115

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2348-2016 (O&M)
Date of decision : 26.04.2016

M/s Pratham Rice Mill

... Appellant

Versus

Punjab State Grain Procurement Corporation Ltd. and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vipul Dharmani, Advocate
for the appellant.

****

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-Miller is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') seeking setting aside of the Award dated 18.07.2014.

Mr. Vipul Dharmani, learned counsel appearing on behalf of the appellant submits that the claim of the Corporation has not been supported by any independent evidence, only filed accounts' statements (Annexure A-3 and Annexure A-4). The Arbitrator accepted the claim. Though, the jurisdiction of the Arbitrator being the Officer of the Corporation was also assailed. The Award is lacking reasons and therefore, is not in accordance with the provisions of sub-Section (3) of Section 28 of the 1996 Act. The aforementioned objections have also been dismissed in the similar manner. In support of his contentions, he relies upon the judgment of Hon'ble Supreme Court rendered in ***"Oil and Natural Gas Corporation Ltd. Vs. Western Geo Int. Ltd." 2015 AIR (SC) 363***, wherein expression "fundamental policy of Indian Law" has been interpreted by holding that the Authorities/Courts below must apply the fundamental principles and in case, Award is contrary, the same is liable to be set aside. He further submits that the the Award also entails the element of interest on interest, which is not permissible in law, in view of the law laid down by the Hon'ble Supreme Court in ***"M/s Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa" 2015(2) SCC 189***.

I have heard the learned counsel for the appellant and appraised the paper book and of the view that the view expressed by the Arbitrator is legal and perfect. For the sake of brevity, the relevant part of the Award reads thus:-

> *"After having considered the submissions made on behalf of both the parties and having gone through the record of the case minutely, I am of the considered opinion that claim of the claimant is liable to be allowed and the objections raised against it are without any basis.*
>
> *It stands established on record that respondent was allotted 80054 bags of paddy weighing 28018.90 qtl. by the Claimant during the crop year 2010-2011 for milling. An agreement dated 22.11.2010 was signed between the Claimant and Respondent. The argument of the respondent questioning the appointment and neutrality of the arbitrator hold no ground in the light of the fact that appointment of arbitrator was consented to by the respondent as recorded in the proceedings dated 21.08.2012. It is also a matter of record that the respondent never made any written request/representation to the competent authority for change of*

arbitrator during the course of proceedings of this case.

It has also been proved that a quantity of 80054 bags of 28018.90 qtl. paddy was received by the respondent as is evident from the mutually signed PV report as the final receipt of paddy which is valid as provided in the clause-2 of the agreement. Similarly the delivery of 3767.74 qtl. rice to FCI out of the total due rice of 18772.66 qtl. proves that paddy was regularly released to the respondent as per milling policy. The respondent could deliver only 3767.74 qtl. rice against the total due quantity of 18772.66 qtl which is just about 20% of the total due rice. The argument of the respondent that rice could not the delivered due to space problem is devoid of any force as the other mills located at the same milling centre delivered total due rice of the same crop year i.e. KMS 2009-10. Even otherwise, the respondent has not produced on record any letter written to FCI for sorting resultant rice nor there is any other document produced to show that at the relevant period of time there was no space available with FCI for storage of milled rice. It is not uncommon that when rice is available for delivery to FCI and space is not available, the Miller inform in writing that space was not available for storing milled rice.

The VAT was charged as per the VAT Act. There is no merit in the argument of the respondent that the un-milled paddy/undelivered rice was sold by the claimant at a throw away price as the application for selling the paddy was submitted by the respondent. The unmilled paddy/undelivered rice was sold by the respondent as per the interim order dated 29.08.2012 and the realized amount on the sale of paddy/rice was deposited by the respondent with the claimant.

The contention of the respondents that an amount of ₹974825.00 of 2009-10 has been wrongly included in the claim of 2010-11 is accepted as the same is not covered in the agreement of 2010-11. The argument of the claimant in this regard is rejected being unjustified and beyond the scope of agreement of 2010-11.

It is clear that respondent failed to supply entire quantity of due rice to FCI as per schedule prescribed in agreement in spite of extensions allowed in delivery period of balance rice from time to time and thus violated the terms and conditions as contained in clause 10 as well as clause 12(a) of the agreement. Therefore, an amount of ₹ 2,96,84,194/- (₹ Two Crore Ninety Six Lac Eighty Four Thousand One Hundred Ninety Four) out of the total revised claim of ₹ 3,06,59,019-00 (₹ Three Crore Six Lac Fifty Nine Thousand Nineteen) on account of unmilled paddy/undelivered rice of KMS 2010-11 and cost of gunny bags succeeds and claimant is held entitled to recover the same with pendent-lite and future interest @ 12% per annum on the above said amount till the actual realization of the same. The claim of the claimant amounting to ₹ 974825-00 of 2009-10 is rejected, however, the claimant will have the freedom to file a separate claim to recover ₹ 974825-00 of 2009-10 as per the terms and conditions of 2009-10 agreement. Arbitration Award is hereby passed with costs throughout to this effect."

The appellant failed to lead any evidence, contrary to what the respondent-claimant has placed on record.

It is matter of record that for filing of the claim, physical verification was made which was sent by the power attorney (Ex.C-3) of the appellant and on the basis of the same, the claim was lodged. The appellant has failed to rebut the aforementioned evidence by leading any corroborative evidence. There is no dispute to the aforementioned judgments cited, but in view of the observations and findings rendered by the Arbitrator, I am of the view that the Award cannot be said to be against the public policy and is based upon the appreciation of oral and documentary evidence brought on record. Even the witness of the Corporation was extensively cross-examined but nothing surfaced. As regards the plea of interest on interest, the aforementioned view has been rendered in the ratio of 2:1 in M/s Hyder Consulting Ltd. (Supra) by setting aside the judgment by the Hon'ble Supreme Court in ***"State of Haryana and others Vs. M/s S.L. Arora and Company" 2010(3) SCC 690.***

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, in as much 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.

26.04.2016
yogesh

(AMIT RAWAL)
JUDGE