

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CWP No.22593 of 2017 (O&M)

Date of Decision.04.08.2022

Shiv Shakti Rice Mill

...Petitioner

Vs

Union of India and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. JPS Sidhu, Advocate
for the petitioner.

Mr. Rajesh Garg, Senior Advocate with
Ms. Neha Matharoo, Advocate
for respondent No.1-Union of India.

Ms. Deepali Puri, Addl. A.G., Punjab.

Mr. Athar Ahmed, Advocate
for respondent Nos.4 and 5.

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JAISHREE THAKUR J. (ORAL)

The instant writ petition has been filed by the petitioner-mill under Article 226/227 of the Constitution of India for issuing a writ in the nature of certiorari for quashing letter dated 07.09.2016 whereby it has been instructed to all the procurement agencies that if there is any recovery pending against the millers than milling allotment be done only after receiving the recovery amount and consequent action of respondents in charging interest on the cost of once used gunny bags of crop year 2012-2013 to crop year 2013-2014.

Learned counsel appearing on behalf of the petitioner would contend that the respondent-State is charging interest on the cost of once used gunny bags of crop year 2012-2013 to crop year 2013-2014 which remained lying with the millers for some time even though the petitioner-miller is ready to deposit the cost of gunny bags, if any recoverable from the

petitioner. It is further contended that there is no provision in the policy or instructions regarding charging of interest on retained gunny bags and therefore, the said action of the respondents is illegal and arbitrary. It is also argued that respondents are insisting on recovery of interest on retained gunny bags and even had not allotted paddy to the petitioner for KMP 2017-2018 on the ground of alleged recovery of interest.

Learned senior counsel appearing on behalf of the respondent No.1-Union of India as well as counsel appearing for other respondents submit that the instant writ petition is not sustainable on account of the fact that as per Clause 19 of the milling policy, all the disputes and difference arising out whatsoever shall be referred to the sole arbitration of concerned Managing Director or any person appointed by him in this behalf and therefore, the petitioner herein ought to have invoke the said arbitration clause.

I have heard learned counsel for the parties and have perused the custom milling policy 2012-13 in which there is an arbitration clause. Relevant Clause 19 of the aforesaid policy is reproduced as under:-

“19. All the disputes and differences 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 petitioner-miller, be it legal or otherwise, should be referred to the Arbitrator.

Consequently, the instant petition is disposed of and petitioner-miller is relegated to appear before the Arbitrator to be appointed by the Managing Director of the concerned agency on 01.09.2022, 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

August 04, 2022

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No