

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

CWP No.3815 of 2016 (O&M)
Date of Decision:04.05.2016

Nangal Coop. Truck Operator Goods Carrier Transport Society Ltd.

. . . .Petitioner

Versus

State of Punjab and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Ashish Aggarwal, Sr. Advocate, with
Mr.M.S. Dalal, Advocate,
for the petitioner.

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

Mr.Rajiv Atma Ram, Sr. Advocate, with
Mr.Vipin Mahajan, Advocate,
for respondent No.2.

RAKESH KUMAR JAIN, J.

The petitioner–Society has prayed for a writ in the nature of mandamus seeking a direction to the respondents, especially respondent No.2, to supply 20% of manufactured urea to it for transportation by road as per the contract agreement dated 18.12.2015 and work order dated 14/17.12.2015 and also for a writ in the nature of certiorari to quash the impugned notices dated 09.02.2016 and 10.02.2016 whereby respondent No.2 has sought recovery of losses and termination of contract dated 17.12.2015.

After notice was issued in the main writ petition on 25.2.2016, respondent No.2 filed an application bearing CM No.3149 of 2016 for invoking Section 8 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for referring the dispute between the parties to the Arbitrator.

At the time of hearing of the main petition, counsel for respondent No.2 pressed the application bearing, CM No.3149 of 2016 and submitted that NIT was issued on 29.5.2015. The duration for completion of work was one year. The tenders were invited for award of annual contract for transportation of filled bags of fertilizers to various destinations in the State of Punjab and HP from NFL Naya Nangal. The work consists of supply of road worthy trucks to NFL Nangal for transporting and delivery of filled bags of Urea to various destinations and the normal requirement of trucks is likely to be 50 to 100 trucks per day, which may vary substantially depending upon the circumstances. The tentative quantity of work was around 104620 MT, which was to be moved via shortest route from Naya Nangal over a period of one year but there was no guarantee given to any work which was to be entrusted to the contractor at any time or during the period of contract. Pursuant to the tender, the contract was entered into between the petitioner and respondent No.2 on 18.12.2015 for a total contract value of ₹625 lacs with the contract documents, namely, the agreement of contract, NIT/Tender documents No.NFL/NGL/RTN-36 dated 29.5.2015, LOI No.NFL/NGL/RTN-26 dated 17.11.2015, work Order No.NFL/NGL, RTN-36 dated 4/17.12.2015. The said agreement contained arbitration clause, which read as under: -

“Article 9: The contract shall be governed by and construed in accordance with the laws of India.

“Except where otherwise, provided in the contract all matters, question or differences whatsoever, which shall at anytime arise between the parties hereto, touching the construction, meaning, operation or effect of the contract or out of matter relating to the contract or the breach thereof or the respective rights or liabilities of the parties during or after completion of the works or whether before or after termination, shall after written notice by either party to the contract be referred to the arbitration of the Designated Unit Head, National Fertilizes Ltd., Nangal Unit or his/her nominee.

The Arbitration and conciliation Act, 1996 or any statutory modification or re-enactment thereof and the rules made there under shall govern the Arbitration proceedings.

The contractor hereby agrees that he shall have no objection if the arbitrator so appointed is an employee of NFL and he had to deal with the matter to which contract relates and that in the course of his duties as such he has expressed his views on all or any of the matter in dispute of differences.”

It is agreed by and between the parties that in case a reference is made to the arbitrator or the Arbitral Tribunal for the purpose of resolving the disputes/differences arising out of contract by and between the parties

hereto, the Arbitrator or the Arbitral Tribunal shall not award interest on the awarded amount more than the rate of SBI PLR/Base rate as applicable to NFL on the date of award of contract.”

It is argued by learned counsel for respondent No.2 that because of the presence of the arbitration clause in the agreement and the dispute between the parties being arbitral, this Court may not interfere in view of Section 8 of the Act, which reads as under: -

“Article 8: Power to refer parties to arbitration where there is an arbitration agreement –

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”

It is also submitted by counsel for respondent No.2 that respondent No.2 has not only issued notice of termination of the contract on 10.2.2016 but has also issued a notice on 9.2.2016 for recovery of losses suffered by it on account of strike/stoppage of rail/road dispatches by the petitioner-Society, which can only be decided by the Arbitrator.

Learned counsel for the petitioner, however, submits that the petitioner is entitled to 20% of dispatch by road in view of letter dated 6.9.2010 but respondent No.2 has not allowed the same to the petitioner and hence, the present dispute has arisen.

I have heard both the learned counsel for the parties and perused the entire record.

It may be pertinent to mention that respondent No.2 had earlier filed writ petition No.3124 of 2016 because the petitioner had caused blockade on the railway track and also at the gate where nitric acid is transported through tankers by respondent No.2 but the said writ petition was disposed of because the president of the petitioner-society made a statement that the said blockade has been lifted and also assured the Court that there would be no blockade in future till the petition was pending. In that petition, the petitioner had alleged that they are claiming their right of 20% of the entire consignment of Urea bags transportation by road which was not being assigned to the petitioner-Society by respondent No.2. That issue was left open for the petitioner to file its own writ petition and hence, the present petition has been filed.

Insofar as the agitation of the petitioner is concerned, it is bound by the terms and conditions of the contract and if

respondent No.2 has caused any breach of contract, the petitioner-society has a right to raise the matter before the Arbitrator in terms of Article 9 of the contract agreement.

Hence, in view of the totality of the facts and circumstances discussed herein above, I am of the considered opinion that the present writ petition is not maintainable as the petitioner has an efficacious remedy of Arbitration under the contract of agreement which may, if so advised, be availed by the petitioner.

Disposed of.

04.05.2016

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**