211.

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-16768-2018
Date of Decision: 26.05.2022

M/S TIRTHANKAR RICE MILLS AND ANR .... Petitioners

Versus

STATE OF HARYANA AND ORS .... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Rajinder Kumar Singla, Advocate,
for the petitioners.

Ms. Kirti Singh, DAG, Haryana.

Mr. Sunish Bindlish, Standing counsel with
Mr. Prashant Rana and Mr. Gagandeep Singh Malhotra,
Advocates, for respondent No.2-FCI.

Mr. Pritam Singh Saini, Advocate,
for respondents No.4 and 5.

JAISHREE THAKUR.J (Oral)

The instant writ petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of Mandamus directing respondents No.1 to 5 to release/pay the amount to the petitioners which was wrongly deducted from their bills of Khariff Marketing Season 2016-17 on account of alleged moisture cut for KMS 2015-16.

Learned counsel appearing on behalf of the petitioners-Millers would contend that since the petitioners are in the business of milling/shelling of paddy, they entered into an agreement with respondents

No.4 and 5 whereby the petitioners had to mill the paddy and converted into resultant rice and then to deliver it to the FCI. Counsel would submit that for the KMS 2015-16, the petitioners delivered the rice including moisture cut as per the agreement and the requisite amount was cleared by the respondents. He would further submit that similarly for the KMS 2016-17, another agreement was executed between the petitioners and respondents No.4 and 5 and as per the agreement, the petitioners delivered the resultant rice to the FCI. However, at the time of clearance of their bills for milling/shelling of the paddy, respondents No.4 and 5 deducted certain amounts (i.e. Rs.4,00,419/- from the bill of petitioner No.1 and Rs.3,18,921/- qua petitioner No.2) on account of alleged moisture cut for KMS 2015-16, which is against the provisions of law. The petitioners requested them for refund of their amount and even served a legal notice as well, but it was neither replied nor any payment was released.

Counsel appearing on behalf of respondent No.2-FCI would contend that the petitioners, who are Millers, had been allotted paddy for custom milling for Khariff Marketing Season 2016-17 and had entered into a custom milling agreement with the procurement agency, namely, respondent No.4. It is submitted that in case the petitioners herein have a grievance, they have a remedy as provided under the agreement, since clause 26 provides for arbitration to be entered into in case any dispute arises which touches the Miller and the Agency.

I have heard learned counsel for the parties and have also gone through the custom milling agreement 2016-17 and have perused clause 24 of the same, which is reproduced as under:-

> *"24. All the minor disputes and differences arising out of interpretations or in any manner 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 arbitrator of the Director Food and Supplies, Haryana/Managing Director of the Agency or any person appointed by them in this behalf. There will be no objection to any such appointment that the person appointed is or was an employee of Food and Supplies Department, Haryana/Agency and he had expressed views on all or any of the matter in dispute or difference. The award of such arbitration shall be final and binding on both the parties to this contract. It is a term of this contract that in the event of transfer, vacation of office or being unable to act for any reason of a person appointed as an arbitrator by the Director Food and Supplies, Haryana/Managing Director at the time of such transfer, vacation of office, death or inability shall appoint another person to act as an arbitrator. Such a person shall be entitled to proceed with reference from the stage where it was left by his predecessor."*

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

Consequently, the instant petition is disposed of and petitioners-Millers are relegated to appear before the Arbitrator, to be appointed by the Managing Director of respondent No.4, on 19.07.2022, 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.

(JAISHREE THAKUR)
JUDGE

26.05.2022
sanjeev

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No