IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O.No.1859 of 2010 (O&M)
Date of Decision: August 20, 2015

1. F.A.O.No.1859 of 2010 (O&M)

M/s Satguru Rice and General Mills, Village Khera Gajju, District Patiala & another

...Appellants

Versus

The Punjab State Co-operative Supply and Marketing Federation Ltd. (Markfed), Rajpura, District Patiala & another

...Respondents

2. F.A.O.No.2851 of 2010 (O&M)

The Punjab State Co-operative Supply and Marketing Federation Ltd. (Markfed), Patiala

...Appellant

Versus

M/s Satguru Rice and General Mills, Village Khera Gajju, District Patiala & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Mukand Gupta, Advocate,
for the appellants (in FAO No.1859 of 2010) &
for respondent Nos.1 & 2 (in FAO No.2851 of 2010).

Ms.Deepali Puri, Advocate,
for respondent No.1 (in FAO No.1859 of 2010) &
for the appellant (in FAO No.2851 of 2010).

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AMIT RAWAL, J. (Oral)

On the asking of the Court, Ms.Deepali Puri Advocate, who is present in Court, accepts notice on behalf of the Markfed.

By this common order, I intend to dispose of two FAO Nos.1859 and 2851 of 2010, one filed by the miller and another filed by the Markfed, as the common question of law and facts involved in both the appeals is the same. The facts are being taken from FAO No.1859 of 2010.

The challenge in FAO No.1859 of 2010 is to the impugned order dated 12.11.2009 passed by the Additional District Judge, Chandigarh, whereby the objections filed by the appellants against the award rendered by the arbitrator, have been dismissed.

Mr.Mukand Gupta, learned counsel appearing for the appellants submits that the appellants had taken an objection in the proceedings which were pending before the arbitrator that it did not have the jurisdiction in view of the excepted clause bearing No.9, but yet the arbitrator adjudicated the matter and decided the reference by awarding compensation of ₹2,27,97,162/- along with interest @ 30% per annum. Objections to that effect were filed in the Court of Additional District Judge, which have been partly allowed by reducing the interest from 30% to 9% per annum, but the question with regard to the arbitrator having jurisdiction has not been delved.

Ms.Deepali Puri, learned counsel appearing on behalf of the Markfed submits that the arbitrator has rightly adjudicated the reference as it was a case of shortage of rice and not a case of delay and, therefore, the ratio decidendi culled out by this Court in **Shree Krishna Rice Mills**

<u>Versus The Punjab State Cooperative Supply & Marketing Federation Ltd.,</u> 2003(2) Civil Court Cases 167 (P&H) and **<u>F.C.I. Versus Surendra, Devendra and Mohendra,</u> 2003(1) PLR 843** would not be applicable and rightly so, the arbitrator has adjudicated the objections.

I have heard the learned counsel for the parties and appraised the paper book.

It would be apt to extract the excepted clause bearing No.9, which reads thus:-

> "*The entire quantity of rice of all varieties delivered by the miller to the Markfed 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 State Government from time to time. The stocks of rice not conforming to the specifications so laid down shall be liable to be rejected in respect of such quantity of rice which is not found to be within the specifications and the miller shall be liable to pay to the Markfed for the quantity of rice short supplied, a penalty at the custom milling rate fixed by Govt. of India plus 21% interest from the date it becomes payable till the date of actual realization of the converted variety of rice. The decision of the Managing Director Markfed (hereinafter referred to as the Managing Director) in this behalf shall be final.*
>
> *(ii) At the time of delivery, the stocks of rice shall be subjected to the inspection as per provisions of the Punjab Rice Procurement (Levy) Order, 1983. Any quality allowance determined at the time of inspection according to the specifications shall be recovered from the miller's bills.*
>
> *(iii) The miller shall complete the delivery of rice within 10 (ten) days of the issuance of paddy to him, and rice due to the*

> *Markfed on the total quantity of paddy issued to him or in joint custody, released at regular intervals, shall be delivered not later than the 28th Feb., 2001 or up to the period extended by the Government of India.*
>
> *In the event of his failure to supply rice within the stipulated period he shall be liable for an interest @ 21% for the first year of default and @ 30% for the subsequent period on the custom milled price fixed by Govt. of India from the date it become payable till the date of actual realization towards the left over quantity/stocks of paddy. The decision of the Director/Managing Director, in this behalf shall be final."*

It is a matter of record that the reference was confined to 21% interest for the first year and 30% for the subsequent period. The award, though deals with the contention of the appellants, vis-a-vis, the jurisdiction, but thereafter while adjudicating the claim, the arbitrator has not given any reasons, much less, dealt with the same. The Additional District Judge distinguished the ratio decidendi culled out in **Shree Krishna Rice Mills** and **F.C.I.'s cases (supra)** by holding that it was a case of late delivery, whereas the present was a case of shortage. I am afraid, the aforementioned observation is not correct.

It is a matter of record that the Markfed had claimed the interest as per the provisions of excepted clause. It is now settled law that the excepted clause deals with the adjudication of the same by the Managing Director and not by the arbitrator. The arbitrator ought to have referred the matter to the Managing Director after noticing the claims sought in the reference. The same very fallacy has been committed by the Additional District Judge.

In view of what has been observed above, the award dated 17.5.2004 and the impugned order dated 12.11.2009 are set-aside and the matter is referred to the Managing Director.

FAO No.1859 of 2010 is allowed, whereas FAO No.2851 of 2010 is dismissed.

The parties shall be at liberty to appear before the Managing Director to file their claims/counter-claims, if they think appropriate, in accordance with law.

August 20, 2015 **(AMIT RAWAL)**
ramesh **JUDGE**