IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No.4266 of 2010 (O&M)
Date of decision : 18.08.2015

Punjab State Civil Supplies Corporation Ltd. and another

...Appellants

Versus

M/s Ravi Rice Mills and ors.

...Respondents

2. FAO No.5550 of 2009 (O&M)
Date of decision : 18.08.2015

M/s Ravi Rice Mills

...Appellant

Versus

Punjab State Civil Supplies Corporation Ltd. and another

...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
for appellants (In FAO No.4266 of 2010)
for the respondent No.1 (In FAO No.5550 of 2009)

Mr. Mukand Gupta, Advocate
for respondents (In FAO No.4266 of 2010)
for appellant (In FAO No.5550 of 2009)

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AMIT RAWAL, J. (Oral)

This order of mine shall dispose of FAO No.4266 of 2010 titled as Punjab State Civil Supplies Corporation Ltd. and another Vs. M/s Ravi Rice Mills and ors., & FAO No.5550 of 2009, titled as M/s Ravi Rice Mills Vs. Punjab State Civil Supplies Corporation Ltd. and another, as common question of facts and law raised/involved in the aforementioned appeals.

FAO No.5550 of 2009 filed by Miller against the order dated 16.04.2007 passed by District Judge, Sangrur, whereby objections filed under Section 34 of the Arbitration and Conciliation 1996 Act (hereinafter to be referred as 'the Act') against the award dated 11.06.2004 has been dismissed, whereas other appeal bearing FAO No.4266 of 2010 has been filed by the PUNSUP, whereby their objections filed against the award of non-granting the claimed amount has also been rejected.

Mr. Mukand Gupta, learned counsel appearing on behalf of Miller submits that reference before the Arbitrator was not maintainable for the reasons that PUNSUP had already issued “No Due Certificate” dated 14.10.1995 and, therefore, the PUNSUP was estopped from filing the reference before the Arbitrator. He further submits that original claim was filed for an amount of ₹1 crore an odd amount and thereafter evidence was led and later on at final stage, claim was revised, and PUNSUP sought revision restricted claim to ₹20 lacs. He further submits that Arbitrator had committed illegality and perversity in entertaining the claim particularly when “No Due Certificate” had been issued and, therefore, the objections on this ground are liable to be allowed and this fact has grossly been ignored by the District Judge while rejecting objections, thus, there is illegality and perversity.

Mr. Rakesh Gupta, learned counsel appearing on behalf of PUNSUP submits that as per the policy of the Government, the Miller was allowed to sell paddy/rice but was liable to deposit its price within time and, therefore, the Arbitrator had awarded interest of ₹66 lacs an odd amount, whereas the other claims have been rejected and against that, objections filed have also been dismissed.

He further submits that PUNSUP is entitled to the amount of ₹22 lacs as per the revised claims and the learned District Judge has not taken into consideration the entire genesis of the controversy and resultantly dismissed the claims.

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

It would be apt to refer to the arbitration clause before pondering upon the controversy on the said reasons in the present case.

Clause 17 of the agreement provides for determination of all the disputes and differences arising out of or in any manner touching or concerning the agreement. For the sake of brevity, Clause 17 reads thus:-

> *"17. ARBITRATION All the disputes and differences arising out of or in any manner touching or concerning this agreement whatsoever except as to any matter the decision of which is expressly provided in the contract) shall be referred to the sole arbitration of the Managing Director or any person appointed by her in this behalf. It will be no objection to any such appointment that the person appointed is or was an employee of PUNSUP or*

that he had to deal with the matters in which the contract relates and that in the course of his duties such as employee of the PUNSUP he had expressed views on all or any of the matters in disputes and difference. The award of such arbitration shall be final and binding on the parties to this contract. It is a terms of this contract that in the event of the arbitration being transferred or vacating his office dying or being unable to act for any reason the Managing Director at the time of such transfer, vacation of office, death or inability shall appoint another person to act as arbitrator. Such a person shall be entitled to proceed with reference from the stage where it was left by his predecessor.

Provided further that any demand for arbitration in respect of any claim(s) of the miller, under the contract shall be in writing and made within one year of the date of completion or expiry of the period of contract. If the demand is not made within the period of claim(s) of the miller shall be deemed to have been waived off and absolutely barred and the Managing Director shall be discharged and released of all liability under the contract in respect of these claims.

The cost or and in connection with arbitration shall be in the discretion of the arbitrator who may make suitable provisions for the same in his award.

Subject as aforesaid the Arbitration Act, 1940 shall apply to the arbitration providing under this clause. In witness thereof the parties hereto have signed this agreement on the day and year first above written."

The Arbitrator while dealing with objections of the Miller noticed that interest claimed by the PUNSUP was on account of deposit of the amount by the Miller as the same was required to be deposited well within the time, whereas it has been deposited in 1995. The contention of the Miller was vis-a-vis the adjudication of the dispute on account of the fact that No Due Certificate has been issued. The relevant portion of the observation reads thus:-

> *"11. Suffice to say as per said clause interest is to be charged for late delivery of rice and the decision of Managing Director was to be final in that behalf. But in the present case, it was not delivery of rice but interest was granted as applicant deposited the amount for purchase of paddy late i.e. he deposited the amount late by 49 days and 80 days as find mention in para 13 of the award and awarded interest on late deposit of payment and is not covered under said clause of agreement and it cannot be said that award of said interest falls under the 'excepted clause'."*

The scope of the interference as per the provision of Section 34 of the Act is limited. None of the ground has been enunciated under Section 34 which envisages that Arbitrator has acted without jurisdiction, much less, against the public policy or against the compliance of natural justice.

Objections pertains to the determination of the dispute as to whether the claim of interest was maintainable or not. The Arbitrator found that other claim of the PUNSUP was not maintainable and only entertained the claim qua interest on the payment made by the Miller.

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 not in consonance with provision of 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. Vs. 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 these 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 embarked 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. The parties to the *lis* had participated in the proceedings and were given proper notice not only with regard to the appointment of the Arbitrator but viz-a-viz proceedings, in my view the award of the Arbitrator does not suffer from any illegality in as much as the Arbitrator who is expert has dealt with the matter and decided the claim of respective claimants to the parties to the *lis*.

The award read as a whole is just, fair and reasonable. It is now a settled law that the Arbitrator is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

In my view, no error of law arise from the award. The award is perfect and justified and all the objections filed against the same were wholly misconceived.

There is no merit in the aforementioned appeals.

The appeals are accordingly dismissed.

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