IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O.No.4308 of 2013 (O&M)
Date of Decision: November 09, 2016

M/s Sangha Rice & General Mills, Talwandi Bhai, District Ferozepur & another

...Appellants

Versus

Punjab State Civil Supplies Corporation Ltd., Chandigarh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Tribhawan Singla, Advocate,
for the appellants.

Mr.Deepak Sabharwal, Advocate,
for respondent Nos.1 & 2.

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AMIT RAWAL, J. (Oral)

Appellants are aggrieved of the impugned order, whereby the Objecting Court has set-aside the award by holding that there was nothing due and remanded the matter back to the Managing Director being excepted clause.

Mr.Tribhawan Singla, learned counsel for the appellants submits that respondent-procurement agency had filed the reference on the premise that the paddy was allotted to the appellants for the crop year 1994-95 by entering into an agreement dated 27.10.1994. According to the PUNSUP, there was some dispute and the matter was referred to the Arbitrator. The claimant-PUNSUP filed the following original claims:-

Amount recoverable	
1½ times economic cost of balance paddy 23566.10 @ 806.12 as on 30.6.1995	18997105
Cost of 4268 bags lying with the miller @ 13.41	57234
Sales Tax @ 4.4% on bags lying with the miller	2518
TDS @ 4.4% on bags lying with miller	1125
Quality cut	24902
Total	19082884
Milling charges of 4948-50-700 qtls of paddy	44537
Double line stitching 3500 bags @ 1.25 per bag	4375
Amount deposited by the miller against sale of paddy	7485385
Net amount recoverable	11548587
Interest from 1.7.1995 to 28.2.98 @ 21%	3631197
Add interest on late delivery of rice	NIL
Total amount recoverable as on 1.3.98	15180284

Thereafter, the claimant filed the revised statement of accounts, which reads as under:-

Particulars	***Bags***	***In Qts.***
Paddy stored	44024	28615-60-000
Driage benefit 2%		572-31-200
Net paddy with miller	44024	28043-29-000
Rice Due		18789
Rice delivered up to 30.6.95	3500	3315-00

Particulars	***Bags***	***In Qts.***
Rice delivered after 30.6.95	NIL	NIL
Conversion of rice into paddy	36256	23566.1
Sale of paddy	32209	20517-00-000
Balance paddy	4047	3049-10
Net paddy		2988-12
Paddy converted into rice		2002-04

The Arbitrator, after noticing all the facts, particularly the claims as extracted here-in-below, passed the award.

He submits that in the un-revised claim, PUNSUP had not noticed the factum of the un-revised sale policy or regarding the issuance of the paddy through sale to the miller. The statement of accounts also go to demonstrate that there was no shortage of paddy and only the economic cost of the balance paddy 23566.10 qtls.was claimed. The revised statement of accounts was filed showing the balance of 4047 bags of paddy weighing 3049-10 qntsl. and after giving the benefit of driage @ 2%, the net short paddy claimed was 2988-12 qtls., the cost of which has been claimed after conversion into rice besides other items, but the fact remains that there was no such claim, therefore, shortage of the paddy and the revised claim was after period of limitation. The revised claim does not fall within the excepted clause and, thus, there is illegality and perversity in remanding the matter to the Managing Director and, thus, urges this Court for allowing the appeal.

Per-contra, Mr.Deepak Sabharwal, learned counsel for respondent Nos.1 and 2-PUNSUP submits that the revised claim takes care of the paddy already sold in the open sale. The Arbitrator was totally confused with regard to the un-revised and revised claim and mixed up the matter and held the claim to be barred by law of limitation. In fact, the revised claim was also falling within the excepted clause. No prejudice would be caused to the miller for agitating the matter before the Managing Director, but the public money cannot be permitted to be squandered away and, thus, urges this Court for affirming the findings.

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

As per the statement of accounts, there was no shortage of paddy and only economic cost was claimed. In fact, in the revised claim, there was no claim qua the shortage of paddy. It is only with regard to the balance of paddy after the shortage as noticed above, thus, it was beyond the period of limitation as revised claim has been filed after five years of the previous claim. The revised claim cannot relate back to the filing of the original claim, thus, would not stretch in the manner and mode as adopted by the procurement agency, thus, the revised claim was beyond the period of limitation. This fact has not been taken care by the Objecting Court. It appears that the Objecting Court has only gone through the un-revised claim, extracted above, which ofcourse was falling within the excepted clause. I am of the view that the order under challenge is purely illegal and wrong. There is patent illegality in the award and the Objecting Court was not, thus, within its jurisdiction to set-aside the award, in essence the objections were not falling with the realm of Section 34 of the Arbitration and Conciliation Act, 1996.

Accordingly, the order under challenge is set-aside. The award of the Arbitrator is restored.

Appeal stands allowed.

November 09, 2016 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**