

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3085 of 2021**

- Rakesh Mishra S/o Shri Baijnath Mishra Aged About 42 Years Occupation- Incharge- Paddy Procurement Center Venkat Nawagaon (Reg. No. 1951), R/o - Behind Of Dr. Soni Hospital, Ward No. 2, Lormi, Police Station And Tahsil- Lormi, District- Mungeli, Chhattisgarh. Mob- 8085996376

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary Department Of Food, Civil Supplies And Consumer Protection Department, Mahanadi Bhawan, New Mantralaya Raipur, Police Station- Rakhi, District- Raipur, Chhattisgarh
2. Collector Mungeli, District- Mungeli, Chhattisgarh
3. Managing Director Chhattisgarh State Cooperative Marketing Federation Limited, 6th Floor, Tower- C, Commercial Complex CBD, Sector 21, Atal Nagar, Nawa Raipur, District- Raipur, Chhattisgarh
4. Assistant Registrar Co-Operative Societies Mungeli, Police Station, Tahsil And District- Mungeli, Chhattisgarh
5. District Marketing Officer Chhattisgarh Rajya Sahkari Vipadan Sangh Maryadit Mungeli, Police Station, Tahsil And District- Mungeli, Chhattisgarh
6. Chief Executive Officer Zila Sahkari Kendriya Bank Maryadit Nehru Chowk Bilaspur, Police Station- Civil Line, Tahsil And District- Bilaspur, Chhattisgarh
7. Nodal Officer Zila Sahkari, Kendriya Bank Maryadit Mungeli, District- Mungeli, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Ratnesh Agrawal, Advocate
For Respondents/State	:	Shri Sidhdharth Dubey, Dy. GA
For Respondents No.3 & 5	:	Shri Chetan Singh Chauhan, Advocate on behalf of Shri Ashish Surana, Advocate
For Respondents No.6 & 7	:	Shri Jitendra Shrivastava, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order**

30/07/2021

Heard.

1. The petitioner who is in individual capacity was appointed by the Collector to the paddy procurement centre by order dated 29/11/2020. According to such order he was to supervise the procurement by the paddy procurement centre societies and to supervise them till it is transported to the MARKFED. It is stated that the *tri partite* agreement was entered in between the society in which the petitioner was appointed as a supervisor, C.G. State Cooperating Marketing Federation Limited through District Marketing Officer and the District Cooperative Central Bank Limited. The agreement 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. It is further stated with the ongoing monsoon if the paddy is left open to open sky it would also loose it's quality and eventually may turn out to be a rotten lot. He would submit that in such eventuality the paddy procurement centre would sustain

loss for the loss of weight or damage caused by rain. 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. It is further stated that with the commencement of the rainy season (monsoon) till date paddy are not lifted and some part of the paddy are submerged into the water due to rain which has caused the loss.

3. It is further submitted that despite the due diligence exercised by the petitioner by giving several representations 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 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 after commencement of the monsoon since the paddy were left in the open sky as such with the accumulation of the water, few part of the paddy are submerged and also the other paddy which has completely become wet. It is further submitted that though the paddy was not lifted for the fault of the respondents marketing federation but in order to pass on the liability threat are being extended that the criminal case would be registered as the petitioner was to supervise the procurement and disbursement.
4. Per contra, learned counsel for respondents 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. It is further submitted that whether the petitioner himself failed in his duty is required to be enquired into as unilaterally the submission of the petitioner cannot be accepted.

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 petitioner 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. Clause 2.8 purports that entire paddy would be lifted by the MARKFED till 31/03/2021. Admittedly that period has passed. As on date near about four months have already been passed.
8. Admittedly, as on date the paddy is lying with the paddy procurement centre.

The submission of the petitioner that in case if the Marketing Federation fails to transport the paddy within time, the procurement centre 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. It is obvious that if the paddy are left in the open sky as the rain has started it will cause loss to the paddy and the entire stock may be damaged, therefore the fact that why the paddy was not lifted despite certain representation which has been placed on record it is to be enquired into and in case the paddy is not lifted despite due diligence of the petitioner, for the loss of the paddy the petitioner cannot be unilaterally held responsible either for their loss of amount or damages or any criminal liability.

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 rain it cannot be pass on to head of the petitioner. 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

petitioner 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 referred 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 petitioner 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

Ashu