

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 3410 of 2021

- Sewa Sahkari Samiti Maryadit, Dokrabhatha Through Manager Namely Vivek Mishra S/o Prem Shankar Mishra , Aged About 55 Years, R/o Village Malood (Khairarajgarh), Block Khairagarh, District Rajnandgaon Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary , Co Operative Department Mahanadi Bhawan Mantralaya , Atal Nagar, Nawa Raipur , District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. The Secretary Food , Civil Supply And Consumer Protection Department, Mahanadi Bhawan, Mantralaya , Atal Nagar , Nawa Raipur , District Raipur Chhattisgarh.
3. Chhattisgarh State Cooperative Marketing Federation Limited Through Its Managing Director, Chhattisgarh State Cooperative Marketing Federation 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 Rajnandgaon, District Rajnandgaon Chhattisgarh.
6. District Marketing Officer Rajnandgaon, District Rajnandgaon Chhattisgarh.
7. Chhattisgarh Rajya Sahkari Bank (Apex Bank) Through The Managing Director Chhattisgarh Rajya Sahkari Bank, Maryadit Head Office Sahkar Bhawan, Plot No. 74 , Sector 24, Nawa Raipur , Atal Nagar , District Raipur Chhattisgarh.
8. District Cooperative Central Bank Limited Through Its Chief Executive Officer, District Cooperative Central Bank Limited, Rajnandgaon, District Rajnandgaon Chhattisgarh.
9. District Food Officer Rajnandgaon, District Rajnandgaon Chhattisgarh.
10. The Deputy Registrar Cooperative Societies , Rajnandgaon, District Rajnandgaon Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Dharmesh Shrivastava, Advocate
For Respondent/ State	:	Mr. Ashish Tiwari, G.A.
For Respondents No. 3 & 6	:	Mr. Chetan Singh Chouhan on behalf of Mr. Ashish Surana, Advocate
For Respondents No. 7 & 8	:	Mr. Jitendra Shrivastava, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

24.08.2021

Heard

1. The petitioner was running paddy procurement centres and they were 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 a *tri partite* agreement was entered between the petitioner, 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 of paddy.
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 submitted that with the on-going monsoon, if the paddy are kept in open sky it will get wet and may be turned into rotten lot. He would submit that in such eventuality the paddy procurement centre would sustain loss. 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 taken 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 petitioner (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 petitioner 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 shift 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 and also would be damaged due to rain. Consequently, the petitioner may be reimbursed with the damages and loss caused and apart from that, the additional charges along with their entitlement of commission that the petitioner is entitled to receive which are not being paid to them.

4. Per contra, learned counsel for respondent/ C.G. State Cooperating Marketing Federation Limited and District Marketing Officer would submit that the agreement on which the petitioner is 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 as agreed upon by the parties.
5. Learned State counsel also adopts the argument of the respondents.
6. Perused the documents filed with the petitions.
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 shifted 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 transport 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 at last purports that the agent who is the petitioner herein, procures the paddy from the farmers and stores it, the Marketing federation shall transfer those stored paddy from petitioner within a period of 1 month and the 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 petitioner is that in case 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. Further, it is obvious that if paddy is left in the open sky it would be damaged due to rain and may sustain 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 द्व

ारा 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 or rain etc., it cannot be passed 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 issues are required to be adjudicated at the same time the petitioner cannot be driven to a corner by an 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 application in the circumstances of this case to claim interim due or any other relief to arrest further loss of paddy.
11. With the aforesaid direction/ observation, the writ petitions stands disposed off.

Sd/-
(Goutam Bhaduri)
Judge