

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

201

Date of decision: 31.01.2024

(1) CWP-2219-2013 (O&M)

M/S PARVATI INDUSTRIES AND OTHERS Petitioners

VERSUS

UNION OF INDIA AND OTHERS Respondents

(2) CWP-21758-2013

M/S ANKIT COTTON COMPANY Petitioner

VERSUS

STATE OF PUNJAB & OTHERS Respondents

(3) CWP-28238-2013

M/S FRIENDS RICE MILLS RAMPURAPHUL Petitioner

VERSUS

FOOD CORPORATION OF INDIA & ORS Respondents

(4) CWP-28309-2013

M/S SINGLA RICE MILL Petitioner

VERSUS

FOOD CORPORATION OF INDIA & ORS Respondents

(5)

CWP-28354-2013

M/S SHREE BALAJI RICE MILL

.....Petitioner

VERSUS

FOOD CORPORATION OF INDIA & ORS

.....Respondents

(6)

CWP-21108-2014 (O &M)

RANGI RAM RICE MILL & OTHERS

.....Petitioners

VERSUS

UNION OF INDIA & OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Dr. Surya Prakash, Advocate with
Ms. Sukhvir Gill, Advocate
Mr. Jaskirat Singh, Advocate
for the petitioner in CWP-2219-2013.

Mr. Rahul Garg, Advocate
for the petitioner in CWP-21758-2013.

Mr. P.S. Rana, Advocate for the petitioners
in CWP-28238-2013, CWP-28309-2013 and
CWP-28354-2013.

Mr. D.D. Bansal, Advocate
For the petitioner in CWP-21108-2014 (O &M).

Ms. Lavanya Paul, DAG, Punjab.

Mr. M.S. Virk, Advocate
for respondent No.4 in CWP-21108-2014.

Mr. K.K. Gupta, Advocate
for the respondent-FCI.

Mr. S.S. Bedi, Advocate

for respondent No.8 in CWP-2219-2013
and for respondent No.2 in CWP-21758-2013.

Mr. Aman Sharma, Advocate for
Mr. Anil Sharma, Advocate
for respondent No.6-PUNSUP in CWP-2219-2013.

VINOD S. BHARDWAJ, J. (Oral)

CM-16072-CWP-2021 in CWP-2219-2013

The present application has been filed for impleading applicant No. 1-M/s Jagdambe Rice Mills, Budhlada through his proprietor Gulshan Kumar and applicant No.2-M/s Kabir Rice & General Mills through S.P.A. Sh. Sandeep Kumar, resident of House No.39, Royal City, Bus Stand Road, Budhlada, Mansa as party petitioners No.23 and 24 respectively.

For the reasons mentioned in the application, the same is allowed and applicant No. 1-M/s Jagdambe Rice Mills, Budhlada through its proprietor Gulshan Kumar and applicant No.2-M/s Kabir Rice & General Mills through S.P.A. Sh. Sandeep Kumar, resident of House No.39, Royal City, Bus Stand Road, Budhlada, Mansa are impleaded as party petitioners respectively.

Amended Memo of parties is taken on record.

MAIN CASES

1. A batch of 06 writ petitions involving common issues is being decided by a common order. For the facility of reference, facts are being extracted from *CWP-28238 of 2013* titled "*M/s Friends Rice Mills Rampuraphul versus Food Corporation of India and others*".

2. Challenge in the said writ petition is to the recovery of Rs.4,54,895/-, pursuant to the demand notice dated 05.12.2007 by the

respondents on account of short delivery, alleging that the same was illegal, arbitrary and against law and in violation of principle of natural justice.

3. Learned counsel appearing on behalf of the petitioner(s) contend that the petitioner(s) Rice Mills is a partnership firm and that respondent No.1-Food Corporation of India had engaged the State Procurement Agencies, for custom milling of paddy for the Crop Year 2004-05, as per Clause 10 of the Punjab Rice Procurement (Levy Control) Order, 1983. The petitioner(s) Rice Mills agreed to carry out the milling and an agreement was executed between the petitioner and the respondent-State Procurement Agency containing terms and conditions for milling of the paddy obtained and the rice required to be supplied post milling. He contends that the petitioner Rice Mills had delivered the rice to respondent-State Procurement Agency strictly as per the guidelines/instruction for acceptance of rice, issued by the Food Corporation of India. Certain payments were also received by the petitioner, however, a demand notice dated 05.12.2007 was later served upon the petitioner alleging that during the Kharif Marketing Season 2004-05, the petitioner had delivered rice 'Beyond Rejection Limit (BRL) and that the loss assessment statement reflected the damage to the tune of Rs. 75,450/- for the 600 MT of stock rice delivered. It is argued that the demand notice wrongly alleged that the petitioner intentionally delivered sub-standard stocks in collusion and in connivance with the officials as well as in breach of the mandatory specifications prescribed by the Food Corporation of India against delivering sub-standard rice. It is further submitted that the above said amount was not recoverable since the respondent-State Procurement Agency, while responding to the above said notice of the Food Corporation of India,

adopted a specific stand to the effect that the milled rice delivered by the petitioner was strictly in accordance with the guidelines/instructions issued by the Food Corporation of India and that due inspection, sampling and analysis procedure had been followed before delivery thereof to the Food Corporation of India. He further places reliance on the specific counter allegation leveled by the respondent-State Procurement Agency in Para 6 of its response, bearing Memo No.A-15-2013/6140 dated 22.05.2013, extracted below:-

“6. Keeping in view the above quoted instructions of Higher Offices of FCI, it is quite clear that FCI quality and depot staff are totally responsible for acceptance of rice and state procurement agencies are in no way responsible for acceptance. If FCI officials have failed in their responsibility by accepting BRL stocks of rice, they are to make good the loss suffered by FCI. Since state agencies are in no way involved/responsible for acceptance of rice, the deduction of money from the account of state agency is highly improper and unreasonable. The losses to FCI occurred in 2004-05 and now deducting money after 8-9 year is totally wrong and unreasonable.”

4. It is argued that the specific stand of the PUNGRAIN against the respondent-FCI was not only that the delivery of the milled rice was as per the prescribed standards but also that the quality of the milled rice may have turned ‘Beyond Rejection Limit’ on account of improper storage and transportation at the ends of the respondent-Food Corporation of India itself.

5. Relying on the above, he contends that the respondent-PUNGRAIN, while acknowledging that the petitioner mill was not in default in supplying of the relevant material, yet, a deduction had been made from the dues payable to the petitioner without affording any opportunity. The

said deduction was thus improper and the dispute, if any, was amongst the State Agency and the Food Corporation of India.

6. Learned counsel appearing on behalf of the respondent-Food Corporation of India however contends that the present writ petitions deserve a dismissal firstly on account of delay and laches considering that the notice impugned in the present writ petition is 05.12.2007 and the writ petition raising a challenge to the same has been filed on 25.03.2013 i.e. after a period of nearly 06 years. It is secondly contended that the respondent-Food Corporation of India had entered into a separate Agreement of Milling with the State Agency (PUNGRAIN in the above said case) and that the said State instrumentality has not been impleaded as party. Be that as it may, the paddy was delivered by the respondent-Food Corporation of India to the State Agency for milling thereof and upon delivery of milled rice, the same was found to be beyond rejection limits. The consolidated miller wise losses was arrived through the loss assessment statements (LAS) sent by the Consignee and loss on account of the BRL rice sent by the petitioner was found to be Rs. 4,54,895/-. The detail of the computation of the said loss has also been attached as Annexure R-1/2. Since the delivery of rice was by the State Agency, hence, a notice was sent by the Food Corporation of India to the State Agency for making good of the said loss within a period of 30 days failing which the recovery was to be effected against the State Agency.

7. Without raising any challenge to the computation of the loss of Rice supplied to the respondent-FCI by to the respondent-State Agency and taking recourse to the remedies provided under the agreement executed between the FCI and the State Agency, the State procurement agencies

deposited the loss amount as assessed. Hence, they acknowledged the consolidated loss assessment statements submitted by the respondent-FCI and made good the loss. He further argues that there was no contractual relationship between the Food Corporation of India and the Miller and that if there is any dispute *inter se* between the Miller and the State agency, the Food Corporation of India cannot be prosecuted. It is contended that even though a copy of the notice impugned herein was sent to the petitioner-miller, however, no recovery has been effected by the FCI from the Miller and as a matter of fact, no payment was disbursed or was liable to be disbursed from the FCI to the said miller. He also places reliance on certain precedents/judgments passed by this Court. The same shall be referred to in the later part of the judgment.

8. Learned State Counsel refers to the reply of the District Food and Supplies Controller, Bathinda, who was also the District Manager of PUNGRAIN, at the relevant point of time. It is, however, not disputed that the PUNGRAIN being a separate juristic entity has not been impleaded as a party in the present case. However, in the said response, it has been averred that the loss had been deducted from the petitioners in terms of Clause 11 (E) of the Milling policy, as per which the Miller is liable for the quality cuts on rice, if any. She further refers to the terms of the agreement executed between the State Agency as well as the Clause 23 of Rice Procurement Policy which mandates that in the event of any dispute or difference arising out of or in any manner touching or concerning the agreement, the same shall be decided by way of an arbitration. The relevant Clause thereof reads thus:

“23. All the disputes and difference arising out of or in any manner touching or concerning this agreement whatsoever (except as to any matter the decision of which is expressly provided for the contract) shall be referred to the sole arbitrator of the Director/Managing Director or any person appointed by him in this behalf. Then will be no objection to any such appointment that the person appointed is or was an employee of Food and Supplies Department, Punjab/Agency or that he had to do with the matter to which the contract relates and that in the court of his duties such employee of the Food and Supplies Department, Punjab/Agency had expressed view on all or any of the matter in dispute or difference. The award of such arbitration shall be final and binding on the parties to this contract. It is a term of this contract that the event of the arbitrator being transferred or vacating his office or being unable to act for any reason, the Director/Managing Director at the time of such vacation of office, death or inability shall appoint another person to act as arbitrator. Such a person shall be entitled to proceed with reference from and the stage who was left by his predecessor.

Provided further that any demand for arbitration in respect of claim(s) of the miller, under the contract shall be in writing and made within year of the date of completion or expiry of the period of contract, if the demand not made within the period, the claim(s) of the miller shall be deemed to have waived off and released of all liabilities under the contract in respect of these claims.

The cost for and in connection with the arbitration shall be the discretion of the arbitrator who may make suitable provisions for the same in his award. Subject to as aforesaid, the Arbitration & Reconciliation

Act, 1996 shall apply to the arbitration provided under this clause.”

9. Counsel for the respondent-State points out that defence of the State had been struck off in CWP-28238 of 2013, CWP-28309-2013 and CWP-28354-2013. She contends that at the relevant point of time, since the matter was taken up in a bunch, it could not be pointed out that the State had actually not been impleaded as a party in the said cases and that written statement on behalf of respondent No.2 i.e. the District Food and Supplies Controller had already been filed. She further contends that the stand of the respondent-State in the other two writ petitions i.e. CWP-28309-2013 and CWP-28354-2013 would however remain the same. She tenders an unqualified apology for failure to point out the said aspect on an earlier date. The explanation is accepted and the documents filed alongwith the response in CWP-28238 of 2013 are also read in the connected writ petitions.

10. Counsel for the petitioner submits in rebuttal that the respondent-State Procurement Agency (PUNGRAIN) did not pass any separate order for effecting recovery and instead went ahead with effecting the deduction by invoking Clause 11 (e) of the Agreement. He thus contends that the recovery was illegal and without following Principles of Natural Justice and ignoring their own response to the FCI viz-a-viz. the quality of rice supplied.

11. No other argument has been raised by any other party.

12. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents available on record. The following uncontroverted facts emerge from a perusal of the documents and pleadings as above.

- i) That the Food Corporation of India had entered into an agreement with the State Procurement Agency/Milling Agency for supply of custom milled rice and to ensure that the delivery is made strictly in accordance with the specifications and guidelines/instructions issued by the Food Corporation of India;
- ii) That the State Procurement Agency (PUNGRAIN) entered into a separate agreement with the petitioner Miller for custom Milling of the said rice, at mutually agreed terms and conditions.
- iii) That there was no privity of contract so far as respondent Food Corporation of India and the petitioner is concerned;
- iv) That the intimation with respect to the delivery being beyond rejection limit was sent by the Food Corporation of India to the State Enforcement Agency alongwith the requisite calculation sheets (LAS and the computation).
- v) The above said communication and the loss assessment statement or its computation conveyed by the Food Corporation of India, even though responded to by the State Enforcement Agency, however, it opted not to impugn or challenge the above said communication in any manner agreed upon between the parties. The State Agency infact deposited the amount as demanded by the Food Corporation of India in terms of the loss assessment statement as communicated. The State Agency thus chose not to pursue any statutory/contractual remedy against the said demand and acknowledged its liability by depositing the same.
- vi) That a notice was sent by the respondent-State Enforcement Agency to the petitioner on 14.06.2013 about effecting recovery.

vii) That as per Clause 11 (e), incorporated in the agreement executed between the State Agency as well as Miller as per which a deduction could be made on the basis of a cut made. There is also an arbitration clause as per the agreement executed between the petitioner and the State Agency which has already been extracted above.

viii) It is also noticed that the Food Corporation of India did not effect any recovery from the petitioner.

13. In the above background, it is also noticed that similar issue was also a subject matter of challenge in ***CWP-24511-2016*** titled as ***“M/s Hari Chand Sadhu Ram versus Food Corporation of India and others”*** alongwith a bunch of writ petition that were decided by a common judgment dated ***03.02.2023***. Similar deduction were made from the said millers as well w.r.t the crop year 2004-05. The High Court upheld the decision to the extent of effecting recovery and interfered with only w.r.t the issue of black listing.

14. Further, this issue was also dealt with in the matter of ***“M/s Jagtar Singh Prabh Dayal versus State of Punjab and others”*** in ***CWP-19835-2005*** decided on ***20.11.2006*** wherein this Court observed as under:-

“A reading of this Clause, therefore, reveals that the acceptance note, weight check memo(s) etc. only prove that the quantity of rice required to be supplied by the rice millers has been supplied. It does not deal with the quality of the rice supplied. Even if the acceptance note, weight check memo(s) and other documents were obtained by the petitioners from the officials/officers of the FCI, that does not prove if the rice supplied by the petitioners conform to the specifications laid down by the respondent-State. It only shows that the rice of the

required quantity has been supplied by the rice millers to the State Agencies.

Even otherwise, it does not appear to be logical or reasonable to plead if the officers/officials of the FCI could have checked the quality of rice in thousands of bags which was received by them at a particular point of time and at a particular place. They were only to accept the quantity and store the rice in the prescribed godown. The quality of the rice could be checked only thereafter, not at the time of delivery.

No provision of the statutory law or of the Rule or of the regulation was brought to the notice of this Court by the learned Counsel for the petitioners, in support of the submission that after the petitioners had supplied the rice at the appointed place, their responsibility had ceased to exist, even about the quality of rice supplied. On the other hand, the Rules have been reproduced above, which points out that joint inspection of the supplied rice has to be carried out to check its quality.

It may also be noticed that the petitioners have not placed on the file any acceptance notice, allegedly furnished to them by the officers/officials of the FCI, specifying that the rice supplied by the petitioners to the officers/officials of the FCI conformed to the specifications laid down under the Rules. Therefore, it appears that the petitioners are raising this submission in the air and patting its own back by pleading that after the acceptance notice was issued by the officers/officials of the FCI to the petitioners, their responsibility about the quality of rice supplied by them to the FCI had ceased to exist.

The respondent-FCI has taken the plea that the rice supplied by the petitioners was subject to the mandatory inspection by the senior officers of the answering respondent-Corporation within one month of its initial delivery. It means, therefore, that the responsibility of the petitioners to ensure that the rice supplied by them conformed to the specifications, was

not over, merely, when they received the acceptance note from the officials/officers of the FCI.”

15. The right of Food Corporation of India to effect recovery in a case of BRL Rice is thus affirmed and well recognized.

16. The issue which now comes up for consideration is as to whether the recovery is in violation of Principles of Natural Justice or not.

17. Undisputedly, the reply on behalf of Food Corporation of India was filed in the year 2013 wherein following submissions and objection had been raised.:-

2. That the present writ petition is also liable to be dismissed on account of concealment/ withholding of the material facts from this Hon'ble Court. On the basis of the custom milling agreements as entered between the petitioners and the respondent No.'s 5 to 8, the petitioners have delivered custom milled rice/levy rice during November 2004-March 2005 in the central pool on behalf of the procuring agencies. The rice delivered by the petitioners was dispatched to various destinations during March, April, May and June 2005, which invited quality complaints from the destinations due to rice being of sub-standard quality (Copy of compiled statement prepared on the basis of destination quality complaint relating to the stocks delivered by the petitioners is enclosed as AnnexureR-4/1). Accordingly, the concerned consignee submitted final LAS after the disposal of the said sub-standard rice. Each stack from which stock was dispatched comprised of 3200 bags. On the basis of quality complaint, the balance rice stocks lying at FCI FSD Budhlada centre relating to some of the petitioners was also checked by District level Squad headed by Sh. Shubranshu, the then District Manager FCI Bathinda on 11.04.2005 and 01.06.2005. During inspection it was observed that the rice stocks delivered by the petitioners lying at FSD Budhlada was found Beyond Rejection Limits (BRL) in respect

of Foreign Matter, Damage, Discoloured, and Dehusked refractions (Copy of report is annexed as Annexure R-4/2). The subject quantities of rice stocks which was found sub standard was replaced by the concerned petitioners to whom the said stocks belonged, which clearly establish that the rice KMS 2004- 05 delivered was sub-standard (Copy annexed as Annexure R-4/3). That Prima-facie connivance of the officials of the Food Corporation of India with petitioners was also found and all the concerned officials have also been proceeded against for disciplinary proceeding as provided under FCI Regulation (Staff) 1971 (Copies of penalty orders annexed as Annexure R-4/4).

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*4. That a similar controversy regarding recovery of losses against the defaulting millers came up for consideration was settled by this Hon'ble Court in **CWP No. 4231 of 2009 titled as M/s Mahesh Rice Mill and others versus State of Punjab and others** vide judgement dated 14.10.2009 with the following observations:-*

"After hearing counsel for the parties, the present writ petition is disposed of by observing that in case millers deposit the default amount along with penal interest, as prescribed in Clause 6((g) (vii) reproduced above, the authorities who are vested with absolute discretion, may consider claim of the petitioners for allotment of work in future. It is clarified that default amount along with penal interest is to be deposited to the satisfaction of the FCI. The petitioners may approach the FCI for making the payment of the amount due, in case such a request is made, the FCI shall communicate to the petitioners, the amount which petitioners are liable to pay within two weeks.

(KANWALJIT SINGH AHLUWALIA)

October 14, 2009. JUDGE

Copy of judgment dated 14.10.2009 is also attached as Annexure R-4/5.

5. That the rice delivered by the petitioners during KMS 2004-05 was found BRL by different destinations across the country as on dispatch of stocks rice including those of petitioners invited quality complaints various destinations. The the from Consolidated Petitioner wise losses relating to destination complaints relating to rice stocks of the petitioners as arrived from Loss Assessment Statements sent by the consignee is annexed as Annexure R-4/6 Colly. The quantity under complaint and Monetary value of LAS is as under:-

S.No.	Qty. under Quality complaints	Monetary value of LAS
1.	17542MT	Rs.5,43,98,856/-

6. That the petitioners were served with notices dated 26.12.2007 to 07.01.2008 (Annexure R-4/7 Colly), asking the petitioners therein that on the basis of dispatch of rice stocks pertaining to their mills, the rice so dispatched has invited quality complaint/LAS worth Rs.5,43,98,856/- from the destinations. But the petitioner did not submit any reply to these notices. Therefore, the plea of petitioners that recovery notices have been served upon them after 8 years of the delivery of sub standard rice is not only false rather misconceived and the writ petition is liable to be dismissed on this score alone.”

MERITS

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3. *That the contents of this para as regards issuance of guidelines dated 28.09.2004 regarding inspections, sampling, analysis for Kharif 2004-05 is not disputed. However, the petitioners in connivance with the officials of FCI managed to deliver sub standard/ BRL rice during KMS 2004-05. Hence, the petitioners cannot derive any advantage from the guidelines annexed as Annexure P-4. Moreover this Hon'ble Court had settled the issue that mere issuance of "Acceptance Note" by T A does not amount to delivering of rice as per specification.*

4. *That the contents of this para are wrong, hence denied. delivered by It is wrong that the rice the petitioner was as per specifications laid down by the FCI. It is true that the rice procured by FCI through agency is checked by different levels by the FCI, but in the case in hand petitioner have connived with the officials of FCI and managed to push such sub-standard rice. However, after the receipt of large scale destination quality complaints against rice dispatched during KMS 2004-2005, it was established that during KMS 2004-05 large scale BRL rice stocks were delivered by the petitioner/ Millers in connivance with the FCI officials and on the receipts of various complaints, the technical staff and Supervisory officers who were responsible to accept such rice, disciplinary proceedings were initiated against such officials under major penalties, as provided under FCI staff regulations 1971. The petitioners are estopped to challenge the action of recovery at this state.*

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6 to 8. *That the contents of these para's are wrong. It is submitted that DFSC, Punsup, Markfed and PSWC agencies were allotted to the petitioners for the KMS 2004-2005. It is matter of record that petitioners have stored Paddy of these agencies and delivered resultant rice to F.C.I. on behalf of these agencies. The rice was dispatched to various destinations which invited quality complaints and stocks were detected as*

BRL. It is further submitted that the petitioners procured the quality certificates and weight check memos and certificates of acceptance of Rice in connivance with the officials of the Corporation which was found beyond rejection limits during subsequent inspections by officers of the Corporation at various destinations. Therefore it does not mean that the petitioners supplied the rice as per specifications laid down in custom milling policy. Moreover as per custom milling policy, the miller is required to deliver the rice as per the laid down specifications. Merely, because 'A Note' has been issued to a miller it does not mean that the stock delivered by a miller is as per specification, particularly when such "A Note" has been managed by a miller in-connivance with the official of the corporation. Thus, it does not deal with the quality of rice supplied even if the acceptance notes, weight check memos and other documents procured by the petitioners from the officials of the F.C.I. have been issued. The petitioners succeeded in delivering BPFA/sub standard/ BRL rice in connivance with the officials of the corporation. Therefore, the petitioners cannot take any advantage of issuance of "Acceptance Note". For having delivered substandard rice in connivance with such officials, the respondent corporation has proceeded against such officials, and they have either been removed from service or were proceeded against under major penalties as provided under Food Corporation of India (Staff) Regulations, 1971. Therefore, the petitioners cannot derive any benefit of such collusion. Moreover, Hon'ble Punjab & Haryana High, Chandigarh, Court while deciding CWP 19835 of 2005 titled as M/S Jagtar Singh Prabh Dyal and others versus State of Punjab and others has settled this controversy and it has been held that mere issuance of "Acceptance Note", weight check memos etc. cannot absolve the miller from its liabilities. Therefore, the present writ petition is liable to be dismissed on this score as well. The petitioners were required to mill and deliver resultant rice on behalf of the agencies i.e. respondent No.'s 5 to 8 and

the payment on account of milling charges have been made to the petitioners by the said procuring agencies. It is however totally wrong that the petitioners delivered Rice as per specifications. The petitioners were issued notices informing delivery of substandard quality of rice, but the petitioners did not opt to submit any reply to such notices. Thus, the non submission of reply by the petitioners leads to the conclusions that the petitioners have not disputed the factum of substandard delivery of rice.”

18. Hence, entire details as regards connivance, communication and action taken against conniving officers of the Food Corporation of India was brought on record. The petitioner never chose to file a replication or dispute the averments by any cogent evidence. The computation of loss thus remained undisputed. The entire emphasis was solely on the response sent by the State Procurement Agency to the Food Corporation of India.

19. Such self serving statement which is also alleged to be an outcome of unholy nexus and connivance of the interested parties cannot be taken at its face value. A mere self serving assertion of violation of Principles of Natural Justice cannot thus be given undue weightage more-so, when petitioner has not been able to dispel that the demand would not be valid or sustainable if an opportunity would have been granted. The petitioner having failed to reflect any prejudice, the proceedings ought not to be re-opened for a mere technical compliance of the Principles of Natural Justice. There is a need to establish a valid defence and circumstance which satisfies the conscience of the Court that an order to the prejudice may not have been the same if an opportunity of hearing had been granted. The petitioner having chosen not to rebut the factual claims made by Food

Corporation of India would be precluded at the stage of final arguments to impugn the factual claim.

20. Even otherwise it is not in dispute that the issue which now arises at the behest of the petitioner is as to whether the demand had been validly computed or not and as to whether the assessment undertaken by the Food Corporation of India was in accordance with law, more so when the respondent-State Agency had itself submitted a letter to the Food Corporation of India averring that the supply of the milled rice was as per the specifications, would involve issues of fact. An arbitration agreement having already been executed between the parties, there is no reason why the petitioners should not take recourse to the remedies that may be available, if any, as per law and contract already executed between the parties and seek refund alongwith interest, if so entitled too.

21. This Court, however at this juncture is not entering into the area as regards the delay on the part of the petitioner in approaching this Court. The amount has undisputedly already been recovered, insofar as the respondent-FCI is concerned.

22. The present writ petitions are accordingly disposed of at this stage by holding that the present writ petition at the behest of the petitioner against the respondent-FCI was not maintainable, for want of any evidence to rebut its claim and contractual arrangement and considering that the contractual State Agency has not raised any challenge to the amount and deposited the same with the respondent-FCI. The petitioner may, if so advised, take recourse to its remedies as per the contract, in view of the Arbitration clause, if available. The period during which the matter has

remained pending before this Court shall be taken into consideration while computing limitation.

23. All the pending miscellaneous application(s), if any, are also disposed of.

JANUARY 31, 2024
Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No