**203**

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

**FAO-3291-2008 (O&M)**
**Date of decision : 01.04.2016**

The Punjab State Cooperative Supply and Marketing Federation Limited

...Appellant

Versus

M/s Guru Nanak Rice Mills and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Vikas Chatrath, Advocate
for the appellant(s) (in all the appeals).

Mr. S.K. Singla, Advocate
for respondent No.1 (in FAO No.2199-2009 and FAO-3291-2008)

****

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. (ORAL)**

This order of mine shall dispose of four appeals bearing ***FAO No.3291 of 2008*** titled as ***"The Punjab State Cooperative Supply and Marketing Federation Limited V/s M/s Guru Nanak Rice Mills and another"***, ***FAO No.2199 of 2009*** titled as ***"The Punjab State Cooperative Supply and Marketing Federation Limited V/s M/s Pawan Kumar and Company Border Road, Ferozpur and another"***, ***FAO No.2313 of 2009*** titled as ***"The Punjab State Cooperative Supply and Marketing Federation Limited V/s M/s Shiva Rice Mills and another"***, and ***FAO No.2312 of 2009*** titled as ***"The Punjab State Cooperative Supply and Marketing Federation Limited V/s M/s Jai Shiv Bholey Rice Mills"***, The facts are taken from ***FAO No.3291 of 2008.***

The appellant(s)-Markfed is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (herein after called 'the 1996 Act') for setting aside the Award passed by the Arbitrator.

Mr. Vikas Chatrath, learned counsel appearing on behalf of the appellant(s)-Markfed have raised the various arguments which are as under:-

1. The Arbitrator did not have jurisdiction as charging of interest was falling within the excepted matter.
2. The Arbitrator could not have been held the instruction dated 6.6.2000 as such power is only within the realm of Article 226 of the Constitution of India.
3. In case, the certain benefits are to be given under this instruction, the deposit of security could not have been adjusted.

In support of his contentions, he relies upon the judgment of this Court rendered in ***"Jai Ambe Rice Mills V/s Punjab State Civil Supplies Corporation Ltd. (PUNSUP) and others" 2010 (1) PLR 762***.

Mr. S.K. Singla, learned counsel appearing on behalf of respondent No.1-Miller (in FAO No.2199-2009 and FAO-3291-2008) submits that the objections were not falling within the realm of Section 34 of the 1996 Act and in support of his contentions, he has drawn the attention of this Court to the Award, where signatures of the Markfed has unequivocally admitted that no amount was due to the Markfed from the Miller as the Miller had supplied the custom milled rice and certain other rice was disposed of as per the sale policy. The Markfed accepted the amount at the tender rate and passed the release order against the deposit of security in an unauthorized manner. The

Objecting Court cannot sit as a Court of appeal and re-appreciate the evidence examined before the Arbitrator and there are parameters for entertaining the objections which were lacking, rightly so, the objections have been dismissed and prays for dismissal of the appeals.

I have heard the learned counsel for the parties and appraised the paper book. It is a strange case where the Markfed at some point of time relies upon the instruction dated 06.06.2000 and at the same breath do not want to take the advantage of the same. The Arbitrator has refrained to grant any relief viz-a-viz the interest taking into consideration the excepted matter. Even otherwise, such a plea cannot be taken by the claimant which has voluntarily/on his own, invoke the jurisdiction of the Arbitrator. Had it been so, they could lodge the claim before the Managing Director, but themselves exercised right to get adjudication viz-a-viz the interest to the Managing Director and therefore, the ratio decidendi culled out in the judgment of this Court in ***"Jai Ambe Rice Mills' case*** (supra) is not applicable. The arguments of Mr. Vikas Chatrath raising the objections qua passing of the Award, in my view, does not fall within the parameters of Section 34 of the 1996 Act.

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 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. The arbitrator has dealt with the dispute which was contemplated and was within the scope of it.

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*.

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 as well as order impugned. The award is perfect and justified.

There is no merit in the aforementioned appeals.

The appeals are accordingly dismissed.

**01.04.2016** **( AMIT RAWAL )**
yogesh **JUDGE**