IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3837 of 2015 (O&M)
Date of Decision.10.01.2017

M/s Sanman Rice Mills and another ....Appellants

Vs

Punjab State Civil Supplies Corporation Limited and others ....Respondents

Present: Mr. Anand Chhibbar, Senior Advocate with
Mr. Aman Pal, Advocate
for the appellants.

Mr. Nitin Kaushal, Advocate
for the respondents-Punsup.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.

The appellant-Miller is aggrieved against the dismissal of the objection petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 seeking setting aside of the Arbitral Award dated 08.11.2012 whereby the Arbitrator ordered for payment of ₹2,67,66,804/- along with interest @12% per annum with further @12% per annum on the principal amount less deposited on the cost of rice of ₹2,16,15,716/- from 01.10.2011 till realization in favour of the respondent-Corporation.

Mr. Anand Chhibbar, learned Senior Counsel assisted by Mr. Aman Pal, Advocate submitted that in pursuance to the agreement dated 06.10.2008 regarding crop year 2008-09, the appellant-Miller was given a fine/Grade 'A' variety of paddy of particular quantity for the purpose of milling and supplying. However, a dispute arose with regard to last date for supply of the same which was on 31.03.2009, extended upto 30.07.2010.

He further submitted that the respondent-Punsup did not approach with clean hands and sought the claim of the aforementioned amount, despite the fact that there was already resolution of dispute whereby the respondents had accepted 10 cheques of equal amount of ₹50 lacs each, totalling ₹5 crores as full and final settlement. This fact was accepted by the star witness, who in the cross-examination admitted that a sum of ₹5 crores had already been received and on the back side of the same, quantity of rice has been mentioned but the cost of the quantities mentioned on the back side of each cheque has not been mentioned, thus, the price demanded by the Punsup as per Ex.C19, is neither here nor there.

He further submitted that the aforementioned witness admitted that on back side of each cheque, the total calculation of the quantity came to 35,100 qtls. of rice which was to be delivered and no other rice was required to be delivered. The aforementioned evidence has been overlooked by the Arbitrator, thus, there is gross illegality and perversity, much less, patent illegality. The Award of the Arbitrator is without jurisdiction being not in consonance with Clause 21 of the agreement, which envisaged that the contract shall come into force with effect from the date of execution of the agreement and remain in force upto, including 30.09.2009 or clearance of dues whichever is later. In fact, when there was no dispute, no occasion arose for seeking the reference to the Arbitrator, thus, incurring of the expenses of arbitral proceedings should be burdened upon the respondent-Punsup.

Clause 16 of the agreement provided that if the losses or damages exceed the amount of security deposit and bank guarantee, the respondent-Punsup shall be within its right to recover the same. However, the respondent could not have made a reference to the Arbitrator nor the

Arbitrator had jurisdiction to decide the dispute and pass the Award. Both the Arbitrator and the Objecting Court have gravely erred in not noticing the aforementioned fact rather relied upon the statement in the cross-examination that no settlement was arrived at. The cross-examination has not to be read in isolation. The cheques aforementioned were given prior to the initiation of the arbitration proceedings. On the back side of each one of the cheques, there is an endorsement that one wagon rice is equivalent to 270 qtls. The respondent-Punsup has not been able to lead any evidence, much less, documentary to prove the alleged claim. The alleged statement of account, Ex.C-15, was not correct. In fact, the correct one has been withheld for the reasons best known to the respondent-Punsup, thus, urges this Court for setting aside of the impugned Award and the Order under challenge.

Per contra, Mr. Nitin Kaushal, learned counsel appearing on behalf of the respondent-Punsup submitted that there is a very limited scope for interference. All the aforementioned points have been taken care of/looked into by the Arbitrator. The appellant-Miller has not been able to point out any of the grounds falling within the parameters of Section 34 of the Arbitration and Conciliation Act, 1996 to enable the Objecting Court or this Court for forming a different opinion than the one arrived at.

The Award passed, is perfectly legal, justified and does not call for interference. Ex.C-19, reflects the cost of rice per quintal @₹2039.73 and therefore, by assessing the shortage of 35,110.39 qntls of rice, the difference of rate has been calculated, which has been worked out as ₹7,16,15,716/- against which advance cheques of ₹5 crores had been given, therefore, leaving a balance of ₹2,16,15,716/-.

The scope of interference is very limited as per the ratio decidendi culled out from 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***, thus, urges this Court for affirming the Award and the Order under challenge.

I have heard learned counsel for the parties, appraised the paper book, records of the Arbitrator/Objecting Court and of the view that there is force and merit in the submissions of Mr. Chhibbar. Endorsement on back side of each cheque borne out from the record of the Arbitrator/Objecting Court contain not only the amount but also quantity that one wagon of rice would be equivalent to 270 qtls and 13 wagons will quantify to 3510 quintals of rice and cheques of ₹50 lacs, 10 in number, had been given for discharging the liability of ₹5 crores. In my view, the Arbitrator, much less, the Objecting Court failed to advert to the specific statement surfaced during the cross-examination of witness of Punsup which reads as under:-

> "*It is correct that the amount of ₹5 crores has been received by Punsup and accounted for in the statement of accounts. Only the quantity of rice has been mentioned on the back side of the respective cheques by the respondent miller, but the cost of the quantities mentioned on the back side of the cheques has not been mentioned against each cheque. The quantities mentioned on the back side of each cheque if summed up, it comes to 35,110 qtls of rice. It is correct that total quantity of rice was 35,110 qtls and no other rice was required to be recovered from the respondent miller. It is incorrect to say that ₹5 crores given by the respondent miller through cheques was full and final settlement of the account.*"

The aforementioned statement of the witness leads to an irresistible conclusion that the quantities mentioned on the back side of the cheque, if summed up, come to 35,100 qtls, thus, no other rice was required to be recovered and the aforementioned cheques have been received by the Punsup before initiation of the arbitration proceedings. The Arbitrator had put a blame upon the appellant of having not obtained the No Due Certificate, much less, of being not sent any legal notice. It is strange that a Public Undertaking after accepting the amount, if do not issue No Due Certificate, blame cannot be fastened upon the appellant. Whatever claim they make cannot be treated to be a gospel truth or a sermon. The factum of receipt of the 10 cheques and encashment of the same is not denied, in essence, is admitted. The factum of physical verification, allegedly conducted on 26.10.2009, was emphatically denied by the appellant, to a specific question in cross-examination.

In my view, the respondent-Punsup has not been able to prove claim of the difference at a particular rate, rather it has also not come out with an explanation that under what circumstances, the cheques aforementioned received were not towards full and final settlement. Unless and until, the aforementioned foundation for claiming the difference of rate is not laid, the Arbitrator could not have accepted the claim of alleged difference. Needless to say that the party who stakes any claim, has to establish the same through a direct, cogent, much less, corroborative evidence and not by merely furnishing the claims. In fact, it was not backed by some logic/documentary evidence.

In view of the candid statement of the witness, the Arbitrator should not have entertained the claim, much less, passed the Award. In view of the aforementioned, the objections filed before the Objecting Court were falling within the parameters of Section 34 of the Arbitration and Conciliation Act, 1996, thus, there was a patent illegality as the Award, in my view, is against the public policy. Both the Award passed by the Arbitrator and the Order of the Objecting Court are hereby set aside. Resultantly, the appeal is allowed.

(AMIT RAWAL)
JUDGE

January 10, 2017
Pankaj*