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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-16641-2021 (O&M)
Date of Decision: 28.02.2023

M/S GURU RICE MILLS AND ORS

....Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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

Ms. Akshita Chauhan, DAG, Punjab.

Mr. Sunish Bindlish, Advocate and
Mr. Prashant Rana, Advocate, for respondent No.3-FCI.

Ms. Deepali Puri, Advocate, for respondent Nos. 4 and 5.

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JASGURPREET SINGH PURI, J. (Oral)

The present writ petition has been filed under Article 226 of the Constitution of India seeking a writ in the nature of *Mandamus* directing the respondents to release the payment of transportation charges for the delivery of rice to respondent No.3 on behalf of respondent Nos. 4 and 5.

Mr. Shiv Kumar, Advocate, for the petitioners has submitted that the petitioners are the rice millers and the process of rice milling in the State of Punjab is governed by the Custom Milling Policy which is formulated each and every year for every crop year. The Custom Milling Policy is binding upon the rice millers as well as upon various procurement agencies. The procurement agencies allocate the mandies to the various millers and the paddy is processed by the mills and thereafter the same is delivered to the Food Corporation of India which constitutes a central pool. In Clause 18 (g) of the Custom Milling Policy it is so provided that the rice miller shall be required to manufacture rice as per the specifications laid down by the Government of India and to deliver the same to FCI Depots. It has been further provided in the aforesaid clause that transportation/incidental charges, if any, shall be paid in accordance with the instructions issued by the Government of India from time to time. The aforesaid Clause 18(g) is reproduced as under:-

> *"(g). The rice miller shall be required to manufacture rice as per specifications laid down by the Govt. of India and deliver the same to FCI at its depots. The transportation/incidental charges, if any, shall be paid in accordance with the instructions issued by the Govt. of India from time to time."*

Learned counsel for the petitioners submitted that the Government of India decided that the aforesaid transportation charges by which the rice millers are to deliver rice to the FCI will be paid by the FCI from the crop year 2003-2004 till 2013-2014 and for that purpose a cut off date was imposed by the Government of India vide letter dated 01.12.2014 which is Annexure R-1 attached with the reply filed by the FCI and as per the aforesaid letter, the cut off date for receiving bills from the millers to the State agencies was fixed as 31.01.2015. He submitted that the aforesaid letter was also sent to the FCI and the FCI also wrote letter to the State of Punjab vide Annexure R-2. He further submitted that the present petitioners had submitted bills to the procurement agency which is respondent No.4 well within time but the same was not processed by the aforesaid agency and which has therefore deprived the petitioners of their rights to receive the transportation charges as decided by the Government of India vide Annexure R-1. He submitted that now in the year 2020 they have received back the bills as no payment was made to them by raising various objections. He submitted that the present petition is filed with a grievance that once the bills have been deposited to the agency, then the agency ought to have processed the same and ought to have sent to the FCI for the purpose of payment of charges and therefore, the petitioners are entitled for the aforesaid amount of bills of transportation charges. He further submitted that the cause of action arose in the year 2020 when the bills were returned by the respondent No.4-Pungrain.

Mr. Sunish Bindlish, Advocate appearing on behalf of the respondent-FCI has submitted that it is a case where the FCI is bound by the orders which are issued by the Government of India and the Government of India through Department of Food Supplies and Public Distribution vide Annexure R-1 had fixed a cut off date which was 31.01.2015 and whatever bills were received before the aforesaid cut off date for that the transportation charges were to be given and the FCI had been giving transportation charges to various rice millers but the same could not be paid to the petitioners because no bill was received by the FCI in this regard in pursuance of the aforesaid letter. He submitted that even FCI has also issued a letter vide Annexure R-1 dated 18.12.2014 in this regard. He further submitted that as per the aforesaid reproduced Clause 18(g) it has been provided that the transportation/incidental charges, if any, shall be paid in accordance with instructions issued by the Government from time to time. He submitted that instructions have been issued by the Government of

India by fixing a cut off date and therefore the petitioners do not even fulfill the eligibility qualification as per the Custom Milling Policy as well.

Ms. Deepali Puri, Advocate appearing on behalf of respondent No.4-Pungrain submitted that some of the petitioners had submitted bills but those bills were not submitted within the aforesaid cut off period. She submitted that since their bills were not submitted within the cut of date as aforesaid, the State agency rather sought clarifications/instructions from the FCI vide Annexure R-3 which has been attached alongwith the reply filed by the Pungrain to seek further instructions whether these bills can be submitted to the office now or not and they even in the reply had stated that extension of time was also sought from the FCI but till date no extension has been granted by the FCI or by the Government of India and in this way, the bills which were given by the petitioners to the Pungrain after the cut off date would not have been entertained in the absence of any further extension of time by the FCI or by the Government of India.

Both the learned counsel for the respondent-FCI and the Pungrain have further raised two fold objections. Firstly, that the grievance of the petitioners seeking payment pertaining to crop year 2008-2009 to 2013-2014 by filing the present petition in the year 2021 is highly belated and is hit by the law of limitation. They submitted that there is no justification for the petitioners to have invoked the jurisdiction of this Court after a lapse of about 6 years and they have already lost their remedy for filing a civil suit for which the prescribed period is 3 years under the Limitation Act. They also submitted that even if technically, the law of limitation is not applicable to the writ petitions but even then the prayer of the petitioners is hit by the *Doctrine of delay and laches* and there is no justification as to why such a delay has been caused. Another objection has been raised by the learned counsels for both the respondents by stating that even otherwise also by way of the aforesaid Custom Milling Policy which has been attached alongwith the writ petition vide Annexure P-1, there is an alternate remedy available vide Clause 19 which provides for an arbitration clause and as per arbitration clause, all the disputes and differences are to be referred to the Arbitrator but the petitioners neither filed any civil suit nor invoked the remedy of arbitration which was available and the aforesaid Clause 19 was binding upon the petitioners as well. They submitted that in view of Section 8 of the Arbitration Act also the filing of the present writ petition is not maintainable. Another objection has also been raised by the learned counsel for the respondents that even otherwise also these are disputed question of fact pertaining to submitting of bills which the petitioners have raised. Learned counsel for the petitioners during the course of arguments raised a plea that they submitted the bills within the aforesaid cut off date but the same was not processed by agency whereas on the other hand, learned counsel for the respondent-Pungrain has submitted during the course of arguments that the bills were received after the cut off date.

I have heard the learned counsel for the parties.

The present is a case where dispute is pertaining to grant of transportation charges in pursuance of Clause 18(g) of the Custom Milling Policy for the crop year of 2008-2009 upto 2013-2014. The present petition is filed in the year 2021. When the Government of India took a decision on 01.12.2014 with regard to grant of transportation charges by the FCI to the millers for the earlier crop years, then a cut off date for receiving the bills was mentioned vide Annexure R-1 which was 31.01.2015. Thereafter, the FCI also issued a letter vide Annexure R-2 dated 18.12.2014 in this regard. The case of the petitioners in the present case is that they have submitted the bills to the procurement agency which is the Pungrain in the present case within the aforesaid cut off period but it is the case of the respondent-Pungrain that they have submitted the bills after the aforesaid cut off date and therefore the same could not be processed. It is also the case of the respondent-Pungrain that rather clarifications/instructions were sought from the Government of India and the FCI as to whether the time can be extended or not. Therefore, it is clear that the disputed questions of facts are involved in the present case as to whether the petitioners had submitted the bills within the cut off date or not. Apart from the above, the cause of action in the present case arose in the year 2015 and the present writ petition has been filed in the year 2021 after a lapse of 6 years. There is no justification coming forward as to why there was a delay of 6 years. Even otherwise also the period of limitation for 3 years for filing a civil suit has also elapsed. In addition to above, there is an arbitration clause as well in the Custom Milling Policy which is binding upon both the parties i.e. the petitioners and the procurement agency vide Clause 19 and therefore on that account also the present petition is not maintainable.

In view of the aforesaid facts and circumstances, the present petition is hereby dismissed.

28.02.2023 **(JASGURPREET SINGH PURI)**
rakesh **JUDGE**

Whether speaking : Yes/No
Whether reportable : Yes/No