

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

FAO No.3629 of 2005 (O&M)
Date of Decision: January 24, 2019

M/s Shiva Rice Traders

...Appellant

Versus

Punjab State Civil Supplies Corporation Limited and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. S.K. Singla, Advocate
for the appellant.

None for the respondents.

JAISHREE THAKUR, J.

1. The appellant herein seeks to challenge the order dated 10.02.2005 passed by the District Judge, Faridkot dismissing the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the award of the Arbitrator dated 05.04.1999.

2. In brief, the facts as stated are that respondents and the appellant herein entered into an agreement dated 17.10.1994 for shelling of the paddy pertaining to the year 1994-95. The appellant-Miller had received 69544 bags weighing 45,203.60 quintals of PR-106 paddy and the appellant-Miller had delivered 19000 bags containing 17,924.40 quintals of PR-106 upto 30.06.1995 and 11,699 bags weighing 10,977-32-000 quintals of rice after 30.06.1995 and thus, 778.97 quintals remained due from the

appellant-Miller. Thereupon, a dispute arose between the appellant matter and the respondent-PUNSUP and the matter was referred to the Arbitrator, who passed the award dated 05.04.1999 directing the miller to pay the amount of ₹ 11,45,395/- with interest at the rate of 21% per annum w.e.f. 01.07.1995 onwards and at the rate of 18% per annum from the date of the award till the date of recovery/payment. Aggrieved, the appellant challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 *inter alia* taking the plea that the Managing Director had no power to appoint the Arbitrator, as it was the matter within his own jurisdiction. It was claimed that only those matters are to be referred to the Arbitrator, the decision of which is not given in the agreement, apart from raising the contention that the award of the arbitrator deals with the dispute, which is not contemplated or falling within the terms of submission of reference to the Arbitrator. The objections came to be dismissed by the District Judge, Faridkot, which has led to the filing of the instant first appeal.

3. Mr. S.K. Singla, learned counsel appearing on behalf of the appellant 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 arising 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 of the Managing Director or any person appointed by him in this behalf'. 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 1.5 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 appellant-Miller, 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 1.5 times of the economic cost of paddy.

Clause 6

iii) xxx xxx xxx In the event of the failure of the Miller to supply the rice within the stipulated period, he shall be liable for an interest at the rate of 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, Faridkot 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.

January 24, 2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No