

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

FAO No. 10325 of 2014 (O&M)

Date of Decision: 02.04.2019

Punjab State Civil Supplies Corporation (PUNSUP) and another

..... Appellants

VERSUS

M/s Guru Tegh Bahadur Rice Mill, Bhawanigarh road, Samana and others

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Naveen Gopal Sharma, Advocate, for
Mr. Mehardeep Singh, Advocate,
for the appellants.

Mr. Gaurav Sharma, Advocate
for Mr. Ashok Verma, Advocate,
for respondent No.1.

JAISHREE THAKUR, J.

1. This is an appeal that has been filed seeking to challenge the judgment dated 05.05.2014 passed by Addl. District Judge, Chandigarh whereby objections filed under Section 34 of the Arbitration & Conciliation Act, 1956 (hereinafter referred to as 'the Act') by the respondent Miller for setting aside the award dated 06.02.2012, has been allowed.

2. In brief, the facts that required to be noticed: that a milling agreement dated 07.10.1994 was entered into between the parties for custom milling of paddy for the crop year 1994-95 subject to the conditions of

availability of the space with the Food Corporation of India during the contract period. The contract was valid and in force upto 28.02.1995. In terms of the contract, the paddy was to be milled and custom milled rice was to be sent to the godowns of Food Corporation of India, who refused to take delivery of the same on account of shortage of space. The District & Food Supply Controller, Punjab unilaterally took a decision to extend the delivery period from 28.02.1995 to 30.06.1995. After refusal by Food Corporation of India to accept the milled rice, a dispute arose between the parties on account of the fact that a claim was made by the Corporation against the miller for a sum of ₹ 1,57,244.95 along with interest @ 15% w.e.f. 01.01.2001 by stating that the miller-respondent herein failed to supply the entire quantity of rice within the stipulated period. An award was passed against the miller and aggrieved against the said award, objections were filed by the respondent before the Addl. District Judge, Chandigarh under Section 34 of the Act. The Court deciding the objections came to hold that the dispute between the parties falls within the ambit of clause 6(iii) of the custom milling agreement dated 07.10.1994 entered into between the parties. The respondent-miller had failed to supply the entire quantity of rice within the stipulated period and this dispute falls within the competence of the Managing Director, PUNSUP to decide the dispute. By referring to Clause 6(iii) of the agreement, the award of the Arbitrator was set aside holding that the Arbitrator was not the competent person to decide the dispute. It is aggrieved against the said decision that the instant appeal has been filed.

3. Learned counsel appearing on behalf of the appellants herein

contends that the Arbitrator had rightly awarded a sum of ₹ 1,57,244.95 along with 21% interest by taking into consideration that the respondent miller had not supplied the entire quantity of rice within the stipulated period and, therefore, on account of such shortage the appellant would be entitled to recover the amount awarded. It is also argued that the Court deciding the objections has failed to note that the award could only be set aside if the award was not within the parameters of Section 34(2) of the Act while further arguing that there is little scope for interference in the award as passed by the Arbitrator.

4. Per contra, learned counsel appearing on behalf of respondent No. 1 submits that Clause 6(iii) and 17 of the agreement have to be referred to in which it is clearly mentioned that in case of the failure of the miller to supply rice within the stipulated period he shall be liable for interest at 21% per annum on the basis of economic cost of left over quantity of rice and the decision of the Managing Director, PUNSUP in this behalf shall be final. It is argued that the arbitrator was not competent to decide the issue.

5. I have heard learned counsel for the parties and with their assistance have also perused the award of the Arbitrator and the order of the Addl. District Judge, Chandigarh.

6. As per the agreement entered into, the miller was to complete delivery of rice within 10 days from issuance of paddy to him and schedule of delivery was detailed. As per Clause 6(iii) of the Agreement dated 07.10.1994 it was stipulated that in the event of failure to supply rice within the specified period, the miller was liable to pay interest @ 21% per annum of the economic cost of left over quantity / stocks of paddy and the decision

of the Managing Director, PUNSUP would be final whereas clause 17 further stated that all the disputes and differences arising out of or in any manner touching or concerning this agreement whatsoever (except to any matter the decision of which is expressly provided in the contract) shall be referred to the sole arbitration of the Managing Director or any other person appointed by him in this behalf.

7. Clause 6(iii) and 17 have already been interpreted by this Court in a matter referred to as *M/s Shree Krishna Rice Mills vs. The Punjab State Cooperative Supply and Marketing Federation Ltd. 2003 (3) RCR (Civil), 254*, wherein it has been held that when there are certain disputes in which the remedy has been provided in the agreement itself then the said matter cannot be referred to the Arbitrator. *M/s Shree Krishna Rice Mills* case (supra) was seized of a similar issue and the interpretation of clauses which are *pari materia* to the clauses referred to herein. The Addl. District Judge referring to the clauses and to the judgment rendered rightly came to hold that the dispute regarding delay in delivery of rice are matters that had to be decided by the Managing Director, PUNSUP itself and, therefore, the matter could not have been referred to the arbitrator for a settlement.

8. Finding no infirmity in the said order of the Addl. District Judge, Chandigarh, this Court finds no merit in the appeal which stands dismissed.

02.04.2019

Satyawan

Whether speaking/reasoned

Whether reportable

(JAISHREE THAKUR)

JUDGE

Yes

No