(2011) 12 P&H CK 0193

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13141 of 2011 (O and M)

Gill Rice Mills APPELLANT

Vs

State of Punjab and others RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9
Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2011) 12 P&H CK 0193

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—The petition is to de-seal the rice sheller of the petitioner which had been sealed by the Punjab Agro Food Grains Corporation (for short, ''the PAFC''), the 5th respondent herein, which according to the petitioner, is without any justification. The petition further contains a direction to the respondents 3 to 6, namely, the PUNGRAIN and the officials connected with the PAFC to adhere to a decision taken in the meeting alleged to have been held on 22.10.2009 and not to make any miller accountable for the nonmilling of rice against the paddy variety of PAU-201. The petitioner would claim that the respondents alone are responsible for the damage/destruction of the paddy in the rice sheller which had been illegally sealed by the 4th respondent.

2. It is an admitted premise that an agreement had been entered into by the petitioner with the Government agencies for the year 2009-10 for getting the paddy milled into rice as per clause 10 of the Punjab Rice Procurement (Levy) Order, 1983. It is stated by the petitioner that 15950 bags of paddy had been received by the petitioner from respondent No. 4-PAFC in terms of receipt dated 05.11.2009 (Annexure P1) and 1400 MT paddy from respondent No. 3-PUNGRAIN in terms of letter dated 11.11.2009 (Annexure P- 2). This was said to

include also the paddy variety of PAU-201. There had been excessive damage and dis-colouration percentage in the rice and it was an experience with the petitioner as well as several other millers that they could not bring the milled rice within the prescribed limits of quality on account of inherent defect in the variety. In a turmoil that erupted and to quell the face off between the State agencies and the rice millers, all the District Managers of the PUNGRAIN and PAFC had been called to a meeting where it was resolved in the presence of the millers on 22.10.2009 that the damage contents in the rice produced after milling would vary from 7% to 8% and the millers were entitled to endorse on the receipt that they were not bound to mill the variety as per the given specifications of the Government of India or till when the Government took a decision regarding the specifications of rice produced before this variety of paddy. A joint report had been made by all the State agencies, namely, MARKFED, PUNSUP, Punjab Agro, Punjab Warehouse and the District & Food Supplies Controller, where it was agreed that the rice millers would unload the PAU-201 variety in their stores and they will check the quality and quantity of the same but they were not required to mill the same. It was decided that the Government would resolve the issue and if the paddy was not milled, no action could be taken and necessary instructions would be got from the State Government.

3. The petitioner claimed that it had milled about 540 bags of rice against the paddy allotted by the PUNGRAIN and also milled about 1080 bags of rice against the paddy allotted by the PAFC. The paddy that could not be milled was offered by the petitioner to be delivered at FCI after putting an effort to make them fit for human consumption, but no space had been provided by the FCI for storing the same. The petitioner would contend that he had spent more than 25 lacs of rupees for converting the rice as fit for human consumption, but still without allowing the petitioner to deliver them at the FCI, about 68 consignments of the PAFC and 11 consignments of PUNGRAIN had been sealed by the 5th respondent on 01.02.2011 without any authority. The petitioner would claim that the sealing had been done by the District Manger of the Corporation out of personal enmity and bias. A written representation had been given on 08.02.2011 (Annexure P-12) to the Senior Superintendent of Police, Barnala, for registration of complaint against the Inspector, Punjab Agro, for forcibly taking up the rice lying in the premises of the mill without giving any receipt and threatening him for false complaints. After sealing the premises, the respondent was still issuing notices for the alleged failure of the petitioner to deliver the paddy after milling. The petitioner has characterized these notices as untenable, for, the respondents, who were guilty of sealing the premises could not have expected the petitioner to mill the paddy and deliver the same. Any damage that had arisen by the long storage and the inability of the petitioner to return after milling were on account of the respondents'' conduct themselves and they could not make the petitioner liable for any damage for non-milling of the paddy.

4. The petitioner had earlier filed a writ petition in CWP No. 9287 of 2011 seeking for a direction to the respondents to deseal the premises, but the said writ

petition was withdrawn to avail the right of the petitioner to make a representation. Such a representation had been made on 17.06.2011 (Annexure P-21), but there had been no reply for the same. On the other hand, the respondents had made a demand on the petitioner to repair his shelter and maintain the stock, to which the petitioner had again replied on 23.06.2011 that he was ready to maintain the stocks and get the shelter repaired, provided a Commissioner was appointed to carry out a physical verification and the loss of the stocks lying inside during the time when it had been sealed. None of the petitioner''s representations has been replied to by the respondents and when even the representations to the Chief Minister of the State yielded no fruit, the present writ petition has been filed for securing the reliefs which we have already outlined above.

5. The Managing Director, PUNGRAIN-the 3rd respondent, has filed a reply contending that the petitioner had been entrusted 45077 bags of paddy weighing 15776.95 quintals for milling and an agreement had been entered into with the petitioner evidencing the fact that he had entrusted with paddy of ''A'' grade. He was required under the terms of the agreement to deliver 10570.55 quintals of the resultant rice against the paddy supplied. Out of the said quantity, he had delivered 7531.43 quintals of rice thus leaving a balance due of 3039.12 quintals of rice. The petitioner himself expressed difficulty to supply the balance of rice to the FCI as had been undertaken by him and was seeking the permission of the 3rd respondent to shift the rice to some other mills so that those millers could exchange the same with the paddy lying with the said milleRs. On the permission secured from the 3rd respondent, the rice to the extent of 2668.70 quintals were shifted to 10 different mills. This was equivalent to 3983.13 quintals of paddy. The contention therefore by the 3rd respondent is that the rice had been shifted by the petitioner himself in the account of the 3rd respondent to the 10 rice mills but still there were 37 MT remaining due on account of the petitioner towards the liability to supply to FCI. As far as the 3rd respondent was concerned, they had not sealed the premises and, therefore, the claim against the 3rd respondent was untenable. No paddy of PAU variety was ever supplied to the petitioner by the 3rd respondent. It is also denied by the 3rd respondent that the rice which was ready to be delivered by the petitioner had been illegally and arbitrarily lifted by the 3rd respondent in connivance with the 5th respondent.

6. The Food Corporation of India which is arrayed as the 2nd respondent, has filed an independent counter, contending that no remedy could be claimed against the Food Corporation since they are only required to receive the milled rice in terms of the contract which the petitioner has entered into with the State procurement agencies. The 2nd respondent would also contend that for any dispute which the petitioner has with the respondents 3 to 5, there is arbitration clause which is operative and the appropriate remedy for the petitioner would have been only to invoke the arbitration clause and not to seek for an extraordinary remedy under Article 226.

7. The respondents 4 and 5 have also filed their reply and it is contended that in terms of the contract entered into with the petitioner, it was bound to deliver the resultant rice upto March 2010 which was later extended upto July 2011. The obligation of the petitioner was to supply a quantity of 15510.77 quintals of rice upto the extended period of delivery. The physical verification that had been done on 19.01.2011 showed large shortages and out of 30373.35 quintals of paddy entrusted to the petitioner, the petitioner had delivered only 4839.50 quintal of rice (milled from 7222.95 quintal paddy @ 67 quintal rice from 100 quintal paddy). The respondents would contend that the rest 23150.40 quintal paddy had been milled by the petitioner in an unauthorized manner, but still the resultant rice had not been delivered to the FCI to the account of the answering respondent No. 4. On physical verification, it had actually been found that there was a shortage of nearly 6946 bags of paddy (2431.10 quintal paddy) and a criminal case had also been registered against the power of attorney holder of the proprietor of the petitioner mill on 01.02.2011 for offences under Sections 406, 420 and 120B IPC. The 4th respondent would again contend that what was supplied to the petitioner was only Grade ''A''/fine variety of paddy for the crop year 2009-10 and it was nowhere mentioned that the paddy entrusted to the petitioner was of PAU variety. The respondents would contend that the petitioner was deliberately misguiding the Court by falsely stated that huge efforts and finances had been spent by the petitioner to make the rice milled fit for human consumption.

8. From the enumeration of facts, it can be noticed that there is a fundamental dispute as to the nature of variety of paddy that had been supplied. While the petitioner would contend that it was of PAU variety, the respondent would deny the same and contend that what was supplied was Grade ''A''/fine variety of paddy. The petitioner''s prayer therefore that the policy of the Government regarding the relaxation of certain condition for milling PAU variety of paddy cannot be granted to the petitioner with the inadequate details brought through documents in Court. If the respondents would contend that the petitioner had shifted some paddy stocks and on physical verification, it was found that several thousand of bags of paddy have been missing that compelled the respondents to register a criminal complaint, it cannot again be a matter of adjudication for this Court to undertake in a writ jurisdiction of whether the petitioner had allowed for deliberate pilferage or misappropriation or the respondents were making out a false case against the petitioner. The contract specifically provides for the dispute to be settled through arbitration and if the petitioner had been compelled to resort to this Court since the representation given to the petitioner after the withdrawal of the earlier writ petition had not been answered, I can find no ground for giving any redressal to the petitioner except to a limited extent that the respondents could not have sealed the premises without a specific clause under the agreement or when there was a statutory provision which allowed for sealing to the premises.

9. It is quiet un-understandable to how the respondents were trying to give a

meaning to their own actions by giving an extension of time for milling the paddy and deliver the rice upto July, 2011 when they had sealed the premises in February, 2011. Again it is un-understandable as to how the petitioner could have demanded the repair to be effected for better storage when they were themselves in custody of the entire stocks by sealing the premises. The respondents had surely made it impossible for the petitioner to either mill the paddy and deliver or the attempt to repairs and ensure that the stocks had stored properly.

10. In the present situation, all that could be done is to allow the parties to resort to action for invoking the arbitration clause and seeking for an adjudication of the respective claims by one against the another. The adjudication will also include the actual variety of paddy that had been supplied to the petitioner and whether the decisions taken regarding admission of higher percentage of damage and dis-colorization for PAU variety of paddy could be applied to the supplies made to the petitioner or not. It could have been possible even for the State agency to seek for appropriate direction for protection of the stocks by a resort to an action u/s 9 of the Arbitration and Conciliation Act pending a reference to arbitration or could have obtained appropriate direction for sealing the premises to prevent apprehended pilferage by the petitioner only in so far as to secure an ease of activity for removal of the stocks to some other place to get the paddy milled. The respondents have failed to take appropriate action which could have protected their own stocks entrusted to the custody of the petitioner.

11. To a specific query to the counsel appearing on behalf of respondents 4 and 5 as to why they had resorted to an action for sealing the premises without judicial intervention or arbitral interim orders, especially in the absence of clause providing for a right of sealing the premises, the learned counsel for the respondents 4 and 5 would contend that in terms of the agreement, the stocks entrusted to the petitioner are deemed to be in joint custody and they had therefore a right to seal the premises to protect the stocks. Sealing the premises and protecting the stocks will have a meaning if action was being taken by the respondents to immediately have them removed from their place and get them milled to reduce any further loss. By allowing the stocks to rot within the sealed premises, the respondents have done themselves no good and they have only allowed for aggravation of a wrong which they have attributed to the petitioner.

12. Under the circumstances, I am of the view that the sealing of the premises must be immediately undone. It shall be done within a week after the receipt of the copy of this order and the stocks that had been stored inside shall be removed in the present state to their own warehouse. At the time of the removal, there shall be a joint inspection of the quantity and quality of stocks and entered in registers duly signed by the parties and attested by a senior revenue official not below the rank of Deputy Commissioner of the District. Either party is at liberty to apply seek for appointment of an Arbitrator for adjudging on

their respective claims one against the other. The stocks that are removed after desealing shall be either milled, if it is feasible or sold in the present condition after due publicity. The petitioner is entitled to bring appropriate offers for the value of the paddy removed from the petitioner''s premises so that he has no grievance about the valuation secured through such sale. The entire process of resale shall be done as expeditiously as possible and preferably within a period of two months. The amount realized shall be duly taken note of at the time of final calculation of the amounts that are respectively claimed by one against the other. If the seals are not removed as directed, the petitioner will be at liberty to estimate the loss that is occasioned by his inability to make use of premises and the financial loss arising on account of the conduct of the respondents in the manner of assessment of damage in the arbitral process.

13. The writ petition is disposed of on the above terms.

