

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

FAO No.2187 of 2004 (O&M)  
Date of Decision: March 28, 2019

Durga Rice Traders and others

...Appellants

Versus

Punjab State Civil Supplies Corporation Limited and others

...Respondents

**CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR**

Present:- Mr. Mukund Gupta, Advocate  
for the appellants.

Ms. Suman Devi, Advocate for  
Ms. Deepali Puri, Advocate  
for the respondent-PUNSUP.

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**JAISHREE THAKUR, J.**

1. The appellants herein seek to challenge the order dated 11.12.2003 passed by the District Judge, Sangrur dismissing the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for setting aside the award of the Arbitrator dated 10.12.1999.

2. In brief, the facts as stated are, that in the year 1994-95 paddy was allotted to the appellants for milling the paddy and the appellants have to deliver the rice to the FCI on account of PUNSUP and the milling period was up to 28.02.1995, which was later on extended up to 30.06.1995 due to shortage of space with the FCI to store the rice. It is averred that before the

expiry of the milling period, the PUNSUP of its own sold the whole of the paddy to the appellants by introducing the Open Sale Policy against the advance payments and thereafter, a No Dues Certificate was issued to the appellants in the year 1995 stating that nothing is due from the appellants, as the appellants have already delivered whole of the rice and has made every payment. Thereafter, without any prior notice to the appellants, the PUNSUP has raised certain dispute and referred the matter to the Arbitrator and Arbitrator was appointed. The Arbitrator had commenced its proceedings at Ludhiana and did not issue notices to all the partners and the appellants were not given any opportunity of hearing and to file its written statement before the Arbitrator. The appellants were not aware of the any arbitration proceedings commenced by the Arbitrator, therefore, the Arbitrator in toto allowed the claim of the PUNSUP giving ex parte award of ₹ 15,58,506.56, as claimed by the PUNSUP vide order dated 10.12.199. When the appellants came to know that an ex parte award has been given, the appellants challenged the same by filing objections under Section 34 of the Act, which came to be dismissed by the District Judge, Sangrur, which has led to the filing of the instant first appeal.

3. Mr. Mukund Gupta, learned counsel appearing on behalf of the appellants submits that both the award as well as the order of the District Judge, dismissing the objections, are liable to be set aside, as the very subject matter of the dispute could not be referred to the Arbitrator. It is contended that as per the clause 17 of the agreement, which pertains to referring disputes and differences to the Arbitrator, it has been clearly stipulated that *“All the disputes and differences arisen out of or in any*

*manner touching or concerning this agreement whatsoever (except as to any matter the decision of which is expressly provided for in the contract) shall be referred to sole arbitration".* It is further argued that in the agreement, it has clearly been mentioned that in case of shortfall or delay, the recovery can be made at the rate of 1 ½ times of the economic cost of shortage in the paddy and if the rice miller failed to supply the rice within the specified time, respondent-PUNSUP would also be entitled to interest @ 21% per annum and the decision of the Managing Director of PUNSUP would be final. It is submitted that the relevant portion of clause 5 and 6 of the agreement have to be read together with the arbitration clause 17. It is argued that a similar issue came up before this High Court in ***CR No.1780 of 2001*** titled as ***Shree Krishna Rice Mills vs. The Punjab State Co-op. Supply & Marketing Federation Ltd. 2003(3) RCR (Civil) 254*** wherein clauses 5 and 6 of the agreement thereunder are pari materia with the clauses in the present agreement, came for judicial scrutiny and it was held as under:-

*"12. Therefore, the combined reading of Clauses 18, 5 & 6 of the aforesaid agreement, clearly show that all disputes between the Markfed and the miller were liable to be referred to the arbitration concerning the agreement except disputes regarding the matters, the decision of which is expressly provided for in the contract. Under Clauses 5 & 6 of the aforesaid agreement, the decision with regard to 1.5 times economic costs and interest @ 21% is clearly provided in the agreement itself and as such, the aforesaid matters were not liable to be referred to the Arbitrator and reference in this regard was beyond the scope of*

*arbitration clauses and the proceedings before the Arbitrator were clearly liable to be terminated on the short ground alone. In such circumstances, neither the Managing Director had any authority to refer aforesaid dispute to the Arbitrator, nor the Arbitrator had any jurisdiction to continue with the proceedings under any circumstances. The observation of the learned Additional District Judge at page 13 of the Judgment that the claim with regard to the economic cost and interest was liable to be decided by the Arbitrator and the dispute is not frivolous, is not based on the appreciation of Clause 18 read with Clauses 5 and 6 of the agreement but he has misinterpreted these clauses and had failed to appreciate the same properly and as such, has misdirected himself. Consequently, the findings of the Additional District Judge on this score cannot be sustained.”*

4. I have heard learned counsel for the parties, apart from perusing the record.
5. For ready reference, relevant portion of clauses 5 and 6 of the agreement entered into in the instant case are reproduced as under:

*“Clause 5*

*(i & ii) xxx xxx xxx*

*iii) In case there is shortfall in the recovery of rice provided in sub-clause (i) above the Miller shall pay to the Punsup the cost of paddy equivalent to the shortfall at the rate of 1 ½ times of the economic cost of paddy.*

*Clause 6*

*(i&ii) xxx xxx xxx*

*iii) xxx xxx xxx In the event of his failure to supply rice within the stipulated period, he shall be liable for an*

*interest 21% per annum on the basis of economic cost of left over quantity/stock of paddy/rice. The decision of the Managing Director in this behalf shall be final."*

6. Clauses 5 & 6 of the agreement entered into in ***Shree Krishna Rice Mills vs. The Punjab State Co-op. Supply & Marketing Federation Ltd. (supra)*** are reproduced as under:-

*"Clause 5:*

*I & II xxx xxx xxx III) In case there is a shortfall in the recovery of rice provided in Sub-clause (1) above the miller shall pay to the Markfed the cost of paddy equivalent to the shortfall at the rate of 1.5 times the economic cost of paddy.*

*Clause 6:*

*I, II & III. xxx xxx xxx In the event of his failure to supply within the stipulated period, he shall be liable for an interest @ 21% on the basis of economic cost of left over quantity/stocks of paddy/rice. The decision of the Markfed Managing Director in this behalf shall be final."*

7. It would also be worthwhile to mention that Special Leave to Appeal (Civil) No.3826 of 2006 filed in the aforesaid judgment in ***Shree Krishna Rice Mills vs. The Punjab State Co-op. Supply & Marketing Federation Ltd. (supra)*** was dismissed.

8. Thus, a reading of the aforesaid clauses clearly reflects that dispute/claim of shortage of rice or delayed supply of rice, are matters which fall in the excepted category, are to be taken up by the Managing Director of the PUNSUP, whose decision would be final.

9. In view of the above, this court is of the opinion that since the disputes were liable to be adjudicated by the Managing Director itself, the

reference to the arbitrator could not have been made and the Arbitrator clearly had no jurisdiction to pass the award. It is held that the disputed matter is covered by Clauses 5(iii) and 6(iii) of the agreement and as such, the award of the arbitrator is without jurisdiction. Resultantly, the impugned order passed by the District Judge, Sangrur as well as the award of the arbitrator are hereby set aside.

10. The appeal stands allowed accordingly. However, the Managing Director is at liberty to decide the dispute afresh in accordance with law, after summoning the record from the District Judge as well as the Arbitrator.

**March 28 , 2019**  
*vijay saini*

**(JAISHREE THAKUR)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No