

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Arb P No.01/2018

M/S Rab Flour Mills

...Appellant(s)/Petitioner(s)

Through: Ms. Tabasum Zaffar Jalali, Advocate

Vs.

State of J&K and others

...Respondent(s)

Through: Mr. Mubashir Majid Malik, Dy. AG

CORAM:

HON'BLE THE CHIEF JUSTICE

O R D E R

12-05-2023

01. Heard Ms. Tabasum Zaffar, learned counsel for the petitioner as also Mr. Mubashir Ahmad, learned Dy. AG, appearing for the respondents.
02. The instant petition has been filed by the petitioner under Section 11(6) of Jammu and Kashmir Arbitration and Conciliation Act, 1996 (for short, the Act') seeking appointment of an independent arbitrator to resolve the dispute which has arisen between the parties named as "J&K State through Director, Consumer Affairs and Public Distribution Kashmir" and "M/s Rab Roller Flour Mill, Chadura, District Budgam". An agreement was entered between the petitioner and respondent for grinding of TPDS wheat into Whole Meal Atta. In the said agreement there is an arbitration clause under para 27 which reads as follows:-

"If at any time any doubt, question or difference as may be arise in connection with or in relation to this contract/agreement, either party may give to other, seven days prior notice for the existence of such doubt, dispute,

question or the difference and same shall be dealt under the provisions of the J&K Arbitration Act”.

03. It is the case of the petitioner that certain TPDS grains were stored in the mill owned by the petitioner for grinding in connection with which an agreement was signed between the petitioner and the respondents, containing the aforesaid arbitration clause. It has been submitted that due to the unfortunate incident of floods in the year 2014, the petitioner distributed some of the food stocks to the needy persons without any intention of defrauding the Government and petitioner did admit the liability to pay the Government for the shortage of the PDS grains. The said shortage was examined by a committee constituted by the Government as can be seen from the order dated 25-01-2017 passed by the Joint Director Administration, Food, Civil Supplies & CA Kashmir, and the Committee held that there was a shortage of food stocks mentioned therein and for which the Government worked out the value of the shortage to be of Rs.16,48,472/= (Rupees Sixteen lacs forty-eight thousand four hundred and seventy-two only) which was required to be paid by the petitioner. According to the petitioner, the said amount was duly paid to the Government. However, the authorities subsequently made a demand notice stating that the revised value of shortage as per OMSS rate was Rs.45,55,474.00 (Rupees Forty-Five Lacs Fifty-Five Thousand and Four Hundred Seventy-Four only) which was required to be paid by the petitioner, as communicated to the petitioner vide letter dated 07-03-2017 by the Joint Director Administration,

Consumer Affairs & PD Department Kashmir which has been disputed by the petitioner.

04. The petitioner contends that the matter had already been examined earlier by the State which quantified the loss at Rs.16,48,472/= (Rupees Sixteen Lacs Forty-Eight Thousand Four Hundred Seventy-Two only) which was duly admitted by the petitioner and accordingly, paid the aforesaid quantified amount. Thereafter, the State authorities could not have made a U-turn and make a fresh demand which is the subject matter of dispute with the respondent-authorities.
05. The existence of arbitration clause in the agreement is not disputed. However, it has been contended by the learned counsel for the respondents that since this matter involves fraud and criminal act, it would be beyond the jurisdiction of the arbitration and as such, the present petition may not be entertained. It was submitted that the petitioner had fraudulently disposed of the TPDS wheat thus causing loss to the Government.
06. Learned counsel for the petitioner, however, submits that the question of fraud does not arise, inasmuch as, the matter was looked into by a committee constituted by the authority which found certain shortcomings in the action of petitioner because of which the petitioner was initially saddled with liability of Rs.16,48,472/= (Rupees Sixteen lacs forty eight thousand four hundred and seventy two only) on account of shortages of PDS Wheat, Whole Meal Atta and Empty Bags, which was stored in the mill of the petitioner for grinding purpose.

07. This Court has examined the aforesaid arbitration clause i.e., Para 27 of the agreement, executed between the petitioner and respondents. I have also noted that the dispute which has arisen is about the liability of the petitioner to pay for the loss of grain which was reassessed by the Government as per OMSS rate which has been disputed by the petitioner.
08. I have not noticed any element of fraud which is required to be examined by the arbitrator. In fact, the Government considering the shortage of TPDS wheat, which was distributed by the petitioner to the needy people during the floods of 2014 as claimed by the petitioner, caused an enquiry by a Committee and the Committee after making necessary enquiry and assessment quantified the loss to the tune of Rs. 16,48,4721/- which was paid by the petitioner. Nothing has been brought to our notice by the respondents that the petitioner had engaged in any fraudulent act. On the other hand, the petitioner had owned up his liability and paid the Government the amount determined by the Committee. It was only when the Government made a reassessment and enhanced the value of the loss/shortage of wheat, that the petitioner objected leading to a dispute. It is not that the petitioner was found to have engaged in any fraudulent act by the Government.
09. Since the petitioner's request for referring the matter for arbitration has not been considered by the authorities, the petitioner has been compelled to approach this Court for appointment of an arbitrator to settle the above dispute. I am satisfied that the petitioner has been able to make out a case for appointment of an arbitrator at

the instance of the Court under Section 11 of the Arbitration and Conciliation Act. Accordingly, this Court proceeds to appoint Mr. Rashid Ali Dar, retired Judge of the High Court of J&K and Ladakh, as the sole arbitrator, who shall proceed in the matter in accordance with the provisions of the Arbitration and Conciliation Act, after affording an opportunity of hearing to both the parties, who are at liberty to raise all the preliminary objections before the arbitrator. The arbitrator shall, thereafter, make an award within the time provided in the Act after charging the prescribed fee along with incidental expenses to be shared by the parties.

10. Registry to inform the above said officer and the parties about the appointment of the arbitrator in this matter.
11. Arbitration petition stands *closed*.

(N. KOTISWAR SINGH)
CHIEF JUSTICE

SRINAGAR
12-05-2023
Shameem H.