IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O.No.1695 of 2011 (O&M)
Date of Decision: March 30th, 2016

Punjab State Civil Supplies Corporation Ltd., Chandigarh & another

...Appellants

Versus

M/s Shiva Rice Mills Talwandi Bhai Ferozepur & others

...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.Karan Garg, Advocate for
Mr.Rakesh Gupta, Advocate,
for the appellants.

*****

AMIT RAWAL, J.

This case has been listed today for service of the respondents.

As the case stands admitted vide order dated 25.8.2011, the same is taken up for final hearing.

The appellant-PUNSUP is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") for setting aside of the award dated 12.12.2002, whereby the Arbitrator has partly declined the relief vis-a-vis 1.5 times economic cost as per the provisions of the contract agreement dated 5.10.1995 being within the domain of the Managing Director.

Mr.Karan Gupta Advocate for Mr.Rakesh Gupta, learned counsel appearing on behalf of the appellants submits that the appellants sought the claim on account of short fall in the custom milling rice and, therefore, would not fall under 1.5 times economic cost and, thus, the jurisdiction of the Managing Director was ousted. It was in the domain of the Arbitrator, which was not appreciated and, thus, there is misreading of the contents of the terms and conditions of the agreement, much less violation of the provisions of sub-section (3) of Section 28 of 1996 Act. The objections were falling within the parameters of Section 34 of 1996 Act, which have erroneously been dismissed, the same being not within the provisions of the Act and, thus, urges this Court for setting-aside of the order under challenge and modification of the award.

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

The relevant portion of the claim reads thus:-

"*AMOUNT RECOVERABLE FROM THE MILLER*

1.	*1.5 times economic cost of balance paddy i.e.3281 qtls. 80 kg.700 gms.@ 817.30/-*	*26,82,286.00*
2.	*cost of bags lying with the miller @ 16.34 per bag of 15,587 bags*	*2,54,692.00*
3.	*sales tax @ 4.4% on bags*	*11,206.00*
4.	*TDS of income tax @ 2%*	*4,078.00*
5.	*Quality cut*	*24,967.00*
6.	*Transportation charges*	*1,27,974.00*
7.	*TOTAL*	*31,05,203.00*
8.	*Net Amount recoverable*	*20,33,870.00*
9.	*Interest on late shift of paddy against advance rice*	*3,90,277.00*
10.	*Interest on late delivery of rice*	*3,00,321.00*
11.	*Interest on late deposit of paddy i.e. 1/7/96 to 21/8/97*	*6,67,222.00*

12.	*Interest from 21/8/97 to 30/11/98*	*5,45,300.00*
	TOTAL AMOUNT RECOVERABLE	*39,36,990.00*

ii) AMOUNT PAYABLE TO RESPONDENTS

1.	Milling charges of 18735.07.500 qtls @ Rs.10 per qtls	1,87,351.00
2.	Double line Machine stitching of 13250 bags @ Es.1.25 per bag	16,562.00
3.	Amount deposited by miller against paddy	8,67,420.00
4.	NET AMOUNT RECOVERABLE BY THE MILLER	20,33,870.00
	TOTAL AMOUNT RECOVERABLE BY THE CLAIMANTS	39,36,990.00

”

The relevant portion of the findings rendered by the Arbitrator is reproduced herein below:-

“*12. The perusal of receipt (Ex.C-3) reveals that 47894 bags of paddy of fine variety weighing 31131.10 qtls were received by one of the partner namely Ram Sarup for Shiva rice mill on 1-11-1995 i.e. after the execution of agreement dated 5.10.1995 which prima-facie proves that the respondent miller received the same for milling purpose as per agreement dated 5-10-1995 (Ex.P-2) for which the plea of the respondents firm that the paddy was supplied other than the alleged agreement is not trustworthy for which as the paddy was received after the agreement dated 5-10-1995 so the respondent firm was liable to comply with the terms of the agreement in question. The plea of the respondents miller that after milling the paddy the balance was sold to the respondent firm by the PUNSUP is not* *proved by way of any evidence and as such this aspect goes against the respondents. Thus as the claimant has stated that after supply of resultant rice and shifting of paddy to other millers the paddy weighing 3281.81.700 was lying outstanding with the miller and as per agreement dated 5-10-1995 (Ex.P-2) the claimant is entitled to recover the economic costs of balance paddy 1.5 times at the rate fixed by the government. However as the decision regarding economic cost and interest is in the hands of Managing Director as per said agreement and keeping in view the facts that a sum of Rs.8,67,420.00 has already been deposited by the miller against paddy as per account statement (Ex.C-4, C-4(i) to C-4(v). So I feel no hesitation to hold that the claim of the claimants on the said accounts is not legally maintainable, and the same is hereby rejected. At the same time, as the transportation charged, as per letter from the director Food & Supplies, Chandigarh vide memo dated 5-2-1996 were not to be charged from the miller hence the amount claimed in the claim petition on this account is also rejected. Thus the parties are now entitled for the recovery of the following amounts".*

On conjoint reading of the claim and the findings given by the Arbitrator, it is crystal clear that the PUNSUP had claimed 1.5 times economic cost of the balance paddy and not of the short fall and, therefore, the jurisdiction as per the terms and conditions of the agreement was with the Managing Director, which has rightly so been observed by the Arbitrator. In my view, the objections were not falling within the provisions of Section 34 of 1996 Act and rightly so have been dismissed.

There is no merit in the appeal. The same is accordingly dismissed.

March 30th, 2016 **(AMIT RAWAL)**
ramesh **JUDGE**