

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

FAO No.238 of 2011
Decided on : 14.08.2015

Punjab State Civil Supplies Corp. Ltd. & anr. Appellants

vs.

M/s Goyal Rice & General Mills & ors. Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ram Niwas Sharma, Advocate
for the appellants.

Mr. Munish Bansal, Advocate
for respondent No.1 (A to F).

Amit Rawal, J.(Oral)

In pursuance to the agreement dated 08.11.1994 entered into between the parties, the dispute arose and the matter was referred to an Arbitrator.

The claimants allegedly filed arbitral reference to claim the amount pertaining to the interest @ 21% per annum. The arbitrator dismissed the claims of the appellants on the basis of terms and conditions of the agreement, which did not envisage such claim.

Aggrieved against the aforesaid award, the appellants filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act"). Even the objections have been dismissed. Resultantly, the present appeal by invoking the provision of Section 37 of 1996 Act has been filed. The grounds on which the petition can be filed are mention in Section 37, 1996 Act. For the sake of brevity reads thus:

"37. Appealable orders.—

(1) An appeal shall lie from the following orders (and from

no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

(a) granting or refusing to grant any measure under section 9;

(b) setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie to a Court from an order granting of the arbitral tribunal.—

(a) accepting the plea referred in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.”

The learned Addl. District Judge considered the claim of the objector/appellant in the light of the parameters of Section 34(2) of the Act and observed that the same did not fall under the said Act, much less there was no provision to claim 2% driage.

The coordinate Bench of this Court has already adjudicated this controversy in ***Punjab State Civil Supplies Corp. Ltd. & anr. vs. M/s Aman Rice Mills & ors. (FAO No.3157 of 2010) decided on 24.01.2012.*** The operative part of the order reads thus:

“I have heard counsel for the appellants at length and gone through the award wherein the Arbitrator has dealt with all the relevant instructions and held that the miller has kept unmilled paddy under the scheme of PUNSUP/ State is entitled to the benefit of 2% driage. The said observation of the Arbitrator is neither illegal nor contrary to any law and it does not fall in any of the parameters Section 34 of the Act warranting interference.

*Counsel for the appellants has relied upon **Oil and Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd.**, AIR 2003 SC 2629 wherein the Hon'ble Supreme Court has considered the scope of Section 34 of the Act and held that if the award is de hors the provisions of the Act and is illegal on the face of it, it is liable to be set aside. There is no dispute regarding the scope of interference as considered in abovesaid judgment but the facts of the present case do not indicate any patent illegality or violation of provisions of any statute. No ground is made out for interference in the judgment passed by the lower Court.*

Dismissed."

It is a matter of record that claim vis-a-vis 2% driage could not be claimed by the appellants for the reasons that agreement did not envisage such claim and rightly so the Arbitrator and Principal Court has declined, much less, not accepted the objections. The present case does not fall within the parameters/provision of Section 34 of the Act which has been explained in the judgment rendered by Hon'ble Supreme Court and this Court to say that until and unless there is a gross violation of the parameters, the Principal Court would entertain the objections.

In view of what has been observed above, there is no merit in the appeals.

Accordingly, same are dismissed.

14.08.2015
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(Amit Rawal)
Judge