

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

FAO No.2032 of 2010 (O&M)

Date of decision : 22.01.2016

Punjab State Civil Supplies Corporation Ltd. and another

...Appellants

Versus

M/s Malerkotla Rice Mills, Malerkotla and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Ms. Deepali Puri, Advocate for appellants.

Mr. S.P. Garg, Advocate for respondents No.1 to 4.

AMIT RAWAL, J. (Oral)

The appeal has been preferred on behalf of PUNSUP against the order dated 12.05.2009, whereby objection filed by the Miller against the award dated 24.08.2008, has been set aside.

Ms. Deepali Puri, learned counsel appearing on behalf of PUNSUP submits that Arbitrator in the midway terminated the proceedings by holding that two of the items in the claim were falling within the Excepted Clause and jurisdiction to deal with those was of the Managing Director. She further submits that original claim was of ₹74,30,586.47 paise but thereafter revised claim to the tune of ₹36,50,695/- was submitted. The

aforementioned claim did not envisage the interest factor and 1 ½ time of economic cost, which has been provided in those Excepted Clause. This fact has totally been ignored by Objecting Court while rejecting the objection. She further submits that in such situation, Objecting Court was required to set aside the award and sent the matter back to the Arbitrator as the Arbitration proceedings have not culminated into final award.

Mr. S.P. Garg, learned counsel appearing on behalf of the Miller submits that claim was not maintainable as no due certificate has already been issued in favour of the Miller. It would be total futile exercise by getting the matter adjudicated before the Arbitrator and thus prays for dismissal of the appeal. He submits that in pursuance to the FIR registered while seeking relief, Miller was compelled to deposit the certain amount, therefore, there is no liability of the Miller.

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

On perusal of the award, it is noticed that the PUNSUP had filed revised statement. The revised statement did not envisage/contemplated the claim which were falling within the Excepted Clauses of the contract. For the sake of brevity, revised claim statement is extracted in the award, reads thus:-

“13 POINT NO.1

The annexure C-3, copy of revised statement of claim depicts as the amount recoverable the following items.

*i) Balance amount recoverable on account of
driage/shortage/conversion into rice as (per stock
accounts) -12,49,099-00*

ii)	<i>Quantity and Value of bags recoverable on account of driage/shortage/conversion as detail attached</i>	=	50,891-00
iii)	<i>Cost of bags lying with miller after delivery of rice at the rate of Rs.13.41.</i>	=	36,823-86
iv)	<i>Sales Tax at 4.4%</i>	=	1,620-24
v)	<i>TDS</i>	=	723-00
vi)	<i>Quality cuts</i>	=	11,310-53”

In my view, the Arbitrator after noticing the statement of revised claim could not have terminated the proceeding by holding that it was falling within the Excepted Clause and ought to have proceeded further in deciding the claim. This aspect has not been appreciated/noticed by the Objecting Court, though objections on behalf of appellant were within the parameter of Section 34 of the Act.

In view of what has been observed above, I am of the view that claim petition is required to be adjudicated upon as per the revised claims or stand/any counter claim taken by the Miller in accordance with law. Resolution of the dispute, as per Contractor is by the Arbitrator and not by this Court or by the Objecting Court.

Parties shall be at liberty to seek revival of the arbitration/appointment of the arbitrator in accordance with law.

Since in many cases, the Arbitrator so appointed on behalf of PUNSUP are the officers of the PUNSUP, I am of the view that independent and impartial Arbitrator be appointed.

Accordingly, Sh. R.P. Nagrath, Retired Judge of this Court is appointed as Arbitrator subject to his consent.

Registry is directed to address letter to Sh. R.P. Nagrath, Retired Judge of this Court for getting his approval for entering into the reference and deciding the matter as Arbitrator. Fees and receipt of the Arbitration shall be within the domain of the Arbitrator.

Sh. R.P. Nagrath, Retired Judge of this Court shall be at liberty to fix the fee and as well as the procedure & place of Arbitration.

Appeal is disposed of.

22.01.2016

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**(AMIT RAWAL)
JUDGE**