

203
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-2508-2022 (O&M)
Date of Decision: 28.03.2023

M/S GANPATI ENTERPRISES

....Petitioner(s)

Versus

DIRECTIOR FOOD AND SUPPLY HARYANA AND ANOTHER

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Robin Dutt, Advocate, for the petitioner.

Ms. Nidhi Garg, AAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *Mandamus* directing the respondents to pay the admitted amount of Rs. 4,87,583/- alongwith CCL interest as per the agreement (Annexure P-2).

Learned counsel appearing on behalf of the petitioner submitted that it is a case where the petitioner-Mill had entered into a contract with the respondent-department for the purpose of milling of rice vide Annexure P-2 which was pertaining to the crop year 2010-2011. He submitted that earlier to the aforesaid crop year, a dispute arose between the parties pertaining to the crop year 2009-2010 regarding which arbitration proceedings had commenced in the year 2019 which culminated in the year 2021 by passing an award in favour of the petitioner. He submitted that so

far as the crop year of 2010-2011 is concerned, since the amount was already pending as per the respondents against the petitioner pertaining to the year 2009-2010, the charges which were due towards the petitioner were withheld by the respondent-department only on the ground that the amount was due pertaining to the earlier crop year. He submitted that thereafter when the arbitration award was finalized and it was passed in favour of the petitioner in the year 2021, the award amount was paid to the petitioner and the award remained satisfied. He submitted that so far as aforesaid amount of Rs. 4,87,583/- is concerned, the same was withheld only on the ground that for the earlier crop year some amount was due against the petitioner regarding which now the award has been passed and therefore so far as the amount which was withheld for the crop year 2010-2011, the same was required to be released to the petitioner immediately after the award was satisfied.

He further submitted that the aforesaid amount of Rs. 4,87,583/- is an admitted liability of the respondent-department and regarding the same it has been so admitted in the reply which has been filed by the State. He referred to para No.6 of the reply of the preliminary objections and the same is reproduced as under:-

6. That as per the assessment of bill of the petitioner, the amount which was to be recovered from the petitioner was found more than the milling charges of the petitioner, hence the respondents had passed only the bill of Rs. 14191/- (TDS+VAT =12643+1548 =14191). The petitioner is having a clear cut balance of Rs.632167/- for the year 2010-11 on account of milling charges and for the year 2010-11 a deduction in the shape of Rs.144584/- were liable to be deducted. Hence, accordingly the petitioner was only entitled to receive a sum of Rs.487583/- from the respondents

but the same could not be made as there was an outstanding balance of the petitioner towards the respondent on account of Holding charges for the year 2009-10 vide bill No.436/78. It is further submitted that as per the Arbitration Case No.118/2019 the order passed by the Hon'ble Arbitrator were complied with and the petitioner was paid the requisite amount of profit due for the year 2009-10. Now the respondents are only entitled to pay the petitioner only a sum of Rs.487583/- which was withheld by the respondents.”

He submitted that a perusal of the aforesaid reply filed by the respondents would show that it has been so admitted by the respondents that an amount of Rs. 4,87,583/- is payable towards the petitioner and he is entitled for the same. He further submitted that once the liability is admitted by the respondents, there is no need to further go for arbitration proceedings or any alternate remedy in this regard and therefore directions may be issued to pay the aforesaid amount to the petitioner, even as per the reply filed by the State.

Ms. Nidhi Garg, learned AAG, Haryana has submitted that although an award was passed pertaining to the crop year 2009-2010 but the petitioner has not invoked the arbitration clause pertaining to the crop year 2010-2011 and therefore the present petition is not maintainable.

I have heard the learned counsel for the parties.

The only objection which has been raised by the learned State counsel was that the petitioner instead of invoking the arbitration proceedings for an amount which was pertaining to the crop year of 2010-2011, he has filed the present petition. This Court is of the view that such an objection is not sustainable, although there was an arbitration clause in

the bipartite agreement between the petitioner and the State in view of the fact that in the reply the respondents have themselves admitted liability pertaining to the aforesaid amount of Rs. 4,87,583/- of the crop year 2010-2011. The aforesaid amount was withheld only on the ground that for the previous crop year, there was a dispute and that dispute was settled in the year 2021 by passing of an award in favour of the petitioner which has also been satisfied and therefore so far as the present amount is concerned which was withheld because of the aforesaid reason could not have been now withheld by the respondents and the petitioner was therefore entitled, even as per the aforesaid reply filed by the State wherein specifically it has been so stated that the petitioner is entitled for the aforesaid amount.

In view of the aforesaid facts and circumstances, the present petition is allowed. The respondents are directed to pay the aforesaid amount of Rs. 4,87,583/- alongwith interest @ 8% per annum with effect from the date of the passing of the award dated 28.02.2021 (Annexure P-1).

28.03.2023

rakesh

Whether speaking
Whether reportable

**(JASGURPREET SINGH PURI)
JUDGE**

: Yes/No
: Yes/No