

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

F.A.O.No.1744 of 2008 (O&M)

Date of Decision: January 19th, 2016

M/s.Narula Foods Private Limited Guruharsahai, District Ferozepur

...Appellant

Versus

**The Punjab State Cooperative Supply and Marketing Federation Limited
(Markfed), Ferozepur and 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: Mr.Kanwaljit Singh, Senior Advocate with
Mr.S.K.Liberhan Advocate &
Mr.Mrigank Sharma, Advocate,
for the appellant.

Mr.Gautam Dutt, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

Civil Misc.No.11373-CII of 2008

For the reasons mentioned in the application, which is supported by an affidavit, delay of 181 days in filing the appeal is condoned.

CM stands disposed of.

F.A.O.No.1744 of 2008

The appellant-Miller is aggrieved of the order dated 5.6.2007, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") seeking setting-aside of the

award dated 25.8.2003, have been dismissed.

Mr.Kanwaljit Singh, learned Senior Counsel assisted by Mr.Mrigank Sharma, Advocate, appearing on behalf of the appellant-Miller submits that the claim of the Markfed was falling under the excepted clause and an objection in this regard was also taken before the Arbitrator, but the Arbitrator failed to take into consideration the same. The award of interest @ 21% per annum, which as per the terms and conditions of the agreement, falls within the excepted clause, therefore, the Arbitrator did not have the jurisdiction. Same very objection was raised before the Objecting Court, but no reason has been assigned either accepting or declining, therefore, the appellant has been prevented from adjudication of the objections pragmatically.

Mr.Gautam Dutt, learned counsel appearing on behalf of the Markfed submits that the claim of the Miller was not falling within the excepted clause, but other clauses regarding the short fall of the rice and rightly the objections have been dismissed and the award is liable to be up held.

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

On going through the impugned order of the Objecting Court, I am of the view that it had noticed the contentions of the appellant vis-a-vis jurisdiction of the Arbitrator, but no reasons have been assigned by just holding that the well reasoned award has been passed. The operative part of the order reads thus:-

“11. Admittedly, there is an arbitration agreement between the parties which is dated 21.9.1999. Its copy has been placed on the arbitration file which is from pages 31 to 41. There is an

arbitration clause No.22 in the said agreement, according to which all the disputes and differences arising out of or in any manner touching or concerning this agreement whatsoever (except to any matter the decision of which is expressly provided for in the contract) shall be referred to as the sole arbitration of the Managing Director, Markfed or any person appointed by him in this behalf and there will be no objection to any such appointment that the person appointed is or was an employee of the Markfed. In view of the aforesaid provisions, the arbitrator was appointed to settle the dispute between the parties. The contention of the learned counsel for the petitioner firm that Shri Manjit Singh arbitrator was the Chief Manager of the Markfed and as such he should not have been appointed as Arbitrator has no force because it is provided in the arbitration clause itself that there will be no objection to any such appointment that the person appointed is or was an employee of the Markfed-corporation. Moreover, the arbitration file also goes to show that the arbitrator has not misconducted the proceedings. Even the petitioner firm appeared before the arbitrator, filed written statement, led evidence and also filed application under Section 16 of the Act. That application was also decided by the arbitrator after hearing the parties. Even the dates were being demanded by the petitioner firm for making the payment or to give supply of the rice to the FCI in the account of markfed. So it cannot be said that full and proper opportunity was not given to the petitioner firm by the arbitrator. A well reasoned award has been passed by the arbitrator and all the points now raised have already been challenged and decided by the arbitrator. There is nothing on the record to show that the award is illegal, null and void. As such there is no ground to set aside the award in question. This issue is accordingly decided against the petitioner firm and in favour of the respondent.

RELIEF

12. In view of my findings on the issue above, this petition

fails and the same is hereby dismissed. Memo of costs be prepared. File be consigned.”

I am of the view that the appellant has been deprived of his right of adjudication of the objections in terms of the provisions of Section 34 of 1996 Act. Accordingly, the impugned order is set-aside and the matter is remitted back to the Objecting Court to decide the same as expeditiously as possible, preferably within a period of three months from the date of receipt of certified copy of this order.

I am also of the view that the Objecting Court cannot preclude the appellant from taking up the objections on the ground that the said objections have been taken before the Arbitrator.

The parties, through their counsel, are directed to appear before the Objecting Court on 15.2.2016.

Appeal stands allowed.

January 19th, 2016
ramesh

(AMIT RAWAL)
JUDGE