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

**FAO-423-2012 (O&M)
Date of decision : 29.07.2016**

Punjab State Cooperative Supply and Marketing Federation Ltd.

... Appellant(s)

Versus

M/s Modern Rice Mills and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.P.S. Mann, Advocate and
Mr. Daman Dhir, Advocate
for the appellant.

Mr. A.K. Khunger, Advocate
for respondent No.4.

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?

AMIT RAWAL, J. (ORAL)

The appellant-Markfed is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') for setting aside of the Award dated 09.03.2006.

Mr. A.P.S. Mann, Advocate and Mr. Daman Dhir, learned counsel appearing on behalf of the appellant-Markfed submits that owing to the arbitration clause, the matter was referred to the Arbitrator. The Markfed lodged the claim against the Miller for a sum of ₹ 7,03,114/- along with interest and future interest @ 30% till its realization, but the Arbitrator

has only awarded the compensation of ₹ 10,143/- towards income tax along with interest @ 18% per annum on this amount. He submits that the Miller had committed default in delivering the entire rice and in this regard, umpteen number of documents have been placed on record, but the Arbitrator failed to advert the same and accordingly, the objections under Section 34 of the 1996 Act have been filed, but the same have erroneously been dismissed, thus, urges this Court for setting aside of the order.

Mr. A.K. Khunger, learned counsel appearing on behalf of the respondent No.4-Miller submits that the stand of the Miller before the Arbitrator was that the entire material was supplied. In fact, the Markfed failed to lead any evidence via-a-viz the shortage and rightly, the claim has been declined. The objections were not falling within the realm of Section 34 of the 1996 Act, much less, the Objecting Court and this Court cannot sit in the arm chair of the Arbitrator, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the scope of interference under Section 34 of the 1996 Act is limited. It is now a settled law that the Arbitrator is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

For the claimant, it is necessary to place on record the material regarding non-supply of shortage of the rice mills. The claimant filed an affidavit (Ex.PW-1) of Sh. R.P. Bansal, Assistant Accounts Officer alleging the shortage in support of the claim of ₹ 7,03,114/- but in cross-examination which has been inspected by the Arbitrator, he spilled the

beans and submits that there is no documentary evidence with regard to the shortage. The pleadings in the claim petition was, in fact, for a short delivery of 00.84 qntls of rice valuing ₹ 832/-.

In my view, the objections at the instance of the Markfed were not falling within the realm of Section 34 of the 1996 Act and the Award is not against the public policy. The expression 'public policy' has been expanded by Hon'ble Supreme Court in “Associate Builders V/s Delhi Development Authority” 2015 (3) SCC 49.

The Markfed have failed to discharge the onus with regard to the shortage and rightly so, the claim has been rejected.

For the foregoing reasons, I do not intend to differ with the findings rendered by the Objecting Court which are based upon the appreciation of oral and documentary evidence and accordingly, the appeal is dismissed.

29.07.2016
yogesh

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No