IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 1831 of 2011 (O/M)
Date of decision : 3.8.2015

Punjab State Civil Supplies Corporation Limited and another
..... Appellants

Versus

M/s Lakhpat Rai Amarjit Talwandi Bhai and another...... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Rakesh Gupta, Advocate, for the appellants.

None for respondents.

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

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KULDIP SINGH, J. (ORAL)

This is an appeal against the judgment dated 19.10.2010, passed by the learned District Judge, Ferozepur, whereby the objections of the appellant-Corporation filed under Section 34 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') against the award dated 14.2.2003, were dismissed.

The brief controversy between the parties is that 6400 bags, weighing 4160.00 quintals of common variety and 63033 bags weighing 40971.45.00 quintals of fine variety of paddy in 'A' class gunny bags for milling were supplied to the respondent No. 1. The rice was to be supplied by 30.6.1996. It is claimed that there is shortfall of 284.80 quintals of common variety of rice and 4751.60.600 quintals of fine variety of rice, for which the economic cost, which is 1-1/2 time, was claimed alongwith the interest. It comes out that the economic cost was paid late i.e. on 23.6.1996, for which the interest was claimed. The Arbitrator declined the interest on the ground that the same is not justified as the Corporation has already levied the 1-1/2 time of the economic cost of the balance paddy left with the miller. The relevant extract of the observations made by the Arbitrator is reproduced below :-

> "However, the interest levied by the corporation for late deposit of cost of paddy from 1.7.96 to 23.6.97 i.e. Rs. 1006203.00 and interest from 24.6.97 to 30.11.98 amounting to Rs. 1369857.00 does not seem to be justified as the corporation has already levied the 1-1/2 time of the economic cost of the balance paddy left with the miller."

Before this Court, respondents did not appear and were proceeded ex-parte.

I have heard the learned counsel for the appellant-Corporation and have also carefully gone through the file.

The learned counsel for the appellant-Corporation has pointed out to the Clause 7 of the Agreement, under which the interest was to be paid on the economic cost of the left over stock of the rice/paddy. The learned counsel for the appellant-Corporation has also pointed out to the Clause 16 (c) of the Agreement, wherein

1-1/2 times of economic cost of equivalent paddy was recoverable. Clause 7 of the Agreement is reproduced below :-

> "7. In the event of his failure to supply rice within the stipulated he shall be liable for an interest @ 21% on the basis of economic cost of left over quantity/stocks of paddy/rice. The decision of Managing Director in this behalf shall be final."

The aforesaid clause shows that the decision of the Managing Director regarding charging the interest shall be final.

The learned counsel for the appellant-Corporation has argued that in this case, no objection was raised before the Arbitrator regarding its jurisdiction to claim the interest. Therefore, the same is deemed to have been waived as per Section 4 of the Arbitration and Conciliation Act, 1996.

A perusal of the written statement shows that some preliminary objections were also raised in this case. The copy of the award further shows that it was pleaded before the Arbitrator that it has got no jurisdiction to conduct the present proceedings as the agreement was executed by the parties at Ferozepur. It was further pleaded that the proceedings having been initiated are contrary to the mandatory provisions and rules framed by Hon'ble the Chief Justice of Punjab and Haryana High Court, vide Punjab Gazette Notification dated 19.12.1996. Therefore, apparently, objection to the appointment of Arbitrator was raised. It is clear from Clause 7, reproduced above, that the question of grant of interest is to be finally decided by the Managing Director of the Corporation. Therefore, the reference to the Arbitrator in this regard was bad in the eye of law.

In view of the matter, the part of award of the Arbitrator dated 14.2.2003, refusing to grant the interest, is set aside and the matter is referred back to the Managing Director of the appellant-Corporation to decide the question of claim of interest after giving proper opportunity of hearing to the parties. The appeal is allowed to said extent and the impugned order dated 19.10.2010, passed by the learned District Judge, Ferozepur, is set aside to said extent.

(KULDIP SINGH)
JUDGE

3.8.2015
sjks