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

FAO No.5654 of 2005 (O&M)
Date of Decision: January 24, 2019

Rajesh Garg

...Appellant

Versus

Punjab Agro Industries Corporation Ltd. (PAIC) and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Mukund Gupta, Advocate
for the appellant.

Ms. Geeta Sharma, Advocate
for respondent No.1.

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JAISHREE THAKUR, J.

CM-26507-CII-2005

Allowed as prayed for, subject to all just exceptions.

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1. The appellant herein seeks to challenge the order dated 14.12.2005 passed by the District Judge, Sangrur dismissing the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the award of the Arbitrator dated 20.01.2003.

2. In brief, the facts as stated are that respondent-PAIC and the

appellant herein entered into an agreement dated 26.11.1999 for shelling of the paddy in the year 1999-2000. It is stated that as per the agreement, the respondent-PAIC was to supply 44,531 bags containing 28,945.15 quintals of paddy for converting into rice weighing 19199.318 quintals. The appellant-Miller delivered 5117.10 quintals of rice packed in 5400 bags and did not deliver 14082.21 quintals of rice. Thereupon, a dispute arose between the appellant matter and the respondent-PAIC and the matter was referred to the Arbitrator, who passed the award dated 20.01.2003 directing the miller to pay the amount of ₹ 1,40,59,332/- with future interest at the rate of 21% per annum w.e.f. 01.09.2000 till the date of recovery. 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 dealt 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, Sangrur, which has led to the filing of the instant first appeal.

3. Mr. Mukund Gupta, 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 22 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 the sole arbitration of the Managing Director PAIC 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, the recovery can be made at the price of rice fixed by FCI with interest at the rate of 21%, which would be equivalent to the shortfall and if the appellant-Miller failed to supply the rice within time, respondent-PAIC would be entitled to interest @ 21% per annum for the first year of default and @ 30% for the subsequent period on the custom milled price fixed by the Govt. of India and the decision of the Managing Director of PAIC would be final. It is submitted that the relevant portion of clause 8 and 9 of the agreement have to be read together with the arbitration clause 22. 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 PAIC 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 mattes 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. Per contra, learned counsel for the respondent-PAIC argues that the award of the Arbitrator is in consonance with the agreement entered into between the parties and the objections of the appellant have been rightly dismissed by the District Judge, Sangrur, while praying that the instant appeal too liable to be dismissed.

5. I have heard learned counsel for the parties, apart from perusing the record.

6. For ready reference, relevant portion of clauses 8 and 9 of the agreement entered into in the instant case are reproduced as under:

> *"Clause 8*
> *(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 PAIC the price of rice fixed by FCI plus interest at the rate of 21% from the date it become payable till the date of actual realisation equivalent to the shortfall.*
> *Clause 9*
> *iii) xxx xxx xxx In the event of his failure to supply rice within the stipulated period, he shall be liable for an interest @ 21% for the first year of default and @ 30% for the subsequent period on the custom milled rice fixed by Govt. of India from the date it become payable till the date of actual realization towards the left over quantity/stocks of paddy. The decision of the Managing Director PAIC in this behalf shall be final.*

7. 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 PAIC 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 PAIC Director in this behalf shall be final."*

8. 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.

9. Thus, a reading of the aforesaid clauses clearly reflect 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 PAIC, whose decision would be final.

10. 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 8(iii) and 9(iii) of the agreement and as such, the award of the arbitrator is without jurisdiction. Resultantly, the impugned order passed by the District Judge, Sangrur as well as the award of the arbitrator are hereby set aside.

11. 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.

(JAISHREE THAKUR)
JUDGE

January 24, 2019
vijay saini

Whether speaking/reasoned Yes/No
Whether reportable Yes/No