

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

Date of Decision: February 25, 2019

1. FAO-4943-2011 (O&M)

Punjab State Warehousing Corporation, Moga.

..... Appellant

VERSUS

M/s V P Anand and another

..... Respondents

2. FAO-7068-2015 (O&M)

Punjab State Warehousing Corporation, Moga

..... Appellant

VERSUS

M/s Aggarwal Trading Co.

..... Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Harsh Aggarwal, Advocate
for the appellant in FAO-4943-2011.

Mr. Jastej Singh, Advocate
for the appellant in FAO-7068-2015.

Mr. S.K. Singla, Advocate
for respondent No.1 in FAO-7068-2015 and
for respondent No.2 in FAO-4943-2011.

JAISHREE THAKUR, J.(Oral)

By this common order, this Court proposes to dispose of both
the appeals i.e. FAO-4943-2011 and FAO-7068-2015 (O&M) as the

identical issues are involved. For brevity, the facts are taken from FAO-4943-2011.

The challenge in the present appeal is to the award of the arbitrator dated 19.08.2003 whereby the claim of appellant against the Miller has been disallowed while allowing the counter claim of the miller. Against the said award, the appellant herein preferred an application/objection under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the arbitration award which was dismissed by the District Judge, Kurukshetra.

Aggrieved of the same, the instant appeal has been preferred.

Mr. Harsh Aggarwal, learned counsel appearing on behalf of the appellant would contend that the Arbitrator- Mr. V.P. Anand came to be appointed as a sole Arbitrator to conduct the arbitration proceedings in the case of paddy stocks. At that point of time his fee was assessed as ₹4000/- per case, which was on a lesser side in similar type of cases to be shared equally between the claimant and the respondent. After having entered into the reference and commenced arbitration proceedings, the Arbitrator raised the demand for additional fee which resulted in the termination of his appointment by an office order dated 25.03.2003. Subsequent to the termination of his appointment, Sh. T.C. Gupta came to be appointed as an Arbitrator vide office order dated 03.04.2003. Since Sh. V.P. Anand continued to hold arbitration proceedings despite the fact that his appointment was withdrawn, the appellant herein filed a suit for permanent injunction directing him to hand over the record alongwith arbitration

proceedings to the plaintiff-Corporation and an injunction was also sought to restrain him to continue with the alleged arbitration proceedings. However, despite the withdrawal of his appointment and the pendency of the suit, Sh. V.P. Anand continued to act as the sole arbitrator and passed the impugned award which dismissed the claim of the appellant herein while allowing the cross-objections. Aggrieved against the said award, objection petitions were filed and those too were dismissed.

Learned counsel for the appellant would contend that there has been a misconduct on the part of Sh. V.P. Anand, who was no longer designated as the Arbitrator and the award passed is without jurisdiction and cannot be looked into. While arguing that the District Judge has erred in not setting aside the award, learned counsel for the appellant would also contend that in fact there were 34 such awards after his appointment had been cancelled. In one of the matters i.e. *FAO-4535-2009* titled as '*District Manager, Punjab State Warehousing Corporation, Faridkot vs. M/s Bhullar Mini Rice Mill and Anr.*' decided on 11.09.2015, this Court has clearly held that the Arbitrator was prejudiced/poised against the appellant and thus neither the award nor the impugned order were sustainable.

Having perused the pleadings in the instant FAOs and the order passed in *FAO-4535-2009*, this Court is of the opinion that the issue is no longer res-integra. Sh.V.P. Anand, Arbitrator who has passed the award was a person having no jurisdiction. Since his appointment as Arbitrator stood cancelled prior to the award, any award passed would be without jurisdiction and liable to be set aside.

Accordingly these appeals are allowed and the order of the District Judge is set aside. The parties are relegated to seek the appointment of the Arbitrator in accordance with law.

Disposed of accordingly.

25.02.2019

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**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes
Yes/No