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

FAO No.5485 of 2005 (O&M)
Date of Decision: January 24, 2019

M/s Mithan Lal Kalra Rice and General Mills

...Appellant

Versus

The Punjab State Civil Supplies Corporation and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

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

Mr. Aman Sharma, Advocate
for the respondent-PUNSUP.

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JAISHREE THAKUR, J. (Oral)

1. The appellant herein seeks to challenge the order dated 22.09.2005 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 07.05.2003.

2. In brief, the facts as stated are that respondents and the appellant herein entered into an agreement dated 08.07.1996 for shelling of the paddy pertaining to the year 1995-96. The respondent-PUNSUP supplied 3900 bags weighing 2418 quintals of common variety of paddy and 1150 bags weighing 71470 quintals of fine paddy to the appellant-Miller on 26.07.1996 for shelling. As per the terms of the agreement, rice

was to be delivered as per the schedule given in the agreement and in case of failure to do so, the appellant-Miller would be liable to pay interest @ 21% per annum on the basis of economic cost. PUNSUP issued notice to the appellant on 11.01.1998 calling upon it to pay ₹ 5,57,344/- on the ground that the appellant-Miller failed to deliver the entire rice within the stipulated period. On failure to pay the amount as claimed, the Managing Director invoked the arbitration clause 20 of the agreement and thereafter, appointed Sh. V.P. Gupta as Arbitrator. Claim was filed, which was duly contested, while filing a counter-claim. On consideration of the evidence produced by both the parties, arbitration award dated 22.05.2003 came into effect ordering the appellant-Miller to pay an amount of ₹ 6,06,519/- along with interest @ 21% per annum to the respondent-PUNSUP. Aggrieved, the appellant challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 *inter alia* taking pleas that transportation charges could not be recovered from the Miller, the Managing Director had no power to appoint the Arbitrator for the enforcement of the penal clauses, as it was the matter within his own jurisdiction, apart from taking the plea of limitation on the ground that the reference had to be made within a period of three years, which had not been done. 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 20 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 or any person appointed by him/her 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 time, respondent-PUNSUP would be entitled to interest @ 21% per annum on the economic cost of the left over quantity of paddy rice 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 20. 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 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-PUNSUP 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, Faridkot, 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 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 ½ times of the economic cost of paddy.*
>
> *Clause 6*
>
> *i) The entire quantity of rice of all varieties delivered by the Miller to the PUNSUP shall conform to the specifications laid down in the Punjab Rice Procurement (Levy) Order, 1983 as amended from time to time and in any other orders or notifications issued by the State Government from time time. The stock 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 found to be with in the specifications and the Miller shall be liable to offer fresh stocks of rice conforming to the specifications to the PUNSUP. In the event of his failure to supply rice within the prescribed specifications, shall be liable to pay to the PUNSUP for the quantity of rice short supplied at penal rate of one time the economic cost of the converted variety of paddy equivalent to the shortages. The decision of the Managing Director, Punjab State Civil Supplies Corporation Ltd. (hereinafter referred to as the MD PUNSUP) 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 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 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 or claim or shortage of rice, variation in specification of the rice provided by the Miller/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.

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 economic cost, award of interest etc. is covered by Clauses 5(iii) and 6(i) 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.

11. The appeal stands allowed accordingly.

(JAISHREE THAKUR)
JUDGE

January 24, 2019
vijay saini

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