

**IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF
PUNJAB AND HARYANA, AT CHANDIGARH**

Letters Patent Appeal No. 1195 of 2015

Date of Decision: August 17, 2015

Julka Foods and others

---Appellants

Versus

Union of India and others

---Respondents

CORAM: **Hon'ble Mr. Justice Satish Kumar Mittal**

Hon'ble Mr. Justice Mahavir S. Chauhan

Present: Shri Vikram Chaudhari, Senior Advocate, with Ms. Isha Goel,
Advocate, for the appellants.

1. *Whether Reporters of local papers may be allowed to see the judgment? Yes/No*
2. *To be referred to the Reporter or not? Yes/No*
3. *Whether the judgment should be reported in the Digest? Yes/No*

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Mahavir S. Chauhan, J.

The appellants, who are rice millers and are engaged in the milling of paddy allotted to them by the various State agencies in accordance with the Punjab Rice Procurement (Levy) Order, 1983 (here-in-after referred to as the '1983 Order') brought Civil Writ Petition No. 9323 of 2013 with a prayer that in the light of the peculiar situation prevalent a holistic view has to be taken to comply with the terms of the Custom Milling Policy for Kharif Marketing Season 2011-12 (for short the 'Milling Policy-2011-12') and the agreements executed between the parties be

harmoniously construed to attain the objectives of the policy so that the respondents may lift the milled rice/paddy lying in the premises of the appellants' rice mills without delay or in the alternative, the appellants be permitted to sell the said milled rice/paddy and to deposit the amount as per the custom milled rice rates for the year 2011-12. They also prayed that no coercive action be taken against them either by way of arbitration or any other proceeding as contemplated under the agreements entered into between the parties.

02. Case set up by the appellants was that under the 1983 Order, every year the Punjab Government has been formulating and notifying the Custom Milling Policy for Kharif Marketing Season. As per the Milling Policy-2011-12, agreements were executed between the appellants-rice millers and the various procurement agencies of the State of Punjab. According to the appellants, after procurement of several tonnes of paddy, it was discovered that certain qualities of paddy including PAU-201, HR-47, HR-127 etc. and other uncertified hybrid varieties of paddy were not yielding the expected quality of rice as per the standard parameters and yardsticks. As a result, the State was unable to deposit the same in the central pool causing financial loss to the exchequer. State even made a public request dated 17.04.2013 (Annexure P-3), through leading newspapers, to the farmers that paddy only of the varieties approved by the Department of Agriculture be sown; paddy of the above referred varieties be not sown and that the same would not be procured by the Punjab Government procurement agencies in the Kharif Season of 2013-14. It was further averred by the appellants that since the procured paddy of the above-stated varieties was not yielding rice of the

requisite standard, they were unable to deliver the rice as per the agreements for the Milling Policy-2011-12. They were forced to hire 'Sortex' machines for sorting of the rice which resulted in extra expenses to them. The varieties referred to above had an inbuilt deficiency as it had pinpoint damage/black spot rice. The Sortex machine was able to remove the black spot to a great extent but the use of this machine resulted in damage to, and discoloration of, the resultant rice and even the pinpoint/black spot could not be removed in its entirety. Repeated representations, including representation dated 27.02.2012 (Annexure P-8), requesting the concerned authorities for relaxation of the norms for accepting the procurement of the pinpoint-damage rice and inability of the appellants to deliver the resultant rice within stipulated time (as the said damage does not adversely affect the human health and the rice with said damage is absolutely fit and safe for human consumption and the delay in delivery of rice is purely on account of confused and unclear approach of the State and its agencies), proved to be ineffective.

03. In the counters submitted by Food Corporation of India and the various procurement agencies of the State of Punjab objections were raised to the maintainability of the writ petition in the light of the terms and conditions of the agreements entered into between the appellants and the various procurement agencies of the State of Punjab, including Clause 27 which provides for arbitration, as also Clause 16 of the agreement, according to which, in case of a default on the part of the miller to perform obligation under the contract, it is lawful for the Government/agency to forfeit the security after granting due opportunity to the miller and also to

get the work executed from other party at the risk and cost of the miller and loss/damage suffered by the Government/agency could be made good from the amount of security or may be recovered in accordance with law. It was also pointed out that the procurement agencies had already initiated proceedings under the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'Arbitration Act'). During the procurement season 2011-12, the respondents had purchased 'A' grade paddy which was supplied to the appellants who, at the time of delivery of the paddy, had carried out physical verification of the same and had issued receipts in writing certifying that 'A' grade paddy had been received by them. On physical verification of the stocks of rice after milling, which are lying in the premises of the appellants, it had been found to have been mixed with broken rice. According to the respondents, the appellants had misappropriated the 'A' grade paddy and were trying to take benefit of the fact that in some areas of Punjab, the paddy contained pinpoint damage or the black spot rice (whereas the paddy stock which was supplied to the petitioners was not of the variety which contained the said draw-back of pinpoint or black spot).

04. After hearing learned counsel for the parties learned Single Judge came to a definite conclusion that the writ petition involved disputed questions of fact and arbitration proceedings in the matter were underway. Accordingly, vide order dated June 29, 2015, the writ petition was dismissed and the appellants were relegated to alternative remedy of arbitration under Clause 27 of the agreements.

05. Appellants have preferred the instant intra court appeal under Clause X of the Letters Patent to assail order dated June 29, 2015 passed by

the learned Single Judge.

06. We have heard learned senior counsel representing the appellants.

07. Though it is argued on behalf of the appellants that it has been admitted on behalf of the respondents that the paddy supplied to them contained pinpoint damage or the black spot rice and it is because of it that a public request dated 17.04.2013 (Annexure P-3) was issued asking the farmers not to sow the above-cited varieties of paddy but in the responses filed by the respondents not only supply of damaged paddy to the appellants has been denied but it has also been stated that the paddy which was supplied to the appellants was of 'A' grade and the appellants have misappropriated the said paddy and have replaced or mixed the same after milling, by or with the other stock of already damaged rice. Such disputed questions of fact, indisputably, can be decided only after the parties are allowed to adduce evidence in support of their respective stands and are allowed an opportunity to cross examine the witnesses deposing against their stands. Such an exercise is possible in the arbitration proceedings to which the appellants have agreed by entering into the agreements of which Clause 27 is an integral part. Even the learned senior counsel appearing for the appellants has not disputed the position of law that such disputed questions of fact cannot be gone into by a Writ Court exercising extraordinary jurisdiction under Article 226 of the Constitution of India.

08. Before us, as also before the learned Single Judge, it could not be disputed that arbitration proceedings in the matter have already been initiated. Thus, when an equally efficacious remedy is available to the appellants whereunder they can agitate their grievance, if any, and no

exceptional circumstances warranting invoking of the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India, could be pointed out on behalf of the appellants.

09. In view of the above, no fault can be found with the order of learned Single Judge dismissing appellants' writ petition. While relegating the appellants to the alternative remedy of arbitration, the appeal is dismissed.

[SATISH KUMAR MITTAL]
JUDGE

[MAHAVIRS. CHAUHAN]
JUDGE

August 17, 2015
adhikari