

IN THE HIGH COURT OF ORISSA, CUTTACK

W.P.(C) No.19523 of 2016

In the matter of an application under Articles 226 & 227 of
the Constitution of India.

M/s. Radharani Food Industries..... Petitioner

-Versus-

State of Odisha & others Opp. Parties

For Petitioner: - M/s. Upendra Kumar Samal,
C.D. Sahoo, S.P. Patra,
S. Nayak &
M.R. Mohapatra

For Opposite parties: Mr. D.K. Mohanty,
Addl. Standing Counsel

M/s. A.K. Mishra, S.Mishra
& A.K. Sharma
(for O.P. Nos. 2 & 3)

Mr. J. R. Deo
(for O.P. No.4)

P R E S E N T:

THE MR. JUSTICE BISWAJIT MOHANTY

Date of Hearing: 24.06.2022

Date of Judgment: 28.06.2022

Biswajit Mohanty, J. This writ application has been filed with
a prayer to direct opposite parties to settle the claim

regarding damage caused at the petitioner's mill on account of fire accident and to pay the said amount to the petitioner's mill.

2. According to Mr. U.K. Samal, learned counsel for the petitioner, the case of the petitioner is that the petitioner mill had participated in Kharif Marketing Season 2013-2014 and had procured paddy for milling. The paddy so procured, were stored in the godown of the petitioner's mill. As per Clause 23 of the agreement under Annexure-A/2 executed between the petitioner's mill and Odisha State Civil Supplied Corporation Limited (opposite party no.2) for KMS 2013-14 it was specifically mentioned as follows:

"Clause-23 Insurance:- It is the responsibility of the Custom Miller for safe and scientific storage of paddy, rice keep under joint custody and gunny bags supplied by Corporation OSCSC head office on behalf of the custom miller shall take up Standard Fire Policy of the stock with nationalized insurance company as insurance against fire and allied perils for stocks. The Corporation shall not be responsible for any damage of stock due to fire and other natural calamities kept unscientifically and in safe manner. Custom miller will be responsible for storage/damage of paddy, rice and gunny bags due to happening of theft, burglary or other reasons not covered under Standard Fire Policy. The insurance premium shall be borne by the millers."

As per the above agreement, the petitioner mill deposited the entire insurance premium with the opposite party no.2 and the said opposite party insured the entire paddy and rice stock of the petitioner's mill with the National Insurance Company Limited (opposite party no.4). Due to heavy rain and flood, some paddy, rice and gunny packets kept in the mills premises, got damaged. This was informed by the ACSO-cum-Authorised Officer of opposite party no.2 to the Civil Supply Officer-cum-District Magistrate, OSCSC Ltd., Samablpur (opposite party no.3) on 8.8.2014 under Annexure-1 requesting him to take necessary action for settlement of the insurance claim. There he indicated about the quantum of the damage suffered by the mill in respect of the paddy, rice and gunny bags. In his turn, the opposite party no.3 wrote a letter to the Deputy General Manager (Finance) on the same day, i.e, 8.8.2014 vide Annexure-2 requesting for making necessary arrangement for deputing a surveyor of

opposite party no.4 for settlement of claims in respect of the mill of the petitioner. There, the opposite party no.3 clearly indicated about the quantum of damage suffered by the petitioner's mill. Accordingly, the Deputy General Manager (Finance) of opposite party no.2 vide his letter dated 11.8.2014 under Annexure-3 intimated the same to the Senior Divisional Manager of opposite party no.4.

While so on 17.9.2014, when the proprietor of the petitioner and his family members were away at Raigarh, after receiving the information that one of his family members had met with an accident, the petitioner's mill and godown got substantially damaged due to fire accident on account of electric short circuit. Staff of the petitioner's mill informed the said fact to the fire brigade and also to the ACSO and Authorized Officer the petitioner's mill. The ACSO and Authorized Officer of the petitioner's mill after receiving the telephonic message, rushed to the spot and found that

fire brigade staffs busy in controlling the fire in order to save the balance portion of mill. According to him near about 45 to 50 per cent of paddy/rice at that time had already been burnt by fire. On the same date, i.e., 17.9.2014 vide Annexure-4 he intimated the matter to opposite party no.3 and requested him to pay a personal visit to the mill. On the same date, the opposite party no.3 vide Annexure-5 requested the ACSO & Authorised Officer of the mill to lodge an F.I.R. in the local police station immediately as the entire stock of opposite party no.2 in the mill had been kept under joint custody of the petitioner-miller and Authorized Officer. Accordingly, the ACSO and Authorised Officer of the petitioner's mill lodged an F.I.R. on 17.9.2014 under Annexure-18 before the O.I.C., Sasan Police Station, Sasan, a copy of which has been filed along with an affidavit dated 20.4.2022 filed on behalf of the mill of the petitioner. In the said F.I.R., it was made clear that stocks of paddy, rice of opposite

party no.2 were kept in the mill premises under joint custody of miller and Authorized Officer of the rice mill and as per his assessment, nearly 40 to 50 per cent of paddy and rice had been burnt in fire. On 18.9.2014, the opposite party no.3 vide Annexure-6, intimated the Managing Director of opposite party no.2 about the fire accident caused in the mill of the petitioner on 17.9.2014 and lodging of the F.I.R. by the Authorized Officer on the same date. He also indicated therein that as per the report of the Authorized Officer about Q33,000 paddy and Q300 raw rice have been damaged due to fire accident. He also indicated therein that one mill staff has also lodged an F.I.R. Opposite party no.3 requested the Managing Director (opposite party no.2) to intimate the Insurance Company to depute a Surveyor. There, he also indicated that balance available stocks were in wet condition due pouring of water to control fire by the fire brigade staff and steps for shifting of balance available stock had not been

taken only for survey by the Insurance Company. So he requested deputation of a Surveyor immediately to assess the damage caused before shifting of stock in order to avoid further damage of stock due to water. On 19.9.2014, vide Annexure-7, the General Manager (Accounts) requested the Senior Divisional Manager of opposite party no.4 to depute a surveyor to assess the damage while indicating therein that the approximate value of damaged stock was Rs.524.10 Lacs. He also requested to settle the claims at the earliest. On 25.9.2014, the opposite party no.3 requested the General Manager (Accounts) of opposite party no.2 again to take necessary steps to depute a surveyor of the Insurance Company to assess the damage. The General Manager (Accounts) in his turn vide letter dated 29.9.2014 also requested the Senior Divisional Manager of opposite party no.4 to depute a surveyor to assess the damage. Also on 29.9.2014, the Station Officer of Fire Station, Rengali certified that the mill of

the petitioner was substantially damaged due to fire accident on 17.9.2014 caused on account of electric short circuit. On 13.10.2014 after a gap of 25 days from the date of accident, a team of surveyor of the Insurance Company came from Calcutta and visited the mill premises. They were accompanied by the ACSO and Authorized Officer of the mill. After recording the statement, the surveyor requested the opposite party no.3 to ask the miller to segregate and salvage the available stock. The ACSO and Authorized Officer vide his letter dated 14.10.2014 under Annexure-8 intimated this fact to opposite party no.3. On 3.3.2015, the opposite party no.3 vide Annexure-9 intimated the Managing Director of opposite party no.2 about the then status of the petitioner's mill, specifically indicating about the damage caused in the fire accident and the cause of the accident to be electric short circuit and that in the meantime, the petitioner's mill has been allowed to operate and mill the balance good quality

paddy. Vide letter dated 28.1.2016 under Annexure-10, the Managing Director of opposite party no.2 intimated the opposite party no.3 that opposite party no.4 has rejected the claim of fire loss at the petitioner's mill on the ground that the fire was not accidental and also intimated that a meeting has been convened with opposite party no.4 on 1.2.2016 to discuss all these issues and the miller should remain present in the said meeting to put forth its points along with their relevant book of accounts and documents. Vide self same letter he was also requested to intimate Santosh Das, the then ACSO to remain present in the Head office. On 16.3.2016, the Managing Director of opposite party no.2 requested the Senior Divisional Manager of opposite party no.4 for settlement of the claim as the report submitted by the surveyor was baseless and to arrange a resurvey through a pool of senior surveyor. Since no effective steps were being taken for settlement of the dispute, on 25.5.2016, the petitioner

vide Annexure-11 requested the Managing Director of opposite party no.2 to give authorization to file a case against the opposite party no.4. On 16.8.2016 vide Annexure-12 the General Manager (Accounts) of opposite party no.2 requested M/s. Safe Risk Insurance Brokers Pvt. Ltd. to submit its opinion regarding the rejection of the claim of insurance company in connection with the fire accident at the petitioner's mill and representation of the miller to file a consumer case. But neither the permission was accorded nor the documents were supplied to challenge the rejection of the claim by the opposite party no.4. Instead the opposite party.no.2 started conducting audit for recovery of the amount of damage from the petitioner's mill. The petitioner also made an application before the Insurance Company (opposite party no.4) under the RTI Act to supply documents regarding insurance of the mill and claim made by the opposite party no.2. Vide letter dated 27.10.2016, under Annexure-13 the Chief

Public Information Officer intimated that the information cannot be granted to a third party as the insurance policy has not been made in the name of the petitioner and has been issued in the name of the opposite party no.2. Therefore, the petitioner could take the documents from the opposite party no.2. Most importantly it was intimated that as per the survey report, the insured has not submitted the claim form. According to Mr. Samal, the case of the petitioner is that since the petitioner has paid the insurance premium to the opposite party no.2 and fire insurance has been made in the name of the opposite party no.2 for the stock of paddy and rice of opposite party no.2 lying at petitioner's mill and as the said stock got damaged due to fire accident, which was covered under the insurance policy, the opposite party no.2 should have taken appropriate steps for settlement of the claim with the opposite party no.4 including the steps to challenge rejection of claim by opposite party no.4.

Instead of doing that a move is on to saddle the petitioner with said liability, which is not permissible under law.

3. Opposite party nos.2 & 3 have filed their counter affidavit. Relying on the said counter affidavit Mr. Mishra denied the allegations and submitted that the opposite party nos.2 & 3 have taken various steps for settling the claim. The same would be clear from Annexure-7 by which opposite party no.2 intimated the opposite party no.4 about the fire accident, approximate value of damage and requested for deputing a surveyor to assess the damage/loss of the stock and for settling the claim of the petitioner. It is their further stand is that the petitioner has not deposited the entire insurance premium with opposite party no.2 rather opposite party no.2 has insured the entire stock available with the petitioner and all other custom millers of the State for KMS 2013-14 on payment of the insurance premium by opposite party

no.2 itself. Subsequently, the premium paid was received from the petitioner by way of adjustment from its bills. Their further stand is that as per the terms of the agreement at Clause-23, opposite party no.2 should not be held responsible for any damage of stock kept unscientifically and in unsafe manner at the mill premises. Further relying on Clause-25(xi) of the agreement under Annexure-A/2, the opposite party nos. 2 & 3 have taken the stand that in case of shortage in paddy and rice due to happening of fire, the miller is liable to pay the economic cost. It is also their case that though the miller agreed to mill good quality paddy of Q 14000.00 as per Annexure-9 which was found after fire accident, instead of delivering Q10292.00 rice, only Q2778.00 of rice was delivered leaving balance of Q7513.94 rice. In reply to Paragraph-17 of the writ application, the above noted opposite parties submitted that opposite party no.2 represented before the insurance company for resurvey

so as to confirm the first survey report. However, as the fire claim was rejected by the insurance company, in the audit, damage on account of fire claim has been included in the liability of the petitioner. In this context, Mr. Mishra relied on Clauses 23 & 25 (xi) of the Agreement under Annexure-A/2.

On 5.4.2022, Mr. Mishra learned counsel for opposite party nos.2 &3 filed certain documents which include Annexure-C/4 and letter dated 17.5.2017 written by the Managing Director of opposite party no.2 to the Senior Divisional Manager of opposite party no.3 which indicated that final report has not yet been submitted on the matter in issue and it was decided the claim should be revised by the opposite party no.4 as has been earlier requested by opposite party no.2 time and again.

On 21.4.2022 the opposite party no.2 and 3 filed further documents indicating that on fire accident involving the present petitioner two Station Diary

Entries, i.e., 323 dated 17.9.2014 and 337 dated 17.9.2014 were recorded by Sasan Police Station. They filed extracts of the Station Diary Entries. A perusal of Station Diary Entry No.337 dated 17 clearly indicates that as per the then ACSO cum Authorised Officer, 45 to 50 per cent paddy/rice were burn by fire.

In the end, Mr. Mishra reiterated that once the request of opposite party no.2 with regard to settlement of claim has been rejected by opposite party no.4, in tune with the Clauses 23 & 25(xi), the petitioner has to pay the damages which occurred on account of the fire. Since the petitioner has further failed to deliver Q10292 of rice as against the available good quality paddy of Q14000 after fire accident, it should be held liable for not delivering the rest Q7513.94 of rice. Accordingly, he submitted that the writ application should be dismissed.

4. Opposite party no.4 has filed a counter affidavit. Relying on the same, Mr. J.R. Deo, learned

counsel for the opposite party no.4 raised a preliminary objection relating to maintainability of the writ application vis-à-vis opposite party no.4. It is their case that since the present writ application involves intricate factual disputes, the same cannot be decided in a writ application. It is the further stand opposite party no.4 that since the claim relating to damage has been repudiated on the basis of a detailed report prepared by the surveyor and since neither surveyor's report nor the repudiation of the claim letter has been challenged, on this ground also the writ application deserves to be dismissed. Their further plea is that the writ application against opposite no.4 is not maintainable as there is no privity of contract between the petitioner and opposite party no.4. He further submitted that it is well settled that the report of the surveyor cannot be interfered with unless there is a glaring error in it. He also submitted that vide letter dated 3.6.2015 under Annexure-C/4, the opposite party no.4 with reference

to the claim intimation letter dated 18.9.2014 intimated to opposite party no.2 about violation of Condition no.8 of the Policy, which reads as follows:

"Condition No.8: If the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof or if any fraudulent means or devices are used by the insured or any one acting on his behalf to obtain any benefit under the policy or if the loss or damage be occasioned by the willful act or with the convenience of the insured, all benefits under this policy shall be forfeited."

Accordingly, vide Annexure-C/4, opposite party no.4 called for comments from opposite party no.2 within a fortnight of receipt of the said letter to enable it to take further action in respect of the claim making it clear that if no comments are received, it would be presumed that opposite party no.2 had no comments to offer. Since the opposite party no.2 did not file any response to the letter dated 3.6.2015 under Annexure-C/4 their claim was repudiated and the same was intimated to the General Manager (Accounts) of opposite party no.2 vide letter dated 23.6.2015 under Annexure-D/4. Opposite Party no.4 also took a stand that opposite

party no.4 has never received any letter dated 16.3.2016 as indicated at Paragraph-17 of the writ application. Accordingly, it also denied the contents of letter dated 16.8.2016 under Annexure-12. In the above noted factual ground, Mr. Deo reiterated that since there exists no contract of insurance between the petitioner and the opposite party no.4 and since the present case involves disputed questions of facts and since the survey report and repudiation of claim order have not been challenged, the writ against opposite party no.4 is not maintainable. Accordingly, he prayed for dismissal of the same.

5. Mr. Samal has filed a rejoinder affidavit to the counter affidavits filed by opposite party nos.2, 3 and 4. While reiterating the stand taken in the writ application, Mr. Samal stated that though opposite party no.2 has objected to opinion of the Insurance Company as would be clear from their letter under Annexure-12, however, till date the opposite party no.2

has not taken any steps to challenge the repudiation of claim for realization of damage caused due to fire accident on 17.9.2014 made by opposite party no.4. In such background, the opposite party no.2 cannot saddle the petitioner with liability on account of the loss caused due to the fire accident in the petitioner's mill. Relying on the averments made in the rejoinder, Mr. Samal submitted that the stock was kept scientifically and in a safe manner in the mill premises. The ASCO and Authorized Officer of the Corporation had verified the stock kept in the premises of the petitioner's mill regularly without raising any objection. Fire Officer has certified that the fire was caused on account of electric short circuit. Further he submitted that Q.14,000 paddy, which was shown as good quality paddy under Annexure-9 were in fact damaged paddy as would be clear from report of Authorized Officer under Annexure-14.

He further submitted that as per Annexure-4 the ACSO cum Authorised Officer has found that 45 to 50 per cent of Paddy/rice were burn on account of fire. Under Annexure-6 the opposite party no.3 clearly indicated to Managing Director of opposite party no.2 to the effect that as per the report of the Authorised Officer, Q33000 of paddy and Q300 of rice were damaged due to fire accident. Under Annexure-7 the General Manager (Accounts) assessed the loss at Rs.5.24 crores. As per Annexure-9 which refers to the fire accident certificate issued by the Fire Officer, Fire Station, Rengali and the report of O.I.C., Sasan Police Station, it is clear that fire accident took place on account of electric short circuit and no where anyone has indicated that such fire accident to be non-accidental or deliberately made. In such background, according to him the opposite party no.2 should have challenged the survey report as well as the rejection of claim order issued by the opposite party no.4 in

appropriate forum. Having not done that it cannot saddle the petitioner with the liability for the damage which has occurred on account of fire. Though under Annexure-12 also the opposite party no.2 makes it clear that it has objected to the opinion of opposite party no.4 vide letter dated 16.3.2016 and though opposite party no.4 has disputed receipt of such letter but this very fact itself shows that opposite party no.2 itself was not satisfied with the opinion of opposite party no.4 that the fire was not accidental. Accordingly, the opposite party No.2 should have challenged such opinion of the opposite party no.4 before the appropriate forum which the petitioner could not have challenged because neither the survey report nor the repudiation letter was communicated to it by the opposite party no.4 at any point of time and also because as the petitioner was not a party to the contract of insurance. Lastly, he submitted that the very fact that letter dated 17.5.2017 has been issued

by the opposite party no.2 to the Senior Divisional Manager of opposite party no.4 during pendency of the writ application indicating its opinion that the claim should be revisited by the opposite party no.4 itself clearly shows that opposite party no.2 was never satisfied with the survey report as well as with the repudiation of claim letter issued by the opposite party no.4. For all these reasons, he submitted that the petitioner cannot be saddled with the liability of damage that has occurred on fire accident. Accordingly, he prayed that the claim relating to the damages be accordingly be decided. Lastly, he made it clear that the petitioner has no claim against opposite party No.4 as there does not exist any privity of contract between them. It's main grievance is against the inaction of opposite party No.2 in taking appropriate steps for just resolution of settlement claim.

6. Heard Mr. U.K. Samal, learned counsel for the petitioner, Mr. D.K. Mohanty, learned Additional

Standing Counsel, Mr. A. Mishra, learned counsel for opposite party nos.3 & 3 and Mr. J.R. Deo, learned counsel for opposite party no.4.

7. The undisputed facts of the case are as follows:

The petitioner and the opposite party no.2 entered into an Agreement for Kharif Marketing Season 2013-14 on 29.11.2013 under Annexure-A/2 for milling paddy. By virtue of such Agreement, it was agreed that the opposite party no.2 shall deliver paddy to the custom miller, i.e., the petitioner at the paddy purchase centre which shall be transported and kept under joint custody of miller and corporation for storing, milling of the paddy and delivery of the custom milled rice to the opposite party no.2/F.C.I. at designated places. As per Clause-23 of the Agreement, it was the responsibility of the petitioner mill for safe and scientific storage of paddy, rice kept under joint custody and gunny bags supplied by the opposite party no.2. The opposite party

No.2 on behalf of the custom miller was obliged to take up Standard Fire Policy of such stock with nationalized insurance company as insurance against fire and allied perils for stocks. The Corporation agreed not to be responsible for any damage of stocks due to fire, kept unscientifically and in unsafe manner. The custom miller would be responsible for shortage/damage of paddy, rice and gunny bags due to happening of theft burglary or other reasons nor covered under Standard Fire Policy. The insurance premium was agreed to be borne by the millers. Clause-25(xi) makes it clear that under no circumstances, the miller would be entitled to claim shortage in paddy/rice in course of storing, milling, transporting, lifting and delivering due to happening of fire. In the event of any shortage or misappropriation, the miller was liable to pay the economic cost of paddy/rice along with interest till the date of recovery. In the event of any shortage occurring due to any accident or mishap, the reasons

and circumstances of which were found by the corporation to be beyond the control of the custom miller, the custom miller would be liable to pay the cost of the shortage of stock along with all expenses by the corporation and interest at such rate and for such period as may be directed by the Corporation. Due to heavy rain from 3.8.2014 to 5.8.2014, paddy, rice and gunny bags at the mill premises got damaged and the same was duly intimated by the ACSO and Authorised Officer of the petitioner mill to opposite party no.3 on 8.8.2014 and the officers of opposite party no.2 moved to opposite party no.4 for settlement of the claim vis-à-vis the above noted damage vide Annexure-3 and it has been admitted by the opposite party nos.2 & 3 in their counter affidavit at Paragraph-15 that the auditors have not included the damage of stock due to flood in the liability of the petitioner. While so on 17.9.2014, when the family of the proprietor of the petitioner was away at Raigarh after receiving the information that one of

his family members had met with an accident, the petitioner's mill and godown got substantially damaged due to fire accident on account of electric short circuit. On receiving the information, the ACSO and Authorised Officer of the petitioner's mill immediately visited the spot and found that fire brigade busy in controlling the fire in order save balance portion of the mill and according to him about by then 45 to 50 per cent of paddy, rice was already burnt. In such background, on the same date, vide Annexure-4 he requested opposite party no.3 to pay a visit to the mill to assess the situation and take necessary action. On receipt of such letter vide Annexure-5 opposite party no.3 directed the ACSO and Authorised Officer of the petitioner mill authorizing him to lodge an F.I.R. in the local police station immediately without further delay as the stock of opposite party no.2 was kept under joint custody and maintenance of the petitioner as well as the Authorized Officer of opposite party no.2. It appears that on

17.9.2014 vide Annexure-18 the ACSO and Authorised Officer of the petitioner mill lodged an F.I.R. before the O.I.C., Sasan Police Station. Therein it is clearly indicated that according to the said Authorised Officer about 40 to 45 per cent of paddy and rice have been burnt. Upon receipt of such information, Station Diary Entry No.337 dated 17.9.2014 was made by the O.I.C., Sasan Police Station clearly indicating therein percentage of burnt paddy and rice as submitted under Annexure-18. On the very same date, one D.R. Sharma also lodged a written report with regard to fire in the mill and the same was registered vide Station Diary Entry No.332 dated 17.9.2014 to the effect that on account of such fire, some paddy and rice have been burnt and damaged. On 18.9.2014 vide Annexure-6 opposite party no.3 intimated the Managing Director of opposite party no.2 about the fire in the mill on 17.9.2014 and lodging of the complaint with the local police station by the Authorised Officer. He also

indicated therein that the Authorised Officer has reported that about damage of Q33000 paddy and Q300 rice due to fire accident and balance available stock were in wet condition due to water pouring and the steps for shifting of balance available stock have not been taken awaiting survey by the insurance company. Accordingly, he requested deputing of a surveyor of Insurance Company to assess the damage in order to avoid further damage. On 19.9.2014, the General Manager (Accounts) wrote a letter vide Annexure-7 to the Senior Divisional Manager of opposite party no.4 drawing his attention to the fire at the mill on 17.9.2014 and indicating the approximate value of damaged paddy and rice to be of Rs.524.10 crores. Accordingly, he requested to depute a surveyor to assess the damage and loss and settle the claim at the earliest. On 25.9.2014, the opposite party no.3 again made a request to the General Manager (Accounts) of opposite party no.2 for taking necessary

steps for deputing the surveyor to assess the damage. On 28.9.2014, the O.I.C. Sasan Police Station reported on enquiry that the electric boards have been found burnt due to electric short circuit and due to electric short circuit, some rice pockets which were inside the mill have been damaged and some paddy pockets and empty paddy pockets which were inside the godown have also been damaged. This has been indicated in Annexure-9. Further the said Annexure refers to fire accident certificate dated 29.09.2014 issued by the Station Officer, Fire Station, Rengali to the effect that on 17.9.2014 in a fire accident at the mill and godown, paddy due to electric short circuit, rice and machine panel board etc were burnt. After a gap of around 25 days the surveyor visited the spot on 13.10.2014. This was informed by the ACSO cum Authorised Officer to the opposite party no.3 vide its letter dated 14.10.2014 under Annexure-8. He also indicated therein that verbally the team of surveyor asked the miller to

segregate and salvage the available stock and also told him that if necessary the team may come again to assess actual damage caused due to fire accident. In such background, he requested the opposite party no.3 to kindly issue necessary direction to the miller to segregate and salvage the available stock and also requested the surveyor to send a computerized copy of their report dated 13.10.2014. On 10.12.2014, the Authorised Officer submitted the physical verification report as indicated in Annexure-9 making it clear that Q14,000 of good quantity paddy has been salvaged. However, in the rejoinder, the petitioner has taken a stand that the entire Q14,000 of paddy was in reality damaged paddy. Thereafter, it appears that the Collector, Sambalpur directed the petitioner to mill the available good quality paddy and minor affected paddy and deliver rice immediately to minimize the loss of Corporation i.e. opposite party no.2. The head office of opposite party no.2 was directed to be intimated

about the present status in details with a request to take immediate steps for settlement of insurance claim on fire accident. It was further observed that after final acceptance of damage quantity by the insurance company, the miller should be issued notice for deposit of differential amount towards value of differential quantity within limited time. All these have been reflected in Annexure-9 dated 03.03.2015 which is a letter written by the opposite party no.3 to the Managing Director of opposite party no.2. It was also indicated therein that at present the miller had started delivery of C.M.R. In the meantime, vide letter dated 11.2.2015 under Annexure-14, the M.I. Rengali Block had intimated the opposite party no.2 that he has taken charge over the mill along with its damaged paddy and rice on 23.12.2014 from the then ASCO and since then or prior to that date the mill was lying closed by orders of the higher authority. He had also intimated that neither balance paddy was being processed nor balance

rice was being delivered. But vide Annexure-9 dated 03.03.2015 the opposite party no.3 has admitted that the petitioner has started delivery of C.M.R. Sometimes thereafter vide Annexure-B/4 dated 12.3.2015, survey report was prepared clearly indicating therein that it was the opposite party no.2, who was the insured and not the petitioner. On 3.6.2015 vide Annexure-C/4, the opposite party no.4 asked for response of opposite party no.2 making their observation vis-à-vis condition no.8 of the policy as quoted earlier as it was felt that the said condition has been violated. The opposite party no.4 made it clear that it would like to have the comments of opposite party no.2 within a fortnight of receipt of this letter in order to enable them to take further action in respect of the claim failing which it would be presumed that the opposite party no.2 had no comments to offer. On such a query the opposite party no.2 remained silent. Accordingly, vide letter dated 23.6.2015 the opposite party no.4 repudiated the claim

of opposite party no.2 with regard to the damage suffered at the mill on account of fire which took place on 17.9.2014. In this background, about 6 months thereafter, the Managing Director of opposite party no.2 intimated the opposite party no.3 vide letter dated 28.01.2016 vide Annexure-10 that a meeting has been convened on 1.2.2016 with the opposite party no.4 to discuss the issue relating to loss of stock in the mill premises of the petitioner on account of fire as in the meantime, the opposite party no.4 has rejected the claim on the ground that the fire was not accidental. In the said letter it was made it clear that the petitioner should be asked to remain present to putforth its points before them on 1.2.2016 with all relevant documents and books of accounts. Neither the petitioner nor the opposite party nos.2 & 3 have indicated as to what happened on 1.2.2016. On 16.3.2016 as would be clear from the contents of Annexure-12 the opposite party no.2 objected to the opinion of opposite party No.3 that

fire was not accidental vide its letter dated 16.3.2016. Though the opposite party no.4 in its counter affidavit has made it clear that such a letter was not received by it, however, one thing is clear that the opposite party no.2 has objected to the opinion of the opposite party no.4 that the fire was not accidental. On 25.10.2016 vide Annexure-11 the petitioner made a request to the Managing Director of opposite party no.2 for authorizing them to file insurance claim before the Consumer court. Further it appears that the deponent in the writ application also requested the opposite party no.4 for claim related opinion from opposite party no.4 and the opposite party no.4 vide letter dated 3.10.2016 under Annexure-E/4 Series wrote to the General Manager of opposite party no.2 seeking their advice regarding submission of documents as requested. On 19.10.2016 under Annexure-E/4 Series in response to the above noted letter dated 3.10.2016, the General Manager requested the Senior Divisional Manager of

opposite party no.4 to furnish those documents to him. Accordingly, Xerox copy of the survey report and copy of the policy were forwarded to the General Manager of opposite party no.2 vide letter dated 2.10.2016 issued by opposite party no.4 under Annexure-E/4 Series. On 27.10.2016 vide Annexure-13 the CPIO of opposite party no.4 intimated the deponent in the writ application that the information sought for by him relates to third party and they have sought permission from the policy holder as the policy was not in the name of the petitioner and as per their request, the insurance policy and survey report have been furnished to the opposite party no.2. It is in such background, when the petitioner thought that the opposite party no.2 is not taking enough steps in the matter and the liability of damage relating to stock on account of fire accident might be saddled on it, the petitioner filed the present writ application on 7.11.2016. Such an apprehension of the petitioner has been found to be

correct from the averments made in Paragraph-15 of the counter affidavit filed by the opposite party no.2. During pendency of the writ application the Managing Director of opposite party no.2 intimated the Senior Divisional Manager of opposite party no.4 vide letter dated 17.5.2017 that it has been decided that claim on fire damage should be revisited by opposite party no.4 as has been requested by opposite party no.2 time and again. As to what happened pursuant to such letter, nothing is there.

The above narration broadly contains the background facts. Keeping in mind the factual background, submissions of the parties and prayer made by the petitioner it is clear that the present case clearly revolves around the damage caused by the fire accident and as to whether the petitioner should bear the liability with regard to the damage caused on account of such accident.

An analysis of the facts as indicated above clearly shows that the Authorised Officer of opposite party no.2 under Annexure-4 has indicated that when he went to the spot, he felt that about 45 to 50 per cent of paddy and rice have been burnt on account of fire. The same was also indicated by the ACSO and Authorised Officer in his report dated 17.9.2014 under Annexure-18 before the O.I.C., Sasan Police Station. Further a perusal of Annexure-6 indicates that the Authorised Officer has also indicated that about Q33000 of paddy and Q300 of rice have been damaged due to fire accident and the balance available were in wet condition due to pouring of water to control fire by the fire brigade. Vide Annexure-7 the General Manager (Accounts) of opposite party no.2 also intimated the Senior Divisional Manager of opposite party no.4 that the approximate value of damaged stock was about Rs. 5.24 crores and requested for settlement of the claim. Neither in Annexure-4 nor in Annexures-18,6 & 7 any

officer of opposite party no.2 has complained that the petitioner has kept the stock in an unscientific and unsafe manner. On 28.9.2014, the O.I.C. Sasan Police Station on enquiry found that the electric boards have been burnt due to electric short circuit and due to electric short circuit, some rice pockets which were inside the mill and some paddy pockets and empty paddy pockets which were inside the godown have been damaged. On 29.9.2014 the Station Officer, Fire Station, Rengali in his certificate has also indicated about the fire accident in the mill occurring due to electric short circuit. Despite request for survey at the earliest, strangely, after expiry of more than 25 days, the surveyor visited the spot on 13.10.2014 as noted under Annexure-9 and as per the direction, the miller started milling available paddy and made delivery of the C.M.R. On 12.3.2015 the survey report was prepared under Annexure-B/4 clearly indicating that the opposite party no.2 is the insurer. The opposite party

no.2 was asked by the officer of opposite party no.4 to give its comments vide letter dated 3.6.2015 under Annexure-C/4 making it clear that in case comments are not received within a fortnight it should be presumed that the opposite party no.2 has no comments to offer. It is not disputed that opposite party no.2 did not offer any comments and accordingly, letter dated 23.6.2015 under Annexure-D/4 was issued by the opposite party no.4 to the General Manager (Accounts) of opposite party no.2 repudiating the claim. Strangely, the opposite party no.2 neither challenged the survey report nor the repudiation letter under Annexure-D/4 before the appropriate forum though it objected to opinion of the Insurance company that fire is not accidental as appears from Annexure-12.

Thus it is not disputed that the damage was caused on account of fire and also not disputed that the stock which has been damaged on account of fire was insured by the opposite party no.2 with opposite party

no.4 and the survey was undertaken after a gap of about 25 days. Only on account of coming to a conclusion that fire was not accidental, the opposite party no.4 has repudiated the claim and though the opposite party no.2 has objected to the same, however, it has not challenged the same in an appropriate forum. Most strangely though opposite party no.2 was granted opportunity to respond to the views of the opposite party no.4 vide Annexure-C/4, however, it chose not to give its comments which resulted in issuance of repudiation letter under Annexure-D/4. Thus despite raising objection to the opinion of opposite party no.4, again strangely opposite party no.2 has not challenged the survey report and repudiation letter. Since the petitioner is not a privy to the contract of the insurance it has no locus standi to either challenge the survey report or the final repudiation of claim. Moreover during pendency of the writ application, on 17.5.2017, the Managing Director of opposite party no.2 in his letter to

opposite party no.4 has clearly indicated that their claim on the accident should be revisited by opposite party no.4 In such background, this Court is of the opinion that the petitioner cannot be saddled with liability on account of damage of stocks due to fire accident.

To the contention of Mr. Mishra that the petitioner is bound to be saddled with the liability on account of Clauses 23 & 25(xi) of the agreement under Annexure-A/2, this Court is of the view that such a submission is without any merit and reflects contradictory stand of opposite party no.2. When opposite party no.2 itself vide Annexure-12 and letter No.8103 dated 17.5.2017 issued by the Managing Director to the Senior Divisional Manager of opposite party no.4 has raised objection to the opinion of the insurance company and is of the opinion that the matter should be revisited by the opposite party no.4, it cannot be permitted to take contradictory stand that

the petitioner be saddled with liability under Clauses 23 and 25(xi) of the Agreement. Moreover, no document /evidence has been brought on record to show that the stock was kept by the petitioner in an unscientific and unsafe manner. As indicated earlier the documents under Annexures-4,6,7,9,18, etc. nowhere indicate that stock was kept in an unscientific and unsafe manner.

With regard to Clauses 23 & 25(xi) of the agreement under Annexure-A/2 it can only be said that both Clauses 23 and 25(xi) should be read together and harmoniously. As per Clause-25(xi) the millers are required to pay the economic cost in case of shortage on account of fire along with interest. Where the shortage occurs on account of accident, the millers are required to pay the cost of shortage along with the interest and expenses incurred by the corporation. But when the subject matter of shortage is covered by insurance or when insurance agreement/contract of insurance exists giving coverage, then certainly the

petitioner can take help of Clause 23 so that its liability can be indemnified. Here it is undisputed that contract of insurance exists and the opposite party no.2 is not satisfied with the reasons on the basis of which its claim vis-à-vis the fire accident has been repudiated. Further for some unknown reasons it had failed to file its response to the letter under Annexure-C/4 despite being of the opinion of the opposite party no.4 is not correct in rejecting the claim. Despite such opinion, since it has chosen not to challenge the survey report and the repudiation letter, it certainly cannot take help of Clauses 23 & 25(xi) to saddle the liability on the petitioner. There cannot be a better illustration of arbitrary use of power than this. It may also be noted here that while entertaining this writ application this Court has also nowhere prohibited the opposite party nos.2 & 3 from taking appropriate action vis-à-vis the survey report and repudiation letter before the appropriate forum. It appears that for its inaction, the

petitioner is going to suffer. In such background, this Court is of the view that on account of their laches, the petitioner cannot be allowed to suffer and therefore, with regard to damage suffered on account of fire accident on 17.9.2014, the petitioner cannot be saddled with liability.

With regard to milling of salvaged paddy to the tune of Q14000 which was salvaged after the fire accident and requiring the petitioner mill to deliver Q10292 of rice and the petitioner only delivering Q2778.06 of rice leaving behind a balance of Q7513.94 of rice, while the stand of opposite party nos.2 & 3 is that Q14000 was good quality salvaged paddy, the petitioner in its rejoinder has taken a stand disputing quality of such paddy and according to it such rice was also completely damaged relying on Annexure-14. However, Annexure-14 nowhere refers to Q14,000 paddy. In any case since this raises a disputed question of fact, the same cannot be decided in this writ

application. The petitioner, if so advised may approach the appropriate authority in the matter for redressal of its grievances relating to milling of salvaged paddy of Q14000 as indicated in Annexure-9.

With the above finding and observations, the writ petition is disposed of. No costs.

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Biswajit Mohanty, J.



Orissa High Court, Cuttack

The 28th of June, 2022 / amit