

203-C

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23912-2017

Date of decision: 18.05.2022

M/S CHANNI RICE MILLS

...Petitioner

VERSUS

UNION OF INDIA AND ORS.

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

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

Mr. Ashish Rawal, Advocate
for respondent No.1.

Mr. Rajesh Garg, Senior Advocate with
Ms. Neha Matharoo, Advocate
for FCI.

Ms. Anju Arora, Addl. A. G., Punjab.

Mr. Mayank Mathur, Advocate
for respondent Nos.5 and 6.

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 demand of interest made amounting to Rs.6,58,162/-, issued by respondent No.6 (PAFC), on account of alleged delayed delivery of Custom Milled Rice (CMR) for the Kharif Marketing Season 2012-13.

Learned counsel for the petitioner herein would contend that the Miller-petitioner herein had been allotted paddy for custom milling for the Kharif Marketing Season 2012-13 and was successful in delivering the

said CMR within the stipulated period as in the Custom Milling Policy Annexure P-1 and the extended period as allowed by the Government of India/FCI. However, despite having delivered the CMR within the Central Pool of FCI, petitioner has been served with a demand notice Annexure P-8, for recovery of Rs.6,58,162/-, on account of interest on late delivery of CMR. It is submitted that the said demand is not sustainable in view of the fact that the delivery had been made within the stipulated period.

Learned counsel for the FCI would submit that the instant writ petition is not sustainable on account of the fact that within the policy, clause 27 would prescribe for arbitration of any dispute between the procurement agency and the Miller and, therefore, the petitioner 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*”, decided 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 27 of the same, which is reproduced as under:-

“27. All the disputes and differences arising out of or in any manner touching or concerning this agreement whatsoever shall be referred to the sole arbitrator of the 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 Food and Supplies Department, Punjab/Agency 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 Food Civil Supplies & Consumer Affairs Department, Punjab/Agency 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 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 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 and 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 Miller-petitioner, be it legal or otherwise, should be referred to the Arbitrator.

Consequently, the instant petition is disposed of and petitioner is relegated to appear before the Arbitrator, to be appointed by the Managing Director of respondent No.6 (PAFC) 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.

18.05.2022
Chetan Thakur

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No