

(2010) 01 P&H CK 0105

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16795 of 2009 ; 17588 of 2009 ; 17615 of 2009 ; 17662 of 2009 ; 17703 of 2009

Pooja Rice Mills

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 12-01-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 5 RCR(Civil) 974

Hon'ble Judges : K.Kannan, J

Judgement

K.KANNAN, J.

1 This batch of writ petitions has been filed at the instance of different rice mill operators questioning the decision of the Food Corporation of India and the State Department in branding the petitioners as "defaulter rice mills" and using such characterisation as justification for supplying paddy for custom milling. They have sought for a direction to the respondents to reserve specified quantity of paddy out of the paddy stock lying with the State agencies and the Food Corporation of India to award to them the contract of custom milling of the paddy stock.

2 The dispute has come about in the matter of issue of contracts by the State agencies and the Food Corporation of India to rice mills owners for milling the paddy supplied by the State and the Food Corporation of India at a contract price and to secure them back for distribution by the State Agency or the Food corporation to public through public distribution and for sale or export. The decision to blacklist certain rice mill owners and to brand them as defaulter rice mills came to be taken as a sequel to a bitter experience in 2004, when the problem was seen in the proportion of a large scam when the paddy hulled at the rice mills and delivered back to the Food Corporation and State Agencies, were found to be of nonmerchantable quality for human consumption. Three types of defects were reportedly noted. One category was beyond the limits permissible

under the Prevention of Food adulteration Act (PFA). The second category was when the quality of rice was below the Rejection Limit (BRL) and the third category was a Mixed Stock (MS). It so happened that when a CBI investigation had been ordered, it was found that about 50 persons running different rice mills had supplied PFA Category, 182 persons had supplied during the relevant period rice that was in BRL category and 39 persons had been guilty of supplying the mixed stock. All these names had been tabulated and the respective defects noted against them, so that in future they would not offer the contract to the very same rice mills. This was a decision taken in public interest to ensure that the ultimate consumer shall not be a recipient of nonmerchantable quality of rice.

3 The relevant Scheme framed by the Government to give effect to blacklisting the defaulter rice mill owners laid down as follows:

"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 mill, the mill in question will not be considered for allotment. 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. "

It is an admitted fact that none of the petitioners was itself named either in the list of CBI or by the State as a defaulter rice mill. However, by applying the Scheme and invoking a fiction that a purchaser or lessee of the rice mill owner, who was either a defaulter or a person, who was blacklisted would also suffer from the same disqualification, the petitioners were treated either as defaulters or blacklisted Rice Mill Operators. The contention made by the learned Senior Counsel appearing for the FCI was that if a particular rice mill was blacklisted or he had been treated as a defaulter rice mill, a lessee or a transferee would also subject himself to such disqualification. If it were not to be so done, it would always become possible for a defaulter to transfer the rice mill to another person and relieve himself of the disqualification.

4 In my view, the reading of the Scheme to disqualify the petitioner as canvassed on behalf of the respondents is clearly wrong. It is one thing to stop the transfer made as a makebelieve affair and putting it in the name of another entity only in order to get over the disqualification of blacklisting or being termed as a defaulter but quite another to say that there cannot be transfer by means of either a lease or a conveyance to another person and such a lessee or a purchaser should also be termed to be defaulter or a blacklisted mill. The Scheme which refers to a defaulter does not make the rice mill itself as a defaulter. A legal fiction could be extended only in so far as law would permit. For example, a company that is not an individual, who can breathe or walk, can still be a person by a fiction enacted through the provisions of the Companies Act. The same way a legal entity could be attributed to a partnership by the fiction introduced by the partnership Act. A defaulter mill must be understood as a person, as a legal entity, who owns the mill or who is a lessee of a mill or who is

a Director of the company that owns. All that the Scheme does is that if an owner, partner or director of a rice mill, which is run on ownership basis or on the basis of lease also becomes an owner or a partner or a director to a new mill, then such a mill in question will not be considered for allotment. In other words, the identity of a person in the old mill as well as in the new mill must be homogenous in some way as an owner or as a partner or as a director. Such an owner or a partner or a director could either be a owner of the mill or as a lessee of the mill. If a new entity such as a new mill comes into the hands of a lessee from an owner or a partner or a director, who is a distinct individual and that person is not in any way connected to the earlier entity, then such a new entity cannot be found to be disqualified for allotment.

5 The learned Senior Counsel appearing for the Food Corporation makes the point that it is the mill, which is disqualified and whoever is a subsequent transferee or a lessee will also suffer from the same disqualification. The scheme does not provide for such a course and if the apprehension is that an owner of defaulter mill will escape the disqualification by a transfer, such an apprehension will have value only in the case of sham transactions of sale or lease, where the owner or a lessee or a defaulter mill uses the name of another person but still continues to run the mill. The only other situation which the Scheme contemplates is when a family member of a defaulter rice mill, who continues to live in the same family will also be disqualified but if a proof is offered that he has separate residence or separate family such a person cannot be disqualified. I see the weight in the argument advanced by the learned counsel appearing for the petitioners that a subsequent purchaser or a lessee cannot be worse off than another member of the same family who remains separate or who has a separate residence. The disqualification attributed to each one of the petitioners is, in my view, untenable and cannot be sustained.

6 The further argument advanced by the learned Senior Counsel appearing for the Food Corporation is that there is a monetary loss that has already been caused by the poor quality supplies and there would be no means of recovering the same. The right of recovery against a mill could be done against a juristic person, who could either be an individual, company or partnership. If there had been a lease or sale, which is intended to defeat the monetary liability, then such a transaction could still be seen to be ineffective or not binding on the Food Corporation or the State agency, by resort to the relevant provisions of the Transfer of Property Act. The validity of a transfer if it is found to be suspect, the Government or the food Corporation cannot be put to any prejudice. If the transaction is true, the remedy will lie only against the particular owner of the mill, who had supplied poor quality stock and who had caused the loss to the Corporation.

7 In answer to a prayer of the petitioners that the paddy stock shall be supplied to them during the period 200910, the contention of the learned senior Counsel appearing on behalf of the Food Corporation of India is that the season was due

to end with 31.03.2010 and they have themselves no stocks available to supply. I do not propose to give such directions right now but I only find that the impugned action of the Food Corporation of India and the state Agency, which has only acted on the recommendation of the Food corporation of India delisting or blacklisting or in any manner disqualifying the petitioners to be arbitrary and invalid. All the petitioners shall be at liberty to make the representations offering their mills as available for custom milling and the Food Corporation of India and the State Agencies shall, in the matter of grant of largesse, address their action by what is fair and proper and shall not act arbitrarily or subject them to any discrimination that would fall foul of Article 14 of the constitution. For discriminatory choice of rice mill owners in the matter of custom milling, the petitioners shall have a right to complaint and make the state answerable for any loss that may be occasioned by the arbitrary decisions to discriminate, if it ever happens in future. Subject to this liberty, the writ petitions are allowed.