

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

FAO-5519-2016 (O&M)
Date of decision: 05.07.2019

Punjab State Co-operative Supply and Marketing Federation Limited,
Chandigarh

...Appellant

Versus

Sardar Exports Ltd. and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Gurmandeep Singh Sullar, Advocate,
for the appellant.

JAISHREE THAKUR, J.

CM-18985-CII-2016

This is an application that has been filed under Section 5 of the Limitation Act seeking condonation of delay of 225 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed.

Delay of 225 days in filing the appeal stands condoned.

FAO-5519-2016

1. This is an appeal that has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 seeking to challenge the order dated 10.08.2015 passed by the Addl. District Judge, Chandigarh dismissing the

objections filed under Section 34 of the Arbitration & Conciliation Act, 1996.

2. In brief the facts are, that the appellant herein and the Miller entered into a Custom Milling Agreement dated 28.10.1997 for the Crop Year 1997-98. In terms of the agreement, the Miller had to deliver 46464.98 quintals of rice to the Food Corporation of India in Markfed Account, however, the Miller did not mill the entire quantity and there was a short supply.

3. Since the Miller failed to mill the paddy, a dispute arose amongst the parties which led to an Arbitrator being appointed to decide the issue regarding short supply of paddy, cost of gunny bags retained by the Miller, cost of empty gunny bags, amongst others.

4. The appellant herein filed a claim petition before the Arbitrator claiming an amount of ` 1,29,37,114/- including interest @ 21% per annum.

5. The Arbitrator after examining the detailed evidence passed an award dated 13.08.2002 holding an amount of ₹ 1,29,37,114/- was due and recoverable from the respondent-Miller. The respondents filed their objections against the award under Section 34 of the Arbitration & Conciliation Act, which objections were allowed and the award dated 13.08.2002 was set aside. Aggrieved against the said objections being allowed, the instant appeal has been filed.

6. Learned counsel appearing on behalf of the appellant contends that the present dispute arises of Clauses 7 & 8(iii) of the Custom Milling Agreement and, therefore, the dispute does not fall within the ambit of excepted Clauses to be decided by the Managing Director himself. It is also argued that the judgment rendered in *Shree Krishna Rice Mills vs. The*

Punjab State Co-op. Supply & Marketing Federation Ltd., 2003(3) R.C.R. (Civil) 254 is not applicable to the facts of the present case.

7. I have heard learned counsel for the appellant and have also perused the order so impugned.

8. Admittedly, the parties had entered into an agreement dated 28.10.1997 for the purpose of milling paddy. Clause 9 is re-produced as under :-

“The entire quantity of rice of all varieties delivered by the Miller to the FCI in Markfed account shall conform to the specifications laid down in the Punjab Rice Procurement (Levy) order, 1983, as amended from time to time or in any other Order or Notifications issued by the State Government from time to time. The stocks of rice not confirming to the specifications so laid down, shall be liable to be rejected in respect of such quantity rice which is not found to be within the specifications and the Miller shall be liable to offer fresh stocks confirming to the specifications to Markfed. In the event of his failure to supply rice within the prescribed specifications the miller shall be liable to pay to the Markfed for the quantity of rice short supplied a penalty at the custom milling rate fixed by FCI plus 21% interest from the date it becomes payable till the date of actual realization of the converted variety of rice. The decision of the Managing Director, Markfed (hereinafter referred to as the Managing Director) in this behalf shall be final.

(ii) At the time of delivery, the stocks of rice shall be subjected to the inspection as per provisions of the Punjab Rice Procurement (Levy) order, 1983. Any quality allowance determined at the time of inspection according to the specifications shall be recovered from the Miller's bills.

(iii) The miller shall complete delivery of rice within 10(ten)

days of the insuance of paddy to him and rice due to the Markfed on the total quantity of paddy issued to him or in custody released at regular intervals shall be delivered not later than the 28th Feb., 1998 or up to the period extended by Government of India from time to time. In the event of his failure to supply rice within the stipulated period he shall be liable interest @ 21% for the first year of default and @ 30% for the subsequent period on the custom milled price fixed by FCI from the date it becomes payable till the date of actual realization towards the left over quantity / stocks of paddy. The decision of the Managing Director in this behalf shall be final.”

9. The dispute that arose between the parties pertained to non-supply of rice within the stipulated period. In the agreement it had clearly been specified that in the event of failure to supply rice within the prescribed specifications, the miller should be liable to pay to the Corporation for the short supply of quantity of rice a penalty at the custom milling rate fixed by FCI plus 21% interest from the date it becomes payable till the date of actual realization of the converted variety of rice and the decision of the Managing Director, Markfed would be final. Therefore, the matter ought to have been decided by the Managing Director, who was competent to do so instead of referring the matter to the Arbitrator. The Addl. District Judge on appreciation of the pleas taken rightly came to the conclusion that the matter referred for arbitration fell within the excepted clause as specified in Clause 22 of the agreement. The view taken by the Addl. District Judge stands fortified by the decision taken by this High Court and subsequently upheld by the Hon'ble Supreme Court in ***Shree Krishna Rice Mills (supra)***. In the said

case it has been held that any dispute regarding economic costs and award of interest, as mentioned in the agreement, is to be decided by the Managing Director himself and there is no need to refer the matter to an Arbitrator. This judgment has subsequently been followed in ***District Food and Supplies, Controller, Moga Versus M/s Aggarwal Rice Mills, Baghapurana, Distt. Moga 2010 (1) R.C.R. (Civil) 756*** and catena of other judgments.

10. Since it has been held that the questions of short falls of recovery of rice, interest etc. being excepted matters, is to be decided by the Managing Director himself, there is no occasion for the appellants herein to challenge the order of the District Judge allowing the objections filed by the respondent miller.

11. For the aforesaid reasons, there is no merit in this appeal. The same is dismissed.

05.07.2019

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.