

205.

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CWP-13767-2021

Date of Decision: 10.08.2022

M/S GURU NANAK RICE AND GENERAL MILLS AND ANR.

.... Petitioners

Versus

STATE OF PUNJAB AND OTHERS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Daman Dhir, Advocate,
for the petitioners.

Ms. Deepali Puri, Additional Advocate General, Punjab.

Mr. Ashish Rawal, Advocate,
for respondent No.2-UOI.

Mr. Rajesh Garg, Senior Advocate, with
Mr. Neha Matharoo, Advocate,
for respondent No.3-FCI.

JAISHREE THAKUR.J (Oral)

This is a petition that has been filed under Article 226 of the Constitution of India seeking a writ in the nature of Certiorari for quashing the order dated 05.02.2021 (Annexure P-14) passed by respondent No.4 whereby the claim of the petitioners for refund of amount of interest charged from them on the so-called delayed delivery of custom milled rice for the crop year 2012-13, has been rejected.

The petitioners herein are Millers, who had been allocated paddy for milling and delivering the Custom Milled Rice (CMR) for the Kharif Marketing Season 2012-13. In terms of the Custom Milling Policy

(Annexure P-1), the Miller was to deliver CMR in the Central Pool of FCI within the stipulated time frame as mentioned in the policy and the extended period as allowed by the Government of India/FCI. The petitioners were successful in delivering CMR within the extended time as allowed by FCI, however, have been charged for the delayed delivery of CMR. The petitioners herein have approached this Court for refund of the amount charged from them on account of delayed delivery of CMR for the crop year 2012-13.

Learned counsel appearing on behalf of the respondents would submit that the instant writ petition is not sustainable on account of the fact that within the policy, clause 19 would prescribe for arbitration of any dispute between the procurement agency and the Miller and, therefore, the petitioners herein ought to invoke arbitration clause and appointment of an Arbitrator. He would submit that similar issue already stands decided in CWP No.23099 of 2016 titled as “*Satnam Agro Industries versus Union of India and Others*”, on 03.05.2019, wherein, all matters which have a dispute between the procurement agency and the Miller have been referred for arbitration.

I have heard learned counsel for the parties and have also gone through the Custom Milling Policy 2012-13 and have perused clause 19 of the same, which is reproduced as under:-

“19. All the disputes and difference arising out whatsoever shall be referred to the sole arbitration of the concerned Managing Director or any person appointed by him in this behalf. There shall be no objection to any such appointment by the miller that

the person appointed is or was an employee of the concerned agency or that he had to deal with the matters to which the contract relates and that in the course of his duties such an employee of the concerned agency had expressed views on all or any of the matters in disputes or difference. The award of such arbitration shall be final and binding on the parties to this contract. It is a term of this contract that in the event of the arbitrator being transferred, or vacating his office or being unable to act for any reason, the Managing Director concerned at the time of such transfer, vacation of office, death or inability shall appoint another person to act as arbitrator. Such a person shall be entitled to proceed with reference from the stage where it was left by his predecessor. However, there shall be no objection to any such appointment by the miller concerned.”

In view of the fact that there is an arbitration clause, it would be appropriate that all disputes arising between the procurement agency and the Miller-petitioner, be it legal or otherwise, should be referred to the Arbitrator.

Consequently, the instant petition is disposed of and petitioners are relegated to appear before the Arbitrator, to be appointed by the Managing Director of the concerned agency on 07.10.2022, in terms of the decision rendered in CWP No.20885 of 2016, decided on 04.10.2016 and CWP No.23099 of 2016, decided on 03.05.2019.

However, it is made clear that any order as passed by respondent No.2 declining the prayer of the petitioners would not be taken into account while deciding the claim of the petitioners herein. The issue as raised by the petitioners would be decided on the strength of its own merits.

(JAISHREE THAKUR)
JUDGE

10.08.2022

sanjeev

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No