IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-28562-2017
Date of Decision:03.09.2019

M/s Jain Rice Mills Amritsar ....petitioner

Versus

State of Punjab and others .....respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.Veneet Sharma, Advocate
for the petitioner

Ms.Simran Grewal, AAG Punjab

Mr.Sarthak Gupta, Advocate
for respondents No.3,4 and 6

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RAJIV NARAIN RAINA, J. (ORAL):

1. This petition has been filed under Article 226 of the Constitution of India for issuance of a writ of certiorari for quashing the order dated 09.11.2011 (P-10) and report dated 28.04.2016 (P-13) declining to issue the 'No Dues Certificate' to the petitioner and for issuance of a writ of mandamus to refund the amount of Rs.15 lakhs to the petitioner.

2. The judgment relied upon by the learned counsel for the petitioner in CWP No.14157 of 2011, decided on 31.10.2011, *“M/s Lakshmi Energy & Foods Limited, Ludhiana vs. State of Punjab”* passed by this Court has been set aside vide order dated 07.11.2013 in Letters Patent Appeal No.139 of 2012 leaving it open to the

respondents to raise objections to the arbitration claim including plea that the subject matter of the arbitration is beyond the agreement itself. The Bench had further directed that the cost imposed upon the appellant would abide by the result of the arbitration proceedings. The last direction is that the extent of the subject matter of the arbitration, to the extent of observations in the impugned order are without recording of the evidence on that aspect, hence the arbitration proceedings will not be influenced by the impugned judgment.

3. In view of this, the theory imported by Mr.Sharma regarding non-cash security portion of the allotment to PUNSUP for custom rice milling (agency MARKFED in the present case) to the petitioner stands exploded that there is no scope for arbitration and the matter be adjudicated by this Court. The finding of the learned Single Judge that the dispute arising from the so called entrustment of additional stocks does not form part of the agreement at all, is also not a correct finding in view of the order 07.11.2013 passed by the Division Bench in Letters Patent Appeal. Accordingly, the arbitration proceedings were eminently possible in the process of agreement. However, and that apart, there is a bar of limitation as the entire judicial process was brought into action in the year 2017. Milling for MARKFED was done in the crop season 2009-10 and the representation was made in the year 2017 for 'No Dues Certificate' and refund of cash deposit of Rs. 15 lakhs, which is highly belated approach to judicial redress.

4. The respondents have made para wise comments on the representation/letter, which learned counsel for the petitioner submits, is the impugned order open to challenge in the present proceedings and substantially covers the delay. However, on the query put to him, as to whether the representation and the decision making thereupon is statutory in nature, he is unable to make an answer. I assume that the representation is non-statutory and therefore, the respondents were not duty bound to decide the representation or consider for a moment that the delay in deciding will stop limitation from running. This writ petition was filed in December 2017. There is a delay of six years in applying for a writ. Even if the petitioner asserts a right, the remedy is taken away by the efflux of time and the bar of limitation coming in. Arbitration was possible remedy but that right too appears to be extinguished by the *rigour mortis* of the time bar setting in.

5. Accordingly I find no merit to admit this petition for regular hearing and would hereby order the petition to stand dismissed.

03.09.2019 **(RAJIV NARAIN RAINA)**
neenu **JUDGE**

Whether speaking/reasoned Yes
Whether reportable- Yes/No