions entered into by such firms in favour of the existing firms purportedly acting under a sale/transfer/mortgage or change in constitution be looked into minutely. The Court has been informed that earlier an exercise was conducted in 2005. Be that as it may, all the currently blacklisted firms and their subsequent sale/transfer and previous change in constitution shall be looked into. Noticing the suggestive relentless violation with the connivance of the officials of the Food & Supplies Department, the enquiry shall also indicate the role of each such District Food & Supplies Controllers who cleared such firms which are now raising their claims.

(2) If the enquiry indicates the complicity of such officials of the Food & Supplies Department, then immediately an F.I.R. should be registered against them and their assets investigated.

(3) If it is established that the transactions are sham, legal action be initiated against the erring rice mills and all this would be without prejudice to the rights of the F.C.I. to establish its losses and recover the same from such erring and defaulting millers.

The C.B.I. is given six months time to produce a report before this Court.

List for further proceedings on 20.3.2013.