IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

CWP 27268 of 2013
Date of Decision: January 10, 2017

M/s Modern Rice Mills
…..Petitioner

Vs.

State of Punjab and ors.
…..Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. Tribhuvan Singla, Advocate
for the petitioner.

Ms. Anu Pal, AAG, Punjab.

Mr. Vikas Singh, Advocate

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M.M.S. BEDI, J.

The petitioner firm M/s Modern Rice Mills, Barnala, has filed the present civil writ petition under Article 226/ 227 of the Constitution of India for an appropriate writ quashing order annexure P-8 dated December 6, 2013 issued by the District Controller, Food Civil Supplies and Consumer Affairs, Punjab requiring the petitioner to deposit a sum of Rs.19,85,210/- in the account of PUNGRAIN for M/s Keshav Rice & General Mills, Barnala.

The petitioner is a rice miller at Barnala. During KMS 2011-12, the petitioner firm had been allotted paddy in the account of

PUNGRAIN and the petitioner had milled the entire paddy for KMS 2011-12 without any due being pending. Petitioner claims that during KMS 2011-12, on account of shortage of space with the FCI, about 27000 bags/ 9450 quintals paddy were shifted from the premises of the petitioner to M/s Keshav Rice & General Mills, Barnala, vide letter dated February 24, 2012. The said M/s Keshav Rice & General Mills, Barnala failed to deliver the complete paddy and 1017.01 quintals of paddy remained with the said mill. As the said mill had failed to deliver complete paddy, a notice was issued to the petitioner firm vide letter dated February 18, 2013, annexure P-2 by District Controller. The petitioner had filed reply taking the objections that as the petitioner firm has not given any guarantee for M/s Keshav Rice & General Mills, Barnala and the petitioner having no relation with the said rice mill; no partner of the petitioner firm being partner of said firm, the petitioner firm was not responsible for the deficiency, if any, made by M/s Keshav Rice & General Mills, Barnala. The Department has not taken any action against M/s Keshav Rice & General Mills, Barnala which had actually received the paddy.

In the reply filed on behalf of respondents No.1 to 3, it is pleaded that the shifting of paddy had been allowed by Director, Food, Civil Supplies and Consumer Affairs Department, vide memo dated February 24, 2012 (annexure P-1) on the request of the petitioner firm and as well as M/s Keshav Rice & General Mills, Barnala. It is, however, pleaded that initially paddy was allotted to the petitioner mill for custom milling as per agreement. It is pleaded that petitioner as well as M/s Keshav Rice & General Mills, Barnala were liable to refund the rice. It is claimed in the written statement that from the letter annexure P-1 it is absolutely clear that the petitioner mill would be responsible for the deposit of due rice as per the custom milling policy. The petitioner firm as well as M/s Keshav Rice & General Mills, Barnala were bound to return the complete milled rice.

A perusal of the pleadings indicates that the petitioner mill wants to wash of his hands of liability, if any arisen, on account of paddy having been transferred to M/s Keshav Rice & General Mills, Barnala. During the pendency of the petition, a disputed question of existing liability and its extent has been raised by the petitioner firm. A perusal of letter annexure P-1 regarding shifting of the paddy for Kharif Season 2011-12 shows that permission had been granted to the petitioner firm to carry 20700 bags of paddy to M/s Keshav Rice & General Mills, Barnala i.e. 9450 quintals of paddy was to be given to PUNGRAIN by M/s Keshav Rice & General Mills, Barnala. It is specifically mentioned in annexure P-1 that the shifting of paddy will not tentamount to absolve of the liability of the petitioner firm but it would be responsible for shifting of the paddy. It is brought to the notice of the Court that the dispute regarding recovery of the amount which is subject matter of milling was the responsibility of the petitioner and that the liability of the person shifting the paddy would continue to exist. The rights of liabilities of the petitioner are required to be determined on the basis of the custom milling policy for the KMS 2013-14, copy of which has been placed on record as annexure P-4. The disputed question of fact regarding the extent of liability of the petitioner cannot be adjudicated upon in writ jurisdiction but it has been informed that there being an arbitration clause in the custom milling policy, contained in para 19 of the policy, 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 concerned Managing Director or any person appointed by him in this behalf.

Counsel for both the parties had agreed that the matter has already been referred to the Arbitrator. In view of said circumstances, the order annexure P-8 dated December 6, 2013 requiring the petitioner to deposit the money has merged in the order by virtue of which the matter has been referred to the Arbitrator.

The writ petition, in view of the above said circumstances, has rendered infructuous and is disposed of as such, the amount of recovery mentioned in annexure P-8 dated December 6, 2013 having already become the subject matter of the arbitration. Disposal of this writ petition will not effect the rights of the parties to be determined by the Arbitrator.

January 10, 2017 (M.M.S.BEDI)
sanjay JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether Reportable:	Yes/No.