IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1559 of 2011 (O&M)
Date of decision : 18.08.2015

Punjab State Warehousing Corporation

...Appellant

Versus

M/s Shiv Shakti Rice Mill 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: Mr. A.D.S. Sukhija, Advocate for the appellant.

Mr. Anil Kshetarpal, Sr. Advocate with
Mr. Piyush Aggarwal, Advocate for respondents.

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AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the order dated 16.09.2010 passed by District Judge, whereby objections filed by the Miller against the award dated 17.12.2004, has been accepted.

Mr. A.D.S. Sukhija, learned counsel appearing on behalf of appellant submits that objections filed on behalf of Miller were not maintainable as the Miller failed to take the specific objection that dispute squarely falls within the excepted clause of the agreement and thus, waived his right as per Section 4 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act'). The Arbitrator proceeded to decide the controversy, in the absence of specific objection. The Objections qua excepted matter has been taken, for the first time, in the objections under Section 34 of the Act which are not sustainable in the eyes of law and, therefore, District Judge has committed illegality and perversity in accepting the objections in part vis-a-vis relief that controversy fall under the 'Excepted Clause'.

Mr. Anil Kshetarpal, learned Senior Counsel assisted by Mr. Piyush Aggarwal, Advocate for the respondents submits that objections qua maintainability of the reference, had though specifically been taken in the written reply before the Arbitrator and it would envisage the entire objections including, the claim under the excepted provisions of the agreement. Learned District Judge has rightly excluded the benefit granted to the Warehousing Corporation under the Excepted Clause vis-a-vis other claim. District Judge has found that Miller is liable to pay Rs.686275.20 and the said finding has not been assailed by the Miller.

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

It would be apt to refer Clause 7(i) of the agreement, which deals with the granting of the relief under Excepted Clause:-

> *"Clause 7(i) of the agreement reads as follows:-*
> *"The entire quantity of rice of all varieties delivered by the miller to the Govt. shall conform to the specification laid down in the Punjab Rice Procurement (Levy) Order 1963 amended from time to time and in any other orders of notification issued by the Government from time to time. The*

stocks of rice not conforming to the specifications so laid down shall be treated to be rejected in respect of such quantity of rice which is not found to the within the specification and the miller shall be liable to offer fresh stocks of rice confirming to the specifications to the Govt. In the event of his failure to supply rice within the prescribed specifications, shall be liable to pay to the Govt. for the quantity of rice short supplied at the penal rate of one and half times the economic cost of the converted variety of paddy equivalent to the shortage. The decision of the Director, Food and Supply Punjab, in this behalf shall be final"

Thus, it provides that in case the quantity of the rice is short, then miller is liable to pay one and half times the economic cost of the paddy and the decision of the Director, Food and Supply, Punjab, shall be final."

In Clause 20, which deals with the Arbitration, it has been clearly mentioned that Arbitrator would have a jurisdiction to decide the matter other than the Excepted Clause. The Arbitrator did not ponder upon the objections qua maintainability of the reference at the instance of Warehousing Corporation and yet decided the controversy.

The order under challenge accepting the plea of the Miller vis-a-vis the relief granted under provision of Excepted Clause of the agreement, in my view is in consonance with the parameters laid down by various judgments, while dealing with the objections under Section 34 of the Act. The Arbitrator could not grant the interest of 21% and 30% which exclusively, was the domain of the Managing Director. In my view, the award granting interest would fall within the expression of the "public policy".

It is not the case of the appellant where entire relief/claim awarded by the Arbitrator has been set aside. The District Judge has found that Arbitrator had exceeded its jurisdiction in granting the relief which would fall under the Excepted Clause as it was not within its domain.

It is now a settled law that as to under what circumstances the award has to be interfered with. The question which has now been raised in the aforementioned appeal has already been answered by the Hon'ble Supreme Court in catena of judgments wherein it has been laid down that until and unless the award suffers from illegality or for want of reason as statutorily prescribed under Section 31 (3) of the Act, the same cannot be interfered with. In this context I intend to refer the judgments of Hon'ble Supreme Court in **Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49 and Navodaya Mass Entertainment Ltd. Versus J. M. Combines (2015) 5 SCC 698.** In the aforementioned judgment the Hon'ble Supreme Court had culled out the ratio decidendi by holding that until and unless there is error apparent on the face of record or the arbitrator has not followed statutory legal position, it is only in those circumstances it would be justified interfering with the award. The High Court should not act as a Court of appeal and reappraise the material/evidence and embark on a path by substitution in its own view. It is not the case of the appellant that the award is against the public policy or has violated the principles of judicial approach, much less against the statute and other provisions of Section 34 of the Act. The Arbitrator has dealt with the dispute which was contemplated and was within the scope of it.

In my view, the impugned order passed by Additional District Judge accepting objections in part and setting aside the findings of the Arbitrator vis-a-vis granting the relief which was falling in excepted provision is correct and does not suffers from illegality and perversity.

There is no merit in the aforementioned appeal.

Appeal is accordingly, dismissed.

18.08.2015 **(AMIT RAWAL)**
pawan **JUDGE**