

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 3199 of 2021 (O&M)

Date of Decision: 23.03.2022

M/s Jain Rice Mills, Rayya

.....Petitioner

Versus

Punjab State Warehousing Corporation, Chandigarh and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Veneet Sharma, Advocate
for the petitioner.

Mr. Jastej Singh Arora, Advocate
for respondent no.1.

LISA GILL, J(Oral).

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Petitioner has filed this revision petition challenging order dated 16.07.2021, Annexure P-15 and order dated 03.12.2021, Annexure P-19, passed by the learned Arbitrator.

Learned Arbitrator, vide order dated 16.07.2021, Annexure P-15, while observing that the claimant-Punjab State Warehousing Corporation (for short 'PSWC'), had filed an application for placing on record a revised claim, reply and rejoinder of which was on record, felt that instead of a provisional claim petition which was earlier filed, the claim petition itself should be filed and the respondent would get an liberty to file the written statement and thereafter arbitration proceedings would continue in a smooth manner. Petitioner admittedly filed CR No. 1709 of 2021, challenging order dated 16.07.2021, which was dismissed as withdrawn on 26.08.2021 with liberty to approach the sole Arbitrator for termination of the proceedings in view of Section 25 of the Arbitration and Conciliation Act (for short 'the

Arbitration Act'). Application for termination of the proceedings in terms of Section 25(a) of the Arbitration Act was filed. Reply thereto was filed by the respondent-claimant and vide impugned order dated 03.12.2021, Annexure P-19, the said application was dismissed holding that the claim petition cannot be dismissed under Section 23 read with Section 25 of the Arbitration Act.

Aggrieved therefrom, present revision petition has been filed.

Brief facts necessary for adjudication of the matter are that agreement dated 07.10.2011 was executed between the petitioner, who is a rice miller with the respondent-PSWC for custom milling of rice for the crop year kharif 2011-12. Dispute arose between the parties and the same was referred for arbitration vide order dated 03.06.2013. Notice was issued by the Sole Arbitrator on 11.07.2013 for 16.07.2013, directing the respondent-Corporation to file the Statement of Claim. A provisional claim dated 30.07.2013, Annexure P-3, was filed by the respondent-Corporation along with an application dated 30.09.2013 under Section 17 of the Arbitration Act for grant of interim measures. Petitioner appeared and filed reply to the application under Section 17 of the Arbitration Act, but no reply to the provisional claim was filed as it is stated that it was only a provisional claim. It is submitted that the petitioner being aggrieved of the multiple civil and criminal litigation initiated against, filed CWP No.11058 of 2014 for issuance of a writ of mandamus for directing the respondents to allow the petitioner to make the outstanding payment of rice as per the custom milling rate in terms of Clause 12 (a) of the Agreement dated 07.10.2011 and further for directing the respondents to release the machinery/ building and the stock of the petitioner.

It is noted in order dated 29.05.2014 in CWP No. 11058 of 2014, that petitioner was ready and willing to make the payment of rice as per physical verification report dated 15.11.2012 and an amount of Rs.4,13,62,805/- is due against the petitioner. It was directed that petitioner would deposit Rs. One Crore within 15 days and thereafter notice be issued to the respondents for 07.10.2014. It was further directed that subject to deposit of Rs. One Crore, no coercive steps would be taken against the petitioner. Consequent thereto, further proceedings before the Arbitrator were adjourned *sine die* on 05.12.2017 to await the decision of CWP No. 11058 of 2014.

The said writ petition was finally disposed of vide order dated 29.11.2018, Annexure P-8, wherein it is recorded that the petitioner is still willing to deposit the amount of Rs.3,17,03,931/- and is also ready and willing to pay the balance amount which is found due after adjustment of the sale price of the rice lying in the godown. It is observed in order dated 29.11.2018 in CWP No. 11058 of 2014 as under:-

“4.) As regards the balance outstanding to be paid by the petitioner, the learned counsels are ad idem that the same shall be subject to outcome of the arbitration proceedings and all the rival contentions are kept open to be adjudicated upon by the learned Arbitrator. In view of the fact that amount of Rs.1 crore has already been paid by the petitioner, which reflects bona fide of the petitioner coupled with the fact that sale proceeds of the rice stock lying in the godown shall also be directly remitted to respondent No.5, no coercive steps shall be taken against the petitioner during the pendency of the arbitration proceedings subject to a further payment of another Rs.1 crore, staggered in 4 monthly installments of Rs.25 lacs each commencing from the month of January, 2019.”

The earlier Arbitrator i.e., Mr. B.R. Bansal, Additional District & Sessions Judge (Retd.), appointed as Sole Arbitrator expressed his inability to proceed further with the Arbitration case vide communication dated 28.01.2021, due to health problems and record of the Arbitration proceedings was returned to the office of PSWC. Thereafter, another Arbitrator namely Mr. B.C.Gupta, Additional District Judge (Retd.) was appointed as the Sole Arbitrator to continue with the Arbitration proceedings. An application for filing the revised claim for the crop year 2011-12 was filed by the respondent-Corporation. Reply thereto was filed as well as the rejoinder leading to passing of order dated 16.07.2021 and thereafter filing of CWP No. 11058 of 2014 and ultimately passing of order dated 03.12.2021, Annexure P-19.

Learned counsel for the petitioner vehemently argued that in terms of Section 25 (a) of the Arbitration Act, arbitral proceedings should have been terminated by the tribunal and continuance thereof is in violation of the said provisions. It is submitted that the time for filing the Statement of Claim was fixed by the Sole Arbitrator vide order dated 11.07.2013, but the respondent-Corporation chose not to file the Statement of Claim for all these years and now after almost a decade vide impugned order dated 16.07.2021, the Sole Arbitrator has incorrectly allowed the respondent-Corporation to file the fresh claim. It is thus prayed that this revision petition be allowed and order dated 16.07.2021, Annexure P-15 and order dated 03.12.2021, Annexure P-19, be set aside.

Per contra, learned counsel for the respondent-Corporation submitted that there is no ground whatsoever for interference by this Court in exercise of revisional jurisdiction, at this stage. A provisional claim was filed at the initial stage as the rates are finalized at a later stage. Learned

counsel submitted that it is clearly explained in the reply to the application seeking termination of proceedings that a provisional claim is filed at the first instance because the claim petition is based on the rates/costs-sheet as prepared or issued by the department of Food and Public Distribution, Government of India, which is subject to change and it is for this reason that the cost-sheet is initially prepared on provisional basis. The rates in the cost-sheet are not finalized by the Central Government in the beginning and are finalized for a particular crop year only after the entire procurement-cum-milling-cum-distribution process of that year ends and the entire cost involved in these operations are sent by the State Government for finalization of the rates in the cost-sheet. It is due to this reason that initially a provisional claim petition was filed by the claimant so that there is no delay in initiation of arbitration proceedings as any such delay would necessarily impact the claimant's case adversely. The final rates and cost-sheet as prepared by the Government of India, it is submitted were duly attached with the reply to the application and that moreover the main issue involved in the present case is related to non-delivery of the rice to the FCI by the miller and that the pleadings remain the same even after filing of the final claim petition.

Learned counsel for the respondent-Corporation further submitted that the amount in the main claim petition is in-fact reduced and in case there had been any kind of mala fides etc., the same could not have happened. Moreover, the petitioner, it is stated never raised any such pleas in the writ petition filed by it before this High Court and it is further submitted that the petitioner having itself admitted its liability as is noted in order dated 29.11.2018, Annexure P-8 in CWP No.11058 of 2014, it is evident that the

petitioner is only trying to delay the process. It is thus prayed that this petition be dismissed.

Heard learned counsel for the parties and have gone through the record with their assistance.

Execution of the contract/agreement between the parties, arising of the dispute between them, appointment of the Sole Arbitrator as well as filing of CWP No. 11058 of 2014 and its decision on 29.11.2018, is not in dispute. At this stage, it is useful to reproduce Section 23 and Section 25 of the Arbitration Act, which read as under:-

“23. Statements of claim and defence.—

(1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

AND

25. Default of a party.—Unless otherwise agreed by the parties, where, without showing sufficient cause,—

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant.

(c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.”

It is the specific case of the respondent-Corporation that at the initial stage it is only a provisional claim which could be filed for the reason that the rates have not been finalized by the Government of India at that stage and it is only after the entire procurement cum milling cum distribution process of the year ends that the process of finalization of the rates for the crop year is carried out and the complete cost involved in these operations is sent by the State Government for finalization of rates in the cost sheet.

In the present case too, the respondent-Corporation filed a provisional claim pursuant to order dated 11.07.2013. Petitioner admittedly had not filed any reply thereto due to this reason. Thereafter, proceedings before the Sole Arbitrator were adjourned sine die to await the decision of this High Court in CWP No. 11058 of 2014. Respondent-Corporation duly moved an application for filing the revised claim. Learned Sole Arbitrator in its wisdom directed the respondent-Corporation to file the claim petition instead of provisional claim petition and observed as under:-

“This dispute was referred to the undersigned on 09.02.2021 only. An application was moved by the counsel for the claimant on 30.04.2021 for placing on record revised claim and reply of which was given on 25.06.2021 and rejoinder was filed on 02.07.2021. I do not want that if some irregular order is passed the same may be set aside after 10 years. In order to straighten the record I feel that the claimant should file claim petition

instead of the provisional claim petition earlier filed and if the claimant is given opportunity, naturally the respondent will get an opportunity to file the written statement and thereafter the arbitration proceedings can continue in smooth manner. The previous claim and reply with automatically become redundant.”

It is apparent that sufficient cause has been brought forth for not filing the final/revised claim by the respondent and perusal of Section 23 and 25 of the Arbitration Act does not in any manner bar the route undertaken by the learned Arbitrator. The amount in question admittedly stands reduced in the claim petition.

Keeping in view the facts and circumstances of the case, I find no infirmity, illegality or irregularity in the impugned order dated 16.07.2021, Annexure P-15 and order dated 03.12.2021, Annexure P-19, passed by the Arbitrator. As far as order dated 16.07.2021, Annexure P-15, is concerned, the same already stood challenged by the petitioner vide CR No. 1709 of 2021, which stands dismissed as withdrawn.

No other argument has been raised.

Present revision petition is accordingly dismissed.

23.03.2022

s.khan

[LISA GILL]
Judge

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