BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.9108 of 2015
and
M.P.(MD)No.1 of 2015

M/s. Bhuvaneswari Modern Rice Mill,
Rep. by its Proprietor, Bhuvaneswari. ... Petitioner

Vs.

1.The Senior Regional Manager,
Tamil Nadu Civil Supply Corporation Limited,
Thanjavur Region, Thanjavur.

2.The Director,
Tamil Nadu Civil Supply Corporation Limited,
No.42, Thambusamy Salai,
Chennai – 600 010. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st Respondent order dated 16.04.2015 in Na.Ka.No.G2/6490/2014 and quash the same and consequently direct the respondents to pay the deposited amount as well as building charge of Rs.4,35,000/- to the petitioner.

For Petitioner : Mr.D.R.Murugesan

For Respondents : Mr.G.Mohankumar,
Standing Counsel.

ORDER

Heard the learned counsel for the writ petitioner and the learned standing counsel for Civil Supplies Corporation.

2.The writ petitioner was running a modern rice mill in Thanjavur District. She was appointed as a hulling agent by the corporation on 12.10.2012. On 12.04.2014, the rice mill premises were inspected by the officials of the corporation. They found shortfall of paddy entrusted by them to the tune of 30 metric tons (14 metric tons of fine variety and 16 metric tons of common variety). A show cause notice was issued on 15.04.2014 calling upon the petitioner to explain as to why action should not be taken against her. The notice did not elicit any response, even though it was received by the petitioner. A second show cause notice was issued on 12.05.2014 and it was returned without the endorsement "left without intimation". On 16.06.2014, the petitioner claimed that on the inspection date, the entire paddy entrusted to her was very much available and that it had since been handed over to the corporation godown at Pattukkottai. Not satisfied with the petitioner's explanation, the first respondent issued proceedings dated 24.11.2014 directing that a sum of Rs.2,55,621/- should be deducted from the amount payable to the petitioner. Thereafter, the impugned order dated 16.04.2014 came to be passed by the first respondent stating that the petitioner has to pay a sum of Rs.7,66,863/-. Challenging the same, the present writ petition came to be filed.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. His primary contention is that the alleged misappropriated quantity of paddy was very much available and that in any event, it had been handed over. The first respondent having passed an order dated 24.11.2014 could not have passed a revised order enhancing the amount payable by the petitioner. He also pointed out that if really the petitioner was at fault, her hulling agreement would not have been continued. He called upon this Court to set aside the impugned order and allow the writ petition as prayed for.

4.The respondents have filed counter affidavit and also typed set of papers. The learned standing counsel took me through their contents. The first objection raised by the learned standing counsel is that since the relationship between the parties was contractual and commercial, the petitioner cannot maintain the present writ petition. Secondly, the agreement between the parties contains an arbitration clause. When arbitral remedy is available, the writ jurisdiction of this Court cannot be invoked. The third contention is that appeal remedy was very much available. Coming to the merits of the matter, he contended that the conduct of the petitioner clearly established that she was at fault. Otherwise, the petitioner would have responded immediately, when the first show cause notice was issued. The petitioner had made good the shortfall after a lapse of 47 days. It is true that the first respondent passed an order on 24.11.2014 levying a sum of Rs.2,55,621/- as the amount payable by the petitioner. Such an order was passed by taking into account the subsequent deposit of paddy by the petitioner. Realizing that the same was not in consonance with the instructions set out in the Manual, the impugned order came to be passed. The learned standing counsel drew my attention to the terms of the hulling agreement as well as the clauses set out in the Manual on Processing of Paddy. It is further contended that the instructions set out in the Manual were very much binding on the petitioner. In this view of the matter, the learned standing counsel called upon this Court to sustain the impugned order and dismiss the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. It is true that the preliminary objections raised by the learned standing counsel do have considerable force and substance. However, I do not want to non-suit the petitioner at the final hearing stage. The writ petition was filed way back in June 2015. We are now in September 2023. It might have probably been in order, if these objections had been taken when the writ petition was listed for admission. It is seen that on 15.07.2015, the writ petition was admitted, rule nisi was issued and records were called for. Therefore, at the final hearing stage, the writ petition does not deserve to be dismissed on the ground of availability of alternative remedies. In any event, I do not propose to go into any disputed question of fact. Even though the learned counsel for the petitioner would claim that there was no shortfall at any point of time in the mill premises, I am satisfied with the submission advanced by the learned standing counsel for the corporation that if the petitioner was not at fault, she would have certainly responded positively to the first show cause notice dated 15.04.2014. The inspection was done in 12.04.2014 and it was also signed by the petitioner's husband. If there was no shortfall, objections would have been endorsed in the inspection report itself by the petitioner's husband. The fact that the copy of the inspection report was merely received without any demur and that the reply was not sent in time to both the show cause notices leads me to uphold the stand of the respondents that there was shortfall.

6.The only question that calls for consideration is whether the petitioner deserves to be saddled with penalty to the tune of Rs.7,66,863/-. It is beyond dispute that the shortfall was made good by the petitioner subsequently. According to the petitioner, whatever should be handed over to the corporation was handed over in two installements ie., on 27.04.2014 and 27.05.2014. This fact is conceded in the proceeding of the first respondent.

7.As per clause 12 of the the hulling agreement, where there is reason to believe that the agent had misappropriated the paddy, the agreement may be terminated by the principal. Two other consequences can also ensue; the mill can be black listed and the value of the shortfall can be recovered at the rates prescribed by the principal or adjusted from any amount due to him from the corporation. Criminal action can also be initiated. In this case, admittedly, the respondents did not terminate the agreement. The mill was also not black listed. Criminal action was not initiated. They chose to confine the action to recovery alone. But the agreement permits only the recovery of value of the shortfall. The clause does not envisage imposing any penalty. It is true that Chapter 4 of the Manual on Processing of Paddy contains the following clause:-

"CHAPTER – 4

DELIVERY OF RICE AND QUALITY CHECK

1. ....

2. For the outturn shortage upto 2% a penalty of 1 ½ times of economic cost of rice of the relevant procurement season has to be imposed. In case the hulling agent is permitted to make good the outturn shortage in kind, a penalty of ½ time of the economic cost of rice alone have to be imposed. If the outturn shortage exceeds 2% such shortage has to be deemed prima facie malafide and a penalty of double value of the economic cost of rice needs to be imposed. In case of exception, which are not found to be malafide, a report to Head Office may be sent by Regional Heads for imposing a penalty of ½ time of the economic cost after collecting the outturn shortage in kind."

In the hulling agreement dated 12.10.2012 entered into between the parties, I do not find any reference to the Manual. In this case, the petitioner had been permitted to make good the shortfall. That is why, the first respondent imposed only a sum of Rs.2,55,621/- on the petitioner. Probably, that is why, the petitioner also did not challenge the same. Even in the present writ petition, the challenge is confined only to the proceedings dated 16.04.2015. For the reasons already set out, the impugned proceeding stands quashed. It is stated by the learned standing for the respondents, the petitioner deposited a sum of Rs.3,00,000/- as security deposit and the respondents are liable to pay a sum of Rs.1,25,384/- for hulling charge. Since the petitioner has not challenged the order dated 24.11.2014, the respondents are permitted to deduct the same from what is payable to the petitioner and the balance amount shall be paid to the petitioner.

8.This writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

08.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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