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

1. CWP No.21913 of 2015

M/s Goyal Rice Industries and Anr.

....Petitioners

Versus

State of Punjab and Ors.

...Respondents

2. CWP No.21808 of 2015

M/s Goyal Agro Industries and Anr.

....Petitioners

Versus

State of Punjab and Ors.

...Respondents

3. CWP No.24957 of 2015

M/s Vazeedpuria Rice Mills

....Petitioner

Versus

State of Punjab and Ors.

...Respondents

4. CWP No.23453 of 2015

Jai Ganga Rice & General Mill and Ors.

....Petitioners

Versus

State of Punjab and Ors.

...Respondents

Date of Order: 04.04.2016

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. K.S. Boparai, Advocate for the petitioner.
(in CWP No.21913 & 21808 of 2015)

Mr. Ishan Gupta, Advocate for
Mr. Mukand Gupta, Advocate
for the petitioner (in CWP No.24957 of 2015)

Mr. Aman Bansal, Advocate for the petitioners.
(in CWP No.23453 of 2015)

Mr. V. Ramswaroop, Addl.A.G, Punjab.

Mr. Nitin Kaushal, Advocate for respondent Nos.5 & 6.

Ms. Deepali Puri, Advocate for respondent No.7.

Mr. Satinder Khanna, Advocate, for FCI.

Mr. Vivek Singla, Advocate, for UOI.

RAKESH KUMAR JAIN,J (ORAL)

This order shall dispose of four petitions bearing (i) CWP No.21913 of 2015 (ii) CWP No.21808 of 2015 (iii) CWP No.24957 of 2015 and (iv) CWP No.21913 of 2015 because the issue involved is similar. However, for the sake of convenience, the facts are being extracted from CWP No.21913 of 2015.

As per the case of the petitioner, procurement of paddy in Punjab is controlled and regulated by the Government. Paddy is purchased by it through its food procuring agencies, namely, PUNSUP, MARK-FED etc. The State is divided in different Procurement Centres/Regions. Each District is controlled by the District Controller, Food Civil Supply and Consumer Affairs assisted by the District Food Supply Officer, who allocate the purchase centres or markets to different Government Procurement Agencies, which purchase paddy through commission agents from those centres/markets and then supply the same to the linked rice mills only as per linkage created by the Food Supply Department. The private rice mills are supplied paddy by the agencies of the State Government for custom milling , who after shelling the paddy return rice to the Government, charge milling expenses and in order to regulate the terms and conditions of supply of paddy, on time delivery of rice and proper supply of paddy to the mills. The Punjab Government formulates the policy every year, which is known as Custom Milling Policy. As per the Policy, the rice mills are supplied paddy keeping in view the infrastructure, capacity of milling etc. The Custom Milling Policy framed by the Punjab Government for the Khariff Season 2015-16 was released vide Memo No.RP-2 (Policy)-2015/2215 dated Chandigarh 13.08.2015, which was further amended on 07.09.2015 vide supplementary policy bearing Memo No.RP-2H (Policy)-2015/2422 dated Chandigarh 07.09.2015.

According to the petitioner, as per clause 2 of the amended policy, paddy was to be allotted to the mills as per their entitlement during last year 2014-2015 and not on the basis of paddy actually supplied. In para 2 clause (iv), the rice mill, which had returned the rice after shelling paddy within stipulated time upto 31.3.2015 during year 2014-2015, was to be supplied extra paddy @ 5% of actual milled paddy. According to the petitioner, entitlement of the petitioner(s) for the current paddy season 2015-2016 is 9564 MT including 9367 MT being equal entitlement of last year 2014-2015 + 197.25 MT as bonus being 5% of 3945.18 MT paddy milled last year. The petitioner has relied upon its entitlement on the basis of report dated 07.10.2014 submitted by the concerned Inspector, Food and Supplies Dehlon, District Ludhiana.

Grievance of the petitioners is that they were not allotted the paddy during KMS 2014-15 to which they were entitled and hence had to serve legal notice dated 10.11.2014. Petitioner had to file writ petition bearing CWP No.1588 of 2015. In the said writ petition, a stand was taken by the respondents that there was surplus paddy lying with certain mills, which was being withdrawn by the Government and the same may be made available to the petitioner. On that basis, the petition was disposed of on 13.3.2015 directing the petitioner to intimate the respondents with regard to availability of such paddy, which shall have to be considered and thereafter allocated to the petitioners in accordance with law. It is alleged by the petitioners that they have not been supplied paddy as per their entitlement and hence the present petition has been filed for issuance of directions to the respondents to create linkage of the petitioners with the food procuring agencies for supply of paddy as per their entitlement i.e 9564 MT including 9367 MT being equivalent to entitlement of last year 2014+15+197.25 MT as bonus being 5% of 3945.18 MT paddy milled last year.

At one point of time, vide the order passed by this Court, 7000 MT paddy was kept reserved for the purpose of allotment to the petitioner if they were found entitled to. However, said order was modified on 10.3.2016 and except for 4175 MT paddy, the remaining paddy was ordered to be released for the purpose of milling because date for delivery of 100% milled rice was 31.3.2016.

Learned counsel for Union of India has informed the Court that the last date for delivery of custom milled rice in respect to State of Punjab has been fixed upto May, 2016 and not 31.3.2016.

On the other hand, learned counsel for the respondents has submitted that prior to KMS 2014-15, the allocation of paddy to various mills across the State of Punjab was calculated on the basis of the milling capacity of the Mills. Since number of mills did not portray the correct milling capacities, it led to over allocation of paddy and consequent delay in milling the same. To solve this predicament, State of Punjab decided to amend the subsequent Custom Milling Policies to the extent that the calculation of actual entitlement of a Mill would be on the basis of the actually milled free paddy by the said Mill in the previous year i.e KMS

2013-14. The actual free paddy allocated to a mill during KMS 2013-2014 from its allotted Milling Centre was taken as the base value of entitlement of the mill and thereafter, the performance incentives, if any, was added to the said base value and the total entitlement of free paddy was calculated for KMS 2014-15. It is alleged that the Custom Milling Policy for KMS 2015-16 also included the same provisions qua the calculation of entitlement of paddy on the basis of actual paddy milled during the previous KMS. Since there was a hue and cry by number of mills for non-allocation as per entitlement in KMS 2014-15, due to the shortage of supply of paddy, the Custom Milling Policy 2015-16 was amended. It is further submitted that as per the Custom Milling Policy 2015-16 and the amendments thereto, the entitlement of the petitioner qua KMS 2015-16 was calculated as 5326 of paddy i.e 5129 MT entitlement of free paddy of KMS 2014-15 plus 197.25 MT of paddy towards incentives and since the petitioner has already been allotted 5389 MT of paddy, which is more than 100% of the total entitlement of the petitioner, the case set up by the petitioner is not made out.

The petitioner has also referred to Memo dated 07.9.2015 regarding amendments/clarification in Custom Milling Policy 2015-16. In para No.3 of Memo/Clarification, it is stated that the "Paddy brought against the local release orders and release orders for the outside districts are not to be counted in the entitlement of the miller".

It is argued by learned counsel for the respondents that the petitioners are claiming paddy out of release order from outside his district. It is further argued that the petitioner has a right of Arbitration as per the Policy, which may be invoked in order to decide the interpretation of the provisions of the Policy of KMS 2015-16 on the basis of which the petitioners may set up their claim for the alleged losses, if any.

I have heard learned counsel for the parties in detail and also perused the available record. Once, it is not disputed by the respondents that the petitioner has right of seeking arbitration, it would be in the interest of parties to avail the remedy, which is so provided in clause 19 of Custom Milling Policy of 2015-2016, which read as under:

> *"All the disputes and differences arising out of or in any manner touching or concerning the agreement whatsoever shall be referred to the sole arbitration of the Managing Director of the concerned agency or any person appointed by him in this behalf. There will be no objection to any such appointment that the person appointed is or was an employee of the Food and Supplies Department, Punjab or the concerned agency or that he had to deal with the matter to which the contract relates and that in the course of his duties such an employee of the Food and Supplies Department, Punjab or the concerned agency had expressed views 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 in the event of the Arbitrator being transferred or vacating his office or being unable to act for any reason, the Managing Director concerned at the time of such transfer, 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 where it was left by his predecessor.*
>
> *Provided that any demand for arbitration in respect of any claim(s)/dispute between both theh parties, under the contract shall be in writing and made within one year of the date of completion or expiry of the period of contract.*

If the demand is not made within the period, the claim (s) of the Miller shall be deemed to have been waived off and the agency shall be released of all liabilities under the contract in respect of these claims. The cost for and in connection with arbitration shall be the discretion of the arbitrator who may make suitable orders in his award.

Subject as aforesaid, the Arbitration and Conciliation Act, 1996 or any statutory re-enactment on modifications thereof shall apply to the arbitration provided under this clause. However, the cases of fraud, theft or misappropriation etc on the part of the miller are not covered under this clause and in such cases legal proceedings as deemed fit shall be initiated by the agency against the miller as well as against the sureties."

In view of the aforesaid, the parties are relegated to the remedy of arbitration and hence the present petitions are hereby disposed of accordingly.

April 04, 2016 **(RAKESH KUMAR JAIN)**
manoj **JUDGE**