IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.3945 of 2013 (O&M)
Date of decision:12.07.2016

Punjab State Civil Supplies Corporation Limited
(PUNSUP) ... Appellant

Vs.

Shri Aggarwal Rice and Allied Industries and others ... 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. Deepak Sabherwal, Advocate
for the appellant.

Mr. D.D.Bansal, Advocate
for respondents No.1 to 3.

AMIT RAWAL J.

PUNSUP is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “1996 Act”) for setting aside of the Award dated 01.10.2008.

Mr. Deepak Sabherwal, learned counsel appearing on behalf of the appellant-PUNSUP submits that dispute in question pertains to the agreement dated 24.10.1994 which has been executed between the parties to the lis for supply of the custom milled rice for the crop year 1994-95 and last date for supply was 28.02.1995. Since the dispute arose, as per the clause 22, the matter was referred to the Arbitrator. The un-revised claim filed before the Arbitrator was to the tune of ₹1,04,37,979/- which included the element of 1-1/2 times economic costs, 21% interest, 31% interest. Since the aforementioned claim was falling within the excepted clause, accordingly, the revised claim Ex. A4 to the tune of ₹6,86,906/- along with bank interest was filed. The Arbitrator has only allowed the claim to the tune of ₹1,86,322/- and counter claimant, i.e., Miller has been awarded to the extent of ₹3,44, 047/- but in fact, appellant is entitled to the sum of ₹6,86,906/- as on 01.01.2001. As per the schedule given under clause 9(iii), the dispute was not with regard to non-delivery of rice . It was only in those cases which fall within the ambit of clause 9(i) and (iii). The issue was with regard to shortage and non-supply of paddy. The District Judge was totally remiss in not appreciating the fact that objections were falling within the parameters of Section 34 of 1996 Act. The District Judge has not assigned any reasons while dismissing the objections in most capricious and fallacious manner and thus, urges this Court for setting aside of the award and impugned order.

Mr. D.D.Bansal, learned counsel appearing on behalf of the respondents No.1 to 3 submits that award has been passed by the Arbitrator, who is none else but retired officer, on the basis of the evidence brought on record. The approach of the PUNSUP has not been fair and genuine as the claimant had put the paddy to open sale in view of the policy decision of the Government and in pursuance of which the respondent-firm had deposited a sum of ₹31,44,000/- at the rate of ₹ 422/- per quintal of paddy weighing

7450.15 quintals with the claimants on the price fixed by the Government and the respondent had delivered 7111.95 quintals rice to the FCI in the PUNSUP account and the balance paddy comes to 17466.78 quintals against which the respondent has already deposited a sum of ₹ 69,71,000/- before lifting paddy on the sale price fixed by the F.C.I. The objections were not falling within the parameters of Section 34 of 1996 Act and rightly so, have been dismissed, in essence, the objections were wholly misconceived and thus, urges this Court for affirming the findings rendered in the award.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and substance in the submissions of Mr. Sabherwal. For the sake of brevity, the operative part of the award reads thus:-

> *"25. The case of the respondent is also that the respondent delivered 7111.95 quintals of rice to F.C.I in PUNSUP account and in the meantime before the expiry of agreement, the claimant put paddy to open sale in view of the policy decision taken by the Government of India vide letter number 8(1)/95-DR-III dated 15/16.3.1995, in pursuance of which firm the deposited a sum of ₹31,44,000/- and the rate of ₹422/- per quintal of paddy weighing 7450.15 quintals with the claimants on the price fixed by the Government and subsequently the Director Food and Civil Supplies Punjab issued Memo No. RP-1 (455 Part-5)-95/2341 dated 21.08.1995 to sell the balance*

paddy on the price fixed by the State and as such the respondent deposited ₹3827000/- at the rate of ₹375 /- per quintal for purchase of 10205.33 quintals of paddy. Thus, the respondents had purchased un-milled paddy in pursuance of the above mentioned instructions issued by the Government and in fact had paid excess amount of ₹78262/- towards purchases of paddy and are entitled to refund the said amount with interest at the rate of 21%/

26. The learned counsel for the respondent further referred to the admission made by Shri Sham Lal to the effect that the total paddy stored with the firm was 44182 bags weighing 28718.30 quintals. It has also been admitted that 574.36 quintals paddy was to be given to the respondent towards driage at the rate of 2%. It has also been admitted in the claim petition as also by the witness that the respondent has delivered 7111.95 quintals rice to FCI in the PUNSUP account. The rice weighing 7111.75 quintals comes to 10697 quintals of paddy. In view of this admission, it has been argued that after deducting paddy equivalent to the rice delivered and driage allowable to the respondent, the balance baddy comes to 17466.76 quintals against which the respondent had already deposited a sum of ₹69,71,000/- before lifting paddy on the sale price fixed by F.C.I and the Government respectively. In *view of these admitted facts nothing remains due to the respondent particularly delayed payment as claimed by the claimant because there was no agreement between the parties that the paddy is to be purchased land amount is to be deposited before 30.6.1995. Apart from this it has also been argued that the claimants have not produced any documentary evidence on record on the basis of which the respondents could be held entitled to claim interest on delayed payment of paddy.*

27. It has also been argued by the learned counsel for the respondents that although the witness has shown ignorance to the amount deposited towards purchase of paddy, the fact remains that the claimants have themselves admitted in the claim petition that the respondent respondent had deposited ₹69,71,000/- towards the price of paddy and as such the claim petition filed by the claimants is wholly misconceived and the respondents are legally entitled to a sum of ₹1,57,725/- with interest and rate 21% per annum with costs."

The aforementioned findings rendered by the Arbitrator are based upon the appreciation of oral and documentary evidence. None of the objections are fallen within the provisions of Section 34 of 1996 Act to make out a case that the award was against the public policy. In the revised claim, PUNSUP had not mentioned about the factum of depositing of amount as has been referred by the Arbitrator.

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 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. The arbitrator has dealt with the dispute which was contemplated and was within the scope of it.

In my view the award of the Arbitrator does not suffer from any illegality, inasmuch as, the Arbitrator who is expert has dealt with the matter and decided the claim of respective claimants to the parties to the *lis.*

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.

In my view, no error of law arise from the award as well as order impugned. The award is perfect and justified.

There is no merit in the aforementioned appeal.

The appeal is accordingly dismissed.

(AMIT RAWAL)
JUDGE

July 12, 2016
savita