

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

CWP No.786 of 2019 (O&M)

Date of decision: 23rd November, 2021

Major Singh & another

... Petitioners

Versus

The Financial Commissioner, Cooperation Punjab & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Ajay Mahajan, Advocate for the petitioners.

Ms. Simran Grewal, Asst. Advocate General, Punjab
for respondents No.1 to 3/State.

Ms. Deepali Puri, Advocate for respondent No.4.

FATEH DEEP SINGH, J.

The principle of *Audi Alteram Partem* was enunciated with a view to bring about impartiality and transparency in a procedure to be adopted by the authorities intending to pass an order which may have serious repercussions on a subject matter. Section 18 of the Arbitration and Conciliation Act, 1996 (in short, 'the Arbitration Act') contemplates two fundamental principles, first of equal treatment of parties and the second providing each party a full opportunity to present its case. The converse seems to have happened in the orders (Annexures P14, P15 and P16) passed by the revisional and the appellate authorities against the present petitioners Major Singh and Gurcharan Singh.

The petitioners at the relevant time were posted as Field Officers in the Punjab State Cooperative Supply and Marketing Federation Ltd. (Markfed) and over the allocation of wheat stock pertaining to the year 1999-2000 and 2000-2001 certain irregularities were found which culminated into passing of departmental enquiry (Annexure P13) against petitioner No.2 Gurcharan Singh. It is subsequent thereto, Markfed initiated proceedings under Section 55/56 of the Punjab Co-operative Societies Act, 1961 for recovery of ₹ 1,71,25,678/- claiming to be due on account of negligence and carelessness of the officials in the storage of wheat stock and also sought interest @ 18% per annum. The Additional Registrar (Admn.) respondent No.3 passed orders (Annexure P14) deciding the matter against the officials who challenged the same through appeal under Section 68 of the Punjab Co-operative Societies Act, 1961 which were again disposed of against them, followed by revision petition before respondent No.1 which too went against the petitioners by order (Annexure P16). It is as a consequence of the same, the petitioners have come up in this civil writ petition seeking a writ in the nature of certiorari for quashing these three orders (Annexure P14 to P16).

The respondents in their reply besides taking up usual pleas of preliminary objections, had contended that wheat can be stored in jute bags both in covered godown and under CAP up to a period of three years without significantly affecting physical and chemical qualities of

the grains and it is alleged that the wheat was stored in hired open spaces, of which the petitioners were in-charge and had consented to this arrangement and has alleged that it was on account of gross negligence and misconduct by the petitioners huge financial loss has occurred to the department, necessitating dismissal of the petition.

Heard.

A close perusal of the orders (Annexure P14 to P16) shows that during the course of initiation of these arbitral proceedings the Arbitral Tribunal failed to consider how and what appropriate procedure it intends to chose to carry on with these proceedings. No doubt, Section 24 of the Arbitration Act broadly provides two modes, one of oral hearing and another by means of documents to decide the arbitration matter. However, as has been contended by learned counsel for the petitioners and could not be successfully controverted by learned counsel for the respondents that no such speaking order has come about nor consented to by the opposite side as to the mode of arbitral proceedings that was being chosen and what is reflected from Annexure P4 is that the Additional Registrar (Admn.) by merely relying on a previous judgment/decision of his office dated 28.06.2012 has done it so and on the basis of the earlier findings which are nowhere shown to be akin or in consanguinity with the present proceedings, has held that the earlier orders were passed after giving complete opportunities to both the parties and on the basis of the same has held that the department had the right to

recover the amount of actual loss that accrued to the Markfed along with interest. Thus, from the same, it is reflective that the order (Annexure P14) is based on partiality without there being evidence before the Arbitrator and without affording opportunity to the parties to lead their evidence/choosing a method of carrying on with these proceedings. There is nothing suggestive that the Award by the Arbitrator is based on any evidence before it nor the same has been discussed therein and rather based on what was earlier decided by the authority, has reached this conclusion which renders the orders to be *non-est* in the eyes of law being contrary and in violation of the process of natural justice and so is the order (Annexure P15) passed in appeal by the Registrar Cooperative Societies which nowhere suggests what are the relevant factors which weighed with the authority at the time of passing of this order and what were the elements which form the very basis of this order. Merely relying on a committee report earlier submitted and which were never put to the petitioners during the course of proceedings to elicit their stands, has arrived at this conclusion based on the charge-sheet and the departmental enquiry, renders the orders to be highly illegal and perverse. The order itself is non-speaking, without spelling out the reasons as to how and by what means the conclusions have been drawn. To the similar effect is the revision order (Annexure P16) passed by the Financial Commissioner who in a tersely worded order basing its findings on the Registrar's order of dismissal of the appeal on the grounds that the moisture condensation

was found in the wheat stock causing irreparable loss and the petitioners have violated the FIFO system of dispatching, had arrived at this conclusion.

In the light of what has been detailed and discussed above, the very purpose of provision of appeal and revision has been rendered fruitless and merely on what transpired in departmental proceedings, these orders have come about and that too in the absence of affording of reasonable opportunity to the petitioners to present their stand and case. In the light of the same, the impugned orders (Annexure P14, P15 and P16) are hereby set aside. The matter is remanded back to the Arbitrator to consider the relevant factors and evidence before it and thereafter to pass speaking order. The Arbitrator must make endeavor to dispose off the matter within a period of two months positively from the date of receipt of a certified copy of this order.

The writ petition stands disposed off in those terms.

(FATEH DEEP SINGH)
JUDGE

November 23, 2021

rps

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