

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

1. FAO No.57 of 2009(O&M)
Date of decision : 11.08.2015

Punjab State Civil Supplies Corporation Ltd. and anr.

...Appellants

Versus

M/s Annupurna Rice Mills and others

...Respondents

2. FAO No.4278 of 2009(O&M)
Date of decision : 11.08.2015

Punjab State Civil Supplies Corporation Ltd. and anr.

...Appellants

Versus

M/s Durga Rice Mills, Ghagga, District Patiala and others

...Respondents

3. FAO No.4151 of 2010(O&M)
Date of decision : 11.08.2015

Punjab State Civil Supplies Corporation Ltd. and anr.

...Appellants

Versus

M/s Malwa Modern Rice and General Mills and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?

3. Whether the judgment should be reported in the Digest ?

Present: Mr. Rakesh Gupta, Advocate &
Ms. Deepali Puri, Advocate for the appellants.

Mr. Pardeep Goyal, Advocate
for respondent Nos.1 to 5. (In FAO No.57 of 2009)

Mr. Deepak Arora, Advocate for the respondents.
(In FAO No.4278 of 2009)

Ms. Ekta Thakur, Advocate for the respondent Nos.1 & 2.
(In FAO No.4151 of 2010)

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of three appeals i.e. FAO No.57 of 2009, FAO No.4278 of 2009 & FAO No.4151 of 2010 titled as Punjab State Civil Supplies Corporation Ltd. and anr. Vs. M/s Annupurna Rice Mills and others, Punjab State Civil Supplies Corporation Ltd. and anr. Vs. M/s Durga Rice Mills, Ghagga, District Patiala and others & Punjab State Civil Supplies Corporation Ltd. and anr. Vs. M/s Malwa Modern Rice and General Mills and others, respectively as common question of facts and law raised/involved in the aforementioned appeals. Facts are being taken from FAO No.57 of 2009.

In pursuance of agreement dated 14.10.1994 entered into between PUNSUP and various other Rice Millers, the dispute arose between them and accordingly the matter was referred to the Arbitrator. The claim filed by the PUNSUP before the Arbitrator was pertaining to 2% driage. The Arbitrator vide his award declined the claims taking into consideration the terms and conditions of the agreement, which did not envisage such claim.

Aggrieved against the aforementioned award, the PUNSUP had preferred objection under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act'). The said objections have also been dismissed and resultantly filed the appeal has been under provision of Section 37 of the Act. The grounds on which the objection can be filed under Section 34 are specified, for the sake of brevity, reads thus:-

“34 Application for setting aside arbitral award. — (1)

Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application furnishes proof that—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on

matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation. —Without prejudice to the generality of sub-clause (ii) it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the

Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.”

The Principal Court did not agree with the contention raised by the PUNSUP on the premise that objections were not falling within the ambit of Section 34, much less, agreement did not envisage the claim of 2% driage. There has already been adjudication to this fact by Coordinate Bench of this Court in FAO No.3157 of 2010 decided on 24.01.2012, wherein identical claim sought by the PUNSUP before the Arbitrator raised in the objection, much less, in the appeal has been declined.

The operative part of the order read thus:-

“I have heard counsel for the appellants at length and gone through the award wherein the Arbitrator has dealt with all the relevant instructions and held that the miller has kept unmilled paddy under the scheme of PUNSUP/State is entitled to the benefit of 2% driage. The said observations of the Arbitrator is neither illegal nor contrary to any law and it does not fall in any of the parameters under Section 34 of the Act warranting interference.

*Counsel for the appellants has relied upon **Oil and Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd.**, AIR 2003 SC 2629 wherein the Hon'ble Supreme Court has considered the scope of Section 34 of the Act and held that if the award is de hors the provisions of the Act and is illegal on the face of it, it is liable to be set aside. There is*

no dispute regarding the scope of interference as considered in abovesaid judgment but the facts of the present case do not indicate any patent illegality or violation of provisions of any statute. No ground is made out for interference in the judgment passed by the lower Court.

Dismissed.”

It is a matter of record that claim vis-a-vis 2% driage could not be claimed by the appellants for the reasons that agreement did not envisage such claim and rightly so the Arbitrator and Principal Court has declined, much less, not accepted the objections. The present case does not fall within the parameters/provision of Section 34 of the Act which has been explained in the judgment rendered by Hon'ble Supreme Court and this Court to say that until and unless there is a gross violation of the parameters, the Principal Court would entertain the objections.

In view of what has been observed above, there is no merit in the appeals.

Accordingly, same are dismissed.

11.08.2015

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**(AMIT RAWAL)
JUDGE**