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

CWP-23650-2014

Date of Decision: July 04, 2019

Punjab Cooperative Supply & Marketing Federation Ltd. ... Petitioner
vs.

State of Punjab & Ors

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Anuj Ahluwalia, Advocate
for the petitioner.

Ms. Ambika Bedi, A.A.G.Punjab.

Ms. Jagdeep Bains, Advocate
for respondents No.4 and 5.

Respondent No.6 proceeded against *ex parte*
vide order dated 10.03.2015.

ARUN MONGA, J.(ORAL)

Petitioner, (Markfed) a State Government Public Sector undertaking, seeks quashing of appellate order dated 01.10.2013 (Annexure P-7), passed by respondent No.2 (Additional Registrar (I), Cooperative Societies, Punjab) whereby, arbitration order dated 05.03.2012 (Annexure P-2) passed by respondent No.3 (Joint Registrar Cooperative Societies, Patiala) dismissing arbitration reference seeking an award against respondents No. 4 to 6 for recovery of loss of ₹28,22,569/-, suffered due to negligence in maintaining stock, has been upheld, primarily on the ground of delay and laches.

2. Succinctly, the facts leading to the filing of the present writ petition are that respondents No.4 and 5 while working in the Branch

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Office of Markfed were in the custody of wheat crop for the year 2000-2001. The wheat stock got damaged due to their negligence and was rejected by the F.C.I. The damaged wheat stock was then sold by way of auction/tenders at a very low price which was below the price of F.C.I. Huge loss was, thus, suffered by the petitioner.

3. To recover its loss, petitioner, almost after lapse of 10 years, filed an arbitration application in year 2010 (date not clear) under Sections 55/56 of the Punjab Cooperatives Societies Act, 1961, seeking an award against respondents No.4 and 5 for an amount of ₹28,22,569/-along with interest @ 21% per annum. However, the Arbitrator dismissed the Arbitration application of the petitioner vide his award dated 05.03.2012 (Annexure P-3).

4. Aggrieved, petitioner filed an appeal, belatedly, under Section 68 of the Punjab Cooperative Societies Act, 1961 alongwith application under Section 5 of the Limitation Act for condonation of delay of 368 days in filing the appeal.

5. Vide an order dated 01.10.2013 (Annexure P7), the application seeking condonation of delay as well as appeal was dismissed by the Additional Registrar, Cooperative Societies, Punjab.

6. Official respondents No.1 to 3 i.e. State of Punjab and office of Registrar Cooperative Societies in their return have taken an objection that the original arbitration application filed by the petitioner being beyond limitation of three years, therefore, the writ petition also deserves to be dismissed.

7. Respondents No. 4 and 5, in support of their case, have also filed their return and following grounds have been taken for dismissal of

the writ petition:

- (1) that petitioner Markfed did not avail any alternative remedy of filing the revision petition under Section 69 of the Punjab Cooperative Societies, Act, *ibid.*;
- (2) that the Arbitration proceedings initiated against respondent No.4 (since retired on 31.03.2008) and legal representatives of S.S.Cheema are not maintainable as the matter to be adjudicated by the Court;
- (3) that the limitation for filing the Arbitration reference is 03 years while the same has been initiated after a period of 10 years from the date of procurement of wheat;
- (4) that the appeal under Section 68 of the Punjab Cooperative Societies Act, 1961 filed by the petitioner was after a period of 368 days whereas the statutory limitation is 60 days from the date of passing of the order by an Authority.
- (5) that the petitioner has not approached the Court with clean hands.

8. I have heard learned counsel for the petitioner and carefully perused the record.

9. Impugned herein is an order dated 01.10.2013 (Annexure P-7), whereby, the appeal against the rejection of claim by the Arbitrator of the petitioner has been dismissed on the ground that the same was filed after a period of limitation. Petitioner states that appeal has been dismissed without considering the reasons of delay, as stated in the application for condonation of delay filed alongwith the appeal.

10. Be that as it may, concededly, the arbitration reference qua the claim sought to be adjudicated in the arbitration proceedings was entered for the first time in the years 1999-2000, 2000-2001 and 2001-2002. By any stretch of imagination, no amount of latitude can justify the

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filing of the arbitration proceedings after a period of 10 years of the cause of action having arisen to the petitioner and, therefore, the arbitration award has been rightly rendered against the petitioner rejecting its claim.

11. Even otherwise, having gone through the award dated 05.03.2012 (Annexure P-2), I am of the view that even if the petitioner was to be given the benefit of condonation of delay in filing the appeal, there is nothing on merits that warrants the interference of this Court under the extraordinary writ jurisdiction at this stage in view of the reasoning recorded for rejection of the claim of the petitioner in the award. Operative part of the award is reproduced below for ready reference:

“From the Ld. Counsel of the respondent No.1 that this case is time barred is cannot be heard. He has said that respondent No.1 filed the reply on 07.06.2011 and after that so, many dates were given. But markfed has not filed any replication nobody came on behalf of the respondent and case was dismissed in default. But on their request the case was again re-open but no replication has been filed. The Ld. Counsel of the respondent that the predecessor has fixed the case for final Arguments. After so, many dates Ld. Counsel for the markfed came present. The Ld. Counsel of the respondent No.1 has said that his written argument may be accepted as the part of the argument. Mainly the case is time barred and markfeds high officers tried to fixe illegal responsibility on the respondent. Respondent may be exonerated and action may be taken against the responsible officers of the Markfed. I have heard the case markfed has not produced any evidence. For this respondent may be responsible. Respondent No.2 has been died on 23.10.2010 but

marked has not moved any application to be made party of his successors. Respondent No.1 produced reply and annexed ruling that this case is time barred. Accordingly to circular produced by respondent No.1 he cannot be held responsible. According to the reply of respondent No.1 in para No.9 according to the decisions in this case there is no basis to give decision against respondent. So, according to the above said I exonerated respondent and the case may be filed in the office. The decision which was held reserve for 24.02.2012 has been recorded today on 05.03.2012.”

12. On merits of the case, reference may be had on my opinion per another judgment rendered by me in CWP-4405-2014, extracted hereinafter :-

“Having heard arguments of respective learned counsels on both sides and after perusal of rival pleadings, I am of the view that lackadaisical approach in issuing the charge-sheet(s), after a lapse of 4-6 years of having come to know of the loss/damage of food-grains, though may not ex-facie be a ground to exonerate a delinquent employee, but benefit of delay on the part of employer must ensue to an employee. It unfairly puts an employee in a situation where he is unable to adduce proper evidence, which in normal course would have been otherwise available at the relevant time. Particularly, in a case where the charges are with respect to loss/ damage to the wheat stocks/ perishable goods, which by its nature do not have a shelf life beyond a certain period. Reliance may be placed on judgment of Hon'ble the Supreme Court rendered in 'State of Punjab vs. Chaman Lal Goyal' reported as 1995 (2) SCC 570, wherein it has been held:-

“10. Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the

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interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, malafides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing.”

13. In the present case, during the inordinate delay of instituting the arbitration application by Markfed, respondents No.4 and 5 (against whom arbitration claim was filed), retired on 31.03.2008 and expired on 23.10.2010, respectively. Arbitration claim pertains to the wheat stocks for the crop year 2000-2001 procured by Markfed at Branch Office Lehragaga. The arbitration proceedings, as is apparent from arbitration application dated 2010, were initiated after a period of 10 years from the date of procurement of wheat, which is a perishable commodity, and starts deteriorating from the date of purchase itself. Arbitration reference has, therefore, been rightly dismissed against the petitioner/Markfed by the Arbitrator.

14. In view of the above, this writ petition is also dismissed being devoid of merits. No order as to costs.

July 04, 2019
smriti

(ARUN MONGA)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether Reportable	: Yes/No