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

FAO No.1333 of 2007 (O&M)
Date of Decision: September 23, 2019

The Punjab State Cooperative Supply and Marketing Federation Ltd.

...Appellant

Versus

M/s Hanuman Trading Company and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. N.G. Sharma, Advocate
for the appellant.

Mr. Ishan Gupta, Advocate
for respondent No.1.

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JAISHREE THAKUR, J. (Oral)

1. This is an appeal that has been filed seeking to challenge the order dated 21.08.2006 passed by the District Judge, Sangrur whereby, the objection petition filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for setting aside the award of the Arbitrator dated 12.10.2004 has been dismissed.

2. In brief, the facts are that the appellant entered into an agreement dated 21.10.1994 with M/s Hanuman Trading Company, Khanauri (for short 'respondent No.1-Miller') for custom milling of the paddy. The appellant supplied 45291 bags weighing 29439.15 quintals of fine paddy and 462 bags weighing 300 quintals of IR-8 paddy. Respondent

No.1-Miller in turn had to deliver 19532.81 quintals of rice, which it failed to do so. As respondent No.1-Miller failed to shell 3033 bags weighing 1971.45 quintals of paddy, a loss was incurred by the appellant. In view of the dispute that arose between the parties, the matter was referred to arbitration in terms of the agreement dated 21.10.1994. The appellant submitted a claim statement, claiming ₹ 1,60,145/- for loss on account of sale of paddy, ₹ 18,330/- on account of shortage of 39.43 quintals of paddy, ₹ 3,29,210/- as costs of 23515 gunny bags, ₹ 77,644/- as costs of 3030 bags, ₹ 1,24,880/- on account of quality cut, ₹ 1,63,009/- on account of interest, ₹ 4898/- as income tax and ₹ 3760/- on account of interest. Thus, a total amount of ₹ 8,84,367/- was claimed by the appellant. Since, an amount of ₹ 4,29,012/- was payable to respondent No.1-Miller, after adjusting the said amount, a total claim of ₹ 4,55,355/- along with interest of ₹ 1,63,009/- was claimed. A reply was filed thereto by respondent No.1-Miller and on appreciation of the evidence, an award for the recovery of ₹ 49,434/- was passed against respondent No.1-Miller with interest at bank rate w.e.f. 20.10.1995. Aggrieved against the award, the appellant filed objections stating that respondent No.1-Miller converted the paddy weighing 1971 quintals, 45 kg into rice and had not supplied the same, as such, the appellant was entitled to recovery an amount at the rate of ₹ 743.80 per quintals of rice along with interest, as per the guidelines framed by the Government dated 06.06.2000 whereas, respondent No.1-Miller filed objections challenging the interest that had been levied. From the pleadings of the parties, issues were framed and the matters were taken up for consideration. The District Judge, Sangrur, on appreciation of the evidence dismissed both the objections filed i.e. by the appellant as well as by respondent No.1-Miller. Aggrieved against the dismissal of the objections, the instant appeal has been filed by the appellant.

3. Learned counsel appearing on behalf of the appellant argues that the Arbitrator had misconducted himself, as he had not noticed that respondent No.1-Miller had failed to adhere to the schedule of milling, while illegally declining payment by respondent No.1-Miller towards the economic cost of paddy, which became short on account of driage of paddy sold to respondent No.1-Miller. It is argued that the Arbitrator erred in not adhering to the instructions dated 06.06.2000 by which Markfed, the appellant herein, would be entitled to recover the cost of rice less supplied by respondent No.1-Miller at the rate of ₹ 743.80 per quintals.

4. Per contra, learned counsel appearing on behalf of respondent No.1-Miller would argue that there is no infirmity in the award and, therefore, submits that no interference is called for.

5. I have heard learned counsel for the parties and with their assistance have gone through the record and the order so impugned.

6. The appellant herein is aggrieved that the Arbitrator did not allow the cost of paddy as per the notification No.RP-2(838)-2000/788 dated 06.06.2000 and, therefore, had misconducted himself. A perusal of the milling agreement that has been placed on record would show that in case, there was failure to supply rice within the stipulated period or shortfall thereto, the Miller would be liable to pay for the quality of rice short supplied at the penal rate of one and half times the economic cost of the converted variety of paddy and the decision of the Managing Director

would be final. A perusal of the award so passed would reflect that cost of rice recoverable had been taken at the rate of ₹ 743.80 per quintals, which is in consonance with the guidelines issued vide notification dated 06.06.2000. Even otherwise, the said notification dated 06.06.2000 could not have been applied retrospectively to an agreement, which had been duly entered into between the parties on 21.10.1994. As far as the award passed regarding the question of payment of interest on account of less delivery of rice is concerned, Clause 6 specified that in the event of the failure of delivery of rice within the stipulated period, respondent No.1-Miller shall be liable to pay interest at the rate of 21% on the basis of economic cost of left over quantity/stocks of paddy/rice and the decision of the Managing Director in this behalf shall be final. Therefore, in fact, the Arbitrator was not competent to decide the issue of interest as well. The District Judge, Sangrur rightly held that the Arbitrator had awarded amount only on account of bardana, quality cut, income tax and towards cost of 3033 bags.

7. In view of the above, finding no infirmity in the impugned order, the appeal is hereby dismissed.

(JAISHREE THAKUR)
JUDGE

September 23, 2019
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No