

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

FAO-402-2004 (O&M)

Date of Decision: September 26, 2019

M/s Shiva Rice Mills

.....Appellant

VERSUS

Punjab State Civil Supplies Corporation Limited

.....Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. J.K. Malhotra, Advocate
for the appellant.

Mr. Sandeep Sharma, Advocate
for the respondent.

JAISHREE THAKUR, J.(Oral)

1. The instant appeal has been filed under Section 37 of the Arbitration and Conciliation Act seeking to challenge the order dated 19.11.2003 of the Additional District Judge, Chandigarh dismissing the objections filed by the appellant to the award dated 04.09.2000 passed by the Arbitrator.

2. In brief the facts are that a milling agreement was entered into between the appellant and Punjab State Civil Supplies Corporation Limited on 15.02.1996. As per the agreement, the appellant was to mill the paddy supplied by the respondent-Corporation as per terms and conditions specified in the agreement. A dispute arose between the parties, which were accordingly referred to arbitration in terms of the agreement. The arbitrator awarded an amount of ₹72,112/- to be paid to the respondent-Corporation, which award was challenged by filing objections before the Additional District Judge, Chandigarh and the same was dismissed. Aggrieved, against the afore-said

dismissal of the objection petition, the instant appeal has been filed.

3. The learned counsel appearing on behalf of the appellant submits that a claim petition was filed on the ground that the appellant had been given 70,525 bags of fine quality paddy weighing 45841.25 quintals and after triage of 2% of paddy the net amount of paddy which was delivered to Food Corporation of India was 30099.35 quintals, whereas only 29924.20 quintals of rice was delivered and thereby there was a shortage of 175.16 quintals of rice which was not milled. A claim was raised to collect 1½ times economic cost of the balance un-milled paddy in terms of the agreement. Apart from short supply of rice, other claims regarding sales tax @4.4% and TDS @2.3% on milling and stitching charges were also claimed. The claim petition was contested by stating that the claim was time barred, that the respondent had already delivered the total quantity of rice due and also made payment towards the shortage of the same, of which a sum of ₹1,31,377.50 had already been paid vide DD No.745108 dated 10.07.1996 and the same had been accepted, while also filing a counter claim. A rejoinder was filed and eventually the award was passed holding that an amount of ₹1,02,112/- was due from the miller minus the amount of security lying deposited therein. The objections filed to the award under Section 34 of the Act of 1996 were dismissed resulting in the present appeal.

4. Mr. J.L. Malhotra the learned counsel for the appellant argues that the arbitrator has passed an award which is beyond his jurisdiction as the agreement entered into provided that:-

“7(i). The entire quantity of rice of all varieties delivered by the miller to the Punjab State Civil Supplies Corporation shall conform to the specifications laid down in the Punjab Rice

Procurement (Levy) Order, 1983 as amended from time to time and in any other orders or notifications issued by the State Government from time to time. The stocks of rice not conforming to the specifications so laid down, shall be liable to be rejected in respect of such quantity of rice which is not found to be within the specifications. Miller shall be liable to offer fresh stocks of rice conforming the specifications to Punjab State Civil Supplies Corporation in the event of his failure to supply rice within the prescribed specifications, shall be liable to pay to Punjab State Civil Supplies Corporation in the event of his failure to supply rice within the prescribed specifications, shall be liable to pay to Punjab State Civil Supplies corporation for the quantity of rice short supplied at the penal rate of one and half times the economic cost of the converted variety of Paddy equivalent to the shortages. The decision of the Managing Director, Punjab State Civil Supplies Corporation, Chandigarh (hereinafter referred to as MD) in this behalf shall be final.”

It is submitted that as per clause 7(i), the dispute pertaining to the quantity of short supply of rice would be a dispute to be settled by the Managing Director of the Punjab State Civil Supplies Corporation. The arbitrator while taking into account that the miller had failed to mill 266.77 quintals of paddy i.e. 175.16 quintals of rice supply had held that the appellant miller would be liable to pay an amount of ₹1,02,112/- which decision was beyond his jurisdiction. It is argued that as per the arbitration clause all disputes could be referred to arbitration other than those that fell within the ‘excepted clause matters’ which were to be decided by the Managing Director

himself.

5. Per contra, learned counsel for the respondent submits that there is no infirmity in the award so passed and therefore, the objections were rightly dismissed.

6. I have heard the learned counsel for the parties and have perused the impugned award and the order so passed on the objections.

7. The question of the jurisdiction of the arbitrator to decide the dispute regarding short supply of rice is no longer *res-integra*, having been settled in a judgment rendered in ***Shree Krishna Rice Mills Vs. The Punjab State Co-op. Supply & Marketing Federation Limited, 2003(3) RCR (Civil) 254***, which judgment has subsequently been affirmed by the Supreme Court. In the said judgment, it has been held by the High Court that any dispute regarding economic costs and award of interest, as mentioned in the agreement, is to be decided by the Managing Director himself and there is no need to refer the matter to an Arbitrator. This judgment has been followed subsequently in **District Food and Supplies, Controller, Moga Versus M/s Aggarwal Rice Mills, Baghapurana, Distt. Moga 2010 (1) R.C.R. (Civil) 756** and catena of other judgments.

8. Since it has been held that the questions of short fall of recovery of rice, interest etc. being excepted matters, is to be decided by the Managing Director himself, there is no occasion for the appellants herein to challenge the award of the Arbitrator or the order of the District Judge not awarding interest at the rate of 21%, as claimed by the them. Relevant Paragraph No.12 of the said judgment is reproduced hereunder:-

“12. Therefore the combined reading of clause 18, 5 and 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 Clause 5 and 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 clause 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 Clause 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.”

9. Finding that the judgment applies wholly to the facts of the case, since the Arbitrator has found that there was short supply of rice and has

awarded economic cost at 1.5 % of the same, this Court is of the opinion that the matter could not have been referred to the Arbitrator and the dispute fell for decision within the ambit of the Managing Director to have decided thereon.

10. Consequently, the award dated 04.09.2000 and the order of the Additional District Judge, Chandigarh dated 19.11.2003 are set aside, leaving it open to the appellant herein to take appropriate remedy available under Law.

Appeal stands allowed.

September 26, 2019

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes.
Whether reportable	No.