

2023 SCC OnLine P&H 974

In the High Court of Punjab and Haryana at Chandigarh
(BEFORE JAGMOHAN BANSAL, J.)

Kissan Rice Mills ... Petitioner;

Versus

State of Punjab and Others ... Respondents.

CWP-473-2023

Decided on July 24, 2023

Advocates who appeared in this case:

Mr. Vishal Mehta, Advocate for the petitioner.

Ms. Deepali Puri, Addl. AG, Punjab for the respondents.

The Judgment of the Court was delivered by

JAGMOHAN BANSAL, J. (Oral):— The petitioner through instant petition under Article 226/227 of the Constitution of India is seeking setting aside of order 12.12.2022 (Annexure P-12) whereby appeal dated 02.12.2022 of the petitioner has been rejected and order dated 26.09.2022 (Annexure P-7) whereby Director has reduced installed capacity of the Mill.

2. The petitioner in 2007 installed a Rice Mill. At that point of time, guidelines dated 10.09.2007 regarding determination of capacity of Rice Mill were in operation. The respondent determined capacity of the petitioner in terms of instructions dated 10.09.2007. The capacity of the Mill was determined 4 MT. There are 5 para-meters to determine capacity of a Mill and one of those para-meters is land. The instructions provided that land may be owned by the Mill owner or it may be on lease near the Mill. The capacity of the petitioner continued to be assessed from 2007 to 2020 as 4 MT, however, on the complaint, the respondent vide order 26.09.2022 (Annexure P-7) reduced capacity of the petitioner's rice mill from 4 MT to 2 MT.

3. The petitioner feeling aggrieved from order dated 26.09.2022 (Annexure P-7) preferred CWP No. 24245-2022 before this Court which came to be disposed of vide order dated 30.11.2022 (Annexure P-10). This Court relegated the petitioner to the remedy of appeal. The Appellate Authority was directed to take decision within a week from the date petitioner puts in appearance before the concerned authority. The petitioner appeared before Appellate Authority and appeal came to be dismissed vide impugned order dated 12.12.2022.

4. Learned counsel for the petitioner *inter alia* contends that petitioner has installed his Rice Mill in 2007 and it was installed in terms of instructions prevailing at that point of time. As per instructions, the petitioner was

required to have 3.5 acres of land which may be owned by the owners/partners or it could be on lease. The instructions came to be modified in 2010 vide instructions dated 20.08.2010 wherein it was provided that land should be owned by owner/partner and lease land would not be considered. Modification of the instructions was not retrospective, thus, respondent had no authority to re-determine capacity of the petitioner's Mill.

5. Learned counsel of the respondents *inter alia* contends that claim of the petitioner has been rejected not only on the ground of parameters changed by instructions dated 20.08.2010 but also on the ground that petitioner was not having required plant and machinery. The State is competent to modify/alter its instructions, thus, petitioner was bound to comply with amended instructions.

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

7. For the better appreciation of the matter, it would be appropriate to look at instruction dated 10.09.2007 and 20.08.2010. The relevant extracts of instructions dated 10.09.2007 read as:

"Subject : Guideline regarding fixation of capacity of Rice Mills in the State of Punjab.

Criteria of New Technique Rice Mills:

Sr. no	Machines	2 Tonnes	3 Tonnes	4 Tonnes	5 Tonnes
1	Rulers	2 Pneumatic Air pressure	2 Pneumatic Air pressure	2 Pneumatic Air pressure	2 Pneumatic Air pressure
2	Petis	2	2	2 (Dandkar)	2 (Dandkar)
3	Whitener/Polisher	3 (30HP)	4 (30HP)	3 (50HP)	4 (50HP)
4	Load	90kw	120kw	170kw	210kw
5	Land	2 acre	3 acre	3.5 acre	4 acre

Those miller who have not the required Land in his mill as per above guidelines, they are bound to complete the required land after purchasing the same or take over on lease near the mill and the said land is only be consider for storage of paddy after getting it verified and declare as eligible for storage of paddy form the concerned DM.

Instructions dated 20.08.2010

Reference to Head Office Memo No. 1Ch(1828)-07/2823 dated 10-9-2007 on the above cited subject and continuation of Letter No. 2871 dated 17-9-2007.

182 xxxxxxxx

3. The guidelines issued for determining the milling capacity of rice

mills through the letters under reference, among other criteria, also stipulate that each rice mill shall make available land near its mill in the quantity specified in the instructions for its rice mill. But it was directed that if a mill owner does not have the required land near his mill as per these criteria, he shall be bound to rent or purchase the required land near his mill.

4. Now it has been decided by the Government that every rice mill owner/partner will get the land mentioned in the instructions registered in his/her name/partners name whatever and submit the relevant information to the government. This land will be made available by every mill owner where his rice mill is established.

5. Therefore, you are instructed to ensure that no rice mill having land on leased or rented. But this land should be registered in the name of the mill owner/mill partner. The above instructions should be followed without in letter and spirit."

8. From the perusal of instructions dated 10.09.2007 and 20.08.2010, it is quite evident that as per instructions of 2007, 4 MT capacity Rice Mill was supposed to have 3.5 acres of land which may or may not be owned, however, as per instructions of 2010, land acquired on lease cannot be included in the required land. The petitioner has established Mill in 2007 and at that point of time lease land was included in the total required land. The capacity of the petitioner's Mill was determined 4 MT in 2007 and continued to be assessed till 2020. Determination of capacity from 2010 to 2020, as alleged by respondent, may be due to mistake, however, it is not case of the State that there was mistake during 2007 to 2010. At that point of time i.e. 2007-2010, the petitioner had fully complied with all the para meters for determining capacity 4 MT. The petitioner is not complying with requirement of ownership of 3.5 acres of land and as per petitioner, he is still having required plant and machinery whereas respondent just to reduce his capacity has held that petitioner is not having required plant and machinery.

9. The petitioner is indubitably not having 3.5 acres owned land, however this Court is of the opinion that instructions dated 20.08.2010 cannot be made applicable to already installed Rice Mill. It is settled proposition of law that executive instructions cannot have retrospective effect and application of 20.08.2010 instructions to the petitioner would amount to retrospective application of the instructions, thus, capacity of the petitioner cannot be determined on the basis of 2010 instructions.

10. The order re-determining capacity was passed without assigning any reason, however, in the appellate order, the Appellate Authority apart from para-meter of land has considered question of plant and machinery which petitioner disputes and submits that it was never in question. He further submits that physical verification of his unit would make it clear that petitioner is having plant and machinery as prescribed by 2007 instructions.

11. On being asked whether it is possible to make physical verification to

determine availability of plant and machinery, learned counsel for the parties agreed for joint inspection to verify availability of plant and machinery as required by 2007 instructions.

12. In view of the above discussion and findings, the impugned order to the extent of question of land stands quashed, however, parties are directed to conduct joint verification of plant and machinery. The respondents are directed to carry out joint inspection within 4 weeks from today. The respondent after completing physical verification shall pass fresh order *qua* capacity expeditiously.

13. Disposed of in the above terms.

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