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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 22nd December, 2023

IN THE MATTER OF:

+ **W.P.(C) 13376/2023 & CM APPL. 63863/2023**

NATIONAL AGRICULTURE AND CONSUMER MULTI STATE
CO-OPERATIVE OF INDIA LTD. (NAMCO) Petitioner

Through: Dr. Vijay Kumar Shukla, Ms. Nupur
Shukla and Mr. Anirudh Gulati,
Advocates.

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Piyush Beriwal, Mr. Sarvan
Kumar and Mr. Nikhil Kumar
Chaubey, Advocates for R-1.
Mr. Anmol Panwar, Ms. Neha Yadav
and Mr. Praveen Ware, Advocates for
R-2.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. The Petitioner, which is a Multi State Cooperative Society, has approached this Court challenging the Order dated 25.09.2023, passed by the Respondent No.2 by which the Respondent No.2 has terminated the agreement dated 28.02.2023 entered into between the Petitioner and the Respondent No.2 and has also sought for refund of Rs.35 lakhs given by the Respondent No.2 to the Petitioner under the agreement.

2. Material on record indicates that the Petitioner is a Society registered under the Multi State Co-operative Society Act and is empanelled as Cluster Based Business Organization in Small farmers Agribusiness



Consortium/Respondent No.2, which is a Society working under the Department of Agriculture, Ministry of Agriculture and Farmers Welfare Govt. of India. It is stated that in pursuance to the Central Sector Scheme launched by the Government of India for formation and promotion of 10,000 Farmer Producer Organizations to ensure economies of scale for farmers of which Respondent No.2 is the implementing agency and for that purpose Cluster Based Business Organizations were engaged by the Respondent No.2 for the execution of the said scheme. It is stated that the Petitioner entered into an agreement dated 28.02.2023 with the Respondent No.2. It is stated that under the Agreement dated 28.02.2023, the Petitioner herein was empanelled by the Respondent No.2 for a period of five years. It is stated that the Petitioner was to provide services for five years relating to formation of farmer based producer organizations. The Scope of service was defined under Annexure 1 of the agreement. Annexure 2 of the Agreement lays down the terms of payment. It is stated that on 25.08.2023 Respondent No.2 issued a notice to the Petitioner regarding fraudulent utilization of certificates issued by the Petitioner. The said notice states that two different copies of utilization certificates have been issued for an amount of Rs.12,25,000/- which was signed by different signatories. The notice further reveals that the analysis of bank statements reveals that after receiving the funds the amount was utilized for purposes other than for achieving the objects of the Scheme. It was found that the amount was in fact transferred to another entity. In view of the said discrepancy, the Petitioner was to show cause as to why the conduct of the Petitioner should not be treated as misrepresentation of facts, submission of forged documents and diversion & mis-utilizing of the Government funds. A reply was given by the Petitioner



on 28.08.2023. A termination notice was issued by the Respondent No.2 on 04.09.2023 terminating the agreement of the Petitioner herein. Clause 7 of the Agreement deals with termination of the Agreement. Clause 7.1 of the Agreement, which is relevant for the present case, reads as under:

“7.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred ("CBBO Default"), and the CBBO fails to cure the default within a cure period of Thirty days, or such longer period mutually agreed upon between the Parties, the CBBO shall be deemed to be in default of this Agreement, unless the default has occurred solely as a result of Force Majeure or due to a default of SFAC. The CBBO Default shall include, without limitation, any of the following defaults:

(a) the CBBO is in material breach of its obligations as laid down in this Agreement with respect to any part or aspect of the Project;

(b) the CBBO abandons or manifests intention to abandon its obligations under this Agreement without the prior written consent of SF AC;

(c) a breach of any of the terms and conditions of this Agreement and/ or the EoI by the CBBO has caused a Material Adverse Effect;

(d) the CBBO repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by this Agreement;

(e) there is a transfer, pursuant to law either of (i) the rights and/ or obligations of the CBBO under this Agreement or of (ii) all or part of the assets or undertaking of the CBBO, and such transfer



causes a Material Adverse Effect;

(f) an execution levied on any of the assets of the CBBO has caused a Material Adverse Effect;

(g) the CBBO is adjudged bankrupt or insolvent for the whole or material part of its assets, that has a material bearing on the Project;

(h) the CBBO has been, or is in the process of being liquidated, dissolved, woundup, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of SFAC, a Material Adverse Effect;

(i) a resolution for winding up of the CBBO is passed, or any petition for winding up of the CBBO is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within Fifteen days of the date thereof or the CBBO is ordered to be wound up by court except for the purpose of amalgamation or reconstruction; except that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the CBBO are transferred to the amalgamated or reconstructed entity and the amalgamated or reconstructed entity has unconditionally assumed the obligations of the CBBO under this Agreement.

provided further that:

i.the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement; and



ii.the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement as at the date of empanelment;

(j) any representation or warranty of the CBBO herein contained which is, as of the date hereof, found to be materially false or the CBBO is at any time hereafter found to be in breach thereof;

(k) the CBBO submits to SF AC any statement which has a material effect on SFAC's rights, obligations or interests and which is false in material particulars;

(l) the CBBO has failed to fulfil any obligation, for which failure, termination has been specified as a consequence in this Agreement; or

(m) the CBBO commits a default in complying with any other provision of this Agreement, if such a default causes a Material Adverse Effect on SFAC.”

3. A notice was given to the Petitioner on 04.09.2023 stating that the reply given by the Petitioner was not satisfactory. The notice also stated that the agreement with the Petitioner stands terminated and the Petitioner was directed to refund the amount of Rs.35 lakhs. Another letter dated 25.09.2023 has also been issued to the Petitioner seeking refund of the amount from the Petitioner.

4. It is these letters which are under challenge in the present Writ Petition.

5. The main contention of the Petitioner is that instead of terminating the Agreement the Respondent No.2 ought to have appointed an arbitrator to



settle the disputes. It is also stated by the Petitioner that the action of the Respondent No.2 in terminating the Agreement is contrary to the procedure prescribed under the Agreement.

6. Heard the Counsels for the Petitioner and the Respondents and perused the material on record.

7. Clause 9 of the Agreement brings out the dispute resolution mechanism. The said Clause reads as under:

“9. Dispute Resolution

9.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement or the Eol (including their interpretation), and so notified in writing between the CBBO and SF AC ("Dispute") shall, in the first instance, be resolved by the Parties through amicable settlement. Either Party may call upon the designated official of SF AC to assist the Parties in arriving at an amicable settlement thereof

9.2 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 9.1 above, shall be finally decided by reference to arbitration. Such arbitration shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") as amended from time to time. The venue and seat of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.

9.3 The arbitration shall be conducted by a sole arbitrator who shall be mutually appointed by the Parties and whose decision shall be final and binding on both the Parties. The arbitrator shall make a reasoned award and such award shall be carried out without any delay.



9.4 Notwithstanding any of the foregoing, but subject to Clause 9.2 and Clause 9.3 above, the courts in New Delhi shall have exclusive jurisdiction over any Disputes.

9.5 This Agreement shall be construed and interpreted in accordance with and governed by the laws of India.”

8. It is well settled that if a contract entered into between the parties provides for a dispute resolution mechanism, then Writ Courts should not exercise their jurisdiction under Article 226 of the Constitution of India to adjudicate upon the disputes and must relegate the parties to resolve their disputes in accordance with the dispute resolution mechanism stipulated under the Agreement.

9. The Apex Court in State of U.P. v. Bridge & Roof Co. (India) Ltd., (1996) 6 SCC 22, has observed as under:

“21. There is yet another substantial reason for not entertaining the writ petition. The contract in question contains a clause providing inter alia for settlement of disputes by reference to arbitration (clause 67 of the contract). The arbitrators can decide both questions of fact as well as questions of law. When the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the parties should not follow and adopt that remedy and invoke the extraordinary jurisdiction of the High Court under Article 226. The existence of an effective alternative remedy — in this case, provided in the contract itself — is a good ground for the court to decline to exercise its extraordinary jurisdiction under Article 226. The said article was not meant to supplant the existing remedies at law but only to supplement



them in certain well-recognised situations. As pointed out above, the prayer for issuance of a writ of mandamus was wholly misconceived in this case since the respondent was not seeking to enforce any statutory right of theirs nor was it seeking to enforce any statutory obligation cast upon the appellants. Indeed, the very resort to Article 226 — whether for issuance of mandamus or any other writ, order or direction — was misconceived for the reasons mentioned supra.”

10. In view of the fact that there is an alternate dispute resolution mechanism for resolution of disputes between the parties, this Court is not inclined to exercise its jurisdiction under Article 226 of the Constitution of India.

11. Accordingly, the Writ Petition is dismissed along with the pending applications, if any.

12. It is made clear that this Court has not made any observations on the merits of the case.

SUBRAMONIUM PRASAD, J

DECEMBER 12, 2023

Rahul