IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
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CWP No.10842 of 2015
Date of Decision:27.05.2016

M/s Sant Attar Singh Rice Mills .....Petitioner

Vs.

State of Punjab and others .....Respondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

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

Mr. V. Ramswaroop, Addl. AG, Punjab.

Mr. Vikas Singh, Advocate for respondents No.4 and 5.

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RAKESH KUMAR JAIN, J.(Oral)

The petitioner is a sole proprietorship firm, engaged in the business of custom milling of paddy since the year 2003-04. The petitioner was allotted paddy of MARKFED Agency for the crop year 2010-11 on the basis of an agreement dated 19.10.2010. The petitioner had milled the entire paddy but could not deliver it to the Food Corporation of India in the account of MARKFED because of space problem with the Food Corporation of India, however, the MARKFED raised an arbitration dispute with the petitioner for the crop year 2010-11 and the Managing Director of the MARKFED was appointed as the sole arbitrator to adjudicate the dispute between the parties for that period. The respondents raised the demand of ₹74,92,496/- against which the petitioner paid ₹82,20,117/- towards full and final settlement and after receiving the said amount, respondent No.5 issued a letter dated 30.11.2012, along with No Due Certificate, to the Arbitrator that since the petitioner had deposited whole of the amount of the outstanding dues, therefore, the proceedings before the Arbitrator may be dropped. The Arbitrator accordingly passed the order on 3.12.2012. According to the petitioner, the matter was settled as he was allotted paddy for the crop year 2012-13, 2013-14 and also 2014-15. After the allotment of the paddy for the crop year 2014-15, respondent No.5 issued a notice to the petitioner to pay ₹30,76,771/- on the ground that on 6.12.2012 i.e. three days after the order of the Arbitrator, instructions were received from the Government of Punjab to the effect that the petitioner has to pay the difference of cost of paddy fixed by the Punjab Government. The petitioner submitted its reply to the notice on 22.9.2014 but since the respondents did not react to the reply, therefore, petitioner had to file CWP No.21525 of 2014. During the pendency of the writ petition, the respondents issued the cancellation order dated 30.10.2014. As a result thereof, the petitioner withdrew the aforesaid writ petition on 18.5.2015 in order to challenge the cancellation order as well. Simultaneously, the respondent also initiated arbitration proceedings and hence the present petition has been filed to challenge the validity of orders dated 15.9.2014 (Annexure P.11) by which the petitioner has been included in the list of defaulters, dated 17.9.2014 (Annexure P.12) notice of recovery of the difference of the price of paddy issued in terms of instructions dated 6.12.2012, 30.10.2014 (Annexure P.14) cancellation order of allotment of paddy for the crop year 2014-15 and 27.4.2015 (Annexure P.15) by which the Arbitrator was appointed.

Counsel for the petitioner has submitted that once the matter has been settled between the parties on the payment of all the dues with interest and No Due Certificate was issued by the respondent on the basis of which earlier arbitration proceedings were dropped, therefore, fresh arbitration proceedings could not have been started in view of the instructions dated 6.12.2014 which was prospective in nature and would not apply to the contract between the parties, entered into by an agreement dated 19.10.2010, for the crop year 2010-11. It is also submitted that once the matter has been settled before the Arbitrator, the proceedings are illegal and in support of his submission, he has relied upon a decision of this Court in <u>CWP No.9279 of 2015 – M/s R.S. Rice Mills v. State of Punjab and others,</u> decided on 4.5.2016 and also relied upon another order passed in <u>FAO No.806 of 2009 – Punjab State Civil Supplies Corporation Ltd. Chandigarh and another v. Rajinder Kumar and another</u>, decided on 22.1.2016 to contend that the Arbitrator is supposed to decide the lis between the parties on the basis of the terms and conditions of the agreement and not on the basis of the instructions.

Counsel for the respondents, however, submits that the same argument was raised by the petitioner before the Arbitrator but his contention has been rejected vide order dated 23.9.2015 which has not been challenged by the petitioner. It is also submitted that the amount which is sought to be recovered from the petitioner is not part of the earlier writ rather it has been approved in view of the instructions dated 6.12.2014 and is a difference between the price of paddy. In reply to the argument raised by counsel for the respondents, it is submitted by the petitioner's counsel that the order Annexure P.18 would not effect the right of the petitioner because at the time of notice of motion, it was ordered that the proceedings may continue before the Arbitrator but final order may not be passed by him and that the difference which is being recovered by the respondents is not borne out from the agreement between the parties.

I have heard learned counsel for the parties and perused the record. There is no dispute that when the arbitration proceedings were initiated to recover ₹74,92,496/- of the crop for the year 2010-11, the petitioner had paid excessive amount which has been accepted by the respondents and information was sent to the Arbitrator along with No Due Certificate requesting him to drop the proceedings as all dues payable by the petitioner were alleged to have been paid. The petitioner was, thereafter, not considered as a defaulter as he was allotted paddy thereafter for the crop year 2012-13, 2013-14 and even for the year 2014-15. However, after expiry of about 4-5 years, he was served with a notice for the payment of another sum of ₹30,76,771/- on account of difference of price of paddy calculated on the basis of instructions of the Government of Punjab dated 6.12.2012. The paddy issued to the petitioner for the crop year 2014-15 was withdrawn.

In the case of M/s R.S. Rice Mills (supra), similar facts were there but with a distinction that in that case, a settlement had arrived at between the parties in terms of Section 30 of the Arbitration and Conciliation Act, 1996 (for short, `the Act') and, thereafter, on the same premise, difference of rates of the paddy, the recovery was raised from the petitioner therein. This Court while allowing the writ petition has held that if the matter had been settled by the Arbitrator under Section 30 of the Act and announced the award in terms of Section 30(4) of the Act, the subsequent proceedings before another Arbitrator for the same crop year cannot be allowed to continue.

In the case of Punjab State Civil Supplies Corporation Ltd., Chandigarh (supra), this Court has held that the Arbitrator has no jurisdiction to decide the matter beyond the terms and conditions of the agreement dated 21.10.1994 because the instructions dated 6.6.2000 could not be substituted with the terms and conditions.

May 27, 2016 **(RAKESH KUMAR JAIN)**
renu **JUDGE**