IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.9279 of 2015 (O&M)
Date of Decision:04.05.2016

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M/s R.S. Rice Mills

. . . .Petitioner

Versus

State of Punjab and others

. . . . Respondent

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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

Mr.Nilesh Bhardwaj, DAG, Punjab.

Ms.Deepali Puri, Advocate,
for respondents No.3 & 4.

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RAKESH KUMAR JAIN, J.

The petitioner is a rice miller, engaged in the business of custom milling of paddy on behalf of various State Procurement Agencies and delivering the resultant rice to the Food Corporation of India [for short 'the FCI'] in the account of various State Procurement Agencies. The petitioner was allotted to respondents No.3 and 4 for custom milling of paddy on their behalf for the crop year 2011-12 and a formal agreement was entered into between the petitioner and respondent No.4, pursuant to which paddy to the tune of 61,795 bags weighing 21,628.25 quintals was delivered to the petitioner for custom milling on behalf of respondents No.3 & 4 but in the meantime a dispute arose between the parties regarding delivery of rice and in view of the provisions of the agreement, arbitration proceedings were initiated by respondents No.3 & 4 against the petitioner. During the pendency of the arbitration proceedings, the petitioner deposited entire amount calculated and assessed by respondents No.3 and 4 and 'No Due Certificate' was issued by respondent No.4 to the petitioner. The Arbitrator thus passed an arbitral award of settlement in terms of Section 30 of the Arbitration and Conciliation Act, 1996 [for short 'the Act] on 2.1.2014. Respondents No.1 & 2, who are vested with the power to regulate the entire process of custom milling of paddy on behalf of various State Procurement Agencies issued a communication on 6.11.2012, directing all the State Procurement Agencies to recover the cost of paddy from all the defaulting rice millers, who had failed to deliver the rice due towards them in the account of the concerned procurement agencies for the relevant crop year and in continuation of the said communication another communication dated 18.2.2013 was issued laying down a revised formula for calculation of the cost of paddy. After the arbitration award dated 2.1.2014, respondent No.4 issued the impugned notice to the petitioner on 19.9.2014 under Section 21 of the Act asking the petitioner to deposit the additional amount on account of revision of rates of rice, relying upon the communication dated 18.2.2013. The petitioner contested the notice but ultimately received a notice from the Arbitrator dated 5.1.2015 where the respondent No.4 filed the claim and also filed the present petition in the Court in which at the time of issuance of notice, it was ordered that the proceedings may continue but the same shall be subject to the final decision of the writ petition and in any case passing of the final award was ordered to be stayed till the specific permission is obtained from the Court.

Learned counsel for the petitioner has submitted that once the matter has been settled by way of settlement before the Arbitrator, who has passed his award, *de novo* proceedings on the same issue cannot be initiated under Section 21 of the Act.

On the other hand, learned counsel for the respondents has submitted that the arbitration proceedings have been initiated for the difference between the provisional and final rates, which is sought to be recovered from the petitioner to the tune of ₹11,59,496/- because 'No Due Certificate' was issued only to the effect that the account of the petitioner was settled at provisional rates and not at the final rates.

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

The arbitral award of settlement passed on 2.1.2014 shows that D.M., PUNSUP, Patiala vide his letter dated 24.12.2013 informed that revised claim of statement of account and no due certificate was issued to the District Food and Supplies Consumer Affairs, Patiala in favour of the petitioner on account of clearance of milling account for the crop year 2011-12. The statement of account produced and referred to in the award would rather show that the petitioner had deposited excess amount of ₹56/- i.e. over and above the amount which was to be recovered from it by respondents No.3 & 4. It was categorically observed in the arbitral award that *"thus the respondent miller squared up its accounts with PUNSUP for which D.M., PUNSUP, Patiala has issued No Due Certificate to the respondent Miller on 8.10.2013"*. Thereafter, the

Arbitrator passed the arbitral award of settlement in terms of Section 30 of the Act in favour of both the parties.

Section 30 of the Act deals with the settlement, which read as under: -

> *"30. Settlement- (1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.*
>
> *(2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.*
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> *(3) An arbitral award on agreed terms shall be made in accordance with section 31 and shall state that it is an arbitral award.*
>
> *(4) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute.*

It transpires from the aforesaid provision that the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage the settlement and in case the parties settle the dispute, the arbitral tribunal shall terminate the proceedings.

In the present case as well once it has been stated by the D.M., PUNSUP, Patiala that the entire accounts of the petitioner has been squared up and there was not a whisper in the arbitral award that it was the settlement of the account on the provisional rates and not on the final rates, respondents No.3 & 4 cannot be allowed to agitate that they are entitled to recover the difference between the provisional and final rates and for that matter can raise arbitration proceedings in terms of Section 21 of the Act, which read as under: -

> *"21. <u>Commencement of arbitral proceedings</u> - Unless otherwise agreed by the parties, the arbitral proceedings, in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."*

As a matter of fact, the proceedings between the parties regarding the recovery of dues of the crop year 2011-12 came to an end in view of the settlement arrived at in the shape of statement made by D.M., PUNSUP, Patiala that no outstanding is due towards the petitioner and even no due certificate was also issued and the settlement came into existence as an arbitral award for which respondents No.3 & 4 cannot be allowed to start *de novo* proceedings on the same issue.

In this regard, learned counsel for the petitioner has also referred to a decision rendered by the Supreme Court in the case of ***"Cauvery Coffee Traders, Mangalore*** *Vs.* ***Honor Resources (International) Company Limited"*** *2011 (10) SCC 420*, in which it has been held that where the final settlement upon renegotiation is reached without misrepresentation, fraud or coercion and money is accepted towards full and final settlement, held, it is not open to either of parties to make any claim/demand against other party.

Thus, in view of the aforesaid discussion, the present petition is found to be meritorious and allowed and the impugned order/notice is hereby quashed.

(RAKESH KUMAR JAIN)
JUDGE

04.05.2016
Vivek