

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

FAO-3504-2003 (O&M)

Date of Decision: 13.11. 2019

Punjab State Federation of Cooperative Sugar Mills Ltd and anr.

.....Appellants

VERSUS

M/s Kay Iron Works Pvt. Ltd. and anr.

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Rahul Sharma, Advocate
for the appellants.

Mr. D.K. Singal, Advocate
for the respondents.

JAISHREE THAKUR, J.(Oral)

1. This is an appeal filed under Section 37 of the Arbitration and Conciliation Act seeking to challenge the order of District Judge, Chandigarh dated 08.08.2003 dismissing the objections to the award of the sole Arbitrator dated 16.04.1999.

2. In brief the facts are that the appellant Nakodar Co-operative Sugar Mills Limited, Nakodar entered into an agreement with respondents on 24.10.1991 for setting up an effluent treatment plant at the distillery set up by the Sugar Mill. As respondent No.1 failed to execute the work in terms of the agreement, dispute arose between the parties. The respondent by a registered letter dated 05.11.1998 invoked the Arbitration Clause and called upon the appellant to settle their dispute through an Arbitrator namely Sh. Anil Sahai. Thereafter, as no reply had been received in response to the said letter the respondents appointed Sh. Anil Sahai as a sole arbitrator by letter dated 24.11.1998. On his appointment the Arbitrator invited claims from the

respondent and sent a copy of the same to the appellant for their reply and counter claim if any. This letter was replied by the counsel for the appellant stating that the appointment of the Arbitrator was not in consonance with the agreement and therefore, there was no need to file any reply or counter-claim thereto. The Arbitrator on the basis of the record as available allowed the claim by an award announced on 16.04.1999, which award was challenged by Punjab State Federation of Co-operative Sugar Mills Limited, Chandigarh by filing an objection under Section 34 of the Arbitration and Conciliation Act 1996, the said objections were dismissed leading to the filing of the instant appeal.

3. Mr. Rahul Sharma, learned counsel for the appellant herein would contend that the appointment of the Arbitrator is in contravention to the Arbitration Agreement dated 24.10.1991 and therefore, any award passed by the Arbitrator is without jurisdiction. He further argues that the District Judge has not appreciated the argument as raised that the award is without jurisdiction and therefore, the order of the District Judge too deserves to be set aside.

4. Per contra, Mr. D. K. Singal, learned counsel for the respondent claimant would argue that a registered letter had been sent to the appellant herein asking them to give their acquiescence for the appointment of Mr. Anil Sahai as an Arbitrator within a period of 01 week and on their failure to reply to the said letter, the appointment was valid.

5. I have heard learned counsel for the parties and with their assistance have gone through the pleadings of the case as well as the record. Admittedly an agreement had been entered into between the parties which is available on the record. There was a clause in the Agreement which allows for

arbitration in case of any dispute or differences arising between the parties in connection with the work to be executed. The arbitration agreement is reproduced as under :

“ If any time any question, dispute or difference whatsoever shall arise between the Purchasers and Sellers or any person claiming under them upon or relation to or in connection with this agreement except a to matters the decision for which has been specifically provided, either Party may forthwith give to the other notice in writing of the existence of such question, disputes or difference and the same shall be referred to the arbitration of single arbitrator when the parties may agree upon, otherwise to two arbitrators one to be nominated by each party. The arbitrators shall before proceeding with the reference nominate an umpire to act in case of disagreement. The award of the Arbitrators or the umpire as the case may be shall be final and binding on the parties. This submission shall be deemed to be submission to arbitration within the meaning of the Indian Arbitration Act, 1940 and the Rules made thereunder of any statutory modification or re-enactment thereof for the time being in force.

The Arbitrator/s may from time to time with the consent of the parties enlarge the time for making and publishing the award. Work under the agreement shall, unless the arbitrator/s otherwise directs, continue during the arbitration proceedings.”

The said arbitration agreement stipulates that ***in case of disputes or***

differences arising between the parties the same shall be referred to an arbitration of a single arbitrator when the parties may agree upon and in the failure of any such agreement, the parties were to nominate two arbitrators -one by each party who in turn would refer the matter to an umpire in case of disagreement between themselves.

6. In the instant case, the letter dated 05.11.1998 as addressed by the respondents calls upon the dispute to be referred to the sole Arbitrator Sh. Anil Sahai and the appellant herein was requested to accept the proposal within a period of one week failing which it would be presumed that there was no objection to get the dispute settled through the sole Arbitrator. However, there is also a letter available on the record which has been marked as Exh. R-2 from Advocate Mr. Vinod Sharma addressed to the respondents in response to letter dated 05.11.1998 calling upon them to give their approval for the appointment of Mr. Anil Sahai. The said letter which is available on the record clearly rejects the proposal of the appointment of Mr. Anil Sahai as the Arbitrator. The District Judge while deciding the objections has not taken into consideration the said letter which is available on the record. The terms of the agreement are clear and specific which allow for a sole Arbitrator to be appointed by consensus and in case there is no agreement to a name, each party would be entitled to nominate their own Arbitrator. It is clear that the appointment of the Arbitrator by the respondents is in clear violation of the terms and agreement as entered into between the parties. The appellant herein had not given any acquiescence to the appointment of the Arbitrator as is sought to be argued by the respondent herein. Even during the arbitration proceedings a specific plea had been raised saying that the Arbitrator had not been appointed in consonance with the terms of the Arbitration clause

incorporated in the agreement dated 24.10.1991 entered into between the parties, which argument has been ignored. Consequently this Court has no hesitation in holding that once there was no approval given to the name as suggested by the respondents to appoint Mr. Anil Sahai, the appointment is not in consonance with the Arbitration Clause. Consequently, the award so passed as well as the impugned order are liable to be set aside.

7. In view of above, the award of the Arbitrator as well as the order dismissing the objection petition filed under Section 34 of the Arbitration and Conciliation Act are hereby set aside leaving it open to the parties to avail the remedies in accordance with law to settle their dispute by an appointment of the Arbitrator in accordance with the agreement.

Appeal stands allowed.

13.11. 2019

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.