IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

F.A.O.No.5468 of 2010 (O&M)
Date of Decision: August 24, 2015

Punjab State Cooperative Supply & Marketing Federation Ltd., Sangrur

...Appellant

Versus

M/s Karam Rice Mills, Amargarh, District Sangrur & another

...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: Ms.Deepali Puri, Advocate,
for the appellant.

Mr.Pardeep Goyal, Advocate,
for respondent No.1.

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AMIT RAWAL, J. (Oral)

The challenge in the present appeal is to the impugned order dated 18.4.2009 passed by the Additional District Judge, Sangrur, whereby the objections filed by the miller against the award dated 7.2.2006 have been accepted and the award has been set-aside.

Ms.Deepali Puri, learned counsel appearing on behalf of the appellant submits that the objector court has committed an illegality and perversity in accepting the objections as the same were not within the parameters of Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") despite the fact that the appellant had filed the revised claim, which did not include the element of provision of excepted clause. She further submits that it is borne out from the award that after considering the documents put forth by the parties, the issue of sale policy was not considered by the arbitrator and as per the section, no fresh ground could be taken before the Additional District Judge.

Mr.Pardeep Goyal, learned counsel appearing on behalf of respondent No.1 submits that the award of the arbitrator is not in consonance with the provisions of 1996 Act as he did not discuss the pleadings, much less, documents placed on record and erroneously awarded compensation which was seriously objected to and the objector court found that the witness of the appellant stated that no dues certificate was issued, much less, no dues were found from the miller and rightly accepted the objections.

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

Noticing the rival contentions of the parties, it is borne out that the arbitrator has not referred to the defence/averments made in the reply to the claim submitted by the miller and as well as the statements of the witnesses of the claimant. Since the award suffers from non-application of mind and against the principles of natural justice, the Additional District Judge noticed that the decision of the arbitrator is based upon no evidence and rather exceeded in jurisdiction and committed an illegality in not noticing the admission of the witness of the appellant. The relevant portion of the order under challenge, whereby the objections have been allowed, reads thus:-

> "*21. After the issuance of the instructions dated 6.6.2000 the respondent has set up entirely new case that 8262 bags weighing 5370.30 quintal paddy were un-authorizedly converted by the applicant into rice and there was shortage of 185 bags weighing 125.25 quintal of paddy. In order to prove the said allegations, the applicant examined Mr.Harsh Kumar AAO, who had filed his affidavit at the time of submitting revised claim. During his cross examination, he stated that the amount of Rs.59057/- which was due from the miller was recovered on 11.10.95 and 12.10.95. As per their ledger, nothing is recoverable from the miller. He further stated that present case had been filed for violation of the terms and conditions of the agreement. He conceded that entire unmilled paddy was sold to the miller as per the sale policy floated by Government of India. He admitted that amount claimed from the miller was no where mentioned in ledger by the Markfed.*
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> *23. Ld.Counsel for the respondent submitted that there is physically verification report on page No.122 of the arbitration file which proves the allegations of unauthorized conversion of paddy and shortage. However, the said report was not proved during the arbitration proceedings by any witness. The respondent could not examine any officer by whom the physically verification was conducted. The said document does not bear the signatures of any representative of the applicant. Such like report could have been prepared by the officials of the Markfed at any time while sitting in their office. Moreover, this report was never pleaded in the original claim petition or in the revised claim petition. Therefore, there was no evidence to substantiate the allegations of the unauthorized conversion of paddy or the shortage. The case set up by the respondent in the revised claim petition was totally contradictory to the original claim petition. The paddy was sold and amount was*

realized from the applicant in the year 1995 and even the no due certificate had been issued by the respondent to the applicant. But in the year 1997, all of sudden the Managing Director of the Markfed passed an order appointing an arbitrator to adjudicate upon the dispute between the parties but in fact no dispute existed between the parties at the time of making of the reference by the Managing Director to the arbitration. The department had never raised any demand from the miller prior to the reference order dated 27.5.1997. Under these circumstances, I am of the view that arbitral award is based on no evidence. However, it would be proper to mention here that Section 23(3) of the act enable the parties to amend or supplement their claim or defence with the permission of the arbitrator. But, in this case the arbitrator did not pass any specific order allowing the amendment in the claim. The arbitration award is liable to be set aside on this ground also. As per the averments made in the original claim petition, the matter was covered by clause (a) of letter dated 6.6.2000 issued by State Government. Thereafter, respondent could not have changed its stand nor the respondent could produce any evidence to prove the allegation regarding un-authorized conversion of paddy or shortage. So far as the price of gunny bags is concerned, the letter regarding open sale policy shows that even price of gunny bags was included in the price of the paddy and driage was also to be allowed to the miller. Therefore, arbitral award is based on no evidence. Rather the same is violative of the open sale policy in pursuance of which remaining paddy was sold to the miller. Hence, this award is against the public policy and is liable to be set aside. Therefore this issue is decided in favour of the applicant and against the respondent."

Once no dues certificate has been issued by the appellant to the miller and the witness had admitted that there was no shortage, no amount was recoverable from the miller on 11.10.1995 and 12.10.1995 and the claim of the appellant before the arbitrator was totally misconceived. There is no illegality and perversity in the order.

In view of what has been observed above, the appeal is dismissed.

August 24, 2015 **(AMIT RAWAL)**
ramesh **JUDGE**