

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

FAO No.1911 of 2006 (O&M)

Date of Decision: December 20, 2019

Kailash Verma

...Appellant

Versus

Punjab Agro Industries Corporation and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. H.S. Saggu, Advocate
for the appellant.

Ms. Ritam Aggarwal, Advocate
for respondent No.1.

JAISHREE THAKUR, J.

1. This appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') seeking to challenge the order dated 31.01.2006 passed by the District Judge, Sangrur whereby, the objections filed by the appellant under Section 34 of the Act for setting aside the award of the Arbitrator, has been dismissed.

2. In brief, the facts of the case are that respondent No.1-Punjab Agro Industries Corporation (for short 'the PAIC') entered into an agreement dated 15.11.1999 with the appellant-Miller for the custom milling of paddy and the rice was to be delivered to the Food Corporation of India in the account of respondent No.1. As per respondent No.1-PAIC, 42399 bags of paddy weighing 27599.35 quintals were stored in the premises of the

appellant-Miller and the appellant-Miller was to deliver 18280.11.685 quintals of rice to the FCI, but the appellant-Miller delivered only 1135.80 quintals of rice and the remaining 17,144.31.685 quintals of rice was still due and pending from the appellant-Miller. When the appellant failed to deliver the remaining rice, a committee of the officials of respondent No.1-PAIC made physical verification on 06.03.2000 of the stock of paddy lying in the rice sheller and on the basis of the inspection, submitted a report that no paddy was found. On account of a dispute that arose between the parties, an Arbitrator was appointed, who assessed the value of the paddy, as against the rice which was not supplied by the appellant as ₹ 1,62,34,125/- and by adding the price of gunny bags and other items, held that the appellant was to pay ₹ 1,86,52,688/- to respondent No.1-PAIC. Aggrieved against the said award, objections under Section 34 of the Act were filed by the appellant, taking an objection therein that the Arbitrator did not have the jurisdiction to decide the question of short supply of rice as it fell within the “excepted clause” matter. However, the objections were dismissed, leading to the instant appeal being filed by the appellant.

3. Learned counsel appearing on behalf of the appellant contends that the judgment as rendered in ***Shree Krishna Rice Mills vs. The Punjab State Coop. Supply & Marketing Federation Ltd. 2003(3) RCR (Civil) 254*** has held that the matters falling within the “excepted clause” could not be decided by the Arbitrator, as the matter was within the purview of the M.D. It is argued that the Arbitrator has taken note of the argument raised that the matter regarding short supply of rice fell within the “excepted clause”, but has gone ahead and decided the claim of respondent No.1-PAIC. It is also

argued that the question of interest of 21% on the price of rice delivered short also could not be decided by the Arbitrator as it is again fell within the “excepted clause”, however, once again while taking note of the aforesaid clause, has illegally decided the issue.

4. Per contra, learned counsel appearing on behalf of respondent No.1-PAIC would submit that there was a short supply of rice, therefore, the Arbitrator correctly allowed the claim along with the claim for short supply of rice and bardana , etc. along with interest.

5. I have heard learned counsel for the parties and with their assistance have gone through the pleadings of the case.

6. Admittedly, the appellant herein was to mill the paddy and deposit the rice with the FCI in the account of respondent No.1-PAIC. The appellant failed to mill the paddy, which had been stored in the rice sheller of the appellant for custom milling and consequently, failed to deposit the rice. An inspection that was carried out showed that there was no paddy lying in the rice sheller and consequently, a claim petition was filed seeking payment against the rice due. As per the statement of account of the rice sheller M/s Sahara Rice Mill, net rice due was 17144.31.685 Qntls. Apart from the price towards the shortage of rice, amount recoverable was also towards Bardana, milling charges, stitching charges, refund of security, value of wooden crates, value of poly cover, value of poly sheets.

7. Clause 9.1 of the agreement reads as under:-

“9(i) The entire quantity of rice of all varieties delivered by the miller to the Government shall conform to the specifications laid down in the Punjab Rice Procurement (levy) Order, 1983, as amended from time to time or any

order order or notification 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 loud to be with in the specifications and the miller shall be liable to pay to the government or procuring agency for the quantity of rice short supplied, a penalty at the custom milling rate fixed by Govt. of India plus 21% interest from the date it becomes payable till the date of actual realization of the converted variety of rice. The decision of the Director Food and Supply (hereinafter referred to as the M.D. in this behalf shall be final).”

The arbitrator was conscious of the argument raised that he could not decide the issue of short supply of rice as would be evident from the reading of the paragraph reproduced hereunder:

“Clause 9(i) of the agreement lays down that the decision of the Managing Director shall be final regarding the recovery of rice short delivered at the custom milled rate fixed by the Govt. of India. Undisputedly, the Managing Director of the claimant has not taken any decision in this case to recover the price of the rice short delivered at the custom milled rate fixed by the Govt. of India. This dispute can only be decided by the Managing Director of the claimant and this dispute can neither be referred to arbitration nor the arbitrator has the jurisdiction to entertain this dispute and as such the claim of the claimant, to recover the price of the remaining resultant rice at the custom miller rate fixed by the Govt. cannot be allowed in arbitration. But it does not mean that the claimant is not entitled for the recovery of the price of the paddy, the resultant rice of which has not been delivered by the respondent FCI in the account of the claimant. The

claimant is entitled for the recovery of the price of paddy, which remained with the miller unmilled as there is no provision in the agreement that the claimant cannot recover the price of the remaining paddy from the miller.”.

8. The reasoning of the Arbitrator in allowing the claim towards short delivery of rice is indeed a strange one, despite being aware of the “excepted clause” of the agreement, which clearly specifies that the Managing Director is to take a decision regarding the short supply of paddy and interest thereon. The Arbitrator has gone on to allow the claim of short supply of rice on a reasoning that the claimant is entitled to recover the amount. The Arbitrator has totally ignored the terms and conditions of the agreement.

9. A reading of clause 9.1 of the agreement lays down that the decision of the Managing Director shall be final regarding the recovery of rice short delivered, and, therefore, this fell within the “excepted clause” of the agreement and could not have been referred to the Arbitrator. The judgment rendered in ***Shree Krishna Rice Mills vs. The Punjab State Coop. Supply & Marketing Federation Ltd.(supra)*** is fully applicable to the present case, and, therefore, in the view of this court, the dispute ought to have been adjudicated by the Managing Director himself regarding the claim of short delivery of rice. The award of the Arbitrator pertaining to recovery qua the short delivery of rice is hereby set aside. However, apart from the short supply of paddy, claim petition was also filed qua the other claims, as discussed by the Arbitrator in para 15 of its award, which could have been referred to the arbitration and a rightful decision has been taken thereon, which warrants no interference by this court.

10. Therefore, the award of the Arbitrator is severed to the extent that the Arbitrator had no jurisdiction to decide the issue pertaining to short supply of rice and which fell within the “excepted clause” of the agreement and a decision should have been taken thereon by the Managing Director, while upholding the award of the Arbitrator qua the other claims.

11. The appeal stands partly allowed accordingly, leaving it open to the parties to refer the matter to the Managing Director qua the shortfall of rice supplied.

December 20, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No