

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22349 of 2015 (O&M)
Decided on : 07.04.2016

M/s Shiv Shakti Rice Foods

... Petitioner

Versus

Punjab State Civil Supplies Corporation Ltd. & others

... Respondents

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

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

Ms.Deepali Puri, Advocate, for the respondents.

G.S. Sandhawalia, J. (Oral)

CM-3915-2016

Application has been made for preponing the date of hearing.

In view of the averments made in the application, same is allowed and the main case is preponed from 28.07.2016, to today.

Main case

Written statement, filed on behalf of respondents No.1 & 2, is taken on record. Office to tag the same at appropriate place.

Petitioner seeks quashing of the order dated 21.09.2015 (Annexure P13), passed by the Arbitrator-respondent No.3, whereby his request for producing further evidence was declined on the ground of being not maintainable and on account of the fact that proceedings were sought to be delayed. Challenge has also been raised to the order dated 29.09.2015 (Annexure P15) whereby his request for change of the Arbitrator was declined

by the Managing Director of the respondent-Corporation.

The dispute *inter se* parties is on account of milling agreement dated 22.10.2009 (Annexure P1) and in view of the arbitration clause, the said Arbitrator was appointed. The case of the petitioner is that the claim was initially filed on 14.11.2011 (Annexure P2). Thereafter, a revised claim was made by the respondent-Corporation and the amount claimed was reduced. The third revised claim dated 07.10.2013 (Annexure P6) was then filed, which was further reduced to Rs.1,51,43,346/- and the final revised claim was, thereafter, filed in May, 2014 (Annexure P9) whereby the amount was enhanced to Rs.3,30,30,360/-. It is, accordingly, pointed out that the petitioner's evidence was submitted by way of affidavit, for the first time, on 20.07.2015 and the sole proprietor was partly cross-examined on that date. Subsequently, on 16.09.2015, he appeared for the balance of the cross-examination and also filed an application for additional evidence (Annexure P12). Thereafter, the impugned order was passed on 21.09.2015 (Annexure P13), rejecting the request for further evidence, as noticed above and the petitioner's request for change of Arbitrator was, thereafter, rejected.

Counsel for the petitioner submits that the matter was pending before the Arbitrator for as long as almost 3 ½ years and for the first time, the petitioner had appeared for evidence on 20.07.2015. Proper opportunity to lead evidence was not being granted by the Arbitrator, which should have been granted and

thus, the petitioner has been seriously prejudiced.

From the above facts, which have come on record, it is apparent that the order passed by the Arbitrator does not seem to be justified. Adequate opportunity had to be granted to the petitioner to file his evidence, though the application of the petitioner, as such, does not specify as to which evidence the petitioner wishes to produce. But nevertheless, if the claim was pending for so long and revised several times, there was no such hurry to dispose of the matter. The petitioner's financial liability is to be fixed and he would be adversely affected if he is not given adequate opportunity to lead evidence. For the delay, costs could firstly have been imposed before declining the request, as it is settled law that the rules of procedure are the handmaid of justice.

Resultantly, this Court is of the opinion that the order dated 21.09.2015 (Annexure P13), shutting out the evidence of the petitioner, is not justified. Accordingly, the same is quashed. The Arbitrator shall grant two clear opportunities to the petitioner to produce the evidence at his own risk and costs. Writ petition, however, is dismissed, on the issue of change of Arbitrator. Parties shall put in appearance before the Arbitrator on 11.04.2106, on which date, the proceedings are stated to be pending.

Writ petition stands, partly allowed, in the above-said terms.

APRIL 7, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE