In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 7352 of 2020 (O&M)

Date of Decision: 23.06.2020

Krishan Kumar

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Akshay Bhan, Senior Advocate
with Mr. Shiv Kumar, Advocate
for the petitioner(s).

Ms. Anu Chatrath, Additional Advocate
General, Punjab for respondents No.1, 2, 4, 6 and 7.

Ms. Deepali Puri, Advocate
for respondents No. 3 and 5.

Anil Kshetarpal, J.

Through the present writ petition filed under Articles 226/227 of the Constitution of India, the writ petitioner has made following prayers:-

"i) To issue a writ for quashing the order dated 14.3.2020 (P-2) passed by the respondent No.5 being illegal, arbitrary, unjust, violative of natural justice, violative of Custom Milling Policy of 2019-2020 and Article 21 of the Constitution of India.

ii) To issue a writ directing the respondents to allow the mills of the petitioner to mill the entire paddy lying in the mills and pay the damages to the petitioner rice mill for its harassment humiliation and huge losses caused by the respondents on account of lifting of the paddy in an illegal way.

iii) Further, to issue a writ that during the pendency of the above mentioned petition the lifting of paddy from the mills of the petitioners namely Surya Agro Foods, Baghapurana, Keshav Agro Foods, Baghapurana and Akshat Agro Foods, Baghapurana and also from lifting of the paddy privately purchased by the petitioner be stopped immediately.

iv) Further to issue directions to the respondents not to interfere into the matter of milling of private purchase paddy of the petitioner and not to create any hindrance in lifting of the parboiled and steamed rice and all by products of paddy of the petitioner.

v) Further to issue directions to the respondents not to interfere into the movement of the petitioner and entrance in the mills and to release the trucks and car of the petitioner illegally confined by the respondents.

vi) Further to issue directions to the respondents to provide all the copies of the documents to the petitioner including copies of agreements, physical verification reports and details of the paddy being lifted.

vii) To issue writ in the shape of mandamus directing the police authorities concerned to investigate the matter and register an FIR against the respondent No. 5 and 6 for stealing and embezzlement of the paddy.”

The writ petitioner claims to be the owner of three Rice Mill

(Processing unit set to de-husk paddy into rice), namely (i) Surya Agro Foods, Baghapurana, (ii) Keshav Agro Foods, Baghapurana and (iii) Akshat Agro Foods, Baghapurana.

The writ petitioner submits that the aforesaid three rice mills have been allotted paddy for custom milling as per Punjab Custom Milling Policy for Paddy -Kharif 2019-2020 (hereinafter referred to as "the Policy"). At this stage, it would be appropriate to explain as to what does the term "custom milling" denote. Certain government agencies/public sector undertakings purchase paddy from the farmers as per the policy of the Government. The aforesaid paddy, so purchased, is then allotted to various rice mills for de-husking so as to take out rice from the paddy. In order to regulate the process of de-husking through various privately owned rice mills, a Policy is framed by the State of Punjab every year. The term "custom milling" means the process of getting the government paddy de-husked from privately owned rice mills on job work. For de-husking the government paddy, these rice mills are paid certain charges as agreed to. In other words, the paddy owned by the government agencies or public sector undertakings is got processed by allocating it for a job work to the privately owned rice mills. The allocation of the paddy is governed by contracts entered into between the parties i.e. government agencies/public sector undertakings on the one hand and the private rice millers on the other hand. The Policy or the contracts entered into with the Rice Mill owners are not statutory. The Policy notified each year contains standard clauses of the contract.

In the present case, it is the case of the petitioner that while allocating paddy for custom milling, agreements were entered into between the Punjab State Grains Procurement Corporation Limited (hereinafter referred to as "PUNGRAIN") and the writ petitioner for de-husking of the paddy in three different rice mills. It is not in dispute that the Policy which is deemed to be part of the contract, contains arbitration clause for appointment of an Arbitral Tribunal for settling all the disputes/differences arising out of or in any manner touching or concerning the agreement.

This Court has heard learned counsel for the parties and with their able assistance, gone through the documents filed. Although, lengthy arguments have been addressed by learned counsel for the parties, however, in the considered view of this Court, it would not be appropriate to examine the arguments in detail, lest it prejudices the case of any of the parties particularly when the writ petitioner is being relegated to the alternative remedy.

Alternative Relief

Clause 24 of the Policy lays down a dispute resolution mechanism. Sub Clause (c) thereof reads as under:

> *"24(c) 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 an Arbitrator to be appointed by the SPA. The award of the Arbitrator shall be final and binding on the parties to the contract."*

In view thereof, the writ petitioner has an alternative remedy before the Arbitral Tribunal.

Although, the learned senior counsel appearing for the writ petitioner has admitted the existence of such clause to be part of the contract, however, he has tried to make a distinction by contending that the filing of the claim before the Arbitral Tribunal would frustrate the interim relief sought for in the writ petition and since certain quantity of paddy owned by the writ petitioner privately has also been taken away/shifted from the Rice Mills by the official respondents, it would not be possible for the Arbitral Tribunal to adjudicate upon the dispute relating thereto.

This Court has considered the submissions, however, finds no merit therein. Under Section 9 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act") any party is entitled to seek interim relief before the initiation of the arbitration proceedings from the Court as defined in the 1996 Act. Similarly the interim relief can also be sought from the Arbitrator.

Still further, the writ petitioner claims that he had also stored his own paddy which in turn was hypothecated with the Punjab & Sind Bank against the credit facility availed from the bank, but the same has also been shifted from the Rice Mills. Correctness of this fact is disputed by the official respondents. The official respondents claim that there is a shortage in the stock of government paddy equivalent to an amount of Rs. 12,00,00,000/- (Rs. 12 Crores). The official respondents maintain that 1,24,107 bags of paddy belonging to PUNGRAIN, stored in the above referred 3 Rice Mills, has been syphoned off by the writ petitioner illegally. Still further, the official respondents strongly contest the claim of the writ petitioner that some quantity of paddy has been purchased and thereafter stored in the Rice Mills by the writ petitioner. The official respondents have taken a stand that after physical verification, shortage of paddy valuing Rs.

12,00,00,000/- has been found and an FIR No. 40 dated 15.04.2020 has already been registered against the writ petitioner. Thus, with regard to the alleged privately purchased paddy, disputed questions of fact are required to be adjudicated upon. Hence, the writ petition would not be an appropriate remedy.

Still further, three suits filed by the bank are pending before the Civil Court claiming superior right over the alleged privately purchased paddy pledged with the bank by the writ petitioner. The writ petitioner also filed a civil suit claiming by and large similar relief being claimed in the present writ petition. The plaint of the suit is dated 28.04.2020, however, the same has been withdrawn by the writ petitioner during pendency of the suit. Thus, the writ petitioner had already availed the alternative remedy, but has chosen to withdraw the same. The writ petitioner would be at liberty to either get the aforesaid civil suit revived or file a fresh civil suit, if permissible in law.

<u>Concealment of facts</u>

Still further, the writ petition filed by the writ petitioner is also liable to be dismissed on account of concealment of the material facts. The writ petitioner filed the present writ petition and got it listed in urgent after making a mentioning on 11.05.2020. However, the writ petitioner did not choose to disclose the pendency of civil suit filed by him before filing the writ petition. The prayer clause of the suit reads as under:-

> *"It is, therefore, prayed that the decree for suit for permanent injunction may please be decreed in favour of the plaintiff, restraining the defendants No. 1 to 8 from lifting the paddy/rice*

stock from the premises of Rice Mills of the plaintiff namely M/s Surya Agro Foods, Bagha Purana, M/s Keshav Agro Foods, Bagha Purana and M/s Akshat Agro Foods, Bagha Purana as well as paddy/rice stock lying outside of the above rice mills due to non-availability of space which is the private purchase of the plaintiff under the mortgage of defendant No. 9 & 10 i.e. Punjab & Sind Bank forcibly, arbitrarily and without due course of law and; suit for Mandatory Injunction directing the defendants to hand over all the record of shifting of paddy from the above said rice mills the plaintiff i.e. (1) physical verification reports of Paddy from the month of January to March 2020 and videography and all the record relating to the same, (2) videography regarding the lifting of paddy and (3) Details of officials who are deputed for lifting of paddy and (4) Detail of vehicle which are being used for lifting of paddy from the rice mills of the plaintiff or any other record relating to the above said illegal lifting of paddy or any other relief which this Hon'ble Court may deem fit and proper."

This civil suit has been withdrawn by the writ petitioner vide order (Annexure P11). However, on careful reading of the order, it is apparent that the aforesaid civil suit has been withdrawn during pendency of the writ petition. The writ petitioner did not disclose this fact while filing the writ petition. The writ petition came up for preliminary hearing before the court on 14.05.2020, on being pointed out to the Court by learned counsel appearing for the respondents, the court passed following order:-

"Notice of motion.

Ms. Anu Pal, DAG, Punjab who is present accepts notice on behalf of respondent No.1.

It has been pointed out on behalf of the respondents that the petitioner as well as Punjab and Sind Bank have already instituted civil suit in the Court at Moga with regard to the paddy in question.

Time has been sought to file the detailed reply.

The learned Senior Advocate has also sought time to produce the copies of the pleadings in the civil suit.

Adjourned to 21.05.2020."

Although the order (Annexure P11) withdrawing the suit filed by the writ petitioner is undated, however, it is certain that the civil suit has been withdrawn after 14.05.2020 because reference is to the fact that the writ petition is coming up for hearing on 21.05.2020. It was on 14.05.2020, the writ petition was adjourned to 21.05.2020. Still further, it is to be noted that as per stand of learned counsel for the respondents, 90% of the paddy belonging to PUNGRAIN lying in the aforesaid three Rice Mills has already been shifted. It will be noted here that all the three rice mills were allocated huge quantity of paddy as asserted in para No. 3, 4 & 6 of the writ petition. It has also come on record that there were publications in the news papers that the writ petitioner along with his family having left the city after leaving a suicide note. In the writ petition itself it has been pleaded that the writ petitioner was not in town for quite some time. The writ petitioner also complains that he is not now being allowed to enter the Rice Mills by the official respondents.

It is further important to note here that the paddy allocated for custom milling is not in exclusive control and possession of the rice miller. Rather as per the contract entered into between the parties, it is in the joint possession of the allocating agency and the rice miller. It may be noted here that due to default in payment of the electricity charges, the electricity connections of the three Rice Mills were disconnected on 12.03.2020. Thereafter, respondent No.3, the allocating agency, contacted the Deputy Commissioner who deputed a Duty Magistrate for shifting of the paddy after its physical verification particularly when it was suspected that huge quantity of paddy belonging to the government agency has been syphoned off by the writ petitioner.

Keeping in view the aforesaid reasons, this Court is of the considered view that the writ petitioner deserves to be relegated to the alternative remedy/remedies. It is clarified that the observations made by this Court while passing this order shall not influence the Court or the Arbitral Tribunal while adjudicating the dispute on merits.

With these observations, the present writ petition is disposed of.

(Anil Kshetarpal)
Judge

June 23, 2020
"DK"

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No