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

FAO No. 3227 of 2006 (O&M)
Date of decision: 15.10.2019

Punjab State Civil Supplies Corporation Limited
...Appellant

Versus

M/s Sudeshi Rice & Oil Mills and others
...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Naresh Gopal Sharma, Advocate,
for the appellant.

Mr. Suvir Sehgal, Advocate, with
Mr. Akhilesh Vyas, Advocate,
for respondents No.1 and 2.

JAISHREE THAKUR, J.

1. The instant appeal has been preferred against the judgment dated 5.12.2005 passed by the District Judge, Amritsar, whereby the objection petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short **'the Act')** against the award of the Arbitrator dated 13.12.2002 has been allowed.

2. In brief, the facts are that a milling agreement dated 29.11.1996 was entered between the appellant—Punjab State Civil Supplies Corporation Limited (PUNSUP) and the respondents—Miller. As per the agreement, the Miller was entrusted with paddy for milling. As the Miller was not able to deliver due rice within the stipulated period, a dispute arose between the parties and the appellant herein claimed an amount of ₹31,869/-

along with interest. An Arbitrator was appointed, who passed his ex-parte award holding that the Miller was liable to pay a sum of ₹33,000/- including interest on late delivery of rice. Aggrieved against the said award, objections were filed by the respondents—Miller by taking several grounds It was submitted that the Arbitrator had wrongly held that an amount of ₹33,000/- was recoverable, including interest on late delivery of rice. It was submitted that the award was liable to be set aside on the grounds that no notice had been sent to the Miller by the Arbitrator; that in fact, the proceedings before the Arbitrator had been adjourned sine-die to await the decision of the High Court on the issue of 'driage' and once the proceedings had been resumed, it was incumbent upon the Arbitrator to serve fresh notice upon them but no such notice of any hearing or meeting was given; that the Arbitrator had ignored the counter-claim lodged by the respondent—Miller and that the Arbitrator had failed to submit his award within the statutory period of four months.

3. The objections were allowed and the award of the Arbitrator was set aside on the ground that the Arbitrator had not followed the due process of law and that no adequate notice had been served for resumption of the proceedings, which were adjourned sine die. Aggrieved against the order, the instant appeal has been filed.

4. Mr. Naresh Sharma, learned counsel for the appellant herein, contends that the respondent—Miller, who had entered into an agreement dated 29.11.1996 for custom milling of the paddy, but did not adhere to the schedule for delivery and, therefore, was liable to pay one and half of times the economic cost of balance paddy, costs of bags lying with the Miller as

well as the sales tax etc. It is contended that the District Judge was not within his jurisdiction to re-appreciate the evidence, which has been thoroughly gone into by the Arbitrator, while passing the award.

5. Per contra, Mr. Suvir Sehgal, learned counsel appearing on behalf of the respondents, vehemently urges that there is no infirmity with the order of the District Judge in allowing the objection and setting aside the award on the ground that the principles of natural justice has not been followed.

6. I have heard learned counsel for the parties and with their assistance have perused the pleadings of the case as well as the impugned judgment.

7. There is no dispute to the principle, as advanced by the learned counsel for the appellant, that the District Judge cannot re-appreciate the evidence and is not to sit as a court of appeal on the award of the Arbitrator. This is the settled law as held in the case of **Oil and Natural Gas Corporation vs. Saw Pipes (2003) 5 SCC 705,** which ratio has been subsequently followed **in J.G. Engineers Pvt. Ltd. v. Union of India (2011) 5 SCC 758** and **P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd., 2012(4) R.C.R.(Civil) 379 : (2012) 1 SCC 594.** However, this Court is of the opinion that the District Judge will be well within his jurisdiction to see whether or not the principles of natural justice had been followed and whether the parties had been given notice of the arbitration proceedings within the meaning of Section 34 (2) (1) (iii) of the Arbitration and Conciliation Act, 1996, which is re-produced as under:-

"***34 Application for setting aside arbitral award. —***

xx xx xx

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application furnishes proof that—

xx xx xx

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;"

8. In the present case, the District Judge seized of the objections framed a question of law, as to whether the arbitral award dated 13.12.2002 was liable to be set aside on the grounds mentioned therein. One of the partners, namely Rajiv Juneja stepped into the witness box as AW-1, who deposed in his affidavit exhibit A1 that "*the case was adjourned sine die by the Arbitrator for awaiting the orders of the Hon'ble High Court on the issue of driage and after the resumption of the case, the Arbitrator never sent any notice to them, requiring them to appear before him."* It is a conceded position that after claim petition had been filed, an Arbitrator was appointed, notice was sent to the respondent—Miller, who appeared and contested the claim of the appellant. However, the proceedings were stayed before the Arbitrator on account of the proceedings that were pending before the High Court pertaining to the question whether any benefit could be allowed to the miller on account of 'driage' of paddy. Admittedly, the Arbitrator on resuming the proceedings did not issue any notice to the respondent Miller as per Section 34 (2) (a) (iii) of the Act.

9. The award of the Arbitrator can be set aside if proper notice has not been given of the arbitral proceedings or in case a party is unable to present his case. Even otherwise, an award can be set aside if it is in conflict with public policy of India, which term would also include that the basic

notion of justice has not been followed. The judgment rendered by the Supreme Court in **Oil and Natural Gas Corporation vs. Western Geco International Limited 2015 AIR (SC) 363** has held that as under:-

> "*28. Equally important and indeed fundamental to the policy of Indian law is the principle that a Court and so also a quasi-judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Besides the celebrated* ***'audi alteram partem'*** *rule one of the facets of the principles of natural justice is that the Court/authority deciding the matter must apply its mind to the attendant facts and circumstances while taking a view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording reasons in support of the decision which the Court or authority is taking. The requirement that an adjudicatory authority must apply its mind is, in that view, so deeply embedded in our jurisprudence that it can be described as a fundamental policy of Indian Law.(emphasis supplied)*
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> *29. No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a Court of law. Perversity or irrationality of decisions is tested on the touchstone of Wednesbury's principle of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a Court of law often in writ jurisdiction of the Superior courts but no less in statutory processes where ever the same are available."*

10. In the instant case, once the matter had been adjourned sine die and was taken up for hearing thereafter, it became incumbent upon the

Arbitrator to have issued notice regarding resumption of proceedings. The basic tenets of the rules of natural justice has not been followed and the ex-parte award cannot be sustained.

11. Consequently, holding the award having been passed in contravention of the procedure to be followed, would not be sustainable. The District Judge has passed a well reasoned judgment. There is no infirmity or illegality in the same. Hence, the appeal is dismissed.

15.10.2019 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned Yes
Whether reportable No