116

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RA-140-CII-2016 (O&M) IN
FAO-6121-2015
Date of decision : 29.11.2016

M/s Garg Rice Mills

... Appellant

Versus

Punjab Agro Food Grains Corporation Limited and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Nitin Kaushal, Advocate
for the applicants/respondents.

Mr. Vivek Aggarwal, Advocate
for the non-applicant/appellant.

****

AMIT RAWAL, J. (ORAL)

This Court vide order dated 21.04.2016 had allowed the aforementioned appeal and with the consent of both the parties, appointed Former Chief Justice of Rajasthan High Court, Justice S.K. Mittal, as Arbitrator.

During the interregnum, the subsequent developments have taken place.

1. The review application bearing No.23476-CII of 2016 at the instance of Punjab Agro has been filed that being the instrumentality of the State representing the same cannot

consent for appointment of the Arbitrator as it is within the domain of the Managing Director.

2. This Court had received the communication dated 09.11.2016, whereby Justice S.K. Mittal had shown his predicament of continuing with the Arbitrator owing to his appointment as Lokayukta of State of Punjab.

In view of the aforementioned order dated 21.04.2016 is hereby recalled.

Mr. Vivek Aggarwal, learned counsel appearing on behalf of the appellant, submits that the Award of the Arbitrator suffers from non-compliance of the provisions of sub-Section 3 of Section 31 of the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act') as it is lacking reasons.

He further submits that the Arbitrator closed the evidence of the Miller and application, in this regard, was moved, but the same has been rejected and the Award came to be passed, thus, the procedure followed by the Arbitrator is totally alien to the 1996 Act, much less, principles of natural justice. This fact had been objected to as squarely falls within the parameters of Section 34 of the 1996 Act, but the objection petition has erroneously been dismissed. It is, in this background of the matter, the present appeal has been filed.

He further submits that on going through the award, there is no compliance of the provisions of the 1996 Act and therefore, the Award, much less, the impugned order are liable to be set aside.

Mr. Nitin Kaushal, learned counsel appearing on behalf of the respondent-Punjab Agro, submits that the Miller did not place on record any document before the Arbitrator, who had an occasion to look into the matter and was given a number of opportunities to lead evidence. Having failed to do so, his evidence was closed and therefore, the Award under challenge is perfect, legal and justified. The scope of interference vis-a-vis the objections filed under Section 34 of the 1996 Act is very limited as the objections were not within the parameters/realm. The re-appreciation of the evidence, even if the different opinion is required to be found, is not permissible in view of the ratio decidendi culled out by the Hon'ble Supreme Court in ***"Navodaya Mass Entertainment Ltd. V/s J.M. Combines" (2015) 5 SCC 698***. Neither the Objecting Court nor this Court can sit in the arm chair of the Arbitrator and re-appreciate the evidence and treat the objections as an appeal, 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 Award is lacking reasons. For the sake of brevity, the operative part of the Award reads thus:-

> *"That the Respondent Rice Mill has not submitted any documents in support of the above position. The claimant was thus asked to submit the evidence by way of affidavit. That on 20.02.2013 the claimant has submitted the evidence by way of affidavit of Sh. Bhawandeep Singh Sandhu, Sr. Distt. Manager, PAFC, Mohali. A copy of the affidavit was delivered to Respondent rice mills for cross examination by the Respondent. Sh. Bhawandeep Singh Sandhu Sr. Distt. Manager in his affidavit has mentioned regarding the various annexures in*

> *support of the claim petition. Despite several dates, the Respondent has not cross-examined him. Sh. Birinder Kumar Aggarwal has stated that he is not interested in cross-examination and further submit any evidence. Thus the application submitted by the respondent was dismissed. The perusal of the above facts indicates that M/s Garg Rice Mills has failed to deliver the rice as per the agreement within stipulated period. The claim of PAFC is supported with documentary evidence. That after having made the statement in detail and submissions of documents, counsel for the claimant has closed the case and prayed for award in favour of the claimant. Thus keeping in view the record and the evidence led by the claimant I am of the considered view that PAFC/claimant has established is claim for ₹ 2,73,84,762/- inclusive interest upto 31.03.2012 plus future interest till the date of actual recovery of the amount from the respondent as per the agreement. One signed copy of the award announced today on 17.06.2013 be sent to the Respondent miller under registered post and the other signed copy be sent to the M.D., PAFC/claimant. The original award with the original file be sent to the Arbitration branch, PAFC, H.O. Chandigarh. As and when required the Arbitration file may be requisitioned from the Arbitration Branch of P.A.F.C. Where it is consigned."*

Even the Objecting Court has failed to assign the reasons. For the sake of brevity, the relevant portion of the judgment reads thus:-

> *"M/s. Garg Rice Mills through its proprietor Sh. Barinder Kumar, has filed the application under Section 34 of the Arbitration and Conciliation Act 1996 alleging that the objector had entered into an agreement with respondent No. 2 for custom milling of paddy for the kharif milling season 2009-*

10. In consonance with the same, the objector and respondent No. 2 entered into an agreement dated October 09, 2009. Respondent No. 2 had taken signatures from the objector on blank documents in 2010 by giving a false assurance/impression to the objector that they would be using the said blank signed documents for the purpose of granting him an extension in regarding to providing the rice to the Food Corporation of India. However, the request of objector with regard to copy of said agreement was declined by respondent No. 2 out rightly. The objector was not required to hand over any rice to respondent No. 2 and further the Food Corporation of India has not been made a party, more so, is not the aggrieved party in the claim petition, therefore, there is no cause of action accrued to respondent No. 2 for recovery. It is further averred that a dispute/difference arising out of or in any manner touching or concerning this agreement entered into between the respondent and the objector could have only resulted in an initiation of the arbitration proceedings. There being no dispute or even an iota of intention of the Food Corporation of India of a dispute/difference; there is no probability/authorisation upon the respondent to initiate the arbitration proceedings for and on behalf of the Food Corporation of India. The alleged agreement between the objector and the respondent agrees to a period of one year for initiation of arbitration proceedings between the parties by the Miller. Accordingly, the last date for cause of action to have accrued upon the respondent could have been 31.03.2010 wherein it was required to provide the last consignment of rice to the FCI. However, the claim petition preferred by respondent No. 2 was filed on 10.10.2012 and is barred by the terms and conditions agreed between the parties. The paddy provided to the objector for custom milling for the Kharif milling season 2009-2010 was in joint custody and accordingly

> *it was the duty and responsibility of both the respondent and the objector to look after/manage the paddy. It is further averred that the objector had deposited ₹ 1,50,000/- with the respondent at the time of signing of the agreement and had further deposited ₹ 11,00,000/- for obtaining an additional grant of paddy for milling. The objector had also provided a security through a demand draft of ₹ 5,00,000/- to the respondent with regard to that procurement of paddy. In consonance with the total amount of alleged paddy milled and handed over to the respondent, there is an outstanding amount of ₹ 7,20,000/- towards the respondent for milling the paddy into rice. Therefore, a total of ₹ 24,70,000/- is due and payable by the respondent to the objector with regard to the amount already paid as security by the objector and further the price for milling paddy into rice. The objector further made a payment of ₹ 10,00,000/-, ₹ 30,00,000/- and ₹ 10,00,000/- to the respondent under the orders of Hon'ble High Court while availing the relief of anticipatory bail. The stock of paddy lying with the objector was also sold by the respondent under the orders of Hon'ble High Court for an amount of ₹ 1,00,00,000/- approximately. The Arbitrator failed to take these amounts into consideration while passing the impugned award dated 17.06.2013 and passed the impugned award arbitrarily for the whole claim, which is liable to be set aside".*

It is a conceded position on record that the Punjab Agro had also lodged an FIR against the Miller in order to deposit the certain amount, which the Arbitrator has also not taken care of, in fact, there is no order of adjustment.

Since, the Award in my view, is not sustainable in the eyes of law and wanting reasons as per the provisions of law, noticed above and accordingly, the Award of the Arbitrator, much less, impugned order of the Objecting Court, are hereby set aside.

Resultantly, the appeal stands allowed.

(AMIT RAWAL)
JUDGE

29.11.2016
Yogesh Sharma

Whether speaking/reasoned **[✓ Yes]/ No**

Whether Reportable **Yes/ [✓ No]**