

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

Date of Decision: October 21, 2013

1. L.P.A.No.985 of 2012 (O&M)

Food Corporation of India, Chandigarh & another

...Appellants

Versus

M/s Shree-Shree Trading Co., Muktsar & others

...Respondents

2. L.P.A.No.986 of 2012 (O&M)

Food Corporation of India, Chandigarh & another

...Appellants

Versus

M/s Vasu Rice Traders, Muktsar & others

...Respondents

3. L.P.A.No.987 of 2012 (O&M)

Food Corporation of India, Chandigarh & another

...Appellants

Versus

M/s Gaurav Rice Traders, Muktsar & others

...Respondents

4. L.P.A.No.988 of 2012 (O&M)

Food Corporation of India, Chandigarh & another

...Appellants

Versus

M/s Brar Trading Company, Muktsar & others

...Respondents

L.P.A.No.985 of 2012 (O&M)

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5. L.P.A.No.989 of 2012 (O&M)

Food Corporation of India, Chandigarh & another

...Appellants

Versus

M/s V.K.Traders, Muktsar & others

...Respondents

6. L.P.A.No.990 of 2012 (O&M)

Food Corporation of India, Chandigarh & another

...Appellants

Versus

M/s K.B.Traders, Muktsar & others

...Respondents

7. L.P.A.No.1000 of 2012 (O&M)

Food Corporation of India, Chandigarh & another

...Appellants

Versus

M/s Varun Enterprises, Muktsar & others

...Respondents

**CORAM: HON'BLE MR.JUSTICE SANJAY KISHAN KAUL, CHIEF JUSTICE
HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASI, JUDGE**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Hari Pal Verma, Advocate,
for the appellants.

Mr.R.S.Modi, Advocate,
for respondent No.1.

Mr.Harsimran Singh Sethi, Addl.A.G.Punjab,
for the State.

SANJAY KISHAN KAUL, CHIEF JUSTICE (ORAL)

Letters Patent Appeal Nos.985, 986, 987,988, 989, 990 and 1000 of 2012 are being disposed of by way of this common judgment.

These appeals are directed against the common judgment dated 15.3.2012 of the learned Single Judge allowing the writ petitions and quashing the impugned letters.

The controversy is on limited factual compass. The Food Corporation of India (FCI), appellants before us, in 2004-05 was dealing with stock of 182 millers, which was found to be defective and a CBI recommendation was made to ban dealing with these millers. Blacklisting orders were passed against these 182 millers and it is conceded by learned counsel for the appellants that no time period was specified for these blacklisted originally. It is, however, submitted that this defect of indefinite blacklisting was rectified subsequently by restricting the period to 3 years by blacklisting for BRL rice and 5 years for BPFA rice. This is stated to have been done vide an order dated 11.10.2012, which was in supersession of the earlier office letter dated 7/8.9.2009. The respondent-private rice mills are ones where it is admitted that they have taken over the rice mills of the banned entities either under lease, licence or ownership basis and, thus, it is claimed that they stepped into the shoes of the banned rice mills and, thus, are equally debarred.

The aforesaid controversy received the attention of the learned Single Judge of this Court in Civil Writ Petition No.16795 of 2009, M/s Pooja Rice Mills Versus State of Punjab and others and other connected matters, decided on 12.1.2010. The learned Single Judge took note of the

then relevant scheme framed by the Government to give effect to the blacklisting, which laid down as under:-

“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.”

The learned Single Judge proceeded to then analyse the same and found that none of the petitioners was itself named either in the list of CBI or by the State as defaulter rice mills but 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 same disqualification, the petitioners were treated either as defaulters or blacklisted rice mills operators. It was opined that the scheme did not provide for such a course of action and if the apprehension of the Food Corporation of India was that an owner of defaulter mill would escape the disqualification by a transfer, such an apprehension would 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 other person but still continues to run the mill. The additional argument of FCI that a monetary loss which had been caused due to poor quality of rice, would be incapable of being

compensated by leaving no means of recovering the same was also repelled by observing that the right of recovery against a mill could be done against a juristic person, who could either be an individual, company or partnership and if there has 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 FCI. The petitioners were granted liberty to make representations offering their mills as available for custom milling and FCI and State Agencies were directed to act in a fair and proper manner.

LPA No.542 of 2010 stated to have been preferred against this order of the learned Single Judge has apparently been dismissed on 12.5.2010.

In the present batch of cases, the petitioner firms were eligible for a licence so applied for paddy, which was allotted to them. The milling process is stated to have started by supply of resultant rice to FCI, but when almost 20% rice has been supplied, the FCI stopped receiving the rice on the alleged ground that some amount was pending against the earlier owner/possessor of the mills. These were stated to be among 182 millers, who have been blacklisted. The learned Single Judge found this action unsustainable in view of the decision of the learned Single Judge in M/s Pooja Rice Mills' case (supra) and disposed of the writ petition in terms of directions contained in that case.

Learned counsel for the appellants before us sought to refer to orders passed in different LPAs, including LPA No.196 of 2012 and LPA No.1068 of 2012. However, a bare perusal of these judgments shows that they are based on their own facts. In LPA No.196 of 2012, the banned mill

was owned by one Anil Kumar son of Raj Kumar. The entity which approached the Court was owned by Vaneeta Rani wife of Lalin Garg son of Raj Kumar. Thus, the husband of the proprietor was the real brother of the banned entity and, thus, the link was obviously established. In fact, the line of reasoning which runs through both these judgments is that where such linking is established, the test laid down in M/s Pooja Rice Mills' case (supra) stand satisfied. That occasion has yet not arisen in the present cases as the process to scrutinise is yet to be gone through. A reading of the grounds of appeal shows that effectively the challenge is only on the basis of the new entity stepping into the shoes of the old entity and nothing more. This is an aspect clearly repelled in M/s Pooja Rice Mills' case (supra) and affirmed by the Division Bench with which we are in complete agreement. The principles laid down in M/s Pooja Rice Mills' case (supra) are exceptional inasmuch as there cannot be ipso-facto banning of the subsequent entity which may have leased or purchased the property unless a link is established to show that the endeavour is to defraud the FCI. We may also take note of another aspect emerging from the time period of blacklisting being restricted to 3 and 5 years qua two different categories of rice in terms of order dated 11.12.2010, a development which has been brought to our notice today. In one of the category, the ban period already stands expired and in the other it would end in September, 2014.

We are, thus, of the view that there is really no merit in the appeals and each of the case has to be examined on the touchstone of the ratio of M/s Pooja Rice Mills before taking a decision as to whether the petitioner entity should also suffer blacklisting. As per the decision dated

11.10.2012, even defaulting millers are permitted to deposit the loss suffered by the Corporation alongwith penal interest and to proceed to be enlisted.

The parties will, thus, act in pursuance to the aforesaid observations and the impugned order, thus, does not require to be interfered in view of what we have observed.

In case the applications are filed by the respondents for release of paddy for milling, the appellants will examine the same within a reasonable time bound schedule not exceeding more than a month from the date of the application.

The appeals are accordingly dismissed, leaving the parties to bear their own costs.

**(SANJAY KISHAN KAUL)
CHIEF JUSTICE**

**October 21, 2013
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**(AUGUSTINE GEORGE MASIH)
JUDGE**