

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

FAO No.6668 of 2011 (O&M)
Date of decision : 22.01.2016

Punjab State Civil Supplies Corporation Ltd. (PUNSUP) and another

...Appellants

Versus

M/s Parameshwar Rice Mills, 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. Karan Gupta, Advocate for the appellants.

Mr. Sanjeev Sharma, Advocate for respondent Nos.1 and 2.

AMIT RAWAL, J. (Oral)

The PUNSUP is aggrieved of the order passed by the Objecting Court, whereby objection filed by the Miller vis-a-vis jurisdiction of the Arbitrator, has been accepted.

Mr. Karan Gupta, learned counsel appearing on behalf of the PUNSUP submits that Arbitrator gave the award in favour of the PUNSUP. However, the Objecting Court did not have any jurisdiction to entertain the objections and held that claim was falling within the Excepted Clause as Miller failed to take the objections to the written statement and thus there is waiver as per the provision under Section 4 of the Arbitration and

Conciliation Act, 1996.

Mr. Sanjeev Sharma, learned counsel appearing on behalf of Miller submits that application dated 24.07.2003 challenging the jurisdiction of the Arbitrator in this regard was filed and the copy of the same was supplied to the PUNSUP but Arbitrator did not take any decision, thereon. In this regard, he has drawn the attention of this Court to zimni order dated 24.07.2003 passed by the Arbitrator and thus submits that once the claim is within the Excepted matter, the Arbitrator did not have any jurisdiction.

He further submits that Arbitrator originally was appointed on 06.04.1998. He continued to proceed till 2000 and, thereafter he appointed another Arbitrator which initiated the proceedings on 28.01.2000. The objection aforementioned vis-a-vis the unilateral appointment of the Arbitrator without the consent of the Miller was challenged by moving aforementioned application.

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

It would be apt to reproduce the zimni order dated 24.07.2003, which reads thus:-

“PW Manjit Singh DDM (A/C) Patiala is present for cross-examination and the ld. Counsel seeks an adjournment on the ground that he has been engaged only on the last date and he has to complete his brief. To come up for cross-examination on 30.07.2003 at 2.30 pm.

An application regarding jurisdiction filed. Copy given to opposite counsel. For reply and consideration on 30.07.2003. The proceedings shall not be stayed till

decision of application and cross-examination of PW will be made on 30.07.2003.

Sd/- 24.07.2003

Arbitrator.”

On going through the same and as well as contents of award, I am of the view that Arbitrator totally remained oblivious of the interim order, much less, pendency of the application challenging his jurisdiction.

It is settled law that Arbitrator once has shown his unwillingness to proceed to the Arbitration, the remedy under the law is either with the consent of the parties, the Arbitrator shall be appointed and if otherwise, Arbitrator can be appointed through intervention of the Court. No such procedure has been followed. Specific objection in this regard was taken which has been dealt with by the Objecting Court. I am of the view that the award of the Arbitrator is without jurisdiction as his appointment is unilateral without the consent of the Miller, much less, wanting the adjudication of the application vis-a-vis the jurisdiction.

Accordingly, there is no substance in the appeal and order accepting the objections is based upon the aforementioned facts.

I do not find any illegality and perversity in the impugned order.

Accordingly, appeal is dismissed.

22.01.2016

pawan

**(AMIT RAWAL)
JUDGE**