

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No. 384 of 2014 (O&M)
Date of decision: 02.11.2015**

M/s Lakshmi Energy & Foods Ltd. (LEAF)

... Petitioner

versus

Punjab State Grain Procurement Corp. Ltd. (PUNGRAIN)

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sanjiv Bansal, Advocate for the petitioner.

Mr. D.V. Sharma, Senior Advocate with

Ms. Eshjyot Walia, Advocate for the respondent.

K.Kannan, J.

The order put to challenge is the appointment of an Arbitrator by the respondent-Corporation. The petitioner who was an allottee for milling paddy had a dispute with the Corporation that resulted in the Corporation appointing an Arbitrator, Ms. Simarjot Kaur. It appears that the petitioner had some benefit of interim directions but he objected to the continuation of the arbitral proceedings on the plea that there was no arbitral agreement and the Arbitrator did not have the competence to adjudicate on the dispute between the parties. The Arbitrator held in her order as follows:

- a) In the absence of any agreement between the parties, present Arbitration proceedings are not maintainable, as the arbitration is not the appropriate remedy for adjudication of the dispute between the parties. The dispute between the parties may kindly be adjudicated through other appropriate legal remedy in accordance with the law.
- b) Responsibility may be fixed and action taken against the office Incharge/staff who were posted during the season when such a major lapse occurred.

It appears that after this order was passed, higher authority in the administrative hierarchy in the Corporation ruled that the Arbitrator's decision was wrong and he has made a fresh appointment. It is this fresh appointment which is brought to challenge on a plea that the order passed by the Arbitrator ruling out her own jurisdiction had become final and a fresh appointment was incompetent.

Learned senior counsel appearing on behalf of the respondent would contend that the Government milling policy under which allotments were made provided specifically for appointment of an Arbitrator in case of disputes between the Corporation and the allottee. Since the order passed by the Arbitrator ruling out her own jurisdiction was merely provisional and she was putting her own order for approval by the administrative head, it was competent for the Managing Director to make a fresh appointment treating the order passed by the Arbitrator as inconsequential.

The whole edifice of appointment afresh is on a slippery ground. Appointment of an Arbitrator of one of the employees of the Corporation performs a judicial function under the Arbitration Act and will not act as a subordinate to his superior officer as on the administrative side. After she had been appointed as an Arbitrator, her function shall not be seen as the order passed by subordinate authority that would require approval from the superior officer in the Corporation for the latter to modify that order or approve of this order. The order of the Arbitrator can be assailed or modified early within the four corners of the provisions of the Arbitration Act, 1996. The order passed by the Arbitrator ruling out her own jurisdiction will be an appealable order under Rule the provisions of the Arbitration Act and without the appeal being filed by the Corporation, Managing Director or any other officer has no power to annul the same. The fresh appointment made is incompetent and without jurisdiction.

Learned senior counsel states that the petitioner had

actually applied before the Arbitrator for an interim direction for disposal of paddy and having availed of some benefit cannot bring an objection to her jurisdiction. This argument may be used in an appeal and not before this Court.

The order impugned is quashed and the revision petition is allowed with above observations.

(K.KANNAN)
JUDGE

02.11.2015

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