

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

204

**CWP-1881-2015 (O&M).
Date of Decision: 11.11.2022.**

M/s Mangat Rice and General Mills

... Petitioners

Versus

Punjab State Warehousing Corporation and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Aditya Grover, Advocate for the petitioner.

Mr. Harish Mehla, Advocate, for
Mr. Athar Ahmed, Advocate, for the respondents.

VINOD S. BHARDWAJ. J (ORAL)

The present writ petition has been filed under Articles 226/227 of the Constitution of India, seeking issuance of a writ of in the nature of certiorari for quashing of the order dated 21.01.2014 (Annexure P-2) whereby respondent No.1 is alleged to have wrongly passed an order of recovery amounting to Rs.1,14,01,438/- against the petitioner Mill without affording an opportunity of hearing.

Briefly summarized, the facts of the case are that the petitioner, a registered partnership firm, engaged in the business of Food

Grains for the last more than 25 years is that the Government of Punjab through the respondent-Corporation had entered into an agreement dated 02.11.2001 with the petitioner firm whereby it was decided that the petitioner-firm shall be supplied 3000 MT's of paddy available at Shahakot. The petitioner-firm was to deliver rice after shelling to Food Corporation of India (hereinafter referred to as 'FCI') on account of the respondent Corporation.

Pursuant to the above agreement, the petitioner firm received 45524 bags of paddy weighing 22762 quintals from the respondent corporation. The respondent corporation took an unilateral decision and transferred 11500 bags weighing 5750 quintals to M/s G.R. Rice Mills. Thereafter, without consulting the petitioner-firm, the respondent-Corporation lifted 8587 bags of paddy weighing 4239 quintals from the paddy stored with the petitioner-firm. Resultantly, out of the total allocated stock of 45524 bags, the respondent corporation transferred/lifted 8587 bags of paddy weighing 4239 quintals and only 25437 bags of paddy weighing 12718 quintals remained with the petitioner-firm for milling. It is averred that the petitioner-firm has delivered 6335 quintals of rice to the respondent-F.C.I. as per the terms and conditions of the agreement. Due to shortage of storage space with the FCI, the petitioner-firm was constrained to deliver balance rice to the tune of 2250 quintals to respondent No.2 and a communication in this regard was also sent. It has been further averred that despite the petitioner-firm having made good its obligations as per the agreement and having supplied 149 quintal excess rice to the respondent-

corporation, ex parte arbitration proceedings were illegally initiated by the respondents. A claim dated 01.10.2004 was filed in the arbitration proceedings for recovery of Rs.45,91,234/- along with interest @ 21% per annum upto 31.12.2003. A copy of the aforesaid claim has been appended along with the present petition as Annexure P-7. An ex parte award was passed on 05.02.2005 by the Sole Arbitrator directing recovery of the above amount in favour of the respondent-corporation.

The petitioner-firm raised a challenge to the said award and filed objections under Section 34 of the Arbitration Act, 1996, before the District Judge, Chandigarh. Additionally, the Arbitrator also issued suo moto notice dated 28.03.2005 to the petitioner-firm calling upon it to appear before the agencies. The same was also challenged by filing Civil Revision No.6920 of 2005 which was allowed and was set aside by the High Court vide order dated 07.05.2007.

The respondent authorities again appointed an Arbitrator for adjudication of the same claim. The said illegal action was also challenged by means of Civil Misc. Application No.18791-C-II-2007 in Civil Revision No.6920 of 2005 before the High Court. The said Civil Misc. Application was allowed by the High Court holding that the matter could not be referred to an Arbitrator, vide its order dated 16.05.2008.

In the meanwhile, the Additional District Judge, Chandigarh, vide his judgment dated 11.01.2013, allowed the objection petition filed by the petitioner firm under Section 34 of the Arbitration Act, 1996 and set aside the award dated 05.02.2005. The parties were relegated to appear before the respondent No.1 – Punjab State

Warehousing Corporation (hereinafter to be referred as 'PSWHC') and holding that the delay in delivery entitled the Corporation to claim interest till actual realization and a final decision thereupon was to be taken by the Director/Managing Director of the Corporation under Clause 8 (iii) of the agreement. Any other dispute and difference was to be resolved through Sole Arbitrator under Clause 22 of the Agreement. The award dated 05.02.2005 was set aside and the case was remanded to the Director/Managing Director for taking a decision as per the terms and conditions of the agreement dated 02.11.2001.

Consequent upon order of remand, the fresh order dated 21.01.2014 (Annexure P-2) has now been passed by Managing Director of the PSWHC whereby he has ordered for the recovery of Rs.1,14,01,438/- as calculated by the respondent No.2- District Manager, PSWHC. The rate of interest, however, has been reduced from 21% to 13% on the net payable amount. The said order is now a subject matter of challenge in the present writ petition.

Written statement on behalf of respondent-corporation has been filed wherein it has been averred that the petitioner-firm failed to mill the paddy within the time stipulated in the agreement. It was on above account that the PSWHC paddy to the extent of 11500 bags weighing 5750 quintals was issued to M/s G.R. Rice Mills for milling at the risk and costs of the petitioner-firm. It has also been averred in the said written statement that due to failure of the petitioner-firm to mill the entire paddy of PSWHC within the stipulated period and to safeguard the interests of the respondent-corporation and also to minimise the losses of

the corporation, 8587 bags weighing 4293.50 quintals of paddy stock was shifted from the premises of the petitioner-firm to the own custody of PSWHC at Shahkot again at the risk and costs of the petitioner-firm. A plea has been taken that 25437 bags weighing 12718.50 quintals remained with the petitioner-firm for custom milling, however, the petitioner-firm failed to mill the above balance paddy as well. The rice that remained due and the rice actually delivered by the petitioner firm against the paddy crop of 2001-02 are tabulated as under:-

Rice due after shifting of paddy due to non-milling	Actual rice delivered (less) by the Miller.	
Grade ‘A’ Raw 8436.18 quintals	Gr. A Raw 2400 (75 Kg. Packing)	1800 quintals
	Gr. A Raw 4500 (50Kg packing)	2237.00 quintals
	Gr. ASella 3070 (75 Kg packing	2298.63 quintals (2242.18 quintals Raw)
	Total 6279.18 quintals Rice Gr. A Raw.	

It is also contended that the petitioner-firm dumped the rice which was of poor quality and was rejected by the FCI authorities and consequently Warehouse Manager of the Corporation asked the petitioner-firm to lift the rejected consignment and to replace the same with the consignments of rice in accordance with the specifications. A specific averment was raised that the petitioner-firm also delivered less rice to the tune of 2157.00 quintals to the FCI in the PSWHC Account.

The above response had been filed on behalf of the respondent-Corporation on 16.05.2016 and no rejoinder controverting the aforesaid statement of fact has been filed. Hence, the aforesaid factual aspect remained uncontroverted.

Learned counsel for the petitioner-firm contends that the dispute in question is non-arbitrable since the arbitration in terms of Clause 22 of the agreement dated 02.11.2001 could only have been invoked where there was no other alternative mechanism prescribed for adjudication of the disputes. Since the dispute involved in the present case was duly contemplated to be resolved through the mechanism prescribed under Clause 8 (iii) of the agreement, hence, the same was non-arbitrable under Clause 22 of the agreement. It is further argued that the petitioner-firm was never granted any effective opportunity of hearing by the Managing Director at the stage of passing of the order and contends that the petitioner-firm has thus been gravely prejudiced on account of violation of principles of natural justice. He also contends that a criminal case had been got registered by the respondent-corporation and that upon investigation, the Investigating Agency recommended a cancellation report after noting that excess rice had in fact been supplied contrary to the claim made by the respondent-corporation. Hence, there was no occasion for any loss caused to the respondent-corporation.

Per contra, learned counsel appearing on behalf of the respondent Corporation contends that the averment of the petitioner-firm that no opportunity of hearing was granted to the petitioner is false and

incorrect inasmuch as perusal of the orders clearly show that the representatives of the petitioner-firm participated on various dates of hearing. It is also pointed out that on 12.03.2013, an offer was given to the partner of petitioner-firm for settlement of the claim which was accepted during the hearing and time was then sought to discuss the matter with the other partners of the petitioner-firm. The matter was thereafter taken up on 28.05.2013 and on the said date again Sh.Prem Kumar partner of the petitioner-firm appeared and submitted a written request in for seeking another date on the plea stating that his Advocate was busy somewhere else. Thereafter, the matter was adjourned to 27.08.2013 on which date the Advocate appeared and filed an application for another date in the month of November 2013 as one of the partners of the petitioner-firm was out of country. Another opportunity was again granted on 26.11.2013 and the partner of the petitioner-firm submitted an application with a request for another date after December 2013. Last opportunity was thereafter granted for parties to appear and the case was fixed for 21.01.2014 on which date the partner of the petitioner-firm appeared along with his counsel and demanded a copy of the claim petition filed by the Corporation. An order on the said request was passed. Further proceedings were commenced after noticing that the petitioner-firm is deliberately trying to put off the case for the reasons best known to him and is unnecessarily delaying the adjudication thereof despite sufficient number of opportunities having been granted wherein the partners of the petitioner-firm had personally appeared and also accepted the offer made by the respondent

Corporation. It was then that the authorities proceeded to decide the matter after hearing the respective parties. Even when the order in question was passed on 21.01.2014, the partner of the petitioner-firm along with the counsel was present before the Managing Director of the respondent-Corporation.

In so far as the submission of the petitioner firm that excess rice had been returned to the respondent-corporation and that there was no embezzlement is concerned, the stand of the respondent-corporation too needs to be kept into consideration. The recovery in question was not only on account of the shortage of delivery but also on account of the risk and costs to be borne by the petitioner-firm due to shifting of the stock and the delay caused by it in milling the paddy. A stand in the written statement was also taken by the respondent-corporation (PSWHC) about less rice delivered by the petitioner-firm. Thus, it was not a case of mere short delivery but it was also a case of poor quality of the rice delivered and the paddy having to be shifted due to delayed milling by the petitioner-firm and the consequent risk and costs of the petitioner-firm due to delay in complying with the obligations under the agreement. The aforesaid stand of the respondent-corporation has not been countered by the petitioner-firm by filing any rejoinder or replication. Resultantly, the said pleadings had remained uncontrovered. The counsel for the respective parties have also not been able to give details as to whether the investigation report filed under Section 173 Cr.P.C. by the Investigating Agency has attained finality or the same is still pending before the Illaqa Magistrate for its acceptance. The same

would in any case be only a circumstance in favour of the petitioner-firm and would not *ipso facto* be a proof against the respondent No.1-Corporation.

The second question that now arises is as to whether the petitioner would have the alternative remedy of Arbitration under Clause 22 of the Agreement or not. The said Clause No.22 reads thus:-

*“2. **ARBITRATION:** All the disputes and differences arising out of or in any manners touching or concerning this agreement whatsoever (except as to any matter the decision of which is expressly provided for in the contract) shall be referred to the sole arbitration of the Director/Managing Director or any person appointed by him in this behalf. There will be no objection to any such appointment that the person appointed is or was an employee of P.S.W.C. or that he had to deal with the matter to which the contract relates and that in the course of his duties such an employee of the P.S.W.C. had expressed views of all or any of the matter 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 arbitration being transferred or vacating his office or being unable to act for any reason, the Director/Managing Director, at the time of such transfer, vacation of office, death or inability shall appoint another person to act as arbitrator. Such person shall be entitled to proceed with reference from the stage where it was left by his predecessor.*

Provided further that any demand for arbitration in respect of any claim (s) of the Miller, under the contract shall be in writing and made within one year of the date of completion or expiry of the period of contract if the demand

is not made within the period, the claim (s) of the miller shall be deemed to have been waived off and released of all liabilities under the contract in respect of these claims.

The cost for and in connection with arbitration shall be the discretion of the Arbitrator who may make suitable provisions for the same in his award.

Subject to as aforesaid, the Arbitration Act 1996 shall apply to the arbitration provided under this clause.”

It is evident from a reading of the above that the clause would come into operation in a circumstance where there is no other remedy expressly provided in the agreement. The claim raised by the respondent Corporation is threefold; firstly, failure to supply rice; secondly, for failure to mill the paddy due to which it had to be shifted to other mills; and thirdly, for sub-standard delivery to F.C.I. which sub-standard supply or delay supply is stipulated under the agreement, the claim against risk and cost shifting and reassignment of paddy is not covered. Additionally, disputed questions are being raised regarding the quantification of the damages as well.

The questions which thus are being agitated by the respective parties are disputed questions of fact and the same cannot be dwelled upon at this stage by Writ Court in appreciating the said controversy. Merely because some of the disputes are not arbitrable does not mean that a litigant is remediless. Arbitration is only a dispute resolution process contractually agreed between the parties. The common law remedy for dispute redressal shall be available when disputed questions of fact arise between the parties. High Court does not

usually foray into the disputed questions of fact in writ jurisdiction as evidence is required to be led before returning a finding on the same.

It is however not for this Court to suggest as to what remedy may be availed by the petitioner since such decision has to be left to the discretion of a litigant. The present petition is thus dismissed with liberty to the petitioner to take recourse to the alternative remedy(ies) available to it under law for redressal of its grievance which shall decide the matter without being prejudiced by any observations recorded above and on the strength of evidence led by respective party(ies).

It has further been pointed out by the learned counsel for the petitioner firm that 25 % of the principal amount had been deposited in compliance of the order dated 04.02.2015. As the main petition has been disposed of, the above amount deposited may be released to the petitioner firm after requisite formalities.

Petition is accordingly disposed of.

Nocember 11, 2022
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No