IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.730 of 2011 (O&M)
Date of decision : 22.03.2016

Laxmi Rice & General Mills and ors.

...Appellants

Versus

Punjab State Civil Supplies Corporation Ltd. 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. Vikas Behl, Sr. Advocate with
Ms. Jaspreet Kaur, Advocate for the appellant.

Mr. Aman Chaudhary, Advocate for the respondent No.1.

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AMIT RAWAL, J. (Oral)

The appellant-Miller is aggrieved of the findings rendered by the Arbitrator, vis-a-vis granting of 21% of the interest which according to Mr. Vikas Behl, PUNSUP is not entitled as per the revised claim. He submits that original claim filed on account of the following facts:-

i) Cost of 55.53 quintals of rice.

ii) Price of 28431 empty bags.

iii) Sales tax on the bags.

iv) Quality cut imposed by the FCI.

v) TDS.

and thereafter interest @ 21% per annum was also claimed by the PUNSUP and the total amount comes to Rs.4,90,437.59/-. However, PUNSUP submitted the revised claims, which reads thus:-

"

1	*Cost of 28431 empty gunny bags @ Rs.19.812 per bag*	*Rs.5,63,274.97*
2	*Sale tax @ 4.4%*	*Rs.24,784.10*
3	*TDS @ 2.3%*	*Rs.8,245.00*
4	*Quality Cut imposed by the FCI*	*Rs.1,13,651.65*
	Total	*Rs.7,09,955.72*

"

The Arbitrator has also held the Miller to certain amount being payable by the PUNSUP which comes to Rs.4,08,458.90/- and after adjustment of amount, Arbitrator has awarded the compensation of Rs.2,92,351.82/- with future interest at the rate of 21% per annum w.e.f. 01.06.1997 till the date of recovery within a period of four months. He submits that as per the terms and conditions of the agreement, 21% interest can be claimed in case there is shortfall in the rice whereas revised claim does not contained the element of shortfall, thus, Arbitrator has erred in granting the interest at the rate of 21% which was against the public policy thus Objecting Court dismissed the objections without referring to aforementioned facts.

Mr. Aman Chaudhary, learned counsel appearing on behalf of PUNSUP submits that award of the Arbitrator is in consonance with the terms and conditions of the Contract. There is no illegality and perversity. The terms and conditions of the contract, is sacrosanct and rightly so, interest at the rate of 21% has been awarded.

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

It is a matter of record that Arbitrator on the analysis of the documentary evidence brought on record found that Miller had supplied excess material. Findings to this effect, reads thus:-

> *"8. The revised statement of account of the respondent miller produced by the claimant corporation shows that no amount is due from the respondent miller to the claimant corporation either on account of the price of the paddy or of rice. The respondent miller has pleaded in para no.5 of its written statement that he delivered 11.60 qntls. of rice, in excess to the FCI and he is entitled to recover the price, this rice from the claimant corporation. Sh. Tarsem Gujral PW1 has admitted in the opening lines of his cross examination that if the driage is allowed @ 2%, then the respondent miller has delivered 11.60 qntls. of rice in excess. The claimant corporation has admitted in para no.2 of its application dated 8.7.2002 filed on 17.7.2002 that the driage allowance has been increased from 1% to 2% by the Hon'ble Punjab and Haryana High Court Chandigarh. In view of these circumstances, the respondent miller is entitled to recover the price of 11.60 qntls of rice of fine quality from the claimant corporation which he delivered in excess. The rate list (Annexure C-6) produced by the claimant corporation goes to show that the price of rice of fine quality was Rs.787.13/- per qntl. during the crop year 1996-97 and at this rate the price of 11.60 qntls. of rice comes to Rs.9145/- which the respondent miller is entitled to recover from the claimant corporation."*

In view of such situation, Miller cannot be fastened with the burden of liability of 21% interest, much less, 18%. Even otherwise, the Clause envisages the element of 21% on account of failure to supply the rice. Relevant para of the same reads thus:-

> *"In the event of his failure to supply rice within the stipulated period he shall be liable for the interest of 21% on the basis of economic cost of left over quantity/stock of paddy. The decision of MD PUNSUP on this behalf shall be final."*

On cumulative reading of the aforementioned provisions and as well as the findings, I am of the view that claim of the PUNSUP was not qua failure to supply the rice but with regard to empty bags and other sales tax, TDS and Quality Cuts. In my view, the Arbitrator exceeded its jurisdiction in awarding the future interest at the rate of 21%. In my view, 21% is liable to be reduced to 9% which is the prevailing rate of interest in the market.

Accordingly, award of the Arbitrator is modified. Instead of 21% per annum, it shall contain the element of interest @ 9% per annum.

Appeal is partly allowed.

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