

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (CIVIL) NO. 5185 OF 2021**

- Bharat Chandrawanshi, S/o Shri Ghasiram Chandrawanshi, aged about 52 years, In-charge, Paddy Procurement Center, Kumhi, Police Station Pandatarai, Tahsil Pandariya, District Kabirdham, Chhattisgarh. Mo. No. 9981712542.

... 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 (C.G.)
2. Collector, Kabirdham, District Kabirdham (C.G.)
3. Managing Director, Chhattisgarh State Co-operative Marketing Federation Limited, 6th Floor, Tower-C, Commercial Complex CBD, Sector 21, Atal Nagar, Nawa Raipur, District Raipur (C.G.)
4. Deputy Registrar, Co-operative Societies, Kawardha, Tahsil and District Kabirdham (C.G.)
5. District Marketing Officer, Chhattisgarh Rajya Sahkari Vipdan Sangh Maryadit, Kawardha, District Kabirdham (C.G.)
6. Chief Executive Officer, Zila Sahkari Kendriya Bank Maryadit, Rajnandgaon, District Rajnandgaon (C.G.)

... Respondents

For Petitioner	: Ms. Prabha Sharma, Advocate.
For Respondent 1, 2 & 4	: Mr. Rahul Jha, Govt. Advocate.
For Respondents 3 & 5	: Mr. Vinod K. Deshmukh, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****[15/12/2021]**

1. Heard on admission as well as on I.A. No.1 - Application for grant of interim relief.
2. It is submitted by learned Counsel for Petitioner that the Petitioner had been working as an In-charge of the Paddy Procurement Centre, Kumhi, which is under the control of the Adim Jati Seva Sahkari Samiti Maryadit, Kumhi, having registration No.1739 during the Kharif Marketing Year 2020-2021. In the Paddy Season 2020-2021, the Paddy Procurement Centre had made a purchase of 28014.80 quintal 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 but 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 of Paddy. The Respondent No.6 has issued a Notice dated 9.11.2021 (Annexure P-1) wherein it is mentioned that there is a shortage of 6255.19 quintal of Paddy having value of Rs.15637975.00 and there is a shortage of 30996 Bardana valued to Rs.993384.40. The said 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 further submitted by learned Counsel for 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. Further, Clause 14 of the Agreement provides for an arbitration clause. Therefore, issuance of notice before any resolution through arbitration is itself illegal and arbitrary and hence the Petitioner may be protected and relief may be granted.

4. Learned Government Advocate opposes the submissions made by learned Counsel for Petitioner and makes formal objection.

5. Learned Counsel for 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 and therefore the Petitioner is not entitled for any relief.

6. Considered the submissions put forth on either side and perused the documents enclosed along with the Petition. Petitioner has made submissions regarding the reasons which have caused shortage in the stock of the Paddy in the Paddy Procurement Centre of which the Petitioner was in-charge. This claim of the Petitioner needs to be inquired. The another submission of the Petitioner's side is that, according to Clause 5.6 of the Agreement, the Society shall be held responsible for the shortage of the 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 Respondents' 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, this Court is of the view that the present Writ Petition is fit to be disposed of at the motion stage itself.

7. Accordingly, the notice (Annexure P-1) issued against the Petitioner is quashed. 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. Respondent No.2 is then directed to arbitrate on the dispute in accordance with law and take appropriate decision on the same at the earliest, within a period of one year.

8. 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.

9. With the aforesaid observation/direction, the Writ Petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge