IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 6406 of 2010(O&M)
Date of decision : August 10, 2015

Punjab State Civil Supplies Corporation Limited
.... Appellant
Versus

Bajwa Rice Mill Sirhind
.... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Karan Gupta, Advocate for
Mr. Rakesh Gupta, Advocate
for the appellant.

Mr. S. S. Rangi, Advocate
for the respondents.

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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?

Amit Rawal, J.
CM No. 28001-CII of 2010

This is an application under Section 5 of Limitation Act seeking condonation of delay in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 35 days in filing the appeal is condoned.

The application stands disposed of.

FAO No. 6406 of 2010

The Punjab State Civil Supplies Corporation Limited (hereinafter called as 'PUNSUP') has knocked the door of this Court by challenging the order dated 17.2.2010 whereby objections filed by the Miller viz-a-viz the award dated 8.8.2001 has been allowed. The Arbitrator vide his award has awarded ₹70,04,588/- along with 21% interest on the principal amount of ₹66,79,145/- w.e.f. 1.9.1996 to the date of award i.e. 8.8.2001 in favour of the appellant and against the miller. The Miller filed objections to the aforementioned award. The District Judge, Fatehgarh Sahib vide order dated 17.2.2010 accepted the objections as a result, award aforementioned, has been set aside.

Mr. Karan Gupta, for Mr. Rakesh Gupta, learned counsel for the appellant submits that the learned District Judge, Fatehgarh Sahib has not gone into the real controversy, much less legal proposition of law while setting aside the award by holding that there was no valid agreement.

He further submits that the agreement dated 27.1.1996 was executed between the parties and respondent Nos. 1 and 2 were required to shell the paddy. It was not in the spirit of the agreement that the material was to be supplied before the date of agreement and the matter was liable to be referred to the Arbitrator. Since the Miller did not raise the plea of jurisdiction before the Arbitrator, the objection under Section 34 of the Act was not maintainable. The Court wrongly held that agreement was executed and the paddy was never supplied in pursuance to the agreement in question.

He further submits that as per the terms and conditions of the agreement, the Miller was liable to pay expenses for the shortage in paddy rice, gunny bags etc. Thus, prays that judgment of the learned District Judge may kindly be set aside.

Learned counsel appearing on behalf of the respondents submits that the order dated 17.2.2010 of the District Judge allowing the objections is legal and justified and there is no illegality, much less perversity and it has been decided on the basis of the evidence lead before the District Judge which escaped notice of the Arbitrator and rather the dispute with regard to the supplies of the material was prior to the execution of the agreement, therefore, the matter could not have been referred to arbitrator, thus, the Arbitrator has acted beyond the jurisdiction and the objections filed were within the parameters/provisions of Section 34 of the Act.

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

It would be apt to refer to relevant paragraph of the order under challenge. The same reads thus:-

> *"The perusal of the agreement shows that there is a clause 16 which deals with the period of the contract and it lays down that contract shall come into force with effect from the date of execution of this agreement and shall remain in force upto and including 28th Feb.1996 thereafter it may be extended at the discretion of MD, Punsup, who reserved the right. It is also mentioned that to terminate the agreement with the miller for shelling of paddy into rice at any time event, the miller shall render complete account of Paddy, rice and gunny bags to the Punsup in its custody and also return the stocks as per direction of the Government. It has also been laid down that to withdraw from the*

contract, at any time, any milling work in respect or part of the stocks covered by the contract yet lifted by them if it considers necessary to do so. Thus from the above said clause, it is evident that the agreement was to remain enforce from the date of its execution till 28th Feb, 1996. No doubt there is a discretion given to MD Punsup to extend the date, but it has not been shown that MD Punsup had extended the date of the contract. So, from the evidence and documents available before the Arbitrator, the period of contract was from 27.1.96 to 28.2.96. The Arbitrator has held that the paddy was supplied to the miller vide receipts on 30.11.95. The paddy supplied before 27.1.96 cannot be held to be a part of this agreement. Similarly, the submission made by learned counsel for the respondents that the said agreement was applicable to the crop year 1995-96 is not tenable. It has not been mentioned in the agreement that this agreement is applicable to the crop year 1995-96. There is no such mention. It has not been shown that the paddy was supplied to the miller during this period. As per clause 7(iii) of the agreement, it was laid down that miller shall complete delivery of rice within 10 days from the issuance of paddy to him and rice due to the Punsup on the total quanity of paddy issued to him or in joint custody released at regular interval shall be delivered not later than the 28th February 1996. The miller shall further ensure milling of Punsup paddy and delivery of rice in the following manner:

October/November	*20%*
December	*26%*
January	*26%*

February 28%

and it was laid down that in the event of his failure to supply rice within the stipulated period, he shall be liable for an interest @ 21% on the basis of economic cost of left over quantity/stocks of paddy/rice. As per this clause the paddy was not supplied to the miller, which was to be returned after shelling in October to January. The agreement was executed on 27.01.96, so it was not possible for the miller as per this condition to supply shelled paddy upto 28.2.96 when the agreement in dispute was not executed. So, the observations and findings given by the Arbitrator in the award that Sukhwant Singh Proprietor of Mill has received 51289 bags weighing 33337.85 Qtls of fine quality of paddy and 1000 bags weighing 650.00 Qtls of paddy of common quality on 30.11.95 is totally beyond the scope of arbitration agreement i.e. 27.1.96. The Arbitrator has also observed that the perusal of the agreement would show that the agreement was executed between the parties on 27.1.96 and according to the Director Food Supply Punjab Letter No. RP1(490-Part)96/2164 dated 23/26.9.96 addressed to MD Punsup and others which was endorsed by Punjab State Civil Supplies Corporation Ltd.to all District Managers at Punsup in the State vide Endst. Dated 8.10.96 (Mark-H) Govt. Of India Ministry of Food, Department of Food Procurement and Distribution, New Delhi had conveyed its approval to the extension of milling period upto 31.8.96 in respect of custom milled rice for the Kharif Marketing season 1995-96. It has also been held by Arbitrator that it was to be ensured that the custom milling of paddy lying unmilled is *completed by 31.8.96 positively. Accordingly, the respondent mill was entitled to deliver custom milled rice upto 31.8.96 and not upto 30.6.96. This observation is also not according to the agreement because the discretion was given in the agreement to MD Punsup whereas this letter was from Director, Food & Supplies Punjab and was addressed to MD Punsup and others. According to this letter, the discretion was not exercised by MD Punsup, so this is also not according to the terms and conditions of the agreement between the parties. Admittedly the rate of interest has been charge for late delivery from 20.11.96 to 20.03.97 amounting to Rs. 3,25,443.00 but it has not been shown that this late delivery to the rice was covered by the said agreement or the paddy was supplied to the miller during the period 27.1.96 28.2.96. It has not been shown that the paddy was supplied to the miller during the above said or that same was not returned after shelling. There is no evidence on the file that as to on which date the paddy was supplied by the department to the miller. In the claim petition which is at page 26 to 30 on the Arbitration file shows that the date of supply of the paddy is not mentioned in para 2 of the claim petition. It is mentioned that the claimant corporation purchased paddy during the paddy season and get it converted into rice through various rice millers. The respondent approached the claimant for milling the paddy into rice for the crop year 1995-96 and consequently an agreement to this effect was duly executed between the claimant and the respondent on 27.1.96. In para 3 it is pleaded that the claimant corporation supplied 50464 bags weighing*

32801.60 quintals of fine quality paddy and 1000 bags weighing 650.00 quintals of common paddy and as per agreement, the respondents were to deliver 21,537.53 quintals of fine quality and 426.79 of common quality rice to Food Corporation of India on Punsup account after giving driage. But no date is mentioned with regard to supply of paddy. So, it is not shown by the Department that the alleged paddy was supplied during the period 27.1.96 to 28.2.96 when the agreement was in existence between the parties.

On going through the reasoning assigned by the Court, it is irresistibly concluded that the period of contract was from 27.1.1996 to 28.2.1996 whereas the paddy was supplied to the Miller vide receipts dated 30.11.1995. Therefore, the paddy, supplied before the execution of the agreement, cannot be held to be part of the agreement. The said agreement was not applicable to the crop year 1995-96.

It is a matter of record that rate of interest charged was for late delivery. The respondent-Miller was to deliver custom milled rice up to 31.8.1996 and not up to 30.6.1996. The information was given to the Managing Director, PUNSUP vide letter dated 23/26.9.1996. No evidence has been lead or proved on record that the paddy was supplied to the Miller during the period 27.1.1996 to 28.2.1996. Even in para 2 of the claim petition filed before the Arbitrator no date has been mentioned.

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 without reasons as per 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 or embark on a path by substituting 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 its scope. 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. 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 and only certain claims have been granted which are duly been supported with reasons. 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 arises from the impugned judgment whereby objections have been allowed. The same is perfect and justified. The arguments raised are wholly misconceived.

There is no merit in the aforementioned appeal.

The appeal is accordingly dismissed.

(AMIT RAWAL)
JUDGE

August 10 , 2015
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