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

FAO No.4462 of 2010 (O&M)
Date of decision : 22.03.2016

Punjab State Civil Supplies Corporation Ltd. and another

...Appellants

Versus

Jagdish Ram and another

...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 the appellants.

Mr. Mukand Gupta, Advocate for the respondent No.1.

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**AMIT RAWAL, J. (Oral)**

The appellant-PUNSUP is aggrieved of the order of ADJ, whereby objection filed under Section 34 of the Arbitration and Conciliation Act 1996 at the instance of the Miller against the award dated 03.07.2006, has been accepted.

Ms. Deepali Puri, learned counsel appearing on behalf of appellant submits that Objecting Court exceeded its jurisdiction in entertaining the objections as Court of Appeal which is not under the scope and realm of Section 34 of 1996 Act. It is settled law that Objecting Court is not to re-appreciate the evidence. It has to only to form any opinion whether objections were falling within the purview of Section 34 of the Act or not. The findings rendered by the Objecting Court is not within the paramters of Section 34, therefore, matter is liable to be set aside.

Mr. Mukand Gupta, learned counsel appearing on behalf of Miller submits that Miller had been issued No Due Certificate. No cause of action survived in favour of PUNSUP to lodge claim before the Arbitrator. It would be a total futile and farcical exercise in resolution of the dispute and rightly so, objection has been accepted.

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

It would be apt to reproduce the relevant findings rendered by the Objecting Court:-

> *"22. After giving my thoughtful consideration to the rival contentions and going through the case file, I am of the considered view that the impugned award is not sustainable. In the original claim petition filed by the respondents No.1 and 2, they did not speak about any shortage allegedly detected on 30.6.95. Rather, they claimed the economic cost of the entire paddy. Initially, the proceedings were started in the year 1998. Only at the time of filing of revised claim petition in the year 2006, the respondents introduced the version regarding detection of shortages on 30.6.95. In order to bring the matter within Clauses (b) and (c) of the guidelines dated 6.6.2000, the respondents should have produced the clear and cogent evidence, but in the instant case, the respondents could not produce any evidence at all to substantiate this plea. It has not been disclosed that by whom the physical verification was conducted on 3.6.1995. None of the officials of*

*respondents who allegedly conducted physical verification was examined during the arbitration proceedings. The physical verification report dated 30.6.95 does not bear the signatures of representative of the applicant and such like report could have been prepared by the officers of the department at any time while sitting in their office. The respondents examined only one witness namely Harblas Garg before the arbitrator. In the affidavit of said witness, it is simply mentioned that shortages as mentioned in the claim petition were detected. However, he did not refer to any physical verification in his examination in chief. Therefore, it is a case of no evidence. As already mentioned above, the plea regarding alleged shortages is contradictory to the original claim petition filed by the respondents. Originally, the respondents have pleaded that the balance paddy was sold to the miller and the price was deposited by him. When the plea raised in the revised claim is contradictory to the original claim petition and there is no evidence at all to substantiate the said plea, the arbitrator could not have accepted the said plea. If the version of the respondents No.1 and 2 as mentioned in the original claim petition is accepted, the matter falls in clause (a) of the letter dated 6.6.2000 and the arbitration proceedings were liable to be dropped. Therefore, the impugned order is not sustainable.*

*23. This court is aware of the proposition that the court cannot set aside the arbitration award merely because it is erroneous. However, the award is based of no evidence, rather, the same contrary to the claim made by the claimant, the award cannot be sustained. Therefore, this Court is of the view that the arbitration award is not sustainable. Rather, the proceedings were liable to be dropped in view of the clause (a) of the instructions dated*

> *6.6.2000. Otherwise also, when the entire paddy had been sold by the respondents No.1 and 2, they could not have claimed anything and over the above sale price. As per the letter dated 18.9.1988, the driage to the extent of 2% is to be allowed, even in case of sale of paddy in pursuance of the policy. Further as per the policy the costs of the gunny bags is also included in the paddy."*

On going through the aforementioned findings, I am of the view that Objecting Court sat as a Court of appeal which is not the scope of Section 34 of the Act. It was only to form an opinion that whether the award of the Arbitrator was against the parameters culled out in the statutory provisions of Section 34 of the 1996 Act or not.

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 or for want of reasons 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. It is not the case of the appellant that the award is against the public policy or has violated the principles of judicial approach, much less against the statute and other provisions of Section 34 of the Act.

The award read as a whole is just, fair and reasonable. It is now a settled law that the Arbitrator or Committee is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

In view of aforementioned facts, impugned order passed by the Objecting Court is set aside and the matter is remitted back to the Objecting Court to decide the objections afresh in accordance with law.

Parties through their counsel are directed to appear before the Objecting Court on 22.04.2016. Objecting Court shall decide the objections pragmatically within a period of six months in accordance with law from the date of receipt of certified copy of this order.

Appeal is disposed of.

**22.03.2016** **(AMIT RAWAL)**
*pawan* **JUDGE**