IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: August 25, 2015

1. F.A.O.No.5807 of 2014 (O&M)

Food Corporation of India, Regional Office, Chandigarh

...Appellant

Versus

M/s Krishna Rice Mills, Ambala & others

...Respondents

2. F.A.O.No.5808 of 2014 (O&M)

Food Corporation of India, Regional Office, Chandigarh

...Appellant

Versus

M/s Krishna Rice Mills, Ambala & 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.Rajesh Garg, Senior Advocate with
Ms.Nimrata Shergill, Advocate,
for the appellant.

*****

AMIT RAWAL, J.

By this order, I intend to dispose of two F.A.O.Nos.5807 and 5808 of 2014 as the common question of law and facts is involved in both the appeals. The facts are being taken from FAO No.5807 of 2014.

The Food Corporation of India (for short “FCI”) has assailed the award dated 6.5.2002 by filing the objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for brevity "1996 Act") on the premise that the arbitrator had committed an illegality in not noticing the terms and conditions of the agreement as the agreement did not envisage the storage of the paddy in joint custody of the miller and the FCI and, therefore, the award was not sustainable.

Mr.Rajesh Garg, learned Senior Counsel assisted by Ms.Nimrata Shergill, Advocate submits that the miller was under obligation to make the payment as per the claim statement of the Corporation for quality cut, moisture rice etc. He further submits that it was obligation of the miller to preserve the paddy and could not have been concluded that the paddy got destroyed due to "Act of God". The Court below and the arbitrator have failed to notice Clause-12 of the agreement, which envisaged that the miller shall take all effective measures and precautions including the insurance at its own expense in order to preserve the paddy and rice. The Act of God could not be pressed into service as the food stock had deteriorated because of the fault of the miller. He further submits that the objections were within the parameters of Section 34(2)(a)(iv) of 1996 Act.

I have heard the learned counsel for the appellant-FCI and appraised the paper book.

The reference to Clauses 7 and 12 of the agreement would reveal that though it was the responsibility of the miller to take precautions in keeping the paddy intact, but the fact remains that it was as per Clause 7, related to out of turn ration. In order to demonstrate the aforementioned fact, Clause 6 of the agreement prescribes two kinds of allotment of paddy, (i) out of turn ration and; (ii) out of turn allotment. Thus, the argument that the arbitrator has rendered the award not in consonance with the terms and conditions of the agreement is not only tenable but fallacious, much less, misconstrued. The arbitrator, after taking into consideration the aforementioned facts and as well as the fact that the witness of the Corporation unequivocally admitted that on the night 4/5 September, 1995, there were heavy rains in Ambala and its adjoining areas and there was flood in Ambala and the paddy stored in different mill premises, including that of the respondent got damaged and on the basis of this fact, arrived at a finding that it was the Act of God, which was beyond the control of the miller. The arbitrator had taken into consideration Clauses 7, 8, 9 and 17 while arriving at a finding in favour of the miller. It would be apt to extract the same, which read thus:-

> "*Clause 7, 8, 9 and 17 relied upon refer to the penal rate of one and half times of the economic cost but is recoverable only in the eventualities specified therein. Penal rate of 1½ times of "economic cost" can be recovered where there are "short falls" or "shortage" in paddy or rice while milling or returning the milled quantity or penal rate is applied to cases of misappropriation or conversion F.C.I. is claiming 1½ times of the "economic cost" of paddy which was never given to the miller for milling. The miller did not lift the balance quantity for milling as no advance rice or/Bank guarantee was given by miller and no release order was issued by F.C.I. The balance quantity remained in joint custody unmilled and unlifted. Clause 14 gave a right to F.C.I. to get the work executed at the millers risk and cost. F.C.I. would resort to it and recover such damages (towards extra cost of milling) as it suffers as a result of miller's breach of contract. In this case the paddy was*

damaged by rains and not segregated despite requests of the miller and thus become unfit for milling. The miller was not issued the paddy for milling. Nor dit F.C.I. got it milled from other sources. It remained in the joint custody till it was sold by F.C.I. in distress sale. F.C.I, therefore, has grounded the claim only on the miller's failure to protect and preserve the paddy but in our opinion, there was no such contractual duty on the miller besides the damage was caused by an Act of God. The main claim of damages for 1½ times of the economic cost (less recovery by sale) is hereby rejected."

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 appeals 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 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 **<u>Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49 and Navodaya Mass Entertainment Ltd. J. M. Combines (2015) 5 SCC 698.</u>** In the aforementioned judgments, 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 Arbitrator has dealt with the dispute which was contemplated and was within the scope of it. 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 but vis-a-vis proceedings, 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 have 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 arise from the award. The award is perfect and justified and all the objections filed against the same were wholly misconceived.

There is no merit in the aforementioned appeals.

The appeals are accordingly dismissed.

August 25, 2015 **(AMIT RAWAL)**
ramesh **JUDGE**