IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 806 of 2009(O&M)
Date of decision : January 22, 2016

Punjab State Civil Supplies Corporation Ltd.,Chandigarh and another

.... Appellants

Versus

Rajinder Kumar and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rakesh Gupta, Advocate and
Mr. Karan Gupta, Advocate
for the appellants.

Mr. Abhishek Goyal, Advocate
for respondent No.1.

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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).

The appellants are aggrieved of the order dated 6.2.2008 passed by the Objecting Court whereby objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') against the award dated 19.9.2005 has been allowed.

Mr. Rakesh Gupta, learned counsel appearing on behalf of the appellants submits that the arbitrator had passed the award by taking into consideration the policy dated 6.6.2000 which was based upon physical verification done on 30.6.1995 and awarded a compensation to the tune of ₹23,18,875/- as on 31.12.2000 w.e.f.1.1.2001 along with applicable bank rate till its realization.

He further submits that the shortage of rice was substantiated by two physical verification reports which have been proved on record, therefore, liability of the miller cannot be dispensed with. The amendment of the claim was in accordance with law. The order of the objecting court is suffering from non-application of mind as there is no reference to the provisions of the agreement whereas the claim of PUNSUP was not falling within the excepted clause.

Mr. Abhishek Goyal, learned counsel appearing on behalf of the respondents has drawn attention of this Court to the findings arrived at by the objecting court wherein it has been held that viz-a-viz demand raised by the PUNSUP of ₹45,73,448/- the miller had deposited a sum of ₹45,75,260/- and also interest @ of 16% in lieu thereof PUNSUP had issued receipt Annexure R-12. The aforementioned fact was not noticed by the arbitrator, therefore the award of the arbitrator was not sustainable in the eyes of law. The PUNSUP could not have based their claim on the basis of physical verification done on 30.6.1995 the payment was made on 8.8.1995. The policy was pertaining to the auction which could not be supplemented over and above the terms and conditions of the agreement.

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

The terms and conditions of the agreement are sacrosanct and the parties are bound by the same. For the sake of brevity the findings rendered by the objecting court in paragraph 30 are reproduced hereinbelow:-

> "*I have considered the submissions made by the learned counsel for the parties. Apparently, the claim made by the PUNSUP before the Arbitrator initially was in consonance with the agreement dated 21.10.1994, but the same was not got determined by the PUNSUP and rather, an amended claim was filed based on the guidelines/instructions issued by the Director, Food & Supplies, Punjab on 6.6.2000, which find contained on page 152 of the arbitration file and regarding which a note has already been taken of by me. When the miller accepted the sale policy introduced by the Government of India/FCI regarding the sale of the paddy at the instance of the PUNSUP and purchased the paddy lying stored in its mill and that too during the continuation of the period of the agreement, which initially had to expire on 28.2.1995 and which was further extended upto 30.6.1995, the question of any physical version and to fasten any liability upon the miller on account of the short delivery of the rice in respect of the paddy delivered to it qua the late delivery of the same, does not arise. As per the statement of account placed in the arbitration file on page 123, the miller purchased the paddy against RO Nos. 194 issued on 29.5.1995, No.247 issued on 9.6.1995, No.277 issued on 16.6.1995, No.296 issued on 20.6.1995, No. 340 issued on 15.7.1995, No.35 issued on 28.7.1995, No. 35 issued on*

28.7.1995 and No.58 issued on 8.8.1995 and deposited the amount of Rs. 45,75,260/- as against the amount of Rs.45,73,448/- and further deposited the amount of 81194/- as interest at the bank rate i.e.16% on account of late deposit of the amount as would appear from the statement contained in the arbitration file on page 124. One fails to understand as to how PUNSUP could lay any claim because of any physical version of the stock made on 30.6.1995, which rather runs contrary to the policy of the sale of the paddy made in favour of the miller.

In any case the Arbitrator had no jurisdiction to decide the matter beyond the terms and conditions of the agreement dated 21.10.1994 because the instructions dated 6.6.2000 could not be substituted with the terms and conditions of the agreement dated 21.10.1994."

I am in agreement with the findings rendered by the objecting court. No ground for interference in the impugned order is made out as the objections entertained were well within the parameters of Section 34 of the Act.

Accordingly the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

January 22 , 2016
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