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

**CWP No.5179 of 2014
Date of decision:29.02.2016**

Kharar Rice Mills, Kharar and others ...Petitioners
Versus
Union of India and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. D.D.Bansal, Advocate,
for the petitioners.

Mr. Rajesh Garg, Senior Advocate, with
Ms. Namarta Shergill and Mr. Rakesh Dhiman, Advocates,
for respondents No.1 and 4.

Mr. V. Ramswaroop, Addl. A.G., Punjab.

Mr. Abhinadya Sood, Advocate, for
Mr. Rakesh Gupta, Advocate, for respondent No.5.

Mr. Nitin Kaushal, Advocate,
for respondents No.6 and 8.

Mr. Ishtbir Singh Sidhu, Advocate,
for respondent No.7.

Mr. Dhruv Gupta, Advocate, for
Mr. Rahul Sharma, Advocate, for respondent No.9.

Rakesh Kumar Jain, J.

This order shall dispose of a batch of 62 cases bearing CWP
Nos.5179, 10089, 12482, 12483, 12535, 13052, 13194, 14029, 14145,
14902, 15398, 16137, 16428, 16560, 16869, 17130, 17208, 17582, 17609,

17733, 17844, 18055, 18106, 18221, 18861, 19313, 19342, 19362, 19848, 19929, 19989, 20116, 20237, 20492, 20701, 21001, 21004, 21189, 21210, 21231, 21387, 21479, 21702, 15970, 22300 & 23615 of 2014, 7991, 12416, 160, 17412, 17982, 22727, 22438, 21084, 21633, 21994, 10867, 14931, 18839, 18513, 19582 and 21187 of 2015 as a similar issue is involved in all these cases. However, for the sake of convenience, the facts are being extracted from CWP No.5179 of 2014, which was ordered to be treated as the lead case vide order dated 30.03.2015.

The petitioners are the rice millers of Punjab who have prayed for issuance of a writ in the nature of *mandamus*, directing the respondents to take back, once used gunny bags, lying with the millers for the Kharif Marketing Season (KMS) 2010-11 to 2012-13 and current KMS 2013-14, compelled to be retained by the millers at the rate of 60% of the cost and for a direction to the respondents not to recover value of the once used gunny bags, as the act of respondents No.2 to 9 in not allowing the rice millers to use once used gunny bags for procurement of paddy during KMS 2011-12 to 2012-13 and current KMS 2013-14, despite being allowed by respondent No.1, is wholly arbitrary and illegal.

In brief, the Central Government procures rice for central pool by two sources; firstly by Custom Milled Rice (CMR) wherein the paddy is purchased by the State and its agencies, got milled from the rice millers, the rice is delivered to the Food Corporation of India (FCI) by the millers in the gunny bags provided to them by the State agencies and the cost of the gunny bags, in which the rice is delivered, is reimbursed to the agencies first as per

the provisional cost sheets and finally as per the final CMR cost sheets, which are issued in consultation with the State Govt. concerned and for the bags retained by the State agencies, gunny depreciation is paid to the State and its agencies as per the costs sheets. Secondly, the rice is procured through levy rice, wherein the quantity of rice, as fixed by the Govt. of India, in consultation with the State Government, is delivered by the millers to the central pool from the paddy purchased by the millers from their own resources.

The case set up by the petitioners is that for supply of the custom milled rice, only 48% of the gunny bags are utilized and balance 52% are compelled to be retained by them on payment of cost of once used gunny bags at the rate for which the new gunny bags can be purchased in the open market on the much cheaper rate.

In order to cut this long story short, it would be apt to mention here that on the similar issue, the petitioners had earlier filed CWP No.16193 of 2012, which was disposed of on 23.08.2012, with the following order:-

“The grievance of the petitioners is that the respondents are not permitting them to use the pre-used gunny bags and rather insisting upon use of new gunny bags which the Union of India has procured by paying an exorbitant price. Petitioners are aggrieved because they have to pay 60% of the price of the gunny bags to lift paddy from the market for the purpose of milling.

After hearing learned counsel for the petitioners, I am of the considered opinion that the instant petition can be disposed of with directions to the respondent no.1 to consider the grievance as contained in the petition and take a decision based on reasons which may be evident in the order. Let needful be done within a

period of four weeks from the date of receipt of the certified copy of this order.”

Pursuant to that order, respondent No.1 took the decision on 27.10.2012, which reads as under:-

- “i) As proposed by Government of Punjab, 2 lakh bales of once used bags left over from KMS 2011-12 can be used for the purpose of paddy during KMS 2011-12 in 50:50 ratio. The old bags used for procurement of paddy shown conform to the specifications laid down vide this Department's letter of even number date 15.02.2006. The specifications laid down are reiterated as under:-
 - “Gunnies in question should be free from any mildew/fungal growth, cuts, holes or tears etc. grains should not bleed out of the bags and the seams should be intact. Bags should be intact and not be repaired one. The weight of the bags should not be less than 500 gms.”
 - ii) The responsibility to ensure that the once used bags for procurement of paddy conform to the specifications laid down by Government of India will be that of the State Government. Any loss due to damage to paddy/resultant rice due to storage of paddy in once used gunny bags will be borne by the State Government. In no case specifications of rice to be delivered by millers will be relaxed if the quality of rice found to be below specifications due to use of once used gunny bags.
 - iii) Delivery of milled rice would be permitted only in new gunny bags of KMS 2012-13 in which paddy has been procured. The bags in which rice is accepted should bear the marking of the relevant marketing season i.e. KMS 2012-13.
2. State Government will maintain separate accounts keeping therein details of number of such once used gunny bags used their source in their book value etc. Such accounts are to be audited as per extant procedure.”

According to the petitioners, respondent No.1 issued costing sheet for the KMS 2012-13 wherein the cost of new gunny bags is mentioned as ₹70.86/- for two gunny bags, whereas the same gunny bags were available in the open market at less than half rate and the millers are forced to retain the balance once used gunny bags at the rate of 60% of the cost of gunny bags fixed by respondent No.1.

The petitioners filed another petition bearing CWP No.20148 of 2013 for seeking a writ in the nature of *mandamus*, directing the respondents to allow the petitioners to use once used gunny bags during KMS 2013-14 and the said writ petition was disposed of on 12.09.2013, with the following order:-

“...Having heard the learned counsel for the petitioners and without expressing any opinion on the merits of the case, the present petition is ordered to be disposed of in terms of the order dated 23.8.2012 passed by this Court in CWP No. 16193 of 2012 (Kharar Rice Mills and others Vs. Union of India and others). However, respondent No.1 is further directed to consider and decide the legal notice dated 30.5.2012 (Annexure P-14), submitted on behalf of the petitioners, at an early date by passing an appropriate order thereon, in accordance with law, positively within a period of three weeks from the date of receipt of a certified copy of this order, so as to ensure that petitioners do not suffer because of the delayed action to be taken by respondent No.1.

With the observations made above and directions issued, here-in-above, the present petition stands disposed of.”

Thereafter, the petitioners issued a notice on 18.09.2013 and in response thereto, the petitioners received an intimation vide letter dated 30.09.2013 to the effect that respondent No.1 had already issued guidelines on 24.05.2013 to allow the use of once used gunny bags for procurement of

paddy etc. with prior information to the Government of India. The said guidelines dated 24.05.2013 are as under:-

“Guidelines For Use of Paddy Released Jute Bags which have been Used Only Once

- i) Only the paddy released jute bags which have been used only once for storing paddy, procured through DGS&D, of the same or immediately preceding Kharif Marketing Season may be permitted to be used. No bags purchased from open market will be allowed unless specifically permitted by the Ministry of consumer Affairs, Food and Public Distribution, Government of India. Any such permission will be given with prior information to the Ministry.
- ii) The concerned State Government proposing to use such bags in a particular Marketing Season will have to inform about the source of availability, number of such bags and the purpose for which these bags are proposed to be used, at the time of the meeting convened by the Department for advance planning of packaging material for that Season.
- iii) Compliance with the quality specifications finalized in consultation with BIS for Kharif Marketing Season 2005-06 and issued vide letter no.15(8)/2004-Py III dated 15.02.2006 for such once used jute bags will be the responsibility of the procuring Agency/State Government.
- iv) The foodgrains procured in such once used bags will, to the extent of requirement of consumed within the procuring state against allocations for PDS and Other Welfare Scheme etc.
- v) Such once used jute bags may be considered for use in the following order of priority:
 - a) Procurement of paddy during the immediately succeeding Kharif Marketing Season.
 - b) Procurement of coarse grains during the same or immediately succeeding Kharif Marketing Season.
 - c) In exceptional circumstances, the use of such paddy released/once used gunny bags may be made, with

specific prior approval of this Department, for procurement of wheat in the immediately succeeding Rabi Marketing Season.

- vi) The costing of such bags for the above mentioned uses may be done as follows:
- a) **Procurement of Coarse Grains/Wheat.** The entire residual cost i.e. 60% of the original cost (since 40% of the cost has been paid for the first use of bag).
 - b) **Procurement of Paddy:** The cost will be lower of the following two alternatives:- (i) 40% of the original cost as depreciation charge for second use of the bag. The bag will thereafter be retained at the remaining 20% of its original cost by the procuring agency for its further use/disposal; (ii) the difference between the 60% residual cost of the bag reduced by the realization, if any from its sale/disposal after second use may be considered.
- vii) The concerned Agency/State Government shall maintain a proper account of the number of such paddy released/once used jute bags used for different purposes and communicate it at the earliest to this Department for the purposes of finalization of procurement incidentals etc.”

It is argued by learned counsel for the petitioners that had the petitioners been allowed to use once used gunny bags for packing the paddy for custom milling by the State agencies during the KMS 2013-14, it would have saved huge amount. It is also submitted that no plausible reason has been given by the respondents for declining the use of once used gunny bags.

The respondents have filed their separate replies, in which respondents No.1 to 4 have alleged that the Jute Packaging Material (Compulsory Use in Packaging Commodities) Act, 1987 (for short “JPM

Act”) has been enacted by the Ministry of Textile, Government of India to provide for the compulsory use of jute packaging material in the supply and distribution of certain commodities in the interests of production of raw jute and jute packaging material and of persons engaged in the production thereof. As per the JPM Act, use of jute bags for packaging of 90% to 100% of foodgrains is mandated with certain relaxations. The State Governments and its agencies engaged in foodgrains procurement from the farmers are required to use jute bags as per the directions issued by Textile Ministry from time to time and since the production capacity of the major rice producing States is more than their milling capacity, the paddy is required to be stored for longer periods and in some cases, the paddy is stored for about one year. Thus, it is imperative that the paddy is to be packed in high quality bags to avoid any quality deterioration and in case the paddy is stored in old bags, there is every likelihood that the quality of the same may be deteriorated and this would result into loss to the foodgrains. It is further averred that the qualitative specifications for the gunny bags are notified by the BIS, based on State's supply indents with full funds. The Jute Commissioner of India issues Production Control Order (PCO) to various manufactures. Based on these PCOs, the DGS&D issues purchase orders for indented gunny bags with the notified specifications only. The whole practice of procurements of gunny bags is adopted so as to ensure that the quality of foodgrains does not get affected adversely on account of substandard packing material and the relaxation, which was initially given for the use of once used gunny bags for packaging of paddy

by respondent no.1 was only to facilitate the smooth implementation of the procurement operations but during the years when there were no special circumstances or dearth of the packaging material, a considered view was taken by respondent no.1 to allow use of new & once used gunny bags (left over from KMS 2009-10, 2010-11 & 2011-12) in 50:50 ratio and by doing so, the essence of JPM Act and the requirements of the State Governments as well as larger interests of the general public involved in the whole operations were safeguarded. It is further averred that keeping in view the continuous demand of the State Governments/Ministers, Government of India has issued guidelines on 24.05.2013 to allow use of paddy released once jute bags for procurement of paddy with prior information to the Government of India and as the standard of the gunny bags available in open market are not established vis-a-vis BIS Standards, procurement of such new bags or once used gunny bags from the open market would not be permitted.

In regard to the argument raised by the petitioners that such gunny bags are available in the open market on a lesser rate, it is stated that the quality specifications of these bags available in the open market are not known and the gunny bags being used by the State agencies are of BIS standards, which are subjected to the set criteria including inspection criteria for ensuring prescribed BIS standards. It is also averred that the Jute Commissioner of India fixes the price of jute bags on the basis of formula recommended by Tariff Commission and on the rates fixed by the office of the Jute Commissioner, DGS&D purchases the jute bags. It is also

mentioned that while fixing the price of the jute bags, formula recommended by the Tariff Commission takes into account various factors like cost of raw jute, productivity norms, raw jute purchase policy, salaries and wages, cost structure, changes in power policies and other parameters.

The guidelines for the use of paddy released jute bags which have been used only once says that *“only the paddy released jute bags which have been used only once for storing paddy, procured through DGS&D, of the same or immediately preceding Kharif Marketing Season may be permitted to be used. No bags purchased from open market will be allowed unless specifically permitted by the Ministry of consumer Affairs, Food and Public Distribution, Government of India. Any such permission will be given with prior information to the Ministry”*.

Counsel for the respondents has also submitted that the basic concern of the Government is about the quality of the gunny bags, which should be free from any mildew/fungal growth, cuts, holes or sunfading etc. and the weight of the 50 Kg bags should not be less than 500 gms. It is also submitted that the quality of the gunny bags which may be available on lesser rate in the open market is not established.

I have heard learned counsel for the parties and examined the available record.

The only issue involved in all these cases is about the retention of once used gunny bags by the millers at the cost fixed by respondent no.1 as according to the petitioners, on the supply of milled rice, only 48% gunny bags are utilized and balance 52% of the once used gunny bags are

compelled to be retained by the millers at a rate which is higher than the rate on which new gunny bags can be purchased in the open market.

On the other hand, the case of the respondents is that they cannot compromise with the quality of the gunny bags and since the production capacity of the major rice producing States is more than their milling capacity, the paddy is required to be stored for longer periods, even for about one year, and if it is not packed in high quality gunny bags, danger of quality deterioration of rice looms large, resulting into loss to the foodgrains.

The specification of the once used gunny based is also that such gunny bags should be free from any mildew/fungal growth, cuts, holes or sunfading etc. Moreover, the guidelines dated 24.05.2013 even provides that the once used gunny bags, procured through DGS&D, of the same or immediately preceding Kharif Marketing Season, may be permitted to be used for storing paddy etc. It does not lay any complete bar of purchasing the new gunny bags from the open market as it provides that it cannot be allowed unless specifically permitted by the Ministry of Consumer Affairs, Food and Public Distribution, Government of India and any such permission will be given with prior information to the Ministry. It further provides that once used gunny bags can be used not only for procurement of paddy during the immediately succeeding KMS but also for procurement of coarse grains during the same or immediate succeeding KMS and in exceptional circumstances, the use of such paddy released/once used gunny bags may be made, with specific prior approval of the Department, for

procurement of wheat in the immediately succeeding Rabi Marketing Season.

Thus, looking from any angle, the cause shown by the petitioners is not made out especially when there is no challenge to the validity of the guidelines dated 24.05.2013 by way of a writ of *certiorari*.

In view of the aforesaid discussion, I do not find any merit in all the writ petitions and hence, the same are hereby dismissed.

February 29, 2016
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(Rakesh Kumar Jain)
Judge