

205+206

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

Date of decision : 26.04.2016

FAO-3848-2010 (O&M)

Punjab State Civil Supplies Corporation Ltd. and another

... Appellants

Versus

M/s Trade India Ltd. and another

... Respondents

FAO-4374-2010 (O&M)

Punjab State Civil Supplies Corporation Ltd. and another

... Appellants

Versus

M/s A/P Rice Mills Pvt. Ltd. and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rakesh Gupta, Advocate
for the appellants (in both the appeals).

Mr. Naresh Prabhakar, Advocate
for respondent No.1 (in both the appeals).

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)

CM-16673-C-II-2010

For the reasons stated in the application, delay of 41 days in filing
the appeal is condoned.

CM stands disposed of.

Main cases

This order of mine shall dispose of two appeals bearing **FAO No.3848 of 2010** titled as **“Punjab State Civil Supplies Corporation Ltd. and another V/s M/s Trade India Ltd. and another”** and **FAO No.4374 of 2010** titled as **“Punjab State Civil Supplies Corporation Ltd. and another V/s M/s A/P Rice Mills Pvt. Ltd. and others”**. The facts are taken from the appeal bearing **FAO No.3848 of 2010**.

The appellant-PUNSUP is aggrieved of the rejection of the claim, by the Arbitrator and against the same, the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') have also been dismissed.

Mr. Rakesh Gupta, learned counsel appearing on behalf of the appellant submits that originally the claim before the Arbitrator was amounted to ₹ 1886059.78, but the same was revised and the claim was reduced to ₹ 337070/-. The Arbitrator has rejected the claim on three grounds:-

1. No notice under Section 21 of the 1996 Act was ever served before entering into reference.
2. Claim was beyond the limitation period.
3. The PUNSUP sold the unmilled paddy in open auction and the new contract was entered into in their place, therefore, no arbitrable dispute subsists.

He submits that the dispute is with regard to the crop year 1994-95, the respondent-Miller was required to supply the material by February 1995, but the date was extended upto 30.06.1995 and the claim has been filed before the Arbitrator on 05.06.1998, therefore, the same cannot be said to be

barred by law of limitation. Even if the Miller has purchased unmilled paddy in open auction, the claim with regard to the outstanding amount/difference of the amount also subsists and can be lodged before the Arbitrator, thus, does not cease to exist. Notice under Section 21 of the 1996 Act is not a mandatory requirement of law and urges this Court for setting aside of the Award and as well as the impugned order, under challenge.

Mr. Naresh Prabhakar, learned counsel appearing on behalf of respondent No.1 submits that the entire stock of unmilled paddy was purchased by the respondent-Miller in open auction and the payment thereof, has been made to the PUNSUP. The account has been settled. There is no outstanding due and therefore, the claim was wholly misplaced, much less, had no foundation. Even the revised claim did not have the break up, thus, urges this Court for affirming the findings rendered by the Arbitrator and as well as the Objecting Court which has dismissed the objections filed under Section 34 of the 1996 Act.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no substance in the submission of Mr. Rakesh Gupta, for the reason that the revised claim was lacking of break up, it is not acceptable as to how the aforementioned amount was claimed, whether it was on account of difference of the amount realized by way of open auction and one due from the Miller and in the absence of the same, the Arbitrator did not have any occasion to ponder upon the same. It is a settled law that a person, who invokes the jurisdiction of the Arbitrator by seeking the reference, prove its case in entirety. In the absence of evidence, the Arbitrator had no occasion to decline the claim. However, the finding of the Arbitrator

viz-a-viz non-serving of the notice under Section 21 of the 1996 Act and the claim beyond the period of limitation is totally misplaced, for the reason that issuance of notice under Section 21 of the 1996 Act, is not a mandatory requirement of law and the claim as noticed above was filed within the period of three years from the last date of the supply of the customed milled rice and therefore, the same cannot be said to be barred by law of limitation. Accordingly, the finding rendered by the Arbitrator viz-a-viz the service of notice under Section 21 of the 1996 Act and the claim beyond the period of limitation is hereby expunged/set aside, but the finding qua third point is hereby upheld for the reason that the claimant has failed to give the break-up of the revised claim.

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.

26.04.2016
yogesh

**(AMIT RAWAL)
JUDGE**