

3. DISTRICT MANAGER FOOD
CORPORATION OF INDIA VARASEONI,
DISTT. BALAGHAT (MADHYA
PRADESH)
4. COLLECTOR BALAGHAT (MADHYA
PRADESH)
5. SUPERINTENDANT OF POLICE
BALAGHAT (MADHYA PRADESH)
6. POLICE OF POLICE STATION KATANGI,
DISTT. BALAGHAT (MADHYA
PRADESH)
7. MANAGER (EARNING AND MILLING)
MADHYA PRADESH STATE
CORPORATIVE MARKETING
FEDRATION, BHOPAL (MADHYA
PRADESH)

.....RESPONDENTS

***(SHRI P.K. MISHRA- ADVOCATE FOR THE RESPONDENT NOS. 1, 2 AND 7,
SHRI SHOBHIT ADITYA- ADVOCATE FOR RESPONDENT NO. 3 AND SHRI
H.K. GOLHANI- PANLE LAWYER FOR RESPONDENT NOS. 4, 5 AND
6/STATE)***

.....
"Reserved on : 04/04/2024"

"Pronounced on : 10/04/2024"
.....

*This petition having been heard and reserved for order, coming on
for pronouncement this day, the court passed the following:*

ORDER

By this common order W.P. No. 3152/2019, W.P. No. 2337/2019,
W.P. No. 2339/2019, W.P. No. 2406/2019, W.P. No. 3881/2019 and
W.P. No. 4354/2019 shall also be disposed of.

2. For the sake of convenience, the facts of W.P. No. 11123/2019
shall be taken into consideration.

3. This petition under Article 226 of Constitution of India has been filed seeking the following reliefs:-

“7.1 may please quash the Annexure P-1 dated 07.06.2019 and Annexure P-2 dated 16.01.2019 for being in violation of agreement condition and Part III of the Constitution of India.

7.2 Any other direction may kindly be issued to the respondents as deemed fit in the present circumstances.”

4. It is the case of petitioners that they are rice millers, who entered into an agreement on different dates with respondent No. 2 for milling of paddy. The life of agreement was 45 days and within the prescribed period petitioners were required to mill the paddy and handover the same to respondents No.2 and 3. As per the agreement, if one third of the rice is not returned after milling within stipulated time, then penalty of Rs.2 per quintal was required to be recovered by the Corporation. It was further mentioned in the agreement that within 45 days 40% of milling capacity will be converted into Custom Milling Rice (C.M.R.) and as per condition No.13, further time to deposit C.M.R. will be provided and as per condition 47, if rice is not returned, which is 60% of the paddy, then the amount to the tune of 1.25 times of the stipulated rate will be recovered. It is submitted by counsel for petitioners that suddenly by letter No. Dhan Milling/2018-19/1917, Seoni, dated 16.01.2019, it was directed that C.M.R. rice lot will not be deposited. Vide order No. Dhan/139, dated 29.01.2019, an enquiry was made and it was found that all petitioners and all other rice millers (except one) were holding the remaining paddy or rice with them. The rice millers pursued the matter before respondent No. 2 and number of issues were cropped up and it was decided in the joint meeting held on 07.03.2019 that for

returning the remaining rice, separate order will be issued. In spite of that assurance, respondent No.2 has issued the recovery order in extremely ambiguous terms. Impugned order begins with the specific condition that as per Condition No. 47-48, action would be taken. Fact remains that Condition Nos. 47 and 48 have been made for those who could not return the 60% rice, as stipulated in the agreement. In the present case petitioners were willing and even are willing to deposit/return the rice, but the same is not being deposited/accepted by respondents No.2 and 3 and accordingly the recovery order has been issued. Thus, by this writ petition, petitioners have challenged the order dated 07.06.2019 issued by Managing Director, Madhya Pradesh State Civil Supplies Corporation Limited, Bhopal and order dated 16.01.2019 issued by District Manager, Madhya Pradesh State Civil Supplies Corporation Limited, District Seoni.

5. It is further submitted by counsel for petitioners that respondents were under obligation to impose the penalty only as per the provision of agreement. There is no provision that after stipulated period, the rice/paddy lying with the millers will not be taken back. Even otherwise, it is clear that paddy was supplied to the millers even on the last date of agreement i.e. 15.01.2019 and abruptly on 16.01.2019, the impugned order was issued. No reasonable time was given to petitioners to deposit the rice after milling the same.

6. In W.P. No.3152/2019, an additional ground was raised by counsel for petitioners that direction to lodge the FIR in case if the entire amount is not deposited is unwarranted. When the terms and conditions are governed by the agreement, then direction to lodge the FIR is bad in law.

7. None appeared for petitioners in other writ petitions.
8. Respondents have filed their return. It is submitted that agreement was valid up to 15.01.2019. Petitioners, who are millers, were aware of the fact that after 15.01.2019 agreement would come to an end and it cannot be acted upon after 15.01.2019. The period of contract was 45 days and the rice millers were required to complete milling of the paddy supplied in different lots as per Clause 51 of the contract. Thus, period of entire contract for milling of paddy into rice was 45 days and it was not in respect of every lot as misconstrued by petitioners. The rice millers were required to deposit the rice after milling of paddy within the aforesaid stipulated period by taking acceptance note under Clause 30 of the agreement. The answering respondents were authorized to extend the period of milling with the recommendation of their concerned Manager. However, the rice millers are precluded from claiming such extension of period of milling as their right/entitlement. The rice millers were responsible for the security of the paddy and rice in their possession under the agreement till the same is deposited by the rice millers as per Clauses 12 and 30 of the agreement and in case of any loss, the answering respondents were authorized to recover the same from the rice millers. In all respect, the Corporation is the owner of the entire paddy and rice available with the rice millers and the rice millers were only the custodian of the paddy and the rice. As per Clause-47, if rice millers supply lesser quantity of rice after milling of paddy, then 1.25 times of its value was recoverable from the rice millers and as per Clause 48, if the rice millers fail to make payment within specified period of 10 days as provided under Clause 47, then interest on the said amount @ 16% per annum was recoverable from the rice millers. The

rice millers were bound to abide by the prevailing rules, laws and directions of the State Government/Government of India/Corporation and in case of any violation, the rice millers were solely responsible without there being any liability of respondent-Corporation. On account of failure on the part of the rice millers, the Corporation was entitled to recover the loss suffered by them, if any. In case of failure to complete the milling of paddy as per the terms and conditions of the contract, then security deposit made by the rice millers was also liable to be forfeited and milling of remaining paddy was liable to be performed by some other agency at the risk and cost of the rice millers and as per Clause 85, every dispute in respect of the terms and conditions of the contract was to be referred for arbitration to the Managing Director of the respondent-Corporation. It is submitted that since petitioners could not complete the milling of paddy within the stipulated period and they were in possession of paddy and rice, therefore, they are liable for penal action regarding recovery as per the terms and conditions of the contract. As per Clause 14 of the contract it was also clear that rice millers have no right or entitlement to claim extension of period of milling. As the entire contract was as per the scheme of Ministry of Consumer Affairs, Food and Public Distribution of the Government of India dated 14.12.2018 for the *Kharif* Marketing Year 2017-18 and the said rice was to be distributed by the Government of India, therefore, the answering respondents had also requested the Ministry of Consumer Affairs, Food and Public Distribution of the Government of India for extension of said period of milling, but the request of answering respondents is pending with the Government of India and in lieu thereof, the answering respondents cannot extend the period of milling in favour of petitioners

or cannot accept their rice after specified period of milling, as the same shall not be accepted by the Government of India from the answering respondents. Since, the Government of India has not extended the date for deposit of rice after 15.01.2019, therefore, paddy and rice, which is in possession of petitioners cannot be accepted. The contentions of petitioners that they were not afforded sufficient time for milling of rice was specifically denied. It is submitted that petitioners were aware of the fact that the life of agreement is only up to 15.01.2019 and, therefore, the work of milling of paddy was to be completed on or before 15.01.2019. So far as the delayed supply of paddy to petitioners for milling purposes is concerned, it is submitted that in fact it was the fault on the part of petitioners. They failed to perform the milling by lifting their lots within time. Now they cannot claim any extension of time in absence of any right under the agreement.

9. Petitioners have filed their rejoinder and submitted that converting the paddy into rice within a day was an impossible act. For converting the paddy into rice 45 days were required and it was the duty of State Government to get the period extended from the Central Government but that activity was only taken belatedly after 10.11.2020. Furthermore, every year time was extended. In the year 2018-19, last date was 15.05.2020. In the year 2019-20, last date was 31.03.2020 and in the year 2020-21, last date was 31.10.2021 and therefore, the proprietary demands that there should be equality and parity in dealing with identical circumstances.

10. Alongwith **I.A. No.14326/2021** petitioners have filed a copy of letter dated 10.11.2020 written by Chief Secretary, Food, Civil Supplies and Consumer Protection, State of M.P. to the Central Government. In

this letter it is specifically mentioned that a request was made for extension of time for milling the paddy but the said request has been rejected by order dated 10.10.2019.

11. Heard the learned counsel for parties.

12. It is not the case of petitioners that petitioners had any right under the agreement to seek extension of time.

13. Petitioners have not challenged the order dated 10.10.2019 issued by Union of India. Even Union of India has not been impleaded as respondent. Once the Union of India has refused to extend the time and it is not the case of petitioners that in spite of refusal by Union of India, the State Government could have extended the time on its own, this Court is of considered opinion that unless and until the order dated 10.10.2019 issued by Union of India thereby refusing to extend the time is challenged by petitioners, the respondents not be compelled to extend the time of milling beyond 15.01.2019, which was agreed upon between the parties by executing the agreement.

14. Petitioners are primarily aggrieved by order dated 16.01.2019 issued by District Manager, M.P. State Civil Supplies Corporation Ltd.

15. Undisputedly, in case of a dispute, the same can be raised before the Arbitrator, who is the Managing Director.

16. By referring to order dated 07.06.2019 issued by Managing Director, it is submitted by counsel for petitioners that Managing Director has directed for recovery of outstanding amount, therefore, remedy of arbitration is inefficacious and therefore, petitioners were not expected to avail the remedy of arbitration.

17. Considered the submissions made by counsel for petitioners with regard to arbitration.

18. It is the case of petitioners that petitioners had approached the Managing Director and on 08.03.2019, it was decided that a separate order shall be passed in respect of remaining paddy as well as rice lying with the millers.

19. Now the question for consideration is as to whether petitioners had ever approached the Managing Director of M.P. State Civil Corporation Ltd. or not?

20. From the note sheet dated 08.03.2019, it is clear that petitioners had approached the concerning Minister of Food, Civil Supplies and Consumer Protection, State of M.P. and accordingly a meeting was convened, which was attended by Chief Secretary, Managing Director, M.P. State Civil Supplies Corporation Ltd., Financial Advisor, MARKFED, President, Rice Industry Corporation, Katni and three more private persons of Rewa, Satna and Umaria. By no stretch of imagination, it can be said that it was a proceeding written by Managing Director in the capacity of an Arbitrator. Thus, it is clear that as per clause 85 of the agreement, the Managing Director was the Arbitrator but petitioners have not availed the said remedy.

21. Clause 85 of the agreement reads as under:

“इस अनुबंध की किसी भी कंडिका को लेकर किसी प्रकार का विवाद उत्पन्न होने पर प्रकरण आर्बीट्रेटर प्रबंध संचालक, म0प्र0 स्टेट सिविल सप्लाइज कार्पोरेशन लिमिटेड, भोपाल के समक्ष प्रस्तुत किया जावेगा।”

22. The Managing Director was never approached by petitioners by referring the dispute to him as an Arbitrator.

23. Petitioner have also sought the quashment of letter dated 07.06.2019, which has been written by Managing Director and accordingly, it is claimed that no useful purpose would be served by

approaching the Arbitrator by the Managing Director.

24. The aforesaid contention raised by counsel for petitioners is misconceived. The Managing Director has issued the instructions on 07.06.2019 to the authorities with a clear understanding that how the situation is to be dealt with. Being the Managing Director, he is required to ensure the effective working of the institution but while acting as an Arbitrator, he is required to perform *quasi-judicial* duties. Merely because the Managing Director is required to perform administrative duties as well as *quasi-judicial* duties as an Arbitrator, it would not mean that the Managing Director in the capacity of Arbitrator would not perform his duties as per law.

25. Furthermore, petitioners had accepted the clause No.85 of the agreement. Petitioners cannot claim that once the Managing Director has been appointed as *de jure* Arbitrator, then he is estopped from performing his administrative duties. Issuance of a general notice and deciding the matter on one to one basis as an Arbitrator are two different aspects.

26. Under these circumstances, this Court is of considered opinion that petitioners had an efficacious remedy of approaching the Arbitrator but they have failed to do so. Even otherwise, if petitioners were of the view that under the facts and circumstances of the case, the Managing Director cannot act as an Arbitrator with free mind, then they could have prayed for appointment of new Arbitrator. Even that was not done.

27. Under these circumstances, this Court is of considered opinion that since petitioners have not availed the remedy available to them as per the agreement therefore, petition cannot be entertained.

28. In W.P. No.3152/2019, it was additionally argued by counsel for

petitioners that in case of violation of agreement, the authorities should not have directed for registration of FIR.

29. Considered the submissions made by counsel for petitioners.

30. Counsel for petitioners could not point out any provision of law, which prohibits the application of provisions of IPC.

31. The Supreme Court in the cases of **State of M.P. v. Rameshwar** reported in **(2009) 11 SCC 424**, **Dhanraj N Asawani Vs. Amarjeetsingh Mohindersingh Basi and Others** decided on **25/07/2023** in **Criminal Appeal No.2093/2023** and **Jayant v. State of M.P.**, reported in **(2021) 2 SCC 670** has held that in absence of any bar to the application of provisions of IPC, the recourse to the penal provisions can always be taken.

32. If there is a defalcation of money by the millers, then they can always be prosecuted for the same.

33. No other argument was advanced by counsel for petitioners.

34. Considering the totality of facts and circumstances of the case, this Court is of considered opinion that no case is made out warranting interference.

35. Petitions fail and are hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

AL/SR*