IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(Sr. No. 108)

LPA No.1379 of 2023
Date of decision : 05.10.2023

Food Corporation of India and others

.....Appellants

Versus

Rama Krishna Rice and General Mills and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present : Mr. Ravi Kamal Gupta, Advocate for the appellants.

* * *

DEEPAK SIBAL, J. (*Oral*)

(1) Food Corporation of India (for short - FCI) has preferred the present intra Court appeal to challenge therein the judgment dated 12.07.2023 rendered by a learned Single Judge of this Court allowing the writ petition filed by respondents No.1 to 4 through which they had sought setting aside of various letters/orders passed by the FCI rejecting their claims made by them with regard to transportation of milled rice.

(2) Under the custom milling policy for paddy of the State of Punjab the FCI allots paddy to State agencies which in turn allot the same to rice millers within the State of Punjab. Thereafter, the rice millers supply the milled rice at a centre nominated by the FCI.

(3) Respondents No.1 to 4 are rice millers. Their rice mills are situated in Sultanpur Lodhi, District Kapurthala. In terms of the Punjab Custom Milling Policy for Paddy (Kharif 2019-20) (for short – the Policy), for the Kharif season 2019-20, they were allotted paddy. They were to supply the milled rice at the godowns of the FCI at Sultanpur Lodhi. However, due to shortage of storage space at Sultanpur Lodhi the needful could not be done. On their request the FCI permitted them to deliver the milled rice at the godowns of the FCI in Patti, District Amritsar which they did. Thereafter, they claimed charges for transportation of the milled rice from Sultanpur Lodhi to Patti which were denied occasioning the filing of a writ petition before this Court. During the course of hearing of their petition they restricted their claim only to transportation charges from Sultanpur Lodhi to Kapurthala where were situated the next available godowns of the FCI from Sultanpur Lodhi. The learned Single Court allowed respondents No.1 to 4's claim. Hence, the present intra Court appeal at the FCI's behest.

(4) Learned counsel for the appellants submits that in the contract between the FCI and respondents No.1 to 4 there was an arbitration clause; therefore, the learned Single Court should have not entertained respondents No.1 to 4's writ petition and relegated them for settling their dispute through arbitration and that even on merits respondents No.1 to 4 had no cause as through their letters dated 12.12.2019 and 11.12.2019 they had themselves undertaken to bear the entire cost of transportation from Sultanpur Lodhi to Patti. Therefore, they would be estopped from claiming the same from FCI.

(5) Learned counsel for the appellants has been heard at length and with his able assistance the record of the case has also been perused.

(6) The submission raised on behalf of the appellants that in the light of there being an arbitration clause in the policy the learned Single Judge should have not even entertained respondent No.1 to 4's writ petition is required to be considered only to be rejected.

(7) In ***Unitech Limited and others Vs. Telangana State Industrial Infrastructure Corporation (TSIIC) and others 2021 SCC Online SC 99,*** the Supreme Court has held that writs under Article 226 are maintainable for asserting contractual rights against the State or its instrumentalities as defined under Article 12 of the Indian Constitution. However, the plenary power under Article 226 must be used with circumspection when other remedies have been provided by the contract between the parties. But as a statement of principle, the jurisdiction under Article 226 is not excluded even in contractual matters. The Supreme Court further went on to hold that even if there was an arbitration clause in the agreement between the parties the same would not oust the jurisdiction under Article 226. In all cases and in the facts of each case the Constitutional Court would decide as to whether recourse to a public law remedy can justifiably be invoked. Relevant portion of the judgment is reproduced below :-

> *"Therefore, while exercising its jurisdiction under Article 226, the Court is entitled to enquire into whether the action of the State or its instrumentalities is arbitrary or unfair and in consequence, in violation of Article 14. The jurisdiction under Article 226 is a valuable constitutional safeguard against an arbitrary exercise of state power or a misuse of authority. In determining as to whether the jurisdiction should be exercised in a contractual dispute, the Court must, undoubtedly eschew, disputed questions of fact which would depend upon an evidentiary determination requiring a trial. But equally, it is well-settled that the jurisdiction under Article 226 cannot be ousted only on the basis that the dispute pertains to the contractual arena. This is for the simple reason that the State and its instrumentalities are not exempt from the duty to act fairly merely because in their business dealings they have entered into the realm of contract. Similarly, the presence of an arbitration clause does*

> *oust the jurisdiction under Article 226 in all cases though, it still needs to be decided from case to case as to whether recourse to a public law remedy can justifiably be invoked.* *The jurisdiction under Article 226 was rightly invoked by the Single Judge and the Division Bench of the Andhra Pradesh in this case, when the foundational representation of the contract has failed. TSIIC, a state instrumentality, has not just reneged on its contractual obligation, but hoarded the refund of the principal and interest on the consideration that was paid by Unitech over a decade ago. It does not dispute the entitlement of Unitech to the refund of its principal."*

(8) In the discussion to follow it would be clearly revealed that the appellant, which is "State" under Article 12 of the Constitution of India, had arbitrarily denied the rightful claims of respondents No.1 to 4 and therefore the learned Single Judge did not falter in fact or in law to entertain respondents No.1 to 4's writ petition even when there was an arbitration clause in the Policy binding on both the parties.

(9) In the absence of any challenge to the same, the terms of the Policy would bind the FCI as well as respondents No.1 to 4. Clause 20 of the Policy, which is relevant, is reproduced below for ready reference :-

> ***"20. SCHEDULE FOR DELIVERY 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.*
>
> *b. Miller shall run the mill to its optimum capacity, so as to achieve the target for milling of paddy as fixed according to the scheduled time frame as per policy.*
>
> *c. Miller is exempted from delivery of any levy rice on his privately purchased paddy.*

d. Delivery of custom milled rice to FCI will commence immediately from the start of KMS 2019-20.

e. Scheduled time for delivery of custom milled rice shall be as under : -

Month	***Progressive %age of CMR to be delivered***
Up to 31st December 2019	*35%*
Up to 31st January 2020	*60%*
Up to 28th February 2020	*80%*
Up to 31st March 2020	*100%*

Note: - The progress of milling shall invariably be monitored by the concerned agency as per time schedule. Mills lagging behind the time schedule are liable to shift their paddy at their risk and cost along with charging the interest @ 12% on the acquisition cost of such paddy from the date of its storage to the date of shifting. Also the penalty, if any, imposed by the Government of India on the State agencies due to delayed/non-delivery of rice, shall be paid by the concerned rice miller.

f. While milling paddy, millers 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. <u>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.</u>"

(emphasis supplied)

(10) As per the Clause 20(g) of the Policy the miller is entitled to be paid the cost of transportation of the milled rice at the approved rates.

(11) Respondents No.1 to 4's rice mills are situated in Sultanpur Lodhi. Initially, FCI and respondents No.1 to 4 had agreed that the milled rice will be supplied by respondents No.1 to 4 at the FCI godowns at Sultanpur Lodhi. However, it is not disputed that at the relevant time the godowns of the FCI at Sultanpur Lodhi had no vacant space and therefore the milled rice could not be supplied by respondents No.1 to 4 at Sultanpur Lodhi. The milled rice could also not be supplied at the next available godowns of the FCI which were at Kapurthala as the rice millers of Kapurthala were up in arms with the FCI against supply of milled rice by outsiders at the godowns of the FCI at Kapurthala. However, space was available in the FCI godowns at Patti, District Amritsar. Fearing that delay in the supply of the milled rice may spoil the rice and result in losses, respondents No.1 to 4 made a representation to the FCI seeking its approval to deliver the milled rice at Patti. Through letters dated 03.12.2019 and 24.12.2019 the FCI approved such request. However, the approval was subject to the condition that payment of transportation charges by the FCI would be restricted from the respondents No.1 to 4's mill to the nearest godown of the originally linked godown *i.e.* from Sultanpur Lodhi to Kapurthala. Relevant portion of the letter of the FCI dated 24.12.2019 reads as under :-

"Food Corporation of India : Sector 31-A, Chandigarh

No. 856 Dt. 24.12.2019

The Divisional Manager,
Food Corporation of India,
District Office, Moga/Ferozepur/Kapurthala/Amritsar.

Sub: Delivery of rice of CMR 2019-20 at Patti instead of originally linked centres of Moga, Ferozepur and Kapurthala reg.

Sir,

Please refer to representation of the following rice millers for delivery of CMR for KMS 2019-20 at Patti :

S.No.	*Originally linked*	*Name of Rice mill*	*Expected consignment*
1-21	*xx*	*xx*	*xx*
22	*Sultanpur Lodhi*	*KP Agro Industries*	*245*
23	*Sultanpur Lodhi*	*Ram Nath Dhir and sons*	*256*
24	*Sultanpur Lodhi*	*Sham Rice mills*	*118*
25	*Sultanpur Lodhi*	*Kissan Rice Trading Co.*	*159*
26	*Sultanpur Lodhi*	*Rama Krishna Rice and Genl.*	*213*

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

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.

(emphasis supplied)

xx xx xx xx xx xx "

(12) Thus, as per letter dated 24.12.2019 the FCI granted approval to the request of respondents No.1 to 4 to supply the milled rice at Patti instead of the originally linked godowns which were at Sultanpur Lodhi. However, the FCI agreed to pay transportation charges only from Sultanpur Lodhi to the nearest FCI godowns from Sultanpur Lodhi. It is not disputed that the nearest FCI godowns from Sultanpur Lodhi are at Kapurthala.

(13) In the light of the afore facts read with Clause 20 (g) of the Policy, we unhesitantly hold that respondents No.1 to 4 were entitled to be paid the approved transportation charges for transporting milled rice but only from Sultanpur Lodhi to Kapurthala. Through the judgment under challenge the learned Single Judge has ordered just that, thereby committing no error.

(14) Before parting with the judgment we would be failing in our duty if we do not deal with the argument of learned counsel for the appellants that in the light of the letters dated 11.12.2019 and 12.12.2019 of the Sultanpur Lodhi Rice Millers Association (for short- the Association), wherein the Association had undertaken to bear all transportation charges, respondents No.1 to 4 would be estopped from claiming any such charges.

(15) The letters by the Association dated 11.12.2019 and 12.12.2019 are prior in time to the afore quoted letter by the FCI dated 24.12.2019 through which the FCI had agreed to reimburse the rice millers with regard to the charges to be incurred by them for transportation of milled rice from Sultanpur Lodhi to the nearest godowns of the FCI from Sultanpur Lodhi *i.e.* Kapurthala. Thus, the FCI's letter dated 24.12.2019 would be deemed to be in supersession of the representations of the Association dated 11.12.2019 and 12.12.2019.

(16) In the light of the afore discussion and the law settled by the Supreme Court we are of the opinion that the learned Single Judge has committed no error, in fact or in law, to direct the appellant-FCI to pay to respondents No.1 to 4 what was rightfully due to them. Resultantly, after quashing the decisions impugned by respondents No.1 to 4 in their writ petition, we dismiss the instant appeal.

(17) No costs.

(DEEPAK SIBAL)
JUDGE

05.10.2023
sunil yadav/gk

(SUKHVINDER KAUR)
JUDGE

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