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

Decided on : 13.02.2019

<u>LPA No.947 of 2016 (O&M)</u>

Punjab State Civil Supplies Corp. Ltd. & anr. ...... Appellants

Versus

M/s R.S.Rice Mills & anr. ...... Respondents

<u>LPA No.2300 of 2016 (O&M)</u>

Punjab State Cooperative Supply & Marketing
Federation Ltd. & anr. ...... Appellants

Versus

M/s Sant Attar Singh Rice Mills & ors. ...... Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Ms. Deepali Puri, Advocate
for the appellants in LPA No.947 of 2016.

Mr. Vikas Singh, Advocate
for the appellants in LPA No.2300 of 2016.

Mr. Karan Gupta, Advocate
for respondent No.1 in LPA No.947 of 2016.

****

<u>Manjari Nehru Kaul, J.</u>

This order shall disposed off both the appeals i.e. LPA No.947 and 2300 of 2016 since learned counsel for the parties have submitted that the issue involved in the present appeals is similar. Brief facts of the case have been extracted from LPA No.947 of 2016.

1. The appellants have laid a challenge by way of this intra Court appeal filed under clause X of the Letters Patent to the order dated 04.05.2016 passed in CWP No.9279 of 2015, which was allowed by the

learned Single Judge.

2. The controversy involved in the present appeal is whether the de novo proceedings under Section 21 of the Arbitration and Conciliation Act, 1996 (for brevity 'the Act') can be initiated on an issue once the same has been settled by way of a settlement before the Arbitrator?

3. The sequence of events leading to filing of the present appeal are that respondent No.1 herein, being a sole proprietorship firm was engaged in the business of custom milling of paddy on behalf of various State Procurement Agencies. Vide agreement dated 15.10.2011 (Annexure P-5), the respondent-firm was allocated paddy by the appellants for the crop year 2011-12. Since the respondent failed to deliver the entire milled paddy to the Food Corporation of India (in short 'FCI') in the account of PUNSUP, the appellants raised an arbitration dispute with the respondent-firm in the year 2011. The case of the respondent-firm was that they could not deliver the milled paddy due to paucity of space with the Food Corporation of India. The appellants herein, raised a demand of ₹ 76,63,066/- against the respondent-firm who then paid ₹ 76,63,122/- towards full and final payment. On receipt of the said amount, No Due Certificate was issued by appellant No.2 vide letter dated 24.12.2013. In view of the aforementioned letter, an order was passed by the Arbitrator on 02.01.2014 dropping the proceedings. Thereafter, vide legal notice dated 19.09.2014 issued under Section 21 of the Act, the appellants directed the respondent-firm to deposit an additional amount of ₹11,59,496/- on account of revision of rates of rice to which the respondent-firm submitted its reply on 16.10.2014 and contended that the respondent-firm had discharged its liability as claimed by

the appellants and therefore, the appellants had no right for claiming any further amount. Thereafter, the appellants again filed a claim petition before another Arbitrator appointed by the appellants. On 05.01.2015, the said Arbitrator issued notice to the respondent-firm regarding arbitration proceedings. Feeling aggrieved, the respondent-firm approached this Court by way of CWP No.9279 of 2015.

4. The case of the respondent-firm was that once the matter had been settled between the parties qua payment of all dues with interest and even No Dues Certificate had been issued by the appellants-department on the basis of which arbitration proceedings had been dropped, fresh arbitration proceedings could not have been initiated in view of the instructions dated 06.11.2012, which were received from Government of Punjab asking the firms to pay the difference of cost of paddy fixed by the Punjab Government. More so, when the instructions were to be prospective in nature, the same would not be applicable to the contract between the parties, which had been entered into between them vide agreement dated 15.10.2011 for the crop year 2011-12. It was the case of the respondent-firm that the Arbitrator was only supposed to decide the lis between the parties on the basis of the terms and conditions of the agreement and certainly not on the basis of the instructions.

5. Learned Single Judge vide order dated 04.05.2016 allowed the writ petition holding that once the matter had been settled by an Arbitrator under Section 30 of the Act and an award had also been pronounced in terms of Section 30(4) of the Act, any subsequent proceedings before another Arbitrator for the same crop year could not be entertained again.

6. Learned counsel for the appellants urged that the learned Single Judge had erred in not appreciating that the petition had been contested by it on the ground that the earlier Arbitrator had not assessed the correct amount and no arbitration award was passed on the basis of merits. Learned counsel further contended that No Due Certificate was given only in the light of the payments made by the respondent-firm and that is why the arbitration proceedings were withdrawn. Hence, it was not a case where the Arbitrator had assessed the amount, which had been paid.

7. For adjudication of the issue, it would be thus, essential to reproduce Section 30 of the Act which deals with the settlement, which is as under: -

> *"30. Settlement- (1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.*
>
> *(2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.*
>
> *(3) An arbitral award on agreed terms shall be made in accordance with section 31 and shall state that it is an arbitral award.*
>
> *(4) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute."*

8. A bare reading of the provisions of Section 30 of the Act makes

it amply clear that an Arbitral Tribunal is required to encourage settlement of a dispute for which it may adopt any positive steps or procedure in the nature of Mediation and Conciliation. The scheme of this section clearly envisages that in case an award is passed as a result of some settlement and on the basis of agreed terms, it shall be at par with and have the same force as that of a contested award.

9. Section 30 of the Act has to be read with Section 31 of the Act as the award under this Section is executable in the same manner as a contested award between the parties. An award under this Section is deemed to be an award with the consent of the parties.

10. Supreme Court in ***Satish Kumar vs. Surinder Kumar, (1969) 2 SCR 244*** has held that if an award was passed between the parties, it shall have to be presumed that the award had dealt with all the disputes between them, which existed at the time of the reference. Hence, in the present case once an award had been pronounced in terms of Section 30(4) of the Act, no action could be initiated on the original claim which had been the subject matter of the reference.

11. Examining the factual matrix herein, it is not disputed that when the arbitration proceedings were initiated for recovery of ₹ 76,63,066/- for the crop year 2011-12 from the respondent-firm, the latter had admittedly paid in excess of the amount due from it and the same too had been accepted by the appellants. An intimation qua the acceptance too had been sent to the Arbitrator along with a No Due Certificate issued by appellant No.2 with a request for dropping the proceedings against the respondent-firm as all the dues payable by the latter stood paid. It would be

relevant to notice that in the connected appeal, the respondent-firm was allotted paddy for the years 2012-13, 2013-14 and even for 2014-15. Had the respondent-firm been considered defaulter for the year 2011-12, the allotment of paddy for the subsequent years would not have been made.

12. We are thus, in agreement with the learned Single Judge that it was beyond the jurisdiction of the Arbitrator to decide the matter under Section 21 of the Act. Arbitrator could not have decided the matter beyond the terms and conditions of the agreement dated 15.10.2011 in accordance with the instructions dated 06.11.2012, which was sought to be substituted with the terms and conditions of the agreement.

13. In view of the discussion made above, we find no infirmity or illegality in the order passed by learned Single Judge and affirm the same.

14. Accordingly, the present appeals are dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

13.02.2019
sonia

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