

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

FAO No.1219 of 2010 (O&M)

Date of decision : 11.08.2015

The Punjab State Civil Supplies Corporation Ltd. and anr.

...Appellants

Versus

M/s National Rice Company and ors.

...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: Ms. Deepali Puri, Advocate for the appellants.

Mr. Pardeep Goyal, Advocate for the respondent No.1.

AMIT RAWAL, J. (Oral)

CM No.6142-CII of 2010

This is an application u/s 5 of the Limitation Act for condonation of delay of 54 days in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, delay of 54 days in filing the appeal is condoned.

The application stands disposed of.

Main Case

Ms Deepali Puri, learned counsel for the appellants submits that in pursuance to the agreement dated 18.10.1994 entered into between

PUNSUP and the respondent for shelling the paddy of the PUNSUP of the crop year 1994-95, it was agreed that rice after shelling shall be delivered by the miller and in the event of breach i.e. short delivery of rice, miller was required to pay 1½ times of the economic cost of the leftover paddy along with interest @ 21% p.a. As per the terms and conditions of the agreement, the Miller breached the aforementioned terms and the matter was referred to the Arbitration and submits that the Arbitrator formed an opinion that it did not have the jurisdiction to entertain and try the claim in view of excepted clause No.6 of the agreement.

As per clauses 5 and 6 of the agreement, jurisdiction of 1 and ½ times of the economic cost & interest @ 21% p.a. lies within the domain of Managing Director. Despite arriving at the finding, aforementioned, yet Arbitrator while segregating the other claims proceeded to decide the remaining claims in favour of PUNSUP.

He submits that once Arbitrator had arrived at a finding, there was no occasion for him to adjudicate the remaining claims and the matter should have been relegated to the Managing Director as per the law. The objections filed against the award also met with the same fate.

Mr. Pardeep Goyal, learned counsel appearing on behalf of respondent No.1 submits that award is fair, legal and justified vis-a-vis the other claims and, therefore, objections have rightly been dismissed by the Courts below.

I have heard learned counsel for the parties.

On going through the contents of the award, it is discernible that the Arbitrator formed an opinion that, in view of Clause Nos.5 and 6 of

the agreement, the controversy was within the domain/realm of the Managing Director. Operative part of the award of the Lower Court read thus:-

“It is also pertinent as also appropriate to reproduce the relevant extract of Clause 5 & 6 of the agreement and the same are as under:-

CLAUSE 5

I & II xx xx xx xx xx xx

(iii) In case there is a shortfall in the recovery of rice provided in such sub-clause (1) above the miller shall pay to the PUNSUP the cost of paddy equivalent to the shortfall at the rate of 1.5 times the economic cost of paddy.

CLAUSE 6

I II & III xx xx xx xx xx

In the event of his failure to supply rice within the stipulated period he shall be liable for an interest @ 21% on the basis of the economic cost of left over quantity/stocks of paddy/rice and the decision of the Managing Director in this behalf shall be final.

Now a perusal of the aforesaid provision of the agreement leaves it in no manner of doubt, that all disputes between the parties were required to be referred to arbitration in the event of any such thing arising between them except of course those matters, the decision whereof was specifically left to be taken by the Managing Director in consonance with what is stipulated therein i.e. in the agreement, and since the matter with regard to the quantum of the amount payable to the Corporation as also of the interest thereon in the event of the failure of the miller to supply required quantity of rice and within the agreed period has expressly & lucidly been left to be taken by the Managing Director alone it inevitably follows that it was not

liable to be referred to arbitration at all and that act of the Managing Director in doing so, through the present proceedings is wholly in violation of what was agreed between the parties & it has therefore, to be dubbed as being totally illegal & unsustainable.

The legal position in this regard as it has evolved through some of the authoritative pronouncement of the apex court as also of our own High Court fully covers the point herein and clearly points to the conclusion that the excepted matters i.e. the ones which were required to be decided by the MD as envisaged by the agreement could not have been referred to the Arbitrator at all. This has to be so irrespective of the fact whether any application incorporating any such objection as has been taken into his case has been filed or not.

While dwelling upon this subject in case M/s Shree Krishna Rice Mill, Ferozepur Vs. Punjab State Cooperative Supply & Marketing Federation Ltd. Ferozepur in civil writ petition No.1780 of 2001, decided on 14.3.2002, it was observed by the Hon'ble Mr. Justice K.C. Gupta as he then was as under:-

“the decision with regard to 1.5 times economic cost and interest @ 21% is clearly provided in the agreement itself as such, the aforesaid matters were not liable to be referred to the Arbitrator and reference in this regard was beyond the scope of arbitration clauses and the proceedings before the Arbitrator was clearly liable to be terminated on the short ground alone. In such circumstances, neither the Managing Director had any authority to refer aforesaid dispute to the Arbitrator, nor the Arbitrator had any jurisdiction to continue with the proceedings under any circumstances.

Thereafter in a similar matter which came up for the

consideration of the sumit court of land in case Food Corporation of India Vs. Suridner, Devinder and Mohidner transport Co. reported as 2003(1) PLR 843, it was held as under:-

“in order to determine whether the Arbitrator has acted in excess of his jurisdiction what has to be seen is whether the claimant could raise a particular claim before the Arbitrator. If there is a specific term in the contract or the law which does not permit or give the Arbitrator the power to decide the dispute raised by the claimant or there is a specific bar in the contract to the raising of the particular claim, then the award passed by the Arbitrator in respect thereof would be in excess of jurisdiction.”

Consequently keeping in view the dictum laid down in the aforesaid cases I have no option but to hold that the Managing Director of the claimant Corporation had no authority to make this reference at least in respect of the excepted matters” i.e. 1.5 times economic cost of the paddy and interest thereon and that I have no jurisdiction to go there into at all.”

However, yet the Arbitrator proceeded to decide vis-a-vis other claims, in my opinion the Arbitrator should not have embarked further to try other claims in view of Clauses 5 and 6 noticed above.

The Lower Court, also in my view, committed illegality and perversity in dismissing the objections, as the objections are squarely fall within the provision of Section 34 of the Arbitration and Conciliation Act, 1996.

In view of what has been observed above, particularly the fact that dispute pertains to the clauses 5 and 6 (Supra), it is only the Managing Director who has to decide the respective claims.

Accordingly, the award dated 13.10.2004 passed by the Arbitrator & order passed by District & Sessions Judge are set aside and the matter is relegated back to the Managing Director to decide the respective claim of the parties to the lis afresh.

Parties as well as their counsels are directed to appear before Managing Director on 31.08.2015.

It is directed that Managing Director shall decide the controversy as expeditiously as possible within a period of 8 months.

The present appeal stands allowed.

11.08.2015

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**(AMIT RAWAL)
JUDGE**