

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

RSA No. 2984 of 2010 (O&M)

Date of decision: 29.03.2016

Punjab State Civil Supplies Corporation Ltd.

...Appellant(s)

Versus

M/s Gee Pee Sales

...Respondent(s)

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Ms. Deepali Puri, Advocate,
for the appellant(s).

Mr. Rakesh Gupta, Advocate,
for the respondent(s).

JITENDRA CHAUHAN.J.

Having failed before both the Courts below, the plaintiffs have filed the present regular second appeal against the judgment and decree dated 14.01.2009, passed by Additional District Judge, Moga and the judgment and decree dated 14.08.2007, passed by Additional Civil Judge (Senior Division), Moga.

In brief, the plaintiffs, Punjab State Civil Supplies Corporation Ltd., Chandigarh filed suit for recovery of Rs. 1,93,94,459 against M/s Gee Pee Sales, Moga. It was pleaded by the plaintiffs that in the year 1994-95, the defendant firm was given a contract to shell the paddy of PUNSUP and to convert it into rice. The defendant was

given the contract by District Manager, Faridkot. In pursuance of the oral contract, the defendant firm was supplied 71839 bags weighing 46695.35 quintals of PR-106 paddy from 22.10.1994 to 02.11.1994 against proper receipts. The defendant firm was requested several times vide letters dated 22.04.1995, 10.07.1995, 08.08.1995 and 28.08.1995 to execute formal agreement but the defendant firm did not turn up to execute formal agreement. As per the oral agreement, the defendant firm was to supply the rice to the Food Corporation of India on behalf of PUNSUP after shelling the paddy. The specification of the rice was to be in accordance with the Punjab Rice Procurement Control Order 1968. The defendant firm was to obtain an acceptance note and weight check memo in respect of said supply of rice from the Food Corporation of India and deliver the same to the District Manager, Faridkot up to 28.02.1995. The plaintiff corporation was to receive the payment of the rice supplied by defendant firm to FCI after submitting the acceptance notes and weight check memo to the FCI @ 781.20 p. per quintal. But the defendant firm failed to supply rice to the FCI in the account of PUNSUP, so the Central Government extended the date of delivery up to 30.06.1995. Since the defendant firm did not supply the rice even till the extended date, the Central Government allowed the PUNSUP to sell the paddy lying with the rice miller in unmilled condition @ Rs. 395/- per quintal to private parties through open auction. Consequently, the PUNSUP sold 25928 quintals paddy lying with the defendant @ Rs. 395/- per quintal in open auction/sale and the

defendant firm purchased this paddy. The remaining paddy was sold at the rate of Rs. 240 per quintal i.e. 10819.20 quintals of PR-106 was sold @ Rs. 240 per quintal to other private parties but the defendant did not purchase any paddy out of the second lot. Thus, the total amount realized from the sale of paddy in open auction came to Rs. 1,41,06,401/-. On physical verification of the stock of paddy lying with the defendants, 3129.75 quintals of paddy was found to be short and the defendant deposited a sum of Rs. 11,88,750/-. The economic cost of the paddy which was purchased by the PUNSUP and delivered to the defendants for shelling firms was Rs. 2,37,27,308/- @ 508.13 p. Thus, a total loss of Rs. 96,20,907/- has been caused to the plaintiff corporation which is the difference of economic cost of the paddy and the amount realized by the sale of paddy to private parties. The loss has been caused due to the negligence of the defendants, therefore, the defendant is liable to make the compensation to the plaintiff. Hence, the suit.

On notice, the defendants appeared and filed written statement. It was pleaded by the defendant that no contract was ever executed between the parties for shelling paddy crop for the year 1994-95. The defendant never gave oral assurance nor was any oral contract effected between the parties.

After appraisal of evidence, the learned trial Court held that no document has been placed on record to show that paddy was supplied to the defendant firm for milling. Further, there was nothing

on record to show that the defendant ever accepted the alleged offer of the plaintiff of milling paddy. There was no such agreement oral or written between the parties regarding milling of paddy by the defendant firm and to supply rice to the FCI. In the absence of any contract, the plaintiff cannot claim anything from defendant firm for non-milling of paddy. Consequently, the suit of the plaintiff was dismissed vide judgment and decree dated 14.08.2007. The plaintiffs-department went in appeal before the lower Appellate Court. The lower Appellate Court dismissed the appeal filed by the plaintiffs.

Feeling aggrieved, the present regular second appeal has been filed by the plaintiffs.

The learned counsel refers to Ex. P7 to P16 and contends that the parties have entered into an oral agreement for milling the paddy in question i.e. 71,839 bags of paddy. He further refers to the communication receipts Ex. P6/A, Ex. P6/D whereby the respondent agreed to mill in pursuance of the oral agreement.

On the other hand, the learned counsel for the respondent states that the respondent never entered into an agreement with the corporation. Due to the scarcity of the place, the corporation was allowed to use the premises owned by the respondent without any consideration. Otherwise also, there is no provision for oral agreement envisaged in the corporation rules.

I have heard the learned counsel for the parties and have

gone through the lower Court record.

The paddy was allegedly handed over to the respondent and for the short fall, the respondent has made the required payment of Rs. 11,88,750/-.

Keeping in view that there is no written agreement, this Court is not inclined to accept the assertion raised by the learned counsel for the appellants that an oral agreement was entered into between the parties when it is not envisaged under the provisions of PUNSUP rules. In the absence of the written agreement, this Court feels that the view taken by the learned Courts below does not suffer from any irregularity or perversity.

No substantial question of law arises for consideration of this Court.

Dismissed.

29.03.2016
SN

(JITENDRA CHAUHAN)
JUDGE