
(2001) 05 P&H CK 0204

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 30397 of 2000 and Civil Writ Petition No. 15972 of 2000 (O and M)

M/s. Jain Agro Industries

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 16-05-2001

Acts Referred:

Citation : (2001) 05 P&H CK 0204

Hon'ble Judges : N.K. Sud, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Rajiv Atma Ram, for the Appellant; M.C. Berry, Senior DAG. Punjab. Mr. R.N. Sharma, for Respondent Nos. 2 and 3 Mr. P.S. Thiara, for the Respondent

Judgement

Jawahar Lal Gupta, J.—Civil Miscellaneous application is allowed. Reply filed on behalf of Respondent No. 4 is taken on record.

CWP No. 15972 of 2000

The paper book is sizeable. However, the issue is short.

2. The Punjab State Civil Supplies Corporation (hereinafter referred to as "PUN-SUP") supplied paddy to the Petitioner for milling. The common rice, which was prepared after the process of milling was to be delivered to the Food Corporation of India at Kapurthala. The Petitioner claims that the process of milling had been completed by or before August, 31, 2000. It had milled the paddy and made repeated requests to the Food Corporation of India to accept the rice. When the Food Corporation refused to accept it, the Petitioner addressed a communication dated July 19, 2000, to the District Manager of PUNSUP. A copy of this letter has been produced as Annexure P4 with the writ petition. By this letter the third Respondent was informed that the food Corporation of India (in short -the "FCI") has not "accepted the milled rice on one pretext or the other-mainly for want of storage capacity with them. Now the FCI has decided that these rice stocks should be disposed of by the Punjab Government & concerned agencies as they

like." The Petitioner further informed the third Respondent that the rice stocks may be lifted as it had no space to keep the stocks. The Direction of the PUNSUP that the Petitioner should keep the rice and deposit the amount of Rs. 931/- per quintal was also controverted. It was pointed out that there was no contract in that behalf and that the market rate of the rice was about Rs. 800/- per quintal and not Rs. 931/-.

3. After the letter of July 19, 2000, the Petitioner sent another communication dated August 30, 2000 to the third Respondent. It was pointed out that the paddy was lying milled. "The rice is ready as per specifications-FCI is not ready to accept the same. We have told this thing to each of your officer on duty. If you do not make any arrangement for the acceptance of the rice, then we are not responsible for any damages." Despite this, the Respondents took no action. Hence this petition. The Petitioner prays that the FCI should be directed to lift the rice.

4. At the hearing, it has been submitted by the counsel for the Petitioner that either the Food Corporation or the PUNSUP should take delivery of rice as the Petitioner has no room to store the huge quantity that has accumulated with the passage of time.

5. A written statement has been filed on behalf of the state of Punjab and the District Food and Supplies controller, Kapurthala. It contains nothing meaningful. Therefore, a detailed reference thereto is not necessary.

6. On behalf of Respondent Nos. 2 and 3, a separate written statement has been filed. The names of the officers, who have filed this written statement, are not clear. The contents have been verified by one of the officers. The verification appears to have been signed by Harkirat Singh, District Manager, PUNSUP.

7. Irrespective of that, we have perused the written statement. In para 2 of the preliminary objections, it has been averred that "Petitioner-firm was bound to deliver the custom milled rice to F.C.I. in the account of PUNSUP by 28-02-2000 (later on custom milling period was extended to 31-08-2000), as per terms and conditions of the agreement dated 04-10-1999". The Petitioner did not deliver the entire milled rice and 747.40 quintals of common rice is still recoverable as on December 5, 2000. The answering Respondents have been caused a huge loss. The fact that the Petitioner had sent a letter dated July 19, 2000, followed by the letter dated August 30, 2000 has not been controverted. Despite that, it has been alleged that the Petitioner did not deliver the milled rice upto June 30, 2000. despite various letters. Thus, it violated the instructions issued by the Food Corporation of India/ Government of India. In para 8 of the written statement, it has been further stated that the PUNSUP wrote letters to the Petitioner asking it to deliver the balance rice to the FCI. The Petitioner received the letters, but "did not deposit the entire cost." with regard to the letter dated August 30, 2000, it has been stated that the reply was sent on September 12, 2000. The Petitioner was asked to "deposit the cost of unmilled paddy to the PUNSUP. "

8. On these premises, the Respondents maintain that the writ petition should be dismissed.

9. A separate reply has been filed on behalf of the Food Corporation of India, by the Joint Manager. It has been averred that the Petitioner had to deliver "the entire rice -by 28/2/2000. This date was extended by the Government of India upto 30/06/2000. Thus, it was the duty of the Petitioner firm to deliver the entire rice by 28/2/2000 or upto the extended period." It has been further averred that neither the PUNSUP nor the Petitioner had sent any communication to the Food Corporation, alleging that there was no storage space available with them. In para 16, it has been averred that the agreement is between the Food Corporation and the PUNSUP. No communication was received by the FCI from the Petitioner.

10. Counsel for the parties have been heard.

11. On behalf of the Petitioner, it has been contended that the paddy has been milled. Rice was offered to the Food Corporation of India. It was not accepted. PUNSUP was informed. Despite that , the PUNSUP has failed to lift the rice. In this situation, the counsel submits that the PUNSUP should be directed to lift the rice, as the paddy had been milled at its instance.

12. On behalf of the Food Corporation of India, Mr. Thiara has contended that there was no contract "between the Petitioner and Respondent No. 4. Thus, the Petitioner should settle its dispute with PUNSUP.

13. Mr. Sharma appearing for Respondent Nos. 2 and 3 has contended that the agreement provides for the arbitration. Secondly, it has been submitted that the Petitioner had failed to supply the milled rice by the due date. Thus, it is bound to deposit the cost of the rice and the PUNSUP cannot be forced to lift the rice.

14. It is not disputed that initially the paddy was to be milled by February 28,2000. Vide fax message dated August 4, 2000, (a copy of which is at Annexure P2. with the petition), the Food Corporation of India had extended "the milling period for the paddy of kharif marketing season 1999-2000 upto 31.8.2000 in respect of Punjab__". Thus,the claim that the milled rice had to be delivered by February 28,2000 or June 30, 2000, is wholly untenable. Still further, it has not been disputed that vide letter dated July 19, 2000, the Petitioner had informed the PUNSUP that the Food Corporation of India was not accepting the milled rice. It had asked the said Respondent to lift the rice. The request was reiterated vide letter dated August 30,2000, (a copy of which has been produced as Annexure P6 with the petition). For reasons, which have not been disclosed on the record the stocks were not lifted.

15. The paddy had admittedly been entrusted to the Petitioner by Respondent Nos. 2 and 3. They are responsible to lift milled rice. It is no doubt true that under the agreement the Petitioner had to deliver the milled rice to the Food Corporation of India. It has categorically been stated that the Food Corporation was not accepting the milled rice on account of non-availability of storage

facilities. It was in view of this situation that vide letter dated July 19, 2000, the Petitioner had asked the PUNSUP to lift the rice. Mr. Sharma contends that the PUNSUP had directed the Petitioner to deposit the price of rice at the rate of Rs. 931/- per quintal. However, the Learned Counsel is unable to refer to any term of the contract, whereby the Petitioner may be under an obligation to purchase the rice or to deposit its price. In the absence of a specific term in the agreement, the Respondents could not have compelled the Petitioner to deposit the price of rice.

16. After consideration of the matter, we are satisfied with the Respondents are intentionally delaying taking delivery of the stocks on account of lack of storage facilities. Mr. Sharma has conceded that the PUNSUP has no godown and, therefore, it is finding difficult to store the rice. But that is not the Petitioner's worry. Once the FCI refuses to accept the stock, the PUNSUP must lift it. The Petitioner is under no obligation to store it.

17. Mr. Sharma contends that the Petitioner should raise the dispute before the Arbitrator.

18. It is the admitted position that the Managing Director of Respondent No. 3 has to be the Arbitrator. If the dispute is now referred to an Arbitrator, it would take sometime for decision. In the meantime, rainy season would come and the product would get damaged. It would result in an avoidable loss of an essential commodity. In the circumstances of the case, we are not satisfied that the Petitioner should be relegated to the remedy of arbitration proceedings. This is all the more so after the Respondents have fully disclosed their pleas.

19. No other point has been raised.

20. In view of the above, we direct that Respondent Nos. 2 and 3 shall lift the rice within two weeks from the date of receipt of a copy of this order. In case they fail to lift the rice as aforesaid, the Petitioner shall be at liberty to sell it in the open market at the risk and responsibility of Respondent Nos. 2 and 3. In that eventually, the Petitioner shall give advance notice of the date, on which it proposes to sell the rice. The respondent/PUNSUP shall be entitled to depute its officer to supervise the sale of rice. The Petitioner shall deposit the sale proceeds, after deduction of the milling charges in the account of PUNSUP. It shall be entitled to adjust the amount, if any, which it may have already deposited. Otherwise Respondent No. 2 shall deposit the milling charges due to the Petitioner before lifting the rice. In that event, the amount deposited by the Petitioner shall also be refunded to it.

21. The writ petition is accordingly disposed of.

22. No. Costs.

23. A copy of this order be given dasti to the counsel for the parties on payment of usual charges.

Sd/- N.K. Sud, J.