

S.No.106

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

**CWP No.10178 of 2020 (O&M)
Date of Decision:24.11.2020**

**The Punjab State Co-operative Supply and Marketing Federation
Ltd. Chandigarh**

.....Petitioner

Vs.

Sh. Subash Gakhar and another

.....Respondents

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IN VIRTUAL COURT
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CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Rohit Singla, Advocate for the petitioner.

Rajbir Sehrawat, J.(Oral)

The present petition has been filed by the petitioner under Articles 226/227 of the Constitution of India for issuance of writ in the nature of certiorari for quashing the impugned order dated 28.05.2018 passed by the learned Assistant Registrar, Co-operative Societies, Zira and impugned order dated 10.12.2019 passed by the learned Deputy Registrar, Co-operative Societies, Ferozepur whereby these authorities dismissed the

arbitration petition of the petitioner, filed under Sections 55 and 56 of the Punjab Co-operative Societies Act, 1961 and also dismissed the appeal against the impugned order dated 28.05.2018 filed by the petitioner under Section 68 of the Punjab Co-operative Societies Act, 1961 respectively.

The brief facts leading to the filing of the present petition are that the petitioner herein had initiated arbitration proceedings against two of its employees for short selling the unservicable Tarpaulins in the field offices of the petitioner. The basis of the arbitration was that the assumed weight of one tarpaulin would have been 45 Kg, as fixed by Head Office of the Markfed. Total number of Tarpaulins to be disposed of was 1021. Therefore, total weight of 1021 tarpaulin covers would have come to about 459.45 quintals. But the respondent- employee had delivered to the purchaser of the unservicable tarpaulin only 183 quintals of unservicable tarpaulins in aggregate on various dates. Hence, the respondents had not accounted for about 276.45 quintals of unservicable tarpaulins. The cost of that material comes to Rs.10,50,889.50. Hence, the respondents were liable to pay the same.

The arbitration remained pending for a long time. In the meantime, one of the respondents, i.e. respondent No.2 had even expired and the other respondent had also retired from the service. Despite that the proceedings were carried out before the Assistant Registrar of Co-operative Societies, Zira. The Assistant Registrar noted the fact that the department did not take appropriate steps to sell the unservicable material in time. Still further, it was noted that the depreciation in the material on account of excess of period over and above the serviceable period has not been

properly assessed by the department. The Assistant Registrar also held that the department had not issued any clear notification regarding the depreciation of the tarpaulin covers and about the actual price of the unservicable material. The petitioner was assuming the weight of the unservicable tarpaulins on the basis of self life of two years, whereas in the present case, the tarpaulins of the year 1999 were auctioned in the year 2005 i.e. after a period of six years. Obviously, the Tarpaulins would have been further damaged due to infestations and bad weather. Accordingly, it was held by the Assistant Registrar that due to lack of definite material on record regarding the actual quantity of the unservicable tarpaulin, it was not possible to fix the responsibility upon the respondents.

Aggrieved against this decision of the Assistant Registrar, the petitioner preferred even an appeal before the Deputy Registrar, co-operative societies, Ferozepur. However, the Deputy Registrar also concurred with the finding recorded by the Assistant Registrar and upheld the decision of the Assistant Registrar Co-operative Societies. The Deputy Registrar also accepted the contention on behalf of the respondents that the appeal was time barred. Aggrieved against these decisions, the present petition has been preferred by the petitioner.

On the last date of hearing, this Court had put a query to the counsel for the petitioner qua the actual weight of the material which was supplied to the respondents at the time of purchase of the same and also regarding the actual assessment of weight of per unservicable tarpaulin, which were to be disposed of.

Learned counsel for the petitioner had sought time to place on

record the document to show the actual weight or actual assessment of weight per Tarpaulin. However, even now the petitioner has failed to produce any documents to show the actual weight of the material at the time of purchase as well as, any document regarding the assessment of actual weight of one unservicable tarpaulin.

Learned counsel for the petitioner submits that the petitioner – Federation has adopted the norms for self life, the weight of new article and qua the weight of unservicable Tarpaulins. As per that notification, which is at Annexure P.2, the weight of new item has to be 60 to 62 Kg for tarpaulin and the weight of unservicable item has to be 45 Kg. The self life of the tarpaulin is adopted to be two years. Hence, the weight of the unservicable Tarpaulin has been presumed to be 45 Kg per tarpaulin itself. Hence, a recovery has rightly been claimed against the respondents on the basis of this letter of the Federation. Learned counsel has further relied upon the physical report of the petitioner- Federation, whereby 1021 unservicable tarpaulins were found present in the Office of the respondents in the year 2005. Hence, the total weight has been calculated by the petitioner by multiplying this number of 1021 tarpaulins by the weight of 45 Kg., assumed for one tarpaulin. Hence, it is submitted that both the Courts below have wrongly dismissed the claim of the petitioner. However, the counsel for the petitioner has no explanation qua the appeal of the petitioner before the Deputy Registrar being time barred.

Having considered the argument of the counsel for the petitioner and having perused the case file, this Court finds that the issue involves disputed questions of fact. The said facts have already been

appreciated by two statutory bodies. This Court does not find any specific material or ground to disagree with the statutory authorities.

Besides this, learned counsel for the petitioner has not been able to controvert finding of the Deputy Registrar Co-operative Societies that the appeal filed by the petitioner was time barred.

Otherwise also, a bare perusal of the record shows that the claim of the petitioner is based on assumptions only. The claim of the petitioner is that a total number of 1021 unservicable tarpaulins was to be disposed of. However, the allegation of the petitioner against the respondents is not that 1021 tarpaulins were not disposed of or given by the respondents to the purchaser of the unservicable material. Instead, the petitioner is converting this number into the total weight of the material by multiplying it by 45 Kg per tarpaulin. But there is absolutely no basis as to how the petitioner assessed the actual weight of the unservicable tarpaulin to be 45 Kg per tarpaulin. Although the counsel for the petitioner relies upon the alleged notification issued by the Head Office of the petitioner qua fixation of such weight, however, the said notification also prescribes the self life of the tarpaulin to be two years only. Therefore, if at all, the weight of 45 Kg. per tarpaulin is to be applied, that would have been applied if the tarpaulins were being disposed of after a period of two years. In the present case, the tarpaulins were, undisputedly, disposed of after five years' duration. It is natural that an item having self life of two years would get diminished to any extent after 5 years. Therefore, fixation of the weight of per tarpaulin in the above-said notification of the petitioner loses all significance qua the present case. Hence, the Assistant Registrar as well as

the Deputy Registrar, both, have rightly held that there is no material placed on record by the petitioner to show the actual quantity of the tarpaulin, by weight, which was disposed of and which was to be supplied by the respondents to the purchaser of the unservicable material.

In view of the above, finding no merit in the present petition, the same is dismissed.

November 24, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No