

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 18/10/2019****Judgment Delivered on : 24/10/2019****Writ Petition (C) No. 2516 of 2018**

M/s Uday Rice Process (A Proprietorsip Firm) Bandha Bazar, Tahsil, Ambagarh Chowki, District- Rajnandgaon, Chhattisgarh Through Its Sole Proprietor Mr. Vijay Khandelwal S/o Mr. Narayan Lal Khandelwal, Aged About 38 Years, R/o A-12, Sun City Kanchan Bag, Rajnandgaon, Tahsil And District- Rajnandgaon, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh, Through The Secretary, Food, Civil Supplies And Consumer Protection Department, Mantralaya, Mahanadi Bhawan, Sector- 19, Rakhi-1, Naya Raipur, District- Raipur, Chhattisgrah PIN 492010
2. Chhattisgarh State Co-Operative Marketing Federation Limited Through Its Managing Director, 880, Civil Lines, Raipur, Tahsil Raipur, District- Raipur, Chhattisgarh 492001
3. District Manager Chhattisgarh State Co-Operative Marketing Federation Limited, Composite District Office Building, Second Floor, Beside Room No. 9, Collectorate Premises, Rajnandgaon, Tahsil And District- Rajnandgaon, Chhattisgarh 491441

---- Respondents**Writ Petition (C) No. 2525 of 2018**

M/s Balaji Grain Processing Industries (A Sole Proprietorship Firm) Through- Proprietor Mr. Mohan Lal Agrawal S/o Late Nand Lal Agrawal Aged About 60 Years, R/o- Balaji Grain Processing Industries Campus, Nayak Bandha Road, Ward No. 14, Abhanpur, Post, PS and Tahsil- Abhanpur, District- Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh, Through- The Secretary, Food, Civil Supplies and Consumer Protection Department, Mantralaya, Mahanadi Bhawan Sector- 19, Rakhi-1, Naya Raipur, Raipur, Chhattisgarh PIN 492101
2. Chhattisgarh State Co-Operative Marketing Federation Limited Through- Its Managing Director, 880, Civil Lines, Raipur, Tahsil- Raipur, District- Raipur, Chhattisgarh PIN 492001
3. District Marketing Officer Chhattisgarh State Co- Operative Marketing Federation Limited, District Office At Nutan Kisan Rice Mill, Ramsagar Para Raipur, Tahsil And District- Raipur, Chhattisgarh. PIN 492001
4. Collector (Food Branch), Raipur, Tahsil And District- Raipur, Chhattisgarh PIN 492001

5. Branch Manager Axis Bank Limited, Branch- Raipur, Tahsil And District- Raipur, Chhattisgarh PIN 492001

---- Respondents

Writ Petition (C) No. 2526 of 2018

M/s. Shankar Rice Industries (A Proprietorship Firm) Bandha Bazar, Tahsil Ambagarh Chowki, District Rajnandgaon, Chhattisgarh Through Its Sole Proprietor Mr. Shivam Khandelwal S/o Mr. Arun Khandelwal, Aged About 19 Years, R/o A-12, Sun City, Kanchan Bag, Rajnandgaon, Tahsil And District Rajnandgaon Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh Through The Secretary, Food, Civil Supplies And Consumer Protection Department, Mantralaya, Mahanandi Bhawan, Sector-19, Rakhi-1, Naya Raipur, Raipur, District Raipur Chhattisgarh PIN 492101
2. Chhattisgarh State Co-Operative Marketing Federation Limited Through Its Managing Director, 880, Civil Lines, Raipur, Tahsil Raipur, District Raipur Chhattisgarh PIN 492001
3. District Manager Chhattisgarh State Co-Operative Marketing Federation Limited, Composite District Office Building, Second Floor, Beside Room No. 9, Collectorate Permisses, Rajnandgaon, Tahsil And District Rajnandgaon Chhattisgarh PIN 491441

---- Respondents

Writ Petition (C) No. 3193 of 2018

M/s Anant Rice Industries (A Registered Partnership Firm) Arang, Tahsil Arang, District - Raipur, Chhattisgarh, Through Our Authorized Partner Mr. Shrawan Kumar Agrawal S/o Late Loknath Agrawal, Aged About 67 Years, R/o Anant Rice Industries, NH-53, Mahasamund Road, Arang Police Station And Tahsil Arang, District Raipur, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh Through The Secretary, Food, Civil Supplies and Consumer Protection Department, Mantralaya, Mahanadi Bhawan, Sector - 19, Rakhi-1, Naya Raipur, Raipur Chhattisgarh. Pin - 492101
2. Chhattisgarh State Co-Operative Marketing Federation Limited Through It's Managing Director, 880, Civil Lines, Raipur, Tahsil Raipur, District - Raipur Chhattisgarh. Pin - 492001
3. District Marketing Officer Chhattisgarh State Co-Operative Marketing Federation Limited, District Office At Nutan Kisan Rice Mill, Ramsagar Para Raipur, Tahsil And District - Raipur Chhattisgarh. Pin - 492001
4. Collector (Food Branch) Collector Office, Raipur Tahsil and District- Raipur Chhattisgarh. Pin - 492001

---- Respondents

Writ Petition (C) No. 2093 of 2019

M/s Maa Gayatri Rice Mill (A Sole Proprietorship Firm) Through Proprietor Mr. Ajay Kumar Agrawal S/o Shri Radheshyam Agrawal, Aged About 45 Years, R/o Village - Arekel, Main Road - Basna, Post - Tahsil Basna, District Mahasamund Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, through The Secretary, Food, Civil Supplies and Consumer Protection Department, Mantralaya, Mahanadi Bhawan, Sector - 19, Rakhi - 1, Naya Raipur, Raipur, Chhattisgarh. Pin - 492101.
2. Chhattisgarh State Co - Operative Marketing Federation Limited, Through Its Managing Director, 880, Civil Lines, Raipur, Tahsil Raipur, District Raipur, Chhattisgarh. Pin - 492001
3. District Marketing Officer, Chhattisgarh State Co - Operative Marketing Federation Limited, District Office At Mahasamund, Tahsil And District Mahasamund Chhattisgarh.
4. Collector (Food Branch) Mahasamund, Tahsil And District Mahasamund Chhattisgarh.

---- Respondent

Writ Petition (C) No. 2122 of 2019

M/s Shiv Shakti Rice Mill (A Sole Proprietorship Firm), Through Proprietor Mr. Tulsidas Agrawal, S/o Late Shri Tarachand Agrawal, Aged About 67 Years, R/o Village - Arekel, Main Road - Basna, Post - Tahsil - Basna, District Mahasamund, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary, Food, Civil Supplies & Consumer Protection Department, Mantralaya, Mahanadi Bhawan, Sector - 19, Rakhi - 1, Naya Raipur, Raipur, Chhattisgarh Pin 492101
2. Chhattisgarh State Co-Operative Marketing Federation Limited, Through Its Managing Director, 880, Civil Lines, Raipur, Tahsil Raipur, District Raipur, Chhattisgarh Pin 492001.
3. District Marketing Officer Chhattisgarh State Co - Operative Marketing Federation Limited, District Office at Mahasamund, Tahsil And District Mahasamund Chhattisgarh.
4. Collector (Food Branch) Collector Office, Mahasamund, Tahsil And District Mahasamund Chhattisgarh.

---- Respondents

Writ Petition (C) No. 2095 of 2019

M/s Radhakeshav Rice Mill (A Proprietorship Firm) Basana, Tahsil Basana District Mahasamund Chhattisgarh Through Sole Proprietor Smt. Rekha Agrawal, W/o Mr. Sanjay Kumar Agrawal, Aged About 42 Years, R/o Beside M/s Radhakeshav Rice Mill,

Main Road Basana, Tahsil Basana, District Mahasamund, Chhattisgarh.

---- **Petitioner**

Versus

1. State of Chhattisgarh, Through The Secretary, Food, Civil Supplies And Consumer Protection Department, Mantralaya, Mahanadi Bhawan, Sector 19, Rakhi - 1, Naya Raipur, Raipur, Chhattisgarh Pin 492001
2. Chhattisgarh State Co - Operative Marketing Federation Limited Through Its Managing Director, 880, Civil Lines, Raipur, Tahsil Raipur, District Raipur Chhattisgarh. Pin 492001.
3. District Marketing Officer Chhattisgarh State Co - Operative Marketing Federation Limited, District Office At Mahasamund, Tahsil And District Mahasamund Chhattisgarh
4. Collector (Food Branch) Collector Office Mahasamund, Tahsil and District Mahasamund Chhattisgarh.

---- **Respondents**

Writ Petition (C) No. 2232 of 2019

M/s. Shri Narayan Rice Industries (A Sole Proprietorship Firm), Through Proprietor Smt. Basanti Agrawal W/o Shri Prabhu Dayal Agrawal, Aged About 60 Years R/o Ward No. 7, Main Road Bagbahara, Post And Tahsil Bagbahara, District- Mahasamund, Chhattisgarh.

---- **Petitioner**

Versus

1. State of Chhattisgarh, Through The Secretary, Food, Civil Supplies & Consumer Protection Department, Mantralaya, Mahanadi Bhawan, Sector-19, Rakhi-1, Naya Raipur, Chhattisgarh Pin- 492101.
2. Chhattisgarh State Co-Operative Marketing Federation Limited Through Its Managing Director, 880, Civil Lines, Raipur, Tahsil Raipur, District- Raipur, Chhattisgarh. Pin- 492001
3. District Marketing Officer Chhattisgarh State Co-Operative Marketing Federation Limited, District- Office At Mahasamund, Tahsil and District- Mahasamund, Chhattisgarh
4. Collector (Food Branch) Mahasamund, Tahsil And District- Mahasamund, Chhattisgarh.

---- **Respondents**

Writ Petition (C) No. 2224 of 2019

Shri Shivam Industries (A Partnership Firm) Through Our Partner Mr. Gulshan Kumar Agrawal S/o Shri Ashok Kumar Agrawal Aged About 34 Years R/o Ambedkar Ward Thana Road, Village Charmudiya Post Police Station And Tahsil Kurud, District Dhamtari Chhattisgarh.

---- **Petitioner**

Versus

1. State of Chhattisgarh, Through The Secretary, Food, Civil Supplies & Consumer Protection Dept. Mahanadi Bhawan, Sector- 19, Rakhi, -1 Naya Raipur, District Raipur Chhattisgarh.
2. Chhattisgarh State Co- Operative Marketing Federation Limited, Through Its Managin Director, 880 Civil Lines, Raipur, Tahsil Raipur, District Raipur Chhattisgarh.
3. District Marketing Officer Chhattisgarh State Co- Operative Marketing Federation Limited, District Office At Dhamtari, Post Tahsil and District Dhamtari Chhattisgarh.
4. Collector (Food Branch) Dhamtari, Tahsil & District Dhamtari Chhattisgarh.

---- Respondents**Writ Petition (C) No. 2222 of 2019**

M/s. Shri Ratan Industries (A Partnership Firm), Through Partner Mr. Ratan Kumar Agrawal, S/o Shri Govind Ram Agrawal, Aged About 60 Years, R/o Opp. Carmel Convent School, D-Cot Gali, Ward No.05, Jagatpur Road, Post, Tahsil And District Raigarh Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh, Through The Secretary, Food, Civil Supplies & Consumer Protection Dept, Mahanadi Bhawan, Sector-19, Rakhi-1, Naya Raipur, Raipur Chhattisgarh
2. Chhattisgarh State Co-Operative Marketing Federation Limited Through Its Managing Director, 880, Civil Lines, Raipur Tahsil Raipur, District Raipur Chhattisgarh
3. District Marketing Officer Chhattisgarh State Co-Operative Marketing Federation Limited, District Office At Raigarh, Post, Tahsil And District Raigarh Chhattisgarh.
4. Collector (Food Branch) Raigarh, Tahsil And District Raigarh Chhattisgarh.

---- Respondents

For Petitioners	: Shri Raj Kamal Singh, Shri Suryapratap Yuddhveer Singh and Shri Barun KUMar Chakrabarty, Advocates.
For Respondent/State	: Shri Sudeep Agrawal, Deputy Advocate General.
For Respondent- Marketing Federation	: Shri Prafull N. Bharat and Shri Ashish Surana, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C.A.V. Judgment

Per P.R. Ramachandra Menon, Chief Justice

1. Invocation of the bank guarantee furnished by the Petitioners in connection with the deficit supply of rice pursuant to the custom milling as per the Out Turn Ration (for short 'the OTR') fixed by the Central Government is under challenge in all these petitions seeking for refund of the amount appropriated, with interest at the rate of 18% per annum.

2. The main ground of challenge is that the course pursued by the Chhattisgarh State Co-operative Marketing Federation (*for short, 'the Federation'*) for invoking the bank guarantee is without the authority of law and is contrary to the verdicts passed by this Court in Writ Petition (C) No. 3246 of 2016 on 04.05.2017 in respect of the year 2016-2017 and Writ Petition (C) No. 3016 of 2017 in respect of the year 2017-2018.

3. The nature of challenge raised in all these writ petitions is exactly similar and hence, Writ Petition (C) No. 2516 of 2018 is treated as the lead case. Reference is made to the parties and proceedings as given therein, except where it is separately mentioned, based on the context.

4. We have heard Shri Raj Kamal Singh, the learned counsel for the Petitioners, Shri Prafull N Bharat, the learned counsel for the Respondent-

Federation and Shri Sudeep Agrawal, the learned Deputy Advocate General representing the Respondent-State/Department.

5. The Petitioners are the Rice Mill owners carrying out their trade and business either as a proprietorship concern or as a partnership firm and they are stated as members of the Chhattisgarh Pradesh Rice Millers Association (*for short 'the Association'*) who has been espousing their cause. It is stated that the Government of India sponsors the procurement of paddy and paddy milling in the country and some benefits are being extended to the States in this regard. The State of Chhattisgarh, in exercise of the power conferred under Section 3 and 5 of the Essential Commodities Act, 1955 (No. 10 of 1955) read with Government of India's Order No. G.S.R. 800, dated 9th June, 1978, has framed the Chhattisgarh Rice Custom Milling Order, 2016 (*for short 'the 2016 Order'*). As per Order 3 of the 2016 Order, the Director of Food, Civil Supplies & Public Distribution/Collector of the District is empowered to direct any Rice Mill owner to make use upto half of the annual milling capacity for custom milling and it shall be binding upon the mill owner. A scheme has been framed by the State as per the relevant provisions of the Order, 2016 which requires the mill owners to ensure supply of rice at the OTR of 67% for raw rice and 68% for par-boiled rice in the custom milling process. Consequences are also mentioned on failure in achieving the OTR, including by way of penalty. The Rice Millers' Association challenged the 2016 Order and the Scheme formulated by the State mentioning the OTR as 67% in respect of raw rice and 68% in respect of par-

boiled rice by filing Writ Petition (C) No. 3246 of 2016. It was contended that there was absolutely no rationale for fixing a uniform ratio throughout the country and that the ratio mentioned was much on the higher side, which had to be revisited because of the various circumstances prevailing in the State. It was contended that in the test milling conducted by some Governmental agencies at the Petitioners' instance, the OTR obtained for raw-rice was only 33.19%, whereas in respect of the par-boiled rice, it was 33.87%. In view of the huge variation in the OTR, it was stated that the mill owners had to procure rice from elsewhere to meet the requirement under the Scheme/Order to make it 67% - 68% so as to avoid any adverse consequences; which in turn caused serious losses to them and hence was sought to be reconsidered.

6. The OTR prescribed by the Central Government was sought to be justified from the part of the Respondents stating that the same was fixed based on scientific studies and that it was highly necessary to have a uniform formula throughout the country.

7. After hearing both the sides, a Division Bench of this Court passed the verdict on 04.05.2017 directing the Petitioner-Association to file a representation before the Government of India; with a further direction to the Government to have it considered and finalised within the time frame as mentioned therein. Awaiting such decision, the Bench made it clear that any steps for prosecuting any of the members of the Petitioner-Association would stand deferred for three months, on a condition that the said representation

was preferred within a period of two weeks from that date. As an interim measure, the Bench also directed that the members (mill owners) of the Petitioner-Association shall deposit the custom milled rice actually obtained not lesser than the quantity as per the ratio of the test result stated as conducted by the State Government authorities which shall be accounted for provisionally and subject to the final decision that may be taken by the State Government, following the decision that would be rendered on the representation preferred by the Petitioner-Association before the Central Government.

8. Pursuant to the aforesaid direction, the representation was considered by the Central Government and a detailed order was passed on 28.06.2017, whereby the request to revisit the OTR was turned down. It was pointed out that the Food Corporation of India was never associated with the so-called trial milling of paddy, if at all done by the Petitioner-Association in their mills. It was also observed that the test milling conducted by the Petitioner was of paddy procured during the Kharif Marketing Season 2012-2013, which had deteriorated due to 15 months' long storage in the open storage centers of the Federation. The OTR of such deteriorated paddy may have been less, but it had no relevance to the OTR fixed for Fair Average Quality (FAQ) paddy, and as such, the picture given by the Petitioner in the representation was a distorted one. The manner in which the OTR was fixed at 67% for raw rice and 68% for par-boiled rice and that the same was in existence since the Kharif Marketing Season 1995-1996 onwards; the

exhaustive study conducted in 10 different States during the year 1993-1994 by the Central Food Technological Research Institute, Mysore, Paddy Processing Research Centre, Thanjavur (now, Indian Institute of Food Process and Technology) and the Indian Institute of Technology, Kharagpur, were specifically adverted to, besides the study conducted by the Paddy Processing Research Centre, Tanjavur in the State of Madhya Pradesh (Chhattisgarh was part of Madhya Pradesh at the relevant time) and Maharashtra. The trial milling of the rice mills was conducted in Madhya Pradesh (in Bagbahera, Akaltara and Belha, which are presently in the State of Chhattisgarh) and similar results were obtained in other States as well. While rejecting the representation, based on the data input as above, with regard to the claim for fixation of different OTR for different paddy varieties grown in the State of Chhattisgarh, it was stated as not acceptable for the reason that thousands of varieties of paddy are grown all across India and that the paddy varieties were broadly classified into two major grades i.e. paddy (common) and paddy Grade 'A'. It was added that the IIFPT was conducting a study in connection with OTR assigned by Food Corporation of India in various States, including Chhattisgarh. It takes a long time for completion, as repeated experiments are to be conducted in different places having different background, climatic conditions, during the different periods of year, adding that the recommendations of the study will be examined and appropriate decision will be taken by the Government of India. It was in the said context that a sentence was added while rejecting the representation sustaining the existing OTR of 67% for raw rice and 68% for par-boiled rice,

that the OTR will be reviewed on acceptance of the final report of the IIFPT on the OTR, based on the study which is being conducted in various States, including the State of Chhattisgarh. The said order has become final and no challenge is raised by the Petitioners in this regard.

9. With the advent of the next marketing season i.e. for 2017-2018, similar course was being pursued with reference to the OTR finally fixed by the Central Government, when the Association of the mill owners approached this Court by filing Writ Petition (C) No. 3016 of 2017 with almost similar pleadings and prayers. The said writ petition was finalised by this Court as per judgment dated 28.11.2017. The final order passed by the Central Government on 28.06.2017 rejecting the representation preferred by the Association (pursuant to the direction in Writ Petition (C) No. 3246 of 2016) and affirming the OTR as 67% for raw rice and 68% for par-boiled rice, was also brought to the notice of the Bench. After hearing both the sides, the said petition was disposed of, as per judgment dated 28.11.2017 in the following terms:

"5. In the aforesaid view of the matter, all that is possible for the Petitioner to wait for the determination of the appropriate OTR for the current year, if it requires modification, on the basis of the report and other inputs that may be available to the Central Government following the final report of IIFPT. Obviously, therefore, in terms of the directions issued for the previous year, the steps for prosecution of any of the members of the Petitioner ought to stand deferred and other directions issued for the previous year as against the State Government will continue to operate for the current year as well. It is so directed."

10. Review Petition No. 8 of 2018 was filed by the State of Chhattisgarh, while the Union of India filed another petition as Review Petition No. 13 of 2018, pointing out that there was 'some error apparent on the fact of record', which required to be rectified. Both the above review petitions were disposed of as per Annexure P/2 common order dated 01.05.2018 clarifying the order to the requisite extent.

11. The learned counsel for the Petitioners submits that the Petitioners were satisfying the requirement of effecting deposit of rice much more than 50%, but still the bank guarantee furnished by them came to be encashed, which made them to approach this Court by filing Writ Petition (C) No. 595 of 2018 and 597 of 2018. The said matters were filed virtually referring to the lethargy on the part of the Respondents in considering the claims of the Petitioners for refund of the bank guarantee wrongly invoked by the Federation. The above writ petitions were disposed of as per common judgment dated 06.03.2018 directing the Respondents to decide their representation within 8 weeks, with liberty to the Petitioners to proceed against the order so to be passed, if it goes detrimental to their rights and interest. The representations preferred by the Petitioners were considered and Annexure P/4 order was passed on 02.07.2018 rejecting their claim. On the next day, Annexure P/5 (memorandum/circular dated 03.07.2018) was issued by the Special Secretary to the Government of Chhattisgarh, Department of Food, Civil Supplies and Consumer Protection, to all

concerned, pointing out the necessity to satisfy the OTR at the rate of 67% for raw-rice and 68% for par-boiled rice.

12. The learned counsel submits that the Petitioners are not in a position to avail the remedy by way of 'Arbitration', by virtue of Annexure P/4 order and P/5 circular and hence, the writ petitions seeking for a direction to release the amount of bank guarantee encashed, along with interest, as aforesaid. The learned counsel submits that the course pursued by the Respondent-Federation is an act of high-handedness and in blatant violation of the specific directions given by this Court as per the judgments dated 04.05.2017 in Writ Petition (C) No. 3246 of 2016 and dated 28.11.2017 in Writ Petition (C) No. 3016 of 2017.

13. Shri Prafull N Bharat, learned counsel for the Respondent-Federation submits that the writ petitions themselves are not maintainable, especially since the matter has become final by virtue of the declaration of the OTR by the Central Government as per order dated 28.06.2017, pursuant to the direction given by this Court in Writ Petition (C) No. 3246 of 2016. Admittedly, the said order has not been challenged and as such, the Petitioners cannot be heard to say anything contrary to the said order passed by the Government. It is also pointed out that, based on the directions given by this Court in Writ Petition No. 595 of 2018 and 597 of 2018, the representation was considered and Annexure P/4 order dated 02.07.2018 was passed, which is also not subjected to challenge in any of these writ petitions. The learned counsel adds that, Annexure P/5 is not a circular, but a

clarification as to the position in the above circumstance, and this proceeding is also not sought to be challenged and no prayer has been raised against the said proceedings in these writ petitions.

14. The learned counsel further points out that in connection with the custom milling, separate agreements were executed between the mill owners and the Federation for the year 2016-2017 and also for 2017-2018, agreeing to the specific terms. As per clause 5.1, the mill owners were bound to maintain OTR at the rate of 67% for raw rice and 68% for par-boiled rice. Under clause 12 of the agreement, the consequences on failure were prescribed, separately mentioning the penalty, the liability to satisfy the interest, and the security deposit to be forfeited (clause 12.3 12.4, 12.7 *etc.*). This being the position, since the lapse on the part of the Petitioners in maintaining the OTR at the rate of 67% for raw-rice and 68% for the par-boiled rice is admitted, the course of action pursued by the Respondent-Federation in encasing the bank guarantee is fully justified as based on the specific terms of the agreement. The learned counsel also points out that the Federation, though was made a party in Writ Petition (C) 3246 of 2016, no notice was ever issued and they were not heard, when the matter was finalised by this Court on 04.05.2017 in respect of the year 2016-2017. Coming to the next year, *i.e.* 2017-2018, the Federation was not even impleaded in the party array in Writ Petition (C) No. 3016 of 2017 and a verdict was obtained behind their back. The direction given by this Court in Writ Petition(C) No. 3246 of 2016 enabling to satisfy the provisional deposit

of rice to be effected by the mill owners till the representation was finally decided by the Central Government, as directed, was given effect to and only after passing the final order by the Central Government on 28.06.2017 (which has become final, having not been challenged by the Petitioners), that the Federation proceeded with further steps to encash the bank guarantee and hence, there is nothing wrong on their part.

15. So as to understand the scope of the review petitions filed by the Union of India and the State Government in respect of the verdict passed in Writ Petition (C) No. 3246 of 2016, we *suo moto* decided to call for the records of the above review petitions and perused the same. The averments made in the said review petitions are virtually in terms of the submissions made during the course of hearing of these matters. It is pointed out in Review Petition No. 13 of 2018 filed by the Union of India {against the verdict passed in Writ Petition (C) No. 3016 of 2017} that the Association of the mill owners had approached this Court by filing MCC No. 566 of 2017 seeking to modify the verdict passed in Writ Petition (C) No. 3246 of 2016. The said case was dismissed in *limine* and the observation made in paragraph 2 of the said order dated 29.08.2017 (produced as Annexure P/3 in Review Petition No. 13 of 2018) is extracted below:

"2. There is no occasion for us in this application for modification, to arrive at a conclusion as to modality in which action ought to have been taken by the competent among the official respondents. If we were to direct that test milling of paddy at the rice mill level in the State of Chhattisgarh have to be carried out to fix the Out Turn Ratio of custom milling rice for the State of Chhattisgarh, we would be contradicting the findings in the judgment sought to be modified, that adjudication of such issue is not within the domain of

the courts. May be, the petitioner could resort to such remedies as should be available against the contents of the decision rendered and communicated along with Annexure A/3. That cannot pave way to any modification of the order issued by this court on 04.05.2017 in the writ petition. Thus, the application for modification fails."

16. After hearing both the sides and on going through the materials on record, we are of the view that the judgment passed by this Court in Writ Petition (C) No. 3246 of 2016 has been given effect to and the members of the Association of mill owners were permitted to effect the deposit of rice at a lesser quantity, than the OTR, till the matter was considered and finalised by the Central Government, pursuant to the direction given therein. The matter was elaborately considered and rejected by the Central Government as per order dated 28.06.2017, a copy of which has been produced as Annexure R-2/1 alongwith the return in Writ Petition (C) No. 2516 of 2018. It was only after passing of the said order, that the bank guarantee furnished by the Petitioners were encashed in respect of the year 2016-2017.

17. On going through the contents of the order dated 28.06.2017 passed by the Central Government, it is seen that meticulous analysis of the facts and figures have been done with reference to the scientific studies conducted by the expert body in various States, including the State of Madhya Pradesh (which consisted of the present State of Chhattisgarh as well) in the operative portion of the order as contained in paragraphs 8, 9 and the concluding paragraph, which are reproduced below:

"8. Regarding fixation of OTR for different paddy varieties grown in the State of Chhattisgarh, the prayer of the petitioner is not acceptable for the reason that thousands of varieties of paddy are

grown all across India. It is virtually impossible for the procuring agencies (Centre/State) to procure and store paddy stock variety-wise and therefore, the paddy varieties are broadly classified into two major grades i.e. Paddy (Common) and Paddy Grade 'A'. As such, variety-wise test milling as prayed for by the petitioner Association is neither practically feasible nor would it serve any useful purpose in the larger public interest. Further, the prevailing OTR has been fixed based on the scientific study conducted on predominant varieties of paddy grown across the country including that from Chhattisgarh.

9. A considerable amount of research work has been done for improving the varieties of paddy and milling technology has also improved over the years. As such, there may not be chances of reduction in OTR. Presently, IIFPT (Indian Institute of Food Processing Technology) is also conducting a study in connection with OTR assigned by FCI in various States including Chhattisgarh. Such studies generally take a long time for completion as repeated experiments are to be conducted at different places having different agro climatic conditions, during different periods of the year. The recommendations of the study will be examined and appropriate decision will be taken by the Government of India.

Now, therefore, the undersigned holds that the contentions raised in the representation of the petitioner Association to challenge the prescribed OTR are factually incorrect and bereft of any merit and therefore, the representation of the petitioner for fixing any OTR lesser than the prevailing OTR of 67% for raw Rice and 68% for parboiled rice is hereby rejected and OTR in vogue would continue to be applicable throughout the country including the State of Chhattisgarh for all varieties of paddy. However, the OTR will be reviewed on receipt and acceptance of final report of IICPT (now IIFPT) on OTR being conducted in various States including Chhattisgarh.

The representation is disposed off accordingly"

18. From the above, it is very clear that the last sentence in the concluding paragraph that *"However, the OTR will be reviewed on receipt and acceptance of final report of IICPT (now IIFPT) on OTR being conducted in various States including Chhattisgarh"* is only with regard to the future course of action based on the study report to be submitted by the IIFPT and it

is not having any effect so far as the existing rate of OTR is concerned. Insofar as the OTR stands intact, as declared by the Central Government, it has to be satisfied till it is varied. A future possible chance to get it varied will not give a cause of action to the Petitioners in relation to their liability for the years 2016-2017 and 2017-2018. This is more so, by virtue of the specific terms agreed by them as per the agreements executed in this regard, with regard to which, there is no challenge. If at all the Petitioners have got a case that the judgment in Writ Petition (C) No. 3016 of 2017 has intended to extend the benefit in exactly similar terms as given in respect of the previous year 2016-2017 covered by Writ Petition (C) No. 3246 of 2016 and that the Respondent-Federation had violated the said direction in encashing the bank guarantee for the year 2017-2018, the remedy of the Petitioners was something else. Admittedly, they have not filed any proceedings under the Contempt of Court Act in respect of the alleged violation. Even otherwise, no such proceeding would actually lie against the Respondent-Federation insofar as the Federation was never made a party to Writ Petition (C) No. 3016 of 2017 wherein the judgment dated 28.11.2017 was passed. When the Federation was a party to the earlier round of proceedings filed by the Association of the mill owners i.e. Writ Petition (C) No. 3246 of 2016, what made the Petitioners to take a conscious decision to delete/exclude the Federation from the party array when they filed Writ Petition (C) No. 3016 of 2017, is not known. In any view of the matter, we do not find any tenable ground to sustain the prayers sought for, nor is there any failure, omission or

excess on the part of the Respondent-Federation in connection with the alleged cause of action.

19. There is absolutely no merit in the writ petitions. They are dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE