

**(2010) 09 P&H CK 0345**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** C.W.P. No. 6556 of 2010 (O and M)

Deep Agro Exports and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision:** Sept. 27, 2010

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2011) 161 PLR 510

**Hon'ble Judges:** Surya Kant, J

**Bench:** Single Bench

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**Judgement**

Surya Kant, J.

This order shall dispose of CWP Nos. 6556, 8796, 8832, 8836, 8883, 8902, 8918, 9261, 10599, 13031, 14252, 15213 and 16753 of 2010 as the questions of law and facts involved in these cases are quite common. For the sake of brevity, the facts are being extracted from CWP No. 6556 of 2010.

2. The Petitioners are running their respective Rice Mills at different places near Bhuchio Mandi, District Bathinda. They seek a writ of certiorari for quashing of the impugned notices dated 25.02.2010 [Annexures P-11 and P-12] which are said to be contrary to the decision taken in the meeting held on 22.10.2009 by the District Administration, Bhatinda. A writ of Mandamus is also sought directing Respondents No. 3 to 8 to adhere to and implement the decision dated 22.10.2009 wherein it is said to have been amicably resolved that the Rice Millers like the Petitioners are not bound to mill the PAU-201 variety of paddy. The Petitioners also seek a consequential direction to absolve them from any liability as a result of non-milling of the PAU-201 variety of paddy, the extracted rice whereof is stated to be below the prescribed specifications and substandard/unfit for human consumption.

3. The petitioner - Rice Millers have been allotted paddy for custom milling by the Procuring Agencies, namely, Respondents No. 5 to 8 for the Crop Year 2009-10 and

a formal agreement to this effect has been executed between the parties, a copy whereof has also been placed on record [Annexure P-1]. The Petitioners have averred that as soon as they initiated the process of storing the paddy - PAU-201 variety - it was found to be excessively damaged of discolour percentage in rice and therefore, they refused to store the said variety of paddy. Since the farmers had allegedly created law and order problem due to non-lifting of their PAU-201 variety of paddy, an urgent meeting was conveyed by the Deputy Commissioner, Bhatinda on 22.10.2009 which was duly attended by the representatives of the Petitioners as well as the District Managers of the Procuring Agencies, namely, Respondents No. 5 to 8. It was resolved in the said meeting that the Rice Millers will cooperate in checking the quality and quantity of the paddy at the time of unloading and get the PAU-201 variety of paddy stored separately and that they may endorse on the "receipt" that they are not bound to mill this variety as per the "given specifications" of the Government of India or till the Government takes a decision with regard to the rice extracted from this variety of paddy. It was also decided that the Millers shall not create any hindrance in the working or shifting of the paddy by the agencies out of the District or storing it with the willing millers within the District. A joint report [Annexure P-3] was also prepared by the District Managers of the Procuring Agencies in which they acknowledged that during the trial milling, 7% to 10% damaged rice was produced from the PAU-201 variety of paddy which was much higher than the norms specified by the FCI and that the damaged contents of the rice extracted from the afore-stated variety of paddy were around 7% to 8%. The Petitioners' further case is that since the specification relaxed by the Government of India at the relevant time was up to 3% in respect of the damaged/slightly damaged grains, which was further increased to 4% vide FCI Memo dated 15.10.2009 [Annexure P-6], followed by further increase to 4.75% was still below the 7% to 8% damaged contents of the PAU-201 variety of paddy, the Petitioners were left with no choice but to refuse to mill the PAU-201 variety of paddy. However, instead of honouring the settlement dated 22.10.2009, the Respondents have started issuing the impugned show-cause notices to the Petitioners calling upon them to deliver the milled rice and/or compensate the financial loss caused to the State Government/Agencies.

4. The 5th Respondent - PUNGRAIN has filed a comprehensive reply/affidavit, inter-alia, pointing out that the inter-se dispute between the parties is governed by the "agreement" already executed between them and that the dispute arising out of the terms of such contract or alleged breach have to be settled by the ordinary principles of Law of Contract rather than invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India. It is also pointed out that as per Clause 26 of the "agreement", such like disputes are referable to a sole "Arbitrator", therefore, also the writ petition is not maintainable. It is also maintained that most of the similarly placed Rice Millers have already started milling PAU-201 variety of paddy and that for the aggrieved Rice-Millers there are sufficient remedies available

to seek compensation for the losses, if any, suffered by them on account of milling of the afore-stated variety of paddy.

5. It is explained on merits that after the understanding dated 22.10.2009, the Government of Punjab took up the matter at the highest level with the Union of India and 3% uniform specification limit for KMS-2009-10 was got revised to 4% from the Ministry of Consumer Affairs, Food and Public Distribution and thereafter again at the instance of the Government of Punjab, the said limit was further extended to 4.75% vide memo dated 25.3.2.10 [Annexure Rule 5/4]. It is also averred that the hue and cry made by the Petitioners regarding the poor quality of the PAU-201 variety of paddy is uncalled for as the samples of rice of that paddy were collected from Punjab by several Agencies like the Food Safety and Standards Authority of India for analysis in the Central Food Laboratory and after discussion at the highest level in the Government of India, it came out that 85% of the samples were within the specifications. The Government of India accordingly advised the State Government to ensure that the Millers start milling the un-milled paddy expeditiously and rice be delivered to the Food Corporation of India.

6. Union of India has also filed its short reply explaining that on the request of the Government of Punjab, uniform specification limit for PAU-201 variety of paddy was raised from 3% to 4% for the damaged/slightly damaged grains and once again the request of the Government of Punjab was accepted to maximize the procurement of rice in the drought year and the relaxation was further increased to 4.75%. Para 6 of the reply/affidavit further suggests that "the answering Respondent has relaxed the uniform specification to the extent it was possible. Because beyond this relaxation the grain is not fit for human consumption rather attracts penal action under the Prevention of Food Adulteration Act, 1954".

7. I have heard learned Counsel for the parties at some length and perused the records.

8. Learned Counsel for the parties are indeed ad-idem on the execution of the "agreement" for the custom milling of paddy between the parties, a copy whereof has also been placed on record by the Petitioners [Annexure P-1]. As per its Clause 22, the agreement came into force from the date of its execution and is in force up to 30.09.2010 or till the clearance of dues, whichever is later. Clauses 10 and 26 of the agreement have a direct bearing on the controversy and the same read as follows:

10. The entire quantity of rice of all varieties delivered by the miller to the Government/Agency shall conform to the specifications laid down in the Punjab Rice Procurement [Levy] Order, 1983, as amended from time to time or in any other order or notification issued by the Government of India/State Government from time to time. The stocks of rice not conforming to the specifications so laid down shall be liable to be rejected. The miller shall be required to manufacture rice as per

specifications laid down by the Government of India and deliver the same to the Food Corporation of India, at its depots by 31.03.2010.

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26. All the disputes and differences arising out of or in any manner touching or concerning this agreement whatsoever [except as to any matter the decision of which is expressly provided for the contract] shall be referred to the sole arbitrator of the Director/Managing Director or any person appointed by him in this behalf. There will be no objection to any such appointment that the person appointed is or was an employee of Food and Supplies Department, Punjab/Agency or that he had to deal with the matter to which the contract relates and that in the course of his duties such an employee of the Food and Supplies Department, Punjab/Agency had expressed views on all or any of the matter in dispute or difference. The award of such arbitration shall be final and binding on the parties to this contract. It is a term of this contract that in the event of the arbitrator being transferred or vacating his office or being unable to act for any reason, the Director/Managing Director at the time of such transfer, vacation of office, death or inability shall appoint another person to act as arbitrator. Such a person shall be entitled to proceed with reference from and the stage where it was left by his predecessor.

9. True it is that the entire quantity of rice of all the varieties to be delivered by the petitioner - Millers must conform to the specifications [relaxed or otherwise] prescribed by the Competent Authority and in the event of any failure to maintain such specifications the rice is liable to be rejected. It is equally true that in the event of any dispute or difference arising out of or in any manner touching or concerning the inter-se "agreement", the same is referable to the Sole Arbitrator to be appointed in terms of Clause 26, reproduced above, whose award shall be final and binding on the parties to the contract.

10. It is trite that a contract does not become statutory in nature merely because it is executed for a "public object" or has been awarded by a "statutory body". The very statute under/by which the statutory body is constituted may expressly or impliedly empower such constituent body to enter into contracts for the purposes of discharging its functions and all such contracts would not ipso-facto become "statutory contracts", the breach whereof might entitle the aggrieved party to invoke even extra ordinary writ jurisdiction under Article 226 of the Constitution. In such like matters, the parties shall be governed by the obligations consciously accepted by them against each other. The breach of the agreed terms and conditions of the contract would thus be got settled by them through the ordinary process of law of contract or through the mechanism agreed to between the parties.

11. In the case in hand, Clause 26 is wide enough that to take all types of disputes within its sweep which need to be referred to the Sole Arbitrator agreed to be appointed between the parties. In my considered view, the remedy to invoke the

arbitral jurisdiction being equally effective and there being no exceptional circumstances warranting the invoking of the extra-ordinary discretionary jurisdiction under Article 226 of the Constitution, the writ petitions are liable to be dismissed on this score alone by relegating the Petitioners to the afore-stated alternative remedy.

12. Suffice it to observe though tentatively that the understanding arrived at between the parties in the meeting held on 22.10.2009 [Annexure P-2] neither over-rides the terms and conditions of the contract nor it varies or supplant them. The Petitioners having agreed to store PAU-201 variety of paddy separately with a clear understanding that they would not be bound to mill that variety "as per given specification of the Government of India" till the Government takes a decision regarding specification of rice produced from this variety of paddy", can not turn around and plead otherwise unless they prove the actual damaged quality of rice and their immunity from the consequential liability, especially when no further relaxation could be granted, as explained by Union of India in its reply/affidavit, for the reason that the rice beyond that relaxation would have been unfit for human consumption. The understanding held between the parties on 22.10.2009, thus, appears to have been substantially complied with.

13. The observations made here-in-above, however, in no way would take away the Petitioners' right to prove before the Sole Arbitrator that the poor quality of PAU-201 variety of paddy which they were allegedly forced to lift in violation of the "agreement" leaving no option for them to select better variety of paddy and the mandatory compliance of Clause 10 of the agreement by them, namely, conformation of the specifications, has caused huge losses in breach of the terms and conditions of the contract. During the course of such arbitral proceedings, the Respondents would obviously be at liberty to prove that PAU-201 variety of paddy does not suffer in terms of the quality/specifications to the extent claimed by the Petitioners or that most of the Rice millers in and around Bhucho Mandi, District Bathinda have already voluntarily milled the said paddy without suffering any losses or that the contractual obligation does not permit the Petitioners to question the quality of paddy. Suffice it to say that these are the disputed questions of facts to be gone into by the Arbitrator on appreciation of the material/evidence/proof to be produced by the parties before him. It is not expedient for this Court to express any views in this regard.

14. In order to safe-guard the interest of the Petitioners against the apprehension expressed in these petitions and also to enable them to effectively discharge the obligations under a binding contract, it is clarified that milling of PAU-201 variety of paddy by the Petitioners would not be taken as their acquiescence or acceptance of the quality of the said variety or non-existent of any "dispute" between the parties and the milling process of the subject paddy shall be carried out by the Petitioners without prejudice to their rights that may be claimed before the Arbitrator and also

subject to the directions given here-in-above. No orders as to costs.

15. Dasti on payment of usual charges.