IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2519 of 2012 (O&M)
Date of decision : 20.01.2016

District Manager, HAFED Yamuna Nagar

...Appellant

Versus

M/s Krishna Rice & General Mill 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: Mr. Arvind Seth, Advocate for the appellant.

Mr. Akshay Jindal, Advocate for respondent Nos.1 to 4.

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AMIT RAWAL, J. (Oral)

CM No.10969-CII of 2012

Due to inadvertence, in the order dated 21.05.2012, while allowing the application for condonation of delay of 3 days in refiling the appeal, instead of word 'refiling' word 'filing' has been mentioned. So, for the reasons stated therein, an application seeking condonation of delay of 3 days in refiling the appeal fresh, is allowed.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 3 days in refiling the appeal is condoned.

Application is allowed.

Main Case

HAFED is aggrieved of the order dated 02.12.2011, whereby objection petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') seeking setting aside of the award dated 05.07.2010 passed by the Arbitrator, at the instance of the Miller, has been allowed.

Mr. Arvind Seth, learned counsel appearing on behalf of appellant submits that in pursuance to the claim filed by the HAFED, the respondent-Miller did not take the objection vis-a-vis jurisdiction of the Arbitrator that the claim was falling within the Excepted Clause of the agreement dated 22.10.2001 and such objections could not have been taken, for the first time, in the objection petition filed under Section 34 of the Act. In support of his contentions, he has referred to provision of Section 4 of the Act and judgment rendered by this Court in FAO No.1576 of 2008 decided on 23.12.2015 on the basis of ratio decidendi culled out by Hon'ble Supreme Court in *Narayan Prasad Lohia Vs. Nikunj Kumar Lohia and ors., 2002 AIR (SC) 1139* and thus prays that order under challenge is liable to be set aside.

Mr. Akshay Jindal, learned counsel appearing on behalf of Miller submits that in view of para Nos.9 and 23 of the agreement ibid, the matter was not liable to be referred to the Arbitrator. Remedy if any was to approach the Managing Director, therefore, question of taking objection before the Arbitrator is immaterial. In support of his contention, he has relied upon following judgments of this Court and thus prays for dismissal of the appeal:-

1. *M/s Krishna Rice & General Mill through its partner Ashok Kumar Vs. District Food and Supplies Controller, Yamuna Nagar, District Yamuna Nagar and another, 2011(2) PLR 432.*
2. *M/s Sain Dass Rice Mill, Mathana Vs. Distt. Food and Supplies Controller, Kurukshetra, 2010(1) RCR (Civil) 824.*
3. *M/s Mahavir Rice & General Mills, Talwandi Bhai Vs. Punjab State Warehousing Corporation Chandigarh and others, 2010 (4) RCR (Civil) 535.*

I have heard learned counsel for parties and appraised the paper book and case law cited at Bar.

The judgments relied by Mr. Jindal, do not apply to the facts and circumstances of the case for the reasons that Miller had raised the objection with regard to the jurisdiction of the Arbitrator. However, on going through the contents of the award and reply filed by the Miller, no such objection has been taken and also been noted by the Arbitrator. For the sake of brevity, relevant para is reproduced hereinunder:-

> *"In response to their above petition, the respondents submitted the written statement (Annexure-2) as under:-*
>
> 1. *That the claim of the claimants is hopelessly time barred so the claim for the time barred amount is not maintainable at all.*
> 2. *That the claimant has calculated the illegal and arbitrary rate of interest so the claimants are not entitled to any claim from the respondents.*
> 3. *That due to some labour problem there was some bit delay in delivery of milled rice and when the respondents offered the milled rice to the FCI in the year 2002-03 but the FCI did not take the delivery on the pretext of false excuses that they have no permission to take the delivery and due to the delaying tactics of FCI, the milled rice*

was damaged and the answering respondents were forced to sell the same at throw away price, thereby suffering heavy losses. Moreover, the Govt. has waived the interest upto the year 2003 and while the respondents have offered the milled rice in the year 2002-03, so the respondents can not be burdened with any interest, so it is wrong to allege that a sum of Rs.16,48,329/- is outstanding on account of interest. It may be mentioned here that the respondents have given the milled rice as per the direction of claimants in the year 2005 and the rate of rice was on higher side in the said year, thereby making profits by the claimants, so the respondents can not be burdened twice for the same as they have delivered the milled rice of higher rates and they cannot be charged with interest on the principal of double jeopardy.

4. *That as per the knowledge of the respondents, the Govt. has waived the interest upto the year 2003 and while respondents were ready to deliver the rice prior to the year 2003 but it was not taken by the FCI for want of necessary permission so no interest is chargeable from the respondents. However, the respondents are ready to pay the surcharge as per policy of the Govt. at the rate of Rs.5/- per qtl.*
5. *That the answering respondents were never informed regarding charging of the interest in the entire correspondence between the claimant and the respondents, so the claimants are estopped from claiming the interest by their own acts, conduct and acquiescence.*
6. *That the amount claimed as interest by the claimant was never agreed upon between the parties and it is excessive and arbitrary and keeping in view the*

circumstances in the preceeding paras no interest can be charged at the rate as alleged by the claimants.

In view of the above, the petitioner has prayed that the claim petition is wrong and hence denied. The claimants are not entitled to any interest from the answering respondents. The respondent have thus submitted that claimant petitioner is not entitled to any interest from the respondents and the petition may be dismissed with special costs being false, frivolous and vexatious to the knowledge of the claimants in the interest of justice.

A copy of the aforesaid written statement of the respondents was also given to the claimant petitioner who has submitted their parawise reply (Annexure-4) to the same as under:-

1. *This is not time bar.*
2. *These are on the basis of agreement.*
3. *No such incidents were there but the party illegally disposed off paddy stocks in market and at the time of P.V. no stocks of paddy/rice available with party. The party has never offered any stocks in the year 2003 as the party was not having any stocks of paddy/rice was due delivered upto 2005 to avoid legal proceedings of cheque bounces, the case lying in Civil Court, Jagadhri. The value of rice was realized after delay of 3-4 years and in shape of cash or delivery of rice to FCI and as such interest demanded is on account of interest loss to Hafed for this delayed period. The party has encashed after making illegal sale of Hafed stocks.*
4. *The Govt. has not waived off any interest. It is wrong to say that the party was ready to deliver the rice prior to the year 2003.*
5. *Interest is claimed in accordance with the terms and condition of the agreement of custom milling of paddy.*

> 6. *The interest claim is in accordance with the terms and conditions and agreement of custom milling paddy."*

Since, Miller has not taken objection with regard to the jurisdiction of the Arbitrator, it tantamounts to waiver as per the provision of Section 4 of the Act.

Accordingly, impugned order dated 02.12.2011, holding matter in dispute was falling under the Excepted Clause, by accepting the objection filed under Section 34 at the behest of the Miller is not sustainable and thus hereby set aside.

Appeal stands allowed.

20.01.2016 **(AMIT RAWAL)**
pawan **JUDGE**