

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CM No.16126 of 2015 in/&
CWP No.24962 of 2015(O&M)
Decided on: 14.12.2015

M/s Ananditta Rice Mills

.... Petitioner

vs.

Food Corporation of India & ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Mukand Gupta, Advocate
for the petitioner.

G.S.Sandhawalia, J.Oral

CM No.16126 of 2015

The application for placing on written statement (Annexure P-5) filed by the petitioner before the Arbitrator is taken on record subject to all just exceptions.

CM stands disposed of.

CWP No.24962 of 2015

The petitioner challenges the appointment of the arbitrator – respondent No.5 by respondent No.3 vide order dated 10.07.2014 (Annexure P-2). The appointment was as per terms of Clause 26 of the milling agreement dated 20.10.2009, which was entered into by respondent-Corporation and the petitioner for the crop year 2009-10.

The argument of the petitioner counsel is that the said agreement stood duly satisfied and a no objection certificate (NOC) was also issued for the said crop year. Even for the subsequent crop year paddy was allotted to the petitioner miller. There was no dispute regarding the said crop year. However, on account of some dues being raised by the Food Corporation of India vide letter dated 16.08.2010 (Annexure P-4), the appointment of the Arbitrator has been done at a belated stage. It is accordingly, contended that there is no dispute arising out of the said agreement as the same stands concluded as per the terms of the agreement. Reliance is placed upon the judgment of Apex Court in ***Union of India and Ors. vs. Hari Singh, 2010 (15) SCC 201*** to contend that there was no dispute regarding the agreement in question, which duly stood executed.

Perusal of the paper book, however, would not go to show that after the appointment of the arbitrator, a claim petition dated 10.12.2014 (Annexure P-3) was also filed before the arbitrator wherein a sum of Rs.43,90,110/- plus interest is claimed from the petitioner. It is not disputed that the petitioner had already appeared before the Arbitrator and filed written statement dated 22.01.2015 (Annexure P-5). A period of almost one year has expired since the proceedings before the arbitrator are pending. The petitioner miller at this point of time is now prima facie estopped to challenge the appointment having filed its reply. Even otherwise, the Court is of the opinion that the issue as to whether the agreement stood concluded

and duly satisfied will also have to be adjudicated upon and the same is already a subject matter before the arbitrator, who will have the benefit of all the evidence and documents available with him. Section 16 of the Arbitration and Conciliation Act, 1996 also provides that the arbitral tribunal can rule on its own jurisdiction.

In such circumstances, this Court is of the opinion that the challenge to the preliminary issue is not appropriate at this point of time. The same issue can be agitated before arbitrator itself and therefore, this Court would be loath to exercise its jurisdiction under Section 226.

Reference to ***M/s Gopal Rice Mills vs. Union of India and ors., 2011(4) PLR 753*** would also be without any basis since in the said case, there was a demand by the FCI upon the miller that the rice was of substandard quality. This Court came to the conclusion that the notices suffered from the principles of natural justice and a unilateral decision had been taken without involving the millers in the inspection on the basis of which, a demand had been raised and they had been blacklisted. Accordingly, the said demand was quashed.

The facts in the present case, are different. As per the facts of the case, the appointment of arbitrator is under the arbitration agreement, which of course, is being contested by the petitioner, which is a issue to be decided by the arbitrator at the initial stage.

Accordingly, the writ petition stands disposed of being premature at this stage.

14.12.2015
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(G.S. SANDHAWALIA)
JUDGE