244 (2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1) **CWP-19606-2023**
Date of Decision:21.09.2023

M/S LUXMI SARASWATI AGRO PVT LTD

..... Petitioner

Versus

STATE OF PUNJAB AND OTHERS ..... Respondent

2) **CWP-19626-2023**

M/S TANUSH EXPORTERS AND ANR ..... Petitioners

Versus

STATE OF PUNJAB AND OTHERS ..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Sanjeev Sharma, Senior Advocate with
Mr. Daman Dhir, Advocate,
Mr. Vikram Vir Sharda, Advocate and
Ms. Raman Dhir, Advocate
for the petitioner.

Mr. Rohit Ahuja, DAG, Punjab.

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JAGMOHAN BANSAL, J. (Oral)

1. By this common order CWP No.19606 of 2023 and CWP No.19626 of 2023 are disposed of as issue involved in both the petitions and prayer sought is identical. For the sake convenience, facts are borrowed from CWP No.19606 of 2023.

2. The petitioner through instant petition under Article 226 of the Constitution of India is seeking direction to respondents to allow the petitioner to apply for allocation of paddy by rectifying fields on its

portal. The petitioner is further seeking direction to respondents to register petitioner as existing mill.

3. The petitioner is engaged in the business of milling of paddy. The petitioner is dependent upon allotment of paddy by State Agencies. The petitioner is getting job work charges for the services rendered. The State Government every year prepares a policy with respect to allotment of paddy to millers located in the State of Punjab which is known as Custom Milling Policy. Like other years, the respondent has framed policy for the year 2023-24. The petitioner got paddy during 2021-22. The petitioner as per schedule specified in the policy read with agreement processed paddy and supplied rice to FCI. A dispute erupted between FCI and petitioner with respect to quality of the rice. The petitioner pursuant to different communications and orders passed by this Court replaced entire Beyond Rejection Limit (for short 'BRL') stock. As the petitioner replaced BRL, the respondent vide allotment letter dated 15.06.2023 (Annexure P-19) allotted paddy for KMS 2022-23 subject to availability. On account of non-availability of paddy, the petitioner could not be supplied stock and accordingly petitioner could not undertake process of milling the paddy. The petitioner for the KMS 2023-24 applied as existing unit, however, respondent has declined to consider petitioner as existing unit. The petitioner made a representation to respondent to consider his case for allotment of paddy for KMS 2023-24. During the pendency of the petition, the respondent has passed order dated 21.09.2023, whereby reiterating earlier opinion, representation of the petitioner has been rejected.

4. Learned counsel for the petitioner *inter alia* contends that

with respect to allocation of paddy for Kharif Marketing Season 2022-23, there was dispute between petitioner and respondents, however, matter came to be resolved and petitioner was found entitled for the allocation of paddy, however, paddy could not be allocated on account of non-availability of paddy. The petitioner for allocation of paddy for KMS 2023-24 attempted to apply on the portal, however, portal has not accepted application of the petitioner because as per portal, the petitioner is a non-existing unit, on account of not being allocated paddy during 2022-23 which is factually incorrect. The petitioner was not supplied paddy due to unavoidable and beyond the control reasons.

5. Learned State counsel submits that Clause 3 of the Policy specifically deals with registration of units. It provides that a unit is ineligible for registration as existing unit, if the mill has not been allotted paddy during KMS 2022-23 or/and did not undertake milling of paddy during KMS 2022-23. The petitioner though was allotted during KMS 2022-23, yet was not supplied paddy. The petitioner did not undertake milling of paddy during KMS 2022-23, thus, petitioner cannot be considered as existing unit. The petitioner may apply as new unit and respondent would consider petitioner as new unit.

6. I have heard the arguments of both sides and with the able assistance of learned counsel perused the record.

7. From the perusal of record and arguments of both sides, it comes out that dispute lies in narrow compass. The petitioner as well as respondents are relying upon Clause 3 (c) (iii) (F) of the Custom Milling Policy 2023-24. The relevant clause of the policy reads as:

> "3(c) (iii) : A person registered previously shall be required

to re-apply on https://anaajkharid.in portal for a de novo registration where:

> *A to E xxx xxx xxx*
>
> *F. A mill which was not allotted during the KMS 2022-23 or/and did not undertake milling of paddy during the KMS 2022-23."*

8. From the perusal of above quoted clause, it comes out that a mill to whom paddy was not allotted during KMS 2022-23, is outrightly barred from the zone of consideration as 'existing unit' during 2023-24. Concededly, the petitioner was allotted paddy during KMS 2022-23, therefore, the dispute comes into play with respect to second part of the aforesaid clause. As per second part of the aforesaid clause, 'if the miller did not undertake milling during 2022-23', he cannot be considered.

9. From the record as well as arguments of both sides, it comes out that petitioner was allotted paddy during KMS 2022-23, however, he could not undertake milling because of non-availability of paddy. The petitioner could not undertake milling on account of non-supply of paddy by the respondent. There was no fault on the part of petitioner. He did not deny to undertake milling.

10. No one can be asked to comply with a condition which is beyond his control. A person can be asked to comply with a condition which is humanly possible. The petitioner did not deny to mill paddy whereas despite allotment, the petitioner was not supplied paddy on account of non-availability.

A three Judge Bench of Hon'ble Supreme Court in ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1*** while dealing with question of non-compliance of mandatory provision

where it is not humanly possible to comply, has held that non-compliance would not be treated as disobedience of law. The Court has held:

> ***47.*** *However, a caveat must be entered here. The facts of the present case show that despite all efforts made by the respondents, both through the High Court and otherwise, to get the requisite certificate under Section 65-B(4) of the Evidence Act from the authorities concerned, yet the authorities concerned wilfully refused, on some pretext or the other, to give such certificate. In a fact-circumstance where the requisite certificate has been applied for from the person or the authority concerned, and the person or authority either refuses to give such certificate, or does not reply to such demand, the party asking for such certificate can apply to the court for its production under the provisions aforementioned of the Evidence Act, CPC or CrPC. Once such application is made to the court, and the court then orders or directs that the requisite certificate be produced by a person to whom it sends a summons to produce such certificate, the party asking for the certificate has done all that he can possibly do to obtain the requisite certificate. Two Latin maxims become important at this stage. The first is lex non cogit ad impossibilia i.e. the law does not demand the impossible, and impotentia excusat legem i.e. when there is a disability that makes it impossible to obey the law, the alleged disobedience of the law is excused. This was well put by this Court in Presidential Poll, In re, (1974) 2 SCC 33] as follows : (SCC pp. 49-50, paras 14-15)*
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> > *"14. If the completion of election before the expiration of the term is not possible because of the death of the prospective candidate it is apparent that the election has commenced*

before the expiration of the term but completion before the expiration of the term is rendered impossible by an act beyond the control of human agency. The necessity for completing the election before the expiration of the term is enjoined by the Constitution in public and State interest to see that the governance of the country is not paralysed by non-compliance with the provision that there shall be a President of India.

15. The impossibility of the completion of the election to fill the vacancy in the office of the President before the expiration of the term of office in the case of death of a candidate as may appear from Section 7 of the 1952 Act does not rob Article 62(1) of its mandatory character. The maxim of law impotentia excusat legemis intimately connected with another maxim of law lex non cogit ad impossibilia.Impotentia excusat legemis that when there is a necessary or invincible disability to perform the mandatory part of the law that impotentia excuses. The law does not compel one to do that which one cannot possibly perform. 'Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over it, there the law will in general excuse him.' Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance with the words of a statute, the statutory

provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. (See Broom's Legal Maxims, 10th Edn. at pp. 162-63 and Craies on Statute Law, 6th Edn. at p. 268.)"

It is important to note that the provision in question in Presidential Poll, In re, (1974) 2 SCC 33 was also mandatory, which could not be satisfied owing to an act of God, in the facts of that case. These maxims have been applied by this Court in different situations in other election cases — See Chandra Kishore Jhav. Mahavir Prasad (1999) 8 SCC 266 (at paras 17 and 21);Special Reference No. 1 of 2002, In re (Gujarat Assembly Election matter) (2002) 8 SCC 237 (at paras 130 and 151) and Raj Kumar Yadav v. Samir Kumar Mahaseth (2005) 3 SCC 601 (at paras 13 and 14).

48. *These Latin maxims have also been applied in several other contexts by this Court. In Cochin State Power & Light Corpn. Ltd.v.State of Kerala (1965) 3 SCR 187 : AIR 1965 SC 1688, a question arose as to the exercise of an option of purchasing an undertaking by the State Electricity Board under Section 6(4) of the Electricity Act, 1910. The provision required a notice of at least 18 months before the expiry of the relevant period to be given by such State Electricity Board to the State Government. Since this mandatory provision was impossible of compliance, it was held that the State Electricity Board was excused from giving such notice, as follows : (1965) 3 SCR 187, at p. 193 : AIR pp. 1691-92, para 8*

"8. Sub-section (1) of Section 6 expressly vests in the State Electricity Board the option of purchase on the expiry of the relevant period

specified in the licence. But the State Government claims that under sub-section (2) of Section 6 it is now vested with the option. Now, under sub-section (2) of Section 6, the State Government would be vested with the option only 'where a State Electricity Board has not been constituted, or if constituted, does not elect to purchase the undertaking'. It is common case that the State Electricity Board was duly constituted. But the State Government claims that the State Electricity Board did not elect to purchase the undertaking. For this purpose, the State Government relies upon the deeming provisions of sub-section (4) of Section 6, and contends that as the Board did not send to the State Government any intimation in writing of its intention to exercise the option as required by the sub-section, the Board must be deemed to have elected not to purchase the undertaking. Now, the effect of sub-section (4) read with sub-section (2) of Section 6 is that on failure of the Board to give the notice prescribed by sub-section (4), the option vested in the Board under sub-section (1) of Section 6 was liable to be divested. Sub-section (4) of Section 6 imposed upon the Board the duty of giving after the coming into force of Section 6 a notice in writing of its intention to exercise the option at least 18 months before the expiry of the relevant period. Section 6 came into force on 5-9-1959, and the relevant period expired on 3-12-1960. In the circumstances, the giving of the requisite notice of 18 months in respect of the option of purchase on the expiry of 2-12-1960, was impossible from the very commencement of

Section 6. The performance of this impossible duty must be excused in accordance with the maxim,lex non cogitia ad impossibilia(the law does not compel the doing of impossibilities), and sub-section (4) of Section 6 must be construed as not being applicable to a case where compliance with it is impossible. We must, therefore, hold that the State Electricity Board was not required to give the notice under sub-section (4) of Section 6 in respect of its option of purchase on the expiry of 25 years. It must follow that the Board cannot be deemed to have elected not to purchase the undertaking under sub-section (4) of Section 6. By the notice served upon the appellant, the Board duly elected to purchase the undertaking on the expiry of 25 years. Consequently, the State Government never became vested with the option of purchasing the undertaking under sub-section (2) of Section 6. The State Government must, therefore, be restrained from taking further action under its notice, Ext. G, dated 20-11-1959."

49. *In Raj Kumar Dey v.Tarapada Dey, (1987) 4 SCC 398, the maximlex non cogit ad impossibiliawas applied in the context of the applicability of a mandatory provision of the Registration Act, 1908, as follows : (SCC pp. 402-03, paras 6-7)*

"6. We have to bear in mind two maxims of equity which are well settled, namely,actus curiae neminem gravabit— An act of the court shall prejudice no man. In Broom's Legal Maxims, 10th Edn., 1939 at p. 73 this maxim is explained that this maxim was founded upon justice and good sense; and afforded a safe and

certain guide for the administration of the law. The above maxim should, however, be applied with caution. The other maxim is lex non cogit ad impossibilia (Broom's Legal Maxims, p. 162) — The law does not compel a man to do that which he cannot possibly perform. The law itself and the administration of it, said Sir W. Scott, with reference to an alleged infraction of the revenue laws, must yield to that to which everything must bend, to necessity; the law, in its most positive and peremptory injunctions, is understood to disclaim, as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of laws must adopt that general exception in the consideration of all particular cases.

7. In this case indisputably during the period from 26-7-1978 to December 1982 there was subsisting injunction preventing the arbitrators from taking any steps. Furthermore, as noted before the award was in the custody of the court, that is to say, 28-1-1978 till the return of the award to the arbitrators on 24-11-1983, arbitrators or the parties could not have presented the award for its registration during that time. The award as we have noted before was made on 28-11-1977 and before the expiry of the four months from 28-11-1977, the award was filed in the court pursuant to the order of the court. It was argued that the order made by the court directing the arbitrators to keep the award in the custody of the court was wrong and without jurisdiction, but no arbitrator could be compelled to disobey the order of the court and if in compliance or obedience with court of

doubtful jurisdiction, he could not take back the award from the custody of the court to take any further steps for its registration then it cannot be said that he has failed to get the award registered as the law required. The aforesaid two legal maxims —the law does not compel a man to do that which he cannot possibly performandan act of the court shall prejudice no man would, apply with full vigour in the facts of this case and if that is the position then the award as we have noted before was presented before the Sub-Registrar, Arambagh on 25-11-1983 the very next one day of getting possession of the award from the court. The Sub-Registrar pursuant to the order of the High Court on 24-6-1985 found that the award was presented within time as the period during which the judicial proceedings were pending that is to say, from 28-1-1978 to 24-11-1983 should be excluded in view of the principle laid down in Section 15 of the Limitation Act, 1963. The High Court [Tarapada Dey v.District Registrar, Hooghly, 1986 SCC OnLine Cal 101: AIR 1987 Cal 107], therefore, in our opinion, was wrong in holding that the only period which should be excluded was from 26-7-1978 till 20-12-1982. We are unable to accept this position. 26-7-1978 was the date of the order of the learned Munsif directing maintenance of status quo and 20-12-1982 was the date when the interim injunction was vacated, but still the award was in the custody of the court and there is ample evidence as it would appear from the narration of events hereinbefore made that the arbitrators had tried to obtain the custody of the award

which the court declined to give to them."

(emphasis in original)

50. *These maxims have also been applied to tenancy legislation — see B.P. Khemka (P) Ltd. v. Birendra Kumar Bhowmick (1987) 2 SCC 407 (at para 12), and have also been applied to relieve authorities of fulfilling their obligation to allot plots when such plots have been found to be unallottable, owing to the contravention of the Central statutes — see Hira Tikkoo v. State (UT of Chandigarh) (2004) 6 SCC 765 (at paras 23 and 24).*

The ratio laid down by Hon'ble Supreme Court in above-cited judgment is squarely applicable to the present case.

11. The interpretation made by respondent of the aforesaid clause seems to be harsh, non-practical and pedantic. It is a case of survival of a unit which is source of livelihood of many families. The petitioner did not get paddy during 2022-23 means got no business during the said period and respondents want to deny paddy during 2023-24 because no business was extended to petitioner during 2022-23. Denial of paddy, without any fault on the part of the petitioner, would amount to violation of fundamental right of business and trade guaranteed by Article 19 (1)(g) besides violation of Article 14 and 21 of the Constitution of India. This Court has been assigned role of guard qua protection of fundamental rights guaranteed by Part III of the Constitution of India, thus, it is imperative to undertake whole gamut in the perspective of fundamental rights. The object of the policy is to regulate the business of milling and protect interest of the stakeholders. It cannot be read as per whims and caprices of officials who seem more interested in the closure of business than its running. A running unit is always source of livelihood

of many families. There is huge investment in a rice mill and its closure is not only going to deprive couple of families from livelihood but also waste precious, valuable resources of the country.

11. In the wake of aforesaid facts and findings, this Court is of the considered opinion that petitioner is entitled to allotment of paddy during KMS 2023-24 as an existing unit.

12. The respondents are directed to consider case of the petitioner subject to compliance of other conditions of Custom Milling Policy 2023-24.

(JAGMOHAN BANSAL)
JUDGE

21.09.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	*Yes/No*