

CWP-10353-2021 (O&M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102+211

CWP-10353-2021 (O&M)

Date of Decision: 12.07.2023

Rama Krishna Rice and General Mills

Through its Partner Narinder Kumar Nayyar and Others

...Petitioners

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Shiv Kumar, Advocate for the petitioners

Mr. Maninder Singh, DAG, Punjab
(for respondent Nos.1, 2 & 13)

Mr. Ravi Kamal Gupta, Advocate
for Food Corporation of India-respondent Nos.3, 8 & 9

Mr. T.S. Sidhu, Advocate for respondent Nos.5 & 10

Ms. Gurpreet Kaur, Advocate for
Mr. Ravi Dutt Sharma, Advocate for
respondent Nos.7 and 12

Ms. Brea Sandhu, Advocate for
Ms. Deepali Puri, Advocate for respondent Nos.4, 6, 11, 13

JAGMOHAN BANSAL, J. (Oral)

CM-10946-CWP-2023

Application preferred by Food Corporation of India-
respondent Nos.3, 8 & 9 for placing on record Annexure R-3/2 and R-3/3
is allowed. The same are taken on record subject to just exceptions.
Registry is directed to tag the same at appropriate place.

CM stands disposed of.

CWP-10353-2021

1. The petitioners, through instant petition under Article 226 of the Constitution of India, are seeking setting aside of order dated 24.12.2019 (Annexure P-12), order/letter dated 04.02.2020 (Annexure P-14) and order dated 27.10.2020 (Annexure P-20).

2. The brief facts of the case which are necessary for the adjudication of the present case are that the petitioners are engaged in the business of milling rice. The petitioners are primarily dependent upon paddy allotted by the respondents. The paddy is owned by Food Corporation of India and it is allotted to state owned agencies who in turn allot the same to rice mills situated within the State of Punjab. A miller is supposed to convert paddy into rice and thereafter supply at a center nominated by the Food Corporation of India.

3. For the crop year 2019-20, the petitioners were allotted paddy. As per prevailing conditions, the paddy was allotted in September' 2019 and it was stored in the mills of the petitioners during October-November 2019. The petitioners, on account on non-availability of storage space at depots of Food Corporation of India, could not deliver rice at Sultanpur Lodhi whereas petitioners, after obtaining prior permission of Food Corporation of India, delivered rice at Patti (District Amritsar). As the rice was delivered outside Sultanpur Lodhi, there were consequential higher transportation charges. The petitioners claimed transportation charges from Sultanpur Lodhi to Kapurthala whereas Food Corporation of India and other respondents agreed to allow

transportation charges within Sultanpur Lodhi. There was also claim for backward movement charges.

4. Learned counsel for the petitioner *inter alia* contends that respondents are wrongly relying upon clause (q) of Paragraph No.5 of Agreement executed between petitioners and respondent. The said clause is applicable to Release Order (R.O.) paddy whereas case of petitioners is not of R.O. Paddy. The case of petitioners is governed by terms and conditions enumerated in the Punjab Custom Milling Policy for Paddy (Kharif 2019-20). As per clause 20 of the said policy, concerned Area Manager (Food Corporation of India) is supposed to intimate miller about the linking plan of miller and storage depots of Food Corporation of India where the millers have to deliver Custom Milled Rice ('CMR'). Area Manager of Food Corporation of India is further supposed to intimate latest status of vacant space to the concerned agency on the first day of every month. In the present case, Food Corporation of India did not pass order of linking millers to storage depots. Food Corporation of India for the first time vide communication dated 03.12.2019 (Annexure P-8) intimated that no space is vacant at Sultanpur Lodhi Center, thus, they are going to link rice mills of Sultanpur Lodhi to Kapurthala Center. The petitioners were not provided space at Kapurthala, thus, to avoid any eventuality and cost of storage, the petitioners sought permission from respondents to deliver rice at Patti. In all their communications, it was pointed out by the petitioners that storage space is not available at Sultanpur Lodhi, thus, they are going to deliver rice at Patti. The

respondent after delivery of paddy has changed place of delivery, thus, petitioners cannot be put to disadvantageous position. The respondents being public authorities were in position to dictate terms and conditions and under unavoidable circumstances, the petitioners wrote various letters seeking permission to deliver rice at Patti. There was no need on the part of petitioners to incur higher cost of transportation.

Learned counsel for the petitioners after arguing for some time confined his prayer qua transportation charges and waived his claim qua backward movement charges. The CMR was delivered at Patti, however, they may be granted transportation charges upto Kapurthala which was nearest location and was linked to petitioners' mills.

5. Learned counsel for Food Corporation of India-respondent Nos.3, 8 & 9 and Mr. Maninder Singh, learned State counsel for respondent Nos.1, 2 & 13 in one voice submit that there is arbitration clause in the agreement executed between the petitioner and State Agency, thus, present writ petition is not maintainable. They further submit that petitioners by different communications had sought permission to deliver rice at Patti and they further agreed to bear cost of transportation, thus, they cannot be permitted to take somersault. The act of petitioners amounts to violations of principle of estoppel. The rice could have been delivered upto June' 2020, thus, there was no haste to deliver in December' 2019 and petitioners without waiting for the space at Sultanpur Lodhi/Kapurthala delivered rice at Patti.

6. I have heard the arguments of learned counsels for the parties and perused the record with their able assistance.

7. The respondents are relying upon arbitration clause of the agreement. It is apt to notice that agreement was executed between the petitioners and agencies other than Food Corporation of India. The prime grievance of petitioners is qua Food Corporation of India who was not a party to the agreement, thus, it would not be fair to refer the matter to Arbitrator.

8. A two Judge Bench of Hon'ble Supreme Court in ***M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703*** has held that arbitration clause is not absolute bar to invoke writ jurisdiction of Constitutional Courts. The relevant extracts of the said judgment read as:-

“82. We may cull out our conclusions in regard to the points, which we have framed:

82.1. It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.

82.2. The principle laid down in *Bareilly Development Authority [Bareilly Development Authority v. Ajai Pal Singh, (1989) 2 SCC 116]* that in the case of a non-statutory contract the rights are governed only by the terms of the contract and the decisions, which are purported to be followed, including *Radhakrishna Agarwal [Radhakrishna*

Agarwal v. State of Bihar, (1977) 3 SCC 457] , may not continue to hold good, in the light of what has been laid down in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] and as followed in the recent judgment in Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847].

82.3. *The mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent State in a case by itself to ward off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/inaction is, per se, arbitrary.*

82.4 xxxx xxxx xxxx

82.5. *After the contract is entered into, there can be a variety of circumstances, which may provide a cause of action to a party to the contract with the State, to seek relief by filing a writ petition.*

82.6. *Without intending to be exhaustive, it may include the relief of seeking payment of amounts due to the aggrieved party from the State. The State can, indeed, be called upon to honour its obligations of making payment, unless it be that there is a serious and genuine dispute raised relating to the liability of the State to make the payment. Such dispute, ordinarily, would include the contention that the aggrieved party has not fulfilled its obligations and the Court finds that such a contention by the State is not a mere ruse or a pretence.*

82.7. *The existence of an alternate remedy, is, undoubtedly, a matter to be borne in mind in declining*

relief in a writ petition in a contractual matter. Again, the question as to whether the writ petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the petitioner, the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the grant of the relief sought. Undoubtedly, while there is no prohibition, in the writ court even deciding disputed questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit.

82.8. *The existence of a provision for arbitration, which is a forum intended to quicken the pace of dispute resolution, is viewed as a near bar to the entertainment of a writ petition [see in this regard, the view of this Court even in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] explaining how it distinguished the decision of this Court in State of U.P. v. Bridge & Roof Co. (India) Ltd. [State of U.P. v. Bridge & Roof Co. (India) Ltd., (1996) 6 SCC 22] , by its observations in SCC para 14 in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553].*

82.9. *The need to deal with disputed questions of fact, cannot be made a smokescreen to guillotine a genuine claim raised in a writ petition, when actually the resolution of a disputed question of fact is unnecessary to grant relief to a writ applicant.*

82.10. *The reach of Article 14 enables a writ court to deal with arbitrary State action even after a contract is entered into by the State. A wide variety of circumstances can generate causes of action for invoking Article 14. The Court's approach in dealing with the same, would be guided by, undoubtedly, the overwhelming need to obviate arbitrary State action, in cases where the writ remedy provides an effective and fair means of preventing miscarriage of justice arising from palpably unreasonable action by the State.*

82.11 xxxx xxxx xxxx

82.12. *In a case the State is a party to the contract and a breach of a contract is alleged against the State, a civil action in the appropriate forum is, undoubtedly, maintainable. But this is not the end of the matter. Having regard to the position of the State and its duty to act fairly and to eschew arbitrariness in all its actions, resort to the constitutional remedy on the cause of action, that the action is arbitrary, is permissible (see in this regard Shrilekha Vidyarthi v. State of U.P. [Shrilekha Vidyarthi v. State of U.P., (1991) 1 SCC 212 : 1991 SCC (L&S) 742]). However, it must be made clear that every case involving breach of contract by the State, cannot be dressed up and disguised as a case of arbitrary State action. While the concept of an arbitrary action or inaction cannot be cribbed or confined to any immutable mantra, and must be laid bare, with reference to the facts of each case, it cannot be a mere allegation of breach of contract that would suffice. What must be involved in the case must be*

action/inaction, which must be palpably unreasonable or absolutely irrational and bereft of any principle. An action, which is completely mala fide, can hardly be described as a fair action and may, depending on the facts, amount to arbitrary action. The question must be posed and answered by the Court and all we intend to lay down is that there is a discretion available to the Court to grant relief in appropriate cases.”

[Emphasis Supplied]

In view of factual position involved in the present case and judgment of Hon’ble Supreme Court in *M.P. Power Management Co. (supra)*, the objection of respondent qua maintainability of writ is not sustainable and accordingly rejected.

9. The petitioners entered into contract with State Agencies. The State Government has made an elaborated milling policy wherein question of transportation is specifically dealt with. The relevant clause of the policy reads as:-

“20. SCHEDULE FOR DELIVER OF RICE

a. After linking of mandis and rice mills by the DAC, Concerned Area Manager (FCI) shall intimate the DAC & Millers about the linking plan of miller and storage depots of FCI, where the millers have to deliver CMR. Area Manager, FCI shall also intimate the latest status of the vacant space, to the concerned agency on the first of every month.

xxxx

xxxx

xxxx

xxxx

f. While milling paddy, miller shall ensure that rice extracted out of paddy is as per norms and specifications fixed by GOI and shall deliver the rice at the storage depot of FCI as linked by its Area Manager.

g. The miller shall be paid cost of transportation and other incidental charges at the rates approved/reimbursed by GOI/FCI and any extra cost if any shall be borne by the miller.”

10. As per Clause 20 of the policy, it is quite evident that Area Manager of Food Corporation of India is duty bound to link every mill to a storage depot and intimate to miller. A miller is entitled to transportation charges. The Food Corporation of India in its letter dated 03.12.2019 (Annexure P-8) decided to link rice mills of Sultanpur Lodhi with Kapurthala. As per communication dated 24.12.2019 (Annexure P-12) of Food Corporation of India, the petitioners were initially linked to Sultanpur Lodhi, however, on the request of the millers, they were permitted to deliver CMR at Patti instead of originally linked center. The relevant extracts of letter dated 03.12.2019 and 24.12.2019 read as below:-

Letter dated 03.12.2019

*“Food Corporation of India: Divisional Office,
Kapurthala”*

No. Proc D-9/(1) Kharif linking/2019-20

Dated 3.12.2019

*The Genl. Manager (Region)
Food Corporation of India,
Regional Office (Pb.)
Chandigarh*

		<i>and Genl.</i>	
27	<i>Sultanpur Lodhi</i>	<i>Uppal Agro Inds</i>	<i>118</i>
28	<i>Sultanpur Lodhi</i>	<i>Kissan Rice mills</i>	<i>119</i>
29	<i>Sultanpur Lodhi</i>	<i>Shiv Shankar Rice Genl. Mill</i>	<i>156</i>
30	<i>Sultanpur Lodhi</i>	<i>United Rice Inds.</i>	<i>54</i>
31	<i>Sultanpur Lodhi</i>	<i>GV J Rice Industries</i>	<i>54</i>
32	<i>Sultanpur Lodhi</i>	<i>KT Rice Mills</i>	<i>255</i>
33	<i>Sultanpur Lodhi</i>	<i>Dhir Agro Inds.</i>	<i>216</i>
34	<i>Sultanpur Lodhi</i>	<i>Momi Rice Mills</i>	<i>231</i>
35	<i>Sultanpur Lodhi</i>	<i>Thindd Bros Rice mills Dalla</i>	<i>394</i>
36	<i>Sultanpur Lodhi</i>	<i>Triveni International</i>	<i>227</i>
37	<i>Sultanpur Lodhi</i>	<i>JR Rice mills Dalla</i>	<i>216</i>
38	<i>Sultanpur Lodhi</i>	<i>Shri Guru Nanak Rice Oil mills</i>	<i>235</i>
39	<i>Sultanpur Lodhi</i>	<i>Shakti Rice and Genl. Mills</i>	<i>304</i>
40	<i>Sultanpur Lodhi</i>	<i>JPS Uttam Rice mills P Ltd.</i>	<i>87</i>
41	<i>Sultanpur Lodhi</i>	<i>Doaba Rice and Genl. Mills</i>	<i>164</i>
42	<i>Sultanpur Lodhi</i>	<i>Mothanwala Rice mills</i>	<i>73</i>

In this connection it is intimated that the request of the above millers has been examined in regional office for delivery of CMR at Patti instead of originally linked centres as per above

in consultation with RO Finance and the approval of Competent authority is hereby conveyed for delivery of rice KMS 2019-20 at Patti as per their request above subject to following conditions:

a. The transportation charges are restricted from mill to nearest godowns of originally linked centre (as per table above) Patti whichever is least.

xxxx xxxx xxxx xxxx”

11. From the perusal of above noted letters, it is evident that Food Corporation of India had initially linked mills of Sultanpur Lodhi to Kapurthala. In the impugned order, Food Corporation of India has accepted that storage space was not available at Sultanpur Lodhi. The petitioners were left with no other option except to deliver CMR at a place other than Sultanpur Lodhi. From the sequence of events and impugned order, it is evident that no storage space was available at Sultanpur Lodhi, thus, CMR in any case was bound to be delivered at a place other than Sultanpur Lodhi. Letter dated 03.12.2019 of Food Corporation of India linked the petitioners to Kapurthala Center which was the nearest place. The petitioners have fairly conceded to restrict their claim from Sultanpur Lodhi to Kapurthala i.e. nearest place of delivery. Though stock was delivered at Patti (Amritsar). The respondents were in dominating position and they had dictated their terms and conditions. The respondents being public authorities are bound to be fair and equitable. It is settled proposition of law that every action

which is arbitrary, is contrary to rule of law and amounts to violation of Article 14 of the Constitution of India. It is a case of contract between a private party and Government/Government Agencies. The millers are entirely dependent upon paddy supplied by the respondents. They were bound to deliver rice at the earliest. The respondents have failed to point out how the petitioners derived any benefit by delivering CMR at Patti instead of any other location. They had incurred higher costs of transportation which has not been pocketed by them. The State and its instrumentalities are bound to be fair in every action including contracts. They cannot misuse their dominating position. The State cannot make its citizens to suffer.

12. A two Judge Bench of Hon'ble Supreme Court in ***M/s Gas Authority of India Limited Versus M/s Indian Petrochemicals Corp. Ltd and Others; 2023 LiveLaw (SC) 88*** has adverted with similar situation. In the said case, Gas Authority of India Limited ('GAIL') i.e. public sector undertaking had raised an objection qua maintainability of the petition apart from other issues. The Hon'ble Supreme Court turned down objection of GAIL and held that writ petition was rightly entertained by the High Court. The Hon'ble Supreme Court has further adverted with validity of clauses and held that action of appellant therein was unfair and unjust apart from being an arbitrary action in violation of Article 14 of the Constitution of India. The relevant extracts of the said judgment read as:-

“Discussion:

18. xxxx xxxxx xxxxx

19. Although the dispute arises from a commercial contract, we find that the writ petition challenging the clauses was maintainable. It is not disputed that GAIL is a Public Sector Undertaking and thus qualifies under the definition of 'State' as per Article 12 of the Constitution. At the time of entering into contract, GAIL was enjoying a monopolistic position with respect to the supply of natural gas in the country. IPCL, having incurred a significant expense in setting up the appropriate infrastructure, had no choice but to enter into agreement with GAIL. Thus, there was a clear public element involved in the dealings between the parties. Further, writ jurisdiction can be exercised when the State, even in its contractual dealings, fails to exercise a degree of fairness or practices any discrimination. We are fortified in our view by this Court's decision in *ABL Enterprises and Joshi Technologies*. In the present case, GAIL's action in levying 'loss of transportation charges' was *ex facie* discriminatory, insofar as IPCL was mandated to build its own pipeline in terms of the allocation letter and was not using GAIL's HBJ pipeline at all. Thus, it cannot be said that merely because an alternative remedy was available, the Court should opt out of exercising jurisdiction under Article 226 of the Constitution and relegate the parties to a civil remedy.

20. Now, we come to the validity of the clauses under which 'loss of transportation charges' were levied. In our view, it would be extremely unfair and

unjust, apart from being an arbitrary action in violation of Article 14 of the Constitution of India that IPCL is charged for loss of transportation charges when it is mandated to lay down its own pipelines and not to transport the gas through the HBJ pipeline. This action also violates the principle of non-discrimination enshrined in Article 14. IPCL, which is using its own pipelines, is being treated at par with other commercial entities who are carrying gas through the HBJ pipeline laid down by GAIL. This is more so when the pricing orders by the concerned authority, i.e. MoPNG stipulate a fixed price for natural gas.

21. On a basic principle, it cannot be doubted that once GAIL has laid down the pipeline, it is entitled to structure in its cost in the contract. However, the issue is not simply that. We are faced with a scenario where two public sector enterprises entered into a contract in pursuance of the allocation made by the MoPNG. There was also a time constraint for IPCL. After incurring a heavy expenditure in the construction of the Gandhar Plant, IPCL had very little choice but to enter into the contract. What is of most significance is that IPCL was bound to follow the allocation terms provided by the principal authority, i.e., MoPNG. Thus, as pleaded by IPCL, they were faced with a “Hobson’s choice”, where they had to either give up the contract or accept the clauses levying transportation charges. On a conspectus of the above factors, it can be said that GAIL exercised an unequal bargaining power at the time of signing the contract.

22. In fact, the contractual exercise of providing such a clause runs contrary to every commercial and

common sense and is manifestly arbitrary, as IPCL is not being charged under any general terms but for a specific purpose. This purpose cannot exist in the contract in view of the master authority, i.e., the Union of India, providing to the contrary.

23. *GAIL may have made a huge investment in constructing the HBJ pipeline, but at the same time IPCL had also made a huge investment in constructing its own pipelines. This was not an option but a mandate of the allocation letter issued by the MoPNG. Thus, it is difficult for us to accept that on the one hand IPCL must lay down its own pipelines, and simultaneously pay for loss of transportation through the HBJ pipeline even without using it. We do not accept GAIL's contention that the charges could be levied merely because GAIL had laid the HBJ pipeline for users generally.*

24 & 25. xxxx xxxx xxxx xxxx

Conclusion:

26. *We thus dismiss the appeal(s) qua the aspect of maintainability of the writ petition and the quashing of the clauses dealing with loss of transportation charges in the case of IPCL. However, we deem it fit to restrict the relief to period of three years insofar as refund is concerned from the date of filing of the writ petition, i.e., 09.03.2006."*

13. Considering terms and conditions of the milling policy, nature of contract, claim of the petitioners, conduct of respondents and judgments of Hon'ble Supreme Court in *M.P. Power Management Co.*

Ltd. (supra) and Gas Authority of India Limited (supra), this Court finds

MOHIT KUMAR
2023.07.14 15:04
I attest to the accuracy and
integrity of this order/judgment.

that present petition deserves to be allowed qua transportation charges and accordingly allowed. The petitioners have waived their claim qua backward movement charges, thus, they would bear cost of backward movement charges.

(JAGMOHAN BANSAL)
JUDGE

12.07.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>