

A FOOD CORPORATION OF INDIA AND ANOTHER

v.

M/S. V.K. TRADERS AND OTHERS

(Civil Appeal No. 2070 of 2020)

B MARCH 06, 2020

[S. A. BOBDE, CJI, B. R. GAVAI AND SURYA KANT, JJ.]

- Rice Mills: Ban on allocation of paddy to rice mills for custom milling – In this case, quality of rice supplied post milling by the rice mills was found to be defective – Ban imposed on these rice mills for allocating paddy for custom milling for three years for ‘Beyond Rejection Limit’ rice and for five years for ‘Beyond Prevention of Food Adulteration’ rice – Demand notice issued to them for compensating the appellant-FCI for the losses caused to it for supply of sub-standard rice – However, rice mills refused to accept liability and failed to make any payment to FCI – As a result blacklisted rice mills were not allocated any paddy for custom milling – Allegedly with a view to wriggle out of the ban period, the mill owners leased out their rice mills to other similar partnership/ proprietorship firms – Such lease deeds were unregistered – These new lessees consequently applied to the appellant-FCI for allocation of paddy and asserted that none of them had committed any default or been blacklisted and that the disqualification attached to their lessors would not traverse onto their lawful entitlements – Whether Respondents who took over on leasehold basis certain blacklisted rice mills were entitled to allocation of paddy for custom milling – Held: The lease deeds allegedly executed between the defaulting rice millers and the respondents were not reliable as they did not satisfy the statutory requirements of s.17(1)(d) of the Registration Act, 1908 – These Lease-deeds thus were not acceptable as evidence of valid transfer of possessory rights – Even in a case where a proprietorship/partnership firm has been in existence for long and took over a mill-in-default only on-word basis, no right to seek allocation of paddy can be claimed by it unless the liabilities arising out of the previous bilateral agreement were satisfied – Thus, High Court erred gravely in setting aside the orders through which the FCI declined to allocate paddy to the new lessees of the defaulting rice mills – Registration Act, 1908 – s.17(1)(d).*

Allowing the appeals, the Court

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HELD: 1. No reliance can be placed upon the lease deeds allegedly executed between the defaulting rice miller(s) and the 17(1)(d) respondent(s), as they do not satisfy the statutory requirements of Section 17(1)(d) of the Registration Act, 1908. These Lease-deeds thus cannot be accepted as evidence of valid transfer of possessory rights. The plea taken by the appellant-FCI, that such documentation was made only to escape the liability fastened on the defaulting rice millers, carries some weight, though it is a pure question of fact. Even in a case where a proprietorship/partnership firm has been in existence for long and took over a mill-in-default only on-word basis, no right to seek allocation of paddy can be claimed by it unless the liabilities arising out of the previous bilateral agreement are satisfied. [Paras 12, 13][115-C-E]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2070 of 2020.

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From the Judgment and Order dated 21.10.2013 of the High Court of Punjab and Haryana at Chandigarh in Letters Patent Appeal No. 989 of 2012(O&M).

With

C.A. No. 2075, 2071, 2072, 2076, 2073 and 2074/2020.

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Gaurab Banerjee, Sr. Adv., Ajit Pudussery, Vijayan K. and Ajeet Singh Verma, Advs. for the Appellants.

Subhasish Bhowmick, N. S. Dalal, Sushil Kumar, R. C. Kaushik and Ms. Ranjeeta Rohatgi, Advs. for the Respondents.

The following Judgment of the Court was delivered:

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JUDGMENT

1. Leave granted.
2. These appeals have arisen from an order dated 21.10.2013 passed by a Division Bench of the Punjab and Haryana High Court whereby a batch of letters-patent appeals filed by the Food Corporation of India (FCI) challenging a learned Single Judge's order of 15.03.2012 was dismissed.

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3. The primary issue before the High Court was whether or not the respondents, who had taken over on leasehold basis certain blacklisted rice mills, were entitled to allocation of paddy for custom milling.

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A Facts:

4. It was common practice in Punjab for different government agencies to allocate paddy for custom milling to hundreds of rice mills, which in turn would supply the rice, post milling as per approved specifications, to the appellant-FCI. Such allocation would take place through terms of a bipartite agreement and the same took place for the Kharif Marketing Season of 2004-05 (hereinafter, "KMS") also.
5. A dispute arose as to the quality of the milled rice stock for the aforementioned KMS, leading to an investigation by the Central Bureau of Investigation (CBI). Finding the quality to be defective, the CBI initiated prosecution against numerous rice millers and additionally recommended blacklisting of a total of 182 millers for a period of three years for 'Beyond Rejection Limit' (BRL) rice and five years for 'Beyond Prevention of Food Adulteration' (BPFA) rice. Such ban was effectuated by the FCI vide a Circular dated 10.10.2012, relevant extracts of which read as follows:
- D *"1. The millers who have supplied rice which was beyond PFA limits, the ban imposed may continue. Final decision on the matter may be taken by the CBI court.*
- E *2. As regards the millers whose stocks were found BRL by the CBI, the proposal for limiting the ban to a period of three (03) Kharif Marketing Seasons (KMS) w.e.f. the date of imposition of ban, has been accepted.*
- F *3. In the case of millers whose stocks were in mixed condition though the same was found beyond PFA and were given benefit of doubt by the CBI, the proposal for limiting the ban to a period of Five (05) Kharif Marketing Seasons (KMS) w.e.f. the date of imposition of ban, has been accepted.*
- G *4. The proposals at St. No. 2 and 3 above, would be subject to condition that the defaulting millers deposit the loss suffered by the Corporation along with penal interest. In cases where, FCI has already effected recovery from the concerned State Government & its Agencies, the State Government & its Agencies should recover the said amount from the defaulter miller under intimation to FCI.*
- H *5. As there is no specific clause in the Custom Milling Agreement/Levy Order for debarring those rice millers who*

are found supplying sub-standard rice in CMR/Levy, FCI Headquarters will examine the issue and make specific provisions in this regard in the CMR Agreement as well as advise State Govt. To make such suitable provisions in the Levy Order. Action on this to be initiated at Headquarters.

6. *The cases of lease or ownership transfer will be decided on merit of each case by a Committee of Officers consisting of GM(R) Punjab, a representative from Zonal Office (North) and Headquarters after obtaining required verification/report from State Govt. The said committee shall see genuineness of each such transaction, subject to Court decisions, if any regulating such decision.* B C

7. *In the matter of pending Court Cases, ED (North)/GM, Punjab may take suitable decision on lifting of the ban imposed on the Millers or otherwise of each case, on merits.”*

6. It is relevant to note that before imposing the ban on allocation of paddy for custom milling and blacklisting the defaulting rice millers, showcause notices were served and objections duly considered. Illustratively, M/s Sharma Rice Mills, situated at Katcha Firozpur Road, Muktsar, was informed vide registered show cause notice dated 04/06.12.2007 that 1814 MT of rice delivered by it, was found as being BRL and BFPA, besides the 588 MT of stock which was yet untested. The notice pointed out how the delivered stock was inedible and caused huge financial losses to the appellant. It called upon M/s Sharma Rice Mills to replace the sub-standard rice, as well as compensate the appellant. However, the rice mills refused to accept liability and failed to make any payment to the FCI for the losses caused. F

7. The blacklisted rice mills, thus, were not allocated any paddy for purposes of custom milling in 2011-12. Allegedly with a view to wriggle out of the ban-period, the mill owners leased-out their rice mills to other similar partnership/proprietorship firms. Notably, all such lease deeds were unregistered. A reference to one such lease deed of 21.09.2011 shows that the rice mill of M/s Sharma Rice Mills along with land measuring 21 kanal 16 marlas on which it was situated was leased to another firm, M/s BK Traders. The land, building, machinery and plant were leased out for an annual consideration of Rs 2 lakhs. Most of the lessees were only newly constituted entities. G

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- A 8. These new lessees consequently applied to the appellant-FCI for allocation of paddy and asserted that none of them had committed any default or been blacklisted, and that the disqualification attached to their lessors could not traverse onto their lawful entitlements. The FCI, on the other hand, declined to entertain such requests on the premise that the new lessees had simply stepped into the shoes of the earlier blacklisted lessors as the lease deeds were nothing but sham transactions to circumvent the ban imposed by the Circular dated 10.10.2012.

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- C 9. The learned Single Judge of the High Court opined that a defaulting mill ought to be understood as the legal entity which controlled the mill, which could be the proprietor-owner, Director of an owning-company or the lessee. He held that the new lessee-firms were entities separate from the earlier defaulting owners and could hence not be held to have defaulted in payment of dues or made responsible for sub-standard milling of paddy. Furthermore, it was observed that the "*proprietor of petitioner-firm has not been shown to have any connivance with the erstwhile defaulter*". The writ petitions filed by some of the new entities were, thus, allowed and the ban imposed by the FCI on allocation of paddy to these new entities, was set aside. The Division Bench of the High Court has vide the judgment under appeal upheld the aforesated view of the learned Single Judge.
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- E **Contentions of Parties:**

- F 10. Shri Gaurab Banerjee, learned senior counsel for FCI contended that the lease deeds relied upon by the new entities were unregistered documents, which had no sanctity in the eyes of law. Making a pointed reference to the lease deeds produced by the respondents, wherein duration of the lease was between 2 to 5 years or even for an indefinite period, he highlighted that such period exceeded the cut-off of 1 year for compulsory registration. He urged that these lease deeds were nothing but sham transactions and had been executed by the defaulting rice millers deliberately to escape their liability for FCI's losses.
- G Such details have been furnished by the counsel through a chart which shows how lakhs of rupees were recoverable by the FCI. It was accordingly argued that what was impermissible in law for the defaulting rice millers could not be permitted through indirect means in the name of emasculated new lessees.
- H 11. Per contra, learned counsel for the respondents maintained that the legality of the lease arrangement had not been disputed by either

parties to the agreement (the lessee and the lessor), and no third party (including the FCI) had any locus standi to call in question such binding contract. He submitted that the liability for default of dues or supply of sub-standard rice was attached only to a rice miller who was found responsible after due enquiry and notice. The lease holders had merely taken over land, building and machinery without any obligation to discharge previous liabilities of the lessors. Hence, it was unreasonable for the FCI to coerce the lessees to make payments.

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Analysis:

12. We are of the considered opinion, that no reliance can be placed upon the lease deeds allegedly executed between the defaulting rice miller(s) and the respondent(s), as they do not satisfy the statutory requirements of Section 17(1)(d) of the Registration Act, 1908. These Lease-deeds thus cannot be accepted as evidence of valid transfer of possessory rights. The plea taken by the appellant-FCI, that such documentation was made only to escape the liability fastened on the defaulting rice millers, carries some weight, though it is a pure question of fact. The High Court nevertheless ought to have refrained from opining on the sufficiency of such lease deeds for recognition of a new legal entity, and consequential non-transfer of liability to the lessees.

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13. Even in a case where a proprietorship/partnership firm has been in existence for long and took over a mill-in-default only on-word basis, no right to seek allocation of paddy can be claimed by it unless the liabilities arising out of the previous bilateral agreement are satisfied. We are, thus, of the view that the High Court erred gravely in setting aside the orders through which the FCI declined to allocate paddy to the new lessees of the defaulting rice mills.

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Conclusion:

14. For the reasons aforesated, these appeals are allowed. The orders passed by the learned Single Judge as well as the Division Bench of the High Court are set aside. The writ petitions filed by the respondent-lessees are dismissed, however, with liberty to pay dues with penalty/ interest of the original rice-millers and thereafter on production of 'No Dues Certificate' seek allocation of paddy for custom milling in accordance with the policy of FCI. No orders as to costs.

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