

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2588 of 2021

- Adim Jati Sewa Sahkari Samiti Maryadit, Bahigaon, District Kondagaon Through Manager, Adim Jati Sewa Sahkari Samiti Maryadit, Bahigaon, District Kondagaon Namely Naresh Netam S/o Shri Amar Singh Aged About 38, Years R/o Village Dohlapara, Post Adenga, Tahsil Keshkal, District Kondagaon Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary Co-Operative Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur District Raipur Chhattisgarh
2. The Secretary, Food, Civil Supplies And Consumer Protection Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur District Raipur Chhattisgarh
3. Chhattisgarh State Cooperative Marketing Fedration Limited Through Its Managing Director, Chhattisgarh State Cooperative Marketing Fedration Limited, Atal Nagar Nawa Raipur District Raipur Chhattisgarh
4. The Registrar Cooperative Societies, Indrawati Bhawan, Atal Nagar, Nawa Raipur District Raipur Chhattisgarh
5. The Collector Kondagaon District Kondagaon Chhattisgarh
6. District Marketing Officer Kondagaon District Kondagaon Chhattisgarh
7. District Cooperative Central Bank Limited Through Its Chief Executive Officer, District Cooperative Central Bank Limited, G. E. Road, Raipur District Raipur Chhattisgarh
8. Nodal Officer District Cooperative Central Bank Limited, Kondagaon District Kondagaon Chhattisgarh
9. District Food Officer Kondagaon District Kondagaon Chhattisgarh

---- Respondent

For Petitioner : Shri Dharmesh Shrivastava, Advocate

For Respondent/ State : Shri Siddharth Dubey, Dy. G.A.

For Respondents No. 3 & 6 : Shri Ashish Surana, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

30.06.2021

Heard

1. The petitioner was running paddy procurement centre and he was to procure the paddy from the farmers and thereafter it was to be transferred to various places of storage as per the direction. It is contended that an *tri partite* agreement was entered in between the petitioners, C.G. State Cooperating Marketing Federation Limited through District Marketing Officer and its District Cooperative Central Bank Limited which lays down the guidelines and terms of procurement and transportation.
2. Learned counsel for the petitioner would submit that according to Clause 2 of the agreement, the initial duty of transportation of the paddy was with Marketing Federation through its District Marketing Officer and the transporter was under obligation to transfer the paddy to the storage centre. It is stated that the paddy procured from farmers was required to be transferred within 1 month from the date of procurement and the last cut off date to transport the paddy was 31.03.2021. He further submits that at the time of procurement of paddy, the moisture content in the paddy was required to the extent of 17 % and the paddy above the said moisture extent was not entitled for acceptance from the farmers. It is stated that time line of transportation was specifically agreed for the reason that paddy once accepted do not lose its moisture thereby the weight, if otherwise kept for a specific period of time in the open sun. He would submit that in such eventuality the paddy procurement centre would sustain loss for the loss of weight. It is further stated that buffer stock limit was to be fixed by District Cooperative Central Bank and if the paddy is procured more than the buffer limit it was required to be lifted within 72 hours.
3. He further submits that despite due diligence by the petitioner the paddy was not lifted from the procurement centre to the storage centre which was the duty of Marketing Federation through its District Marketing Officer. They would submit that in order to transport the paddy the Delivery Order (DO)/ Transport order (TO) are required to be issued. Delivery Order (DO) is issued by District Marketing Officer of a particular District wherein the paddy was kept and Transportation Order (TO) was issued to the Transporter so as to carry the

paddy to the destination for which it was meant for. It is submitted that in absence of issuance of TO & DO the petitioners (procurement centre) could not transfer the paddy, therefore no transportation could be carried out by procurement centre and eventually it caused loss. It is further submitted that since paddy was kept over a specific period of time, the petitioners had to incur additional expenses as the initial plastic bags were torn and the new Jute bags were to be procured and in order to transfer the paddy to newly procured bags the labour charges were also incurred along with payment of wages to them. Apart from it, it is also submitted that because of the termite and mice it also caused loss and the dryness of the paddy also increased because it was kept in open sky. Consequently, the petitioners may be reimbursed with the damages and loss caused and apart from that, the additional charges along with their entitlement of commission that the petitioners are entitled to receive which are not being paid to them.

4. Per contra, learned counsel for respondents No. C.G. State Cooperating Marketing Federation Limited and District Marketing Officer would submit that the agreement on which the petitioners are harping upon is a *tri parte* agreement which contains an arbitration clause, therefore the party who was at fault cannot be adjudicated by this Court by taking evidence which is to be established before the appropriate forum which is agreed upon by the parties.
5. Learned State counsel also adopts the argument of the respondents.
6. Perused the documents filed with the petition.
7. The main dispute which arises out appears to be for non lifting of the paddy which is lying at paddy procurement centres which was required to be transferred to the storage centre. The agreement which is referred and relied upon by petitioners and the respondents prescribes agreed terms and Clause 2 initially reflects that the initial duty of transportation would be that of District Marketing Federation and the transporter was required to transfer the paddy in the specified centre as directed. Clause 2.6 of the agreement purports that

in case the Marketing Federation is unable to transport the paddy then it would be the duty of procurement centre to transfer the same in the specified rate to the paddy storage centre and they would be entitled to get reimbursement. Clause 2.7 also purports that if the stock increases from the buffer stock limit prescribed, then it would be lifted within 72 hours. The Clause 2.8 at last purports that the agents who are the petitioners herein, who procures the paddy from the farmers and stores it, the Marketing federation shall transfer those stored paddy from petitioners within a period of 1 month and entire paddy would be transported uptill 31.03.2021.

8. Admittedly, as on date the paddy is lying with the agents who are the paddy procurement centre. The submission of the petitioners that in case if the Marketing Federation fails to transport the paddy within time, the agents can transfer it as per Clause 2.6 of the agreement provided that the DO/ TO is issued but it was not issued. It is question of fact as to whether DO/ TO was issued or not and who was at fault to transport the paddy to the storage centre. This issue can only be resolved when the facts are produced. With respect to the loss of the moisture, Annexure P- 8 a letter written by the Special Secretary dated 27.03.2021 projects the concern that in case the paddy is exposed to open sky, the dryness may increase and it may lose its weight and eventually, the loss may pass on to the head of the procurement centre. Therefore, it is obvious that if paddy is left in the open sky it would lose its moisture and consequently will lose its weight which would result into the loss. This is also a finding to be arrived at after the facts are produced before the appropriate forum.

9. The agreement contains Clause 14 which is about Arbitration which reads as under:-

14. आर्बिट्रेशन:-

इस अनुबंध की किसी भी कण्डिका से संबंधित विवाद उत्पन्न होने की स्थिति में विवाद के निर्णय हेतु जिले में जिला कलेक्टर का निर्णय अन्तिम होगा जो उभयपक्षों को मान्य होगा। कलेक्टर द्वारा दिये गये निर्णय की अपील उभयपक्षों द्वारा संबंधित जिले के संभागीय आयुक्त को की जा

सकेगी।

10. The submissions of the petitioner and the respondents would show as on date that the dispute arisen about the performance of the agreement is quite logical that if the paddy was not transferred because of the fault of Marketing Federation and caused loss and further loss by termite, mice etc it cannot be pass on to head of the petitioners. The submission of the petitioner that in absence of the DO/TO the paddy could not be transferred is also required to be examined to finalize the liability. All these issue are required to be adjudicated at the same time the petitioners cannot be driven to a corner by arm twisting method to lodge FIR for any loss which might have been caused. Therefore, under the facts of this case, to arrive at the finding of fact about failure of performance of agreement on either part of the party i.e. procurement centre or State Marketing Federation as per Clause 14 the issue is refereed to the Collector of the particular district. The Collector shall adjudicate the issue after the evidence is adduced about the non performance of part of the contract by either of the parties and shall thereafter decide it accordingly. The petitioner shall be at liberty to invoke clause 14 i.e. Arbitration Clause along with the memo of their claim for 2020-21 within a period of 2 weeks and the same shall be concluded with a reasonable time. The petitioners shall also be entitled to file any interim prayer in the circumstances of this case to claim interim due or any other relief to arrest further loss of paddy.

11. With the aforesaid observation, the petition stands disposed of.

Sd/-
(Goutam Bhaduri)
Judge

Jyoti