

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No. 2612 of 2018 (O&M)

Date of decision : May 11, 2018

Punjab State Cooperative Supply & Marketing Federation Limited and Anr

..... Appellants

v.

M/S Satkartar Rice Mills and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. APS Mann, Advocate
for the appellants.

Ajay Tewari, J (Oral)

This appeal has been filed against the order of the Additional District Judge, Barnala accepting objections and directing the appellants to refund certain amounts.

Admitted facts are that respondent No.1 had tendered for milling of rice belonging to the appellants. However, there was a shortfall and the appellants claimed payment for the same and invoked the arbitration. Respondent No.1 chose not to appear and was proceeded against ex-parte. The Arbitrator awarded compensation of the value of the paddy. Thereafter, respondent No.1 filed objections in which, apart from other grounds, one ground (which found favour with the Court) was that as per the contract agreement value of the loss had to be computed on the basis of CMR of rice and could not have been computed on the basis of the

rate for paddy. The Court below, after going through the contract agreement, held that this was an error apparent on the record and consequently upheld the objections to that extent. Hence the present appeal.

Counsel for the appellants has argued that respondent No.1 chose not to appear before the Arbitrator and hence now could not be heard to argue that those facts which it could have brought to the notice of the Arbitrator had it bothered to appear. In some circumstances, this argument would be compelling but the facts are different in the present case. Counsel for the appellants has asserted that the contract provided for computation of loss by a particular formula but while computing the loss a different formula was used. He has argued that though the different formula was used on the directions of the Government but that would not alter the fact that it was not as per the contract which was signed between the parties and merely because respondent No.1 did not appear and did not urge this point would not justify that the appellants could compute the loss in a manner which was not envisaged by the contract agreement and that it was incumbent upon the Arbitrator to have required the appellants to justify the invocation of a separate formula. In my opinion, a unilateral decision could not have been taken even by the government to the prejudice of respondent No.1.

Counsel for the appellants has relied upon Gupta Rice Mill (P) Ltd v. Punjab State Co-operative Supply and Marketing Federation Ltd 2013(3) RCR (Civil) 371, wherein this Court held that if objection regarding jurisdiction is not taken before the Arbitrator in terms of Section 16 of the Arbitration and Conciliation Act, 1996, it cannot be taken in proceedings under Section 34 or in the appeal under Section 37 of the said Act. In my opinion the said decision would not be applicable. In the

present case, it was the duty of the Arbitrator to have examined the invocation of the formula for computation of loss used by the appellants to see if it was in conformity with the contract. Merely because respondent No.1 was ex-parte would not have absolved the Arbitrator of the basic duty of judiciousness.

The second argument raised by counsel for the appellants is that respondent No.1 had deposited the entire amount and, thus, was estopped from filing objections. In my opinion, this also cannot be accepted. A person can always seek correction of a wrong amount. The Court has noticed that it was ascertained that this payment was made since this was the policy of the appellants that only that miller/s could be considered for grant of milling contract who had cleared their previous dues. The mere fact that this ground was not specifically taken in the objections (though this condition is not disputed) would not render the order illegal.

Looking at the totality of the facts and circumstances and without laying down any law, I do not feel persuaded to accept this appeal. Consequently, this appeal is dismissed.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

May 11, 2018
'kk'

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No