

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 4767 of 2021

- Kanhaiya Lal Dansena, S/o Shri Chhoturam Dansena, Aged About 59 Years Incharge - Paddy Procurement Center Kodwagodan, Police Station - Pandatarai, Tahsil - Pandariya, District - Kabirdham Chhattisgarh Mo. No. - 9993250629, District : Kawardha (Kabirdham), Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary Department Of Food, Civil Supplies And Consumer Protection, Mahanadi Bhawan, New Mantralaya, Atal Nagar Raipur, Police Station - Rakhi, Tahsil And District Raipur Chhattisgarh
2. Collector, Kabirdham, District Kabirdham Chhattisgarh
3. Managing Director, Chhattisgarh State Co-Operative Marketing Federation Limited, 6th Floor, Tower-C, Commercial Complex Cbd, Sector21, Atal Nagar Nawa Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
4. Deputy Registrar, Co-Operative Societies Kawardha, Tahsil And District Kabirdham Chhattisgarh
5. District Marketing Officer Chhattisgarh Rajya Sahkari Vipadan Sangh Maryadit Kawardha, District Kabirdham Chhattisgarh
6. Chief Executive Officer, Zila Sahkari Kendriya Bank Maryadit Rajnandgaon, District - Rajnandgaon Chhattisgarh, District : Rajnandgaon, Chhattisgarh

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For Petitioner	:	Mr. Ratnesh Kumar Agrawal, Advocate
For State	:	Mr. Rahul Jha, G.A.
For respondents No. 3 & 5	:	Mr. Vinod Deshmukh, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

25.11.2021

1. Heard on petition and on I.A. No. 01, application for grant of interim relief.
2. It is submitted by the learned counsel for the petitioner that the petitioner had been working as an in-charge of the Paddy Procurement Centre Kodwagodan under the control of the Adiwasi Seva Sahkari Samiti Maryadit Kodwagodan which has registration No. 2241 under the Kharif Marketing Year 2020-2021. In the paddy season of 2020-2021, the paddy purchase centre made a purchase

of 44954.00 quintals of paddy between 01.12.2020 to 31.01.2021. According to the Clause 2.6 & 2.7 of the agreement, all the paddy purchased was to be lifted by the respondents No. 3 & 5 before 31.03.2021 and the concerned respondents neither lifted the paddy nor issued any Transport Order or Delivery Order to the petitioner for the same. The paddy was kept stocked in open. Losses have been suffered because of the natural causes in the rainy season which is the reason for the shortage in paddy. The respondent No. 6 has issued a notice dated 09.11.2021 (Annexure P/1) in which it is mentioned that there is shortage of 19595.04 quintals of paddy having value of Rs.48987600/- and there is shortage of 129403 Bardana of value 2911946.54/-. The notice has been issued to the petitioner in personal capacity holding him responsible for the loss occurred and he has been directed to deposit the amount, mentioning the consequences of non-deposit of the amount.

3. It is submitted by the learned counsel for the petitioner that the action initiated against the petitioner is misconceived and against the provisions of the contract itself. Clause 5.6 of the agreement provides that in case of any shortage the same shall be recovered from the Samiti, therefore the petitioner should not have been held personally responsible for the shortage. It is submitted that the Clause 14 of the agreement provides for an arbitration clause, therefore issuance of notice before any resolution through arbitration is itself illegal and arbitrary hence the petitioner may be protected and relief may be granted.
4. Learned State counsel opposes the submission and makes formal objection.
5. Learned counsel representing respondents No. 3 & 5 submits that the petitioner is not entitled for grant of any relief. Clause 2.6 of the agreement clearly provides that in case of failure of the marketing federation in lifting the

paddy in time, the agent is empowered to transfer the same to the destination in which the petitioner and the society has failed therefore the petitioner is not entitled for any relief.

6. Considered on the submissions. Perused the documents filed along with the petition. The petitioner has made submissions regarding the reasons which have caused shortage in the stock of the paddy in the paddy purchase centre of which the petitioner was in-charge. This claim of the petitioner needs to be enquired. The another submission of the petitioner's side that according to the clause 5.6 of the agreement, the society shall be held responsible for the shortage of paddy and the amount of the shortage shall be recoverable from the society. According to the submissions made by the petitioner's side, the dispute has been raised and there is already a clause 14 present in the agreement of the petitioner with the respondent side, according to which in case any dispute arises, then the same shall be referred to District Collector and the District Collector shall arbitrate on the dispute and give the decision, which shall have the finality. This clause also provides that the award of the District Collector shall be appealable to the Divisional Commissioner. Hence, there is a remedy present which has not been exhausted and without resorting to this remedy, the respondent No. 6 has directed and initiated the proceeding of recovery against the petitioner in personal capacity. Hence on the basis of these discussions, I am of the view that his petition is fit to be disposed off at the motion stage. The notice Annexure P/1 issued against the petitioner is quashed. The petitioner is granted liberty to make reference before the District Collector on behalf of the society. Such reference petition may be presented within a period of 10 days from today. The respondent No. 2 is then directed to arbitrate on the dispute in accordance with law and take the decision on the same at the earliest within a period of one year.

7. It is made clear that this Court has not made any observation on the merits of the case and the respondent No. 2 shall arbitrate the dispute referred to it without being influenced by any of the observations made in this order.
8. With such observations/ directions, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Vishakha