IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O.No.7294 of 2010
Date of Decision: August 10, 2015

Punjab State Civil Supplies Corporation Limited (PUNSUP), Chandigarh

...Appellant

Versus

M/s Jai Durga Rice Mills, Guru Har Sahai, District Ferozepur & others

...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: Mr.Deepak Sabherwal, Advocate, for the appellant.

Mr.Parvez Chugh, Advocate, for respondent No.1.

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AMIT RAWAL, J. (Oral)

In pursuance to the agreement dated 20.8.1998, the matter was referred to the arbitrator. The arbitrator, vide award dated 5.5.2005, accepted the claim of the appellant and rejected the plea of the Miller with regard to Clause 9(i) & (iii) of the agreement that the matter could not have been referred to the arbitrator and allowed the objections.

Mr.Deepak Sabherwal, learned counsel appearing on behalf of the appellant submits that the Principal Court, i.e., the District Judge has committed an illegality and perversity in accepting the objections as the same did not fall within the parameters of Section 34 of the Arbitration and

Conciliation, 1996 Act.

Mr.Parvez Chugh, learned counsel appearing on behalf of respondent No.1-Miller submits that the Arbitrator, while relying upon the aforementioned clauses, came to a categoric conclusion that it was an "excepted" matter and the dispute was within the domain of the Managing Director.

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

It would be apt to refer Clause 22 of the agreement, which provides the matter to be referred to the Arbitrator except the matter, the decision of which is expressly provided in the contract. Clause 22 reads thus:-

> *"22. 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 for in the contract) shall be referred to the sole arbitration of the M.D. or any person appointed by him in this behalf. There will be no objection to any such appointment that the person appointed is or was an employee of Punjab State Civil Supplies Corporation Ltd. or that he has to deal with the matters to which the contract relates and that in the course of his duties such an employee of the Punjab State Civil Supplies Corporation Limited had expressed view on all or any of the matters in dispute or difference. The award of such arbitration shall be final and binding on the parties to this contract. It is term of this contract that in the event of the arbitrator being transferred, or vacating his office or being unable to act for any reason Managing Director at the time of such transfer, vacation of office, death or inability shall*

appoint person to act as arbitrator. Such a person shall be entitled to proceed with reference from that stage where it was left by his predecessor.

Provided further that any demand for arbitration in respect of any claim(s) of the millers, under the contract shall be in writing and made with in one year of the date of completion or expiry of the period of contract, if the demand is not made within the period, the claim(s) of the miller shall be deemed to have been waived off and absolutely barred and the M.D. shall be discharged and released of all liabilities under this contract in respect of these claim.

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

Subject as aforesaid, the Arbitration & Reconciliation Act, 1996 shall apply to the arbitration providing under this clause."

The contention that the claim fell within the provisions of Clause (7) does not cut the ice in view of the fact that Clause 9(i) &(iii) of the agreement provides that in case the PUNSUP claims the interest as mentioned in the aforementioned clauses, then the matter would fall within the "excepted" clause. Since the PUNSUP claimed the aforementioned interest, therefore, the arbitrator did not have the jurisdiction, much less, the matter could not have been referred to the arbitrator. Accordingly, the objections filed by the miller, by taking into consideration the aforementioned clauses, have rightly been allowed.

Mr.Deepak Sabherwal, learned counsel for the appellant submits that the matter can be referred to the Managing Director owing to the observations given by the District Judge while accepting the objections.

It would be apt to refer the relevant findings of the District Judge, which read thus:-

> *"A bare look upon the afore said clauses of arbitration agreement make it evident that as regards the dispute regarding 1-1/2 times of economic costs of left over quantity/ stocks of paddy/rice, the firm was liable to pay interest @ 21A% per annum on the basis of economic costs, can be termed to be the excepted matters/penal clauses which were to be decided by the Managing Director and his decision is final and binding upon the parties. The matter in this regard has been finally decided and set as rest by our own Hon'ble High Court in case M/s Shree Krishna Rice Mills (Supra) and the observation made in the said authority was upheld even by the Hon'ble Apex Court in Special Leave Petition preferred by Markfed vide judgment dated 2.3.2006, in which it has been categorically observed that the dispute regarding which a remedy itself is provided in the agreement, the said matter cannot be referred to the arbitrator. Similar observations were made by our own Hon'ble High Court in a recent case captioned as M/s Sukhbir Singh and Co. vs Markfed (Supra), relied upon by the learned counsel for petitioner firm. The facts of the said case were akin to the facts of the case in hand. The authority relied upon by the learned counsel for the Corporation captioned as Union of India Versus Moti Enterprises (Supra) is not applicable to the facts and circumstances of the case in hand. The said authority comes under the eclipse of the decision rendered by the Hon'ble Apex Court in Special Leave Petition, referred to above, in case M/s Shree Krishna Rice Mills (Supra) as well as in case M/s Sukhbir Singh and Co.(Supra).*
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> *13. In view of the discussions as held above, this court is of the considered opinion that in the instant case, matter in*

dispute was not referable to the arbitrator and on this ground alone, the award in question is liable to be set aside. This issue is accordingly decided in favour of the petitioner firm and against respondent-corporation."

In view of what has been observed above, the present appeal is disposed of with a direction that the parties shall be at liberty to approach the Managing Director in view of the excepted clause, referred to above, and file their respective claims.

The parties, through their counsel, are directed to appear before the Managing Director on 3.9.2015.

It shall be open to the parties to take legal objections in accordance with law.

August 10, 2015 **(AMIT RAWAL)**
ramesh **JUDGE**