

Sr. No.208

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

**CWP No.20721 of 2015 (O&M)
Date of Decision: 25.03.2019**

M/s Shiv Shakti Rice Mills

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Tahaf Bains, Advocate,
for the petitioner.

Ms. Ambika Sood, DAG, Punjab.

Mr. K.K.Gupta, Advocate,
for respondent No.5-FCI.

ARUN MONGA, J.(ORAL)

Present writ petition has been filed, *inter alia*, for issuance of a writ in the nature of certiorari to quash the notices of recovery dated 13.09.2013 and 01.10.2014 (Annexures P-6 and P-7) respectively, whereby the petitioner was intimated that owing to respondent-FCI deducting a sum of Rs.4,70,100/- from Markfed, on account of excess payment of up-gradation charges for paddy crop 2009-2010 qua the petitioner, the said amount was to be deposited by the petitioner with Markfed within a period of 10 days from the issue of notice.

2. Succinctly, factual backdrop is that the petitioner is engaged in the business of milling of rice. The petitioner was allotted the job of custom milling of paddy pursuant to an

agreement dated 22.10.2009 (Annexure P-1). The said agreement contains an Arbitration Clause, the relevant extract, for ready reference, is reproduced hereinbelow:-

“26. All the disputes and difference arising out of or in any manner touching or concerning this agreement whatsoever shall be referred to the sole arbitrator of the Managing Director or any person appointed by him in this behalf. There will be no objection to any such appointment that the person appointed is or was an employee of Agency or that he had to deal with the matter to which the contract relates and that in the course of his duties such an employee of the Agency had expressed views on all or any of the matter in dispute or difference. The award of such arbitration shall be final and binding on the parties to this contract.”

3. Learned counsel for the petitioner contends that after issuance of recovery notices, the petitioner submitted bank guarantees dated 20.04.2015 (Annexure P-8) for an amount of Rs.4,70,000/-, for guaranteeing the recovery of the amount demanded by the Markfed subject to the adjudication of the dispute claimed.

4. Learned counsel for the petitioner submits that being in a vulnerable position, the respondent-Markfed strong-armed the petitioner and encashed the said bank guarantee even though the petitioner had caused issuance of a legal notice dated 13.02.2015 (Annexure P-10), calling upon the respondent-Markfed to release the bank guarantee furnished by it and to drop the recovery proceedings and instead take up the matter with FCI for settlement

of accounts.

5. Per contra, in the respective written statements filed by respondent No.1, 4 and 6 (Markfed) as also respondent No.5-FCI, the factual matrix has been strongly disputed and a preliminary objection has been taken that in view of the Arbitration Clause, the present writ petition is not maintainable.

6. Learned counsel for the petitioner has strenuously argued that merely because an alternative remedy of arbitration is available, there cannot be an absolute bar qua invocation of writ jurisdiction as has been held by Hon'ble Supreme Court of India in ***Union of India Vs. Tania Construction Private Limited, 2011 (5) JT 59.***

7. Learned counsel further argues that it is well established that an alternative remedy has to be overlooked whenever and where-ever rule of law and provisions of Constitution are violated. While I am in agreement with the proposition of law canvassed by learned counsel for the petitioner but, I am afraid, in present case commercial agreement executed between parties cannot be overlooked. That apart, no violation of any provision of Constitution of India or Rule of Law has been committed in the present case.

8. I have gone through the respective pleadings and have heard the learned counsel for the appearing parties. I am in agreement with the preliminary objection raised by the respondents that in view of the commercial contract executed between the petitioner and the Markfed wherein, in the event of

any dispute, the same is to be adjudicated under the Indian Conciliation and Arbitration Act, 1996, the present writ petition is not maintainable.

9. The preliminary objection, supra is sustained in view of principles enunciated by Supreme Court of India in ***Harbanslal Sahnia Vs. Indian Oil Corporation, AIR 2003 SC 2120*** as extracted below:-

“So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore, the writ petition filed by the Appellants was liable to be dismissed. Suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; (iii) where orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged.”

10. Applying the principles of law as laid down in Harbanslal Judgment, *ibid*, I find that in the present case, neither there is any violation of fundamental rights nor there is any failure on the principles of natural justice nor it is the case where the impugned recovery notices have been issued without any jurisdiction or the same are ultra vires any statute.

11. In view of my discussion and the reasons contained therein, the present writ petition is dismissed with liberty to the

petitioner to invoke arbitration proceedings in accordance with Clause 26 of the agreement dated 22.10.2009 (Annexue P-1), in accordance with law.

12. In the event, the petitioner decides to invoke the arbitration proceedings to dispute the impugned demand which has already been recovered, the respondents shall not count the period of limitation taken towards the adjudication of the present writ petition for the purpose of counting the limitation.

13. With these observations, petition is disposed of.

25.03.2019

vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No