

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

1. FAO No.7252 of 2010 (O&M)
Date of decision : 24.09.2015

Haryana State Agricultural Marketing Board, Rohtak ...Appellant

Versus

Maa Shakti Cooperative L & C Society Ltd. and another ...Respondents

2. FAO No.1380 of 2011 (O&M)
Date of decision : 24.09.2015

Haryana State Agricultural Marketing Board, Jhajjar ...Appellant

Versus

Maa Shakti Cooperative L & C Society 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. Amit Jaiswal, Advocate for the appellant.

Mr. P.S. Rana, Advocate for respondent No.1

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two FAOs i.e. FAO No.7252 of 2010 titled as Haryana State Agricultural Marketing Board, Rohtak Vs. Maa Shakti Cooperative L & C Society Ltd. and another & FAO No.1380 of 2011 titled as Haryana State Agricultural Marketing Board, Jhajjar Vs. Maa Shakti Cooperative L & C Society Ltd. and another.

Challenge in the present appeals is to the impugned order, whereby objection filed under Section 34 of Arbitration and Conciliation Act, against the award, has been dismissed.

Mr. Amit Jaiswal, learned counsel appearing on behalf of appellant submits, that award of the Arbitrator is non-speaking, much less, beyond the terms and conditions of Clause 25-A of the agreement and that Arbitrator could not awarded interest, yet interest at the rate of 9% on the awarded amount of compensation has been awarded.

Mr. P.S. Rana, learned counsel appearing on behalf of respondent No.1 submits, that Clause 25A was amended vide resolution No.27 dated 30.08.1994 and as per the amended clause, there is no provision of putting restriction in granting the award by the Arbitrator. Even award is lacking reasons.

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

It would be apt to reproduce unamended Clause and amended Clause, which read thus:-

***“Clause 25-A:** If any question, difference or object whatsoever shall arise in any way connected with or arising out of this instrument of the meaning or operations of any part thereof or the rights, duties or liabilities of either party then save in so far as the decision of any such matter here in before provided for and has been so decided every such matter including whether its decision has been otherwise provided for and/or whether in has been finally decided accordingly are whether the contract should be terminated not has been rightly terminated and as regards*

the rights and obligations of the parties as the result of such termination shall be referred for arbitration to the Arbitrator not below the the Rank of Superintending Engineer to be appointed by the Chief Engineer of the Board within 180 days viz six months from the date of making final payment to the Contractor or when the Contractor is not willing to receive the payment from the date registered notice is sent to him that this final bill is ready for payment and his decision shall be final and binding and where the matter involves. A claim for the payment or recovery or deduction of money, only the amount, if any, awarded in such arbitration shall be recoverable in respect of the matter so referred.

If the matter is not referred to arbitration within the specified period, all the rights and claims under the contract shall be deemed to have been forfeited and absolutely barred.

Clause 25-A: *It shall be a term of the contract agreement that arbitrator shall give a speaking award otherwise the award shall be null and void and will not be binding on the parties, it shall also be a term of this contract that in any dispute/difference referred to the arbitrator the arbitrator shall not award interest to the parties on any of the items of contract agreement executed in between the parties, if the arbitrator awards interest the same shall not be binding on the parties.*

Amended Clause 25-A: *of the agreement approved by the Board vide Resolution No.27 dated 30.8.1994 and conveyed vide Chief Engineer, HSAM, Board, Panchkula's memo No.CEA-V-94/15159 dated 25.10.1994.*

Clause 25-A: *If any question, difference or object whatsoever shall arise in any way connected with or arising out of this instruments at the meaning or*

operations of any part thereof or the rights duties liabilities of other party then save in so far as the decision of any such matter here in before provided for and has been so decided every such matter including whatever according or whether its decision has been otherwise provided for and or whether it has been finally divided the contract should be terminated not has been rightly terminated and as regards the rights and obligations of the parties as the result of such termination shall be referred for arbitration to the capable office to appoint by the Chief Administrator Board within 180 days viz six months from the date of making final payment to the Contractor or when the Contractor is not willing to receive the payment from the date of registered notice is sent to him that this final bill is ready for payment and his decision shall be final and binding and where the matter involves a claim for the payment or recovery or deduction of money, only the amount if any awarded in such arbitration shall be recoverable in respect of the matter so referred.

If the matter is referred to arbitration within the specified period, all the rights and claim under the contract shall be deemed to have been forfeited and absolutely barred.”

I have gone through the award, vis-a-vis claim No.1, since same was admitted therefore there was no reasons required to be given.

Vis-a-vis other claims, the Arbitrator has decided claims, in awarding amount of compensation.

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 for want of reasons as statutorily prescribed under 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 award read as a whole is just, fair and reasonable. It is now a settled law that the Arbitrator or Committee is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

There is no illegality and perversity in the order.

Appeals are dismissed.

24.09.2015

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**(AMIT RAWAL)
JUDGE**