IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2761 of 2021 (O&M)
Date of Decision:27.10.2021

Haryana State Co-operative Supply and Marketing Federation Limited, Ambala

......Appellant

Versus

M/s Bhirgu Rice Industries and another

...... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Lokesh Sinhal, Advocate
for the appellant.

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LISA GILL, J(Oral).

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

This appeal has been filed by the appellant-Haryana State Co-operative Supply and Marketing Federation Limited, Ambala, challenging decision dated 16.11.2019, passed by the learned Additional District Judge, Panchkula, whereby petition under Section 34 of the Arbitration and Conciliation Act, 1996, filed by the present appellant, has been partly allowed.

Brief facts necessary for adjudication of the case are that an agreement for custom milling of paddy for the year 2009-2010, was entered into between the appellant and respondent, as per Clause 10 of the Haryana Rice Procurement (Levy) Order, 1965. Dispute arose between the parties regarding deduction of Rs. 7,79,656/- by the appellant on account of holding charges. Claimant-respondent invoked the provision of Clause 23 of the

Agreement and respondent no.2 was appointed as Arbitrator. Claimant challenged deduction of Rs. 7,79,656/- on account of holding charges and also claimed the following amounts from the appellant:-

i- Expenses incurred on purchase of paddy in lieu of driage (Rs. 50,785.30/-).
ii- Rent, storage and watch and ward charges (Rs. 16,40,458/-).
iii- Weight loss of rice due to moisture loss (Rs. 3,46,346/-).

As per award dated 27.04.2017, claimant was held entitled to Rs. 15,99,885/- along with interest @ 18 % per annum from the date of award till realization. The Arbitrator held the deduction on account of holding charges to be unjustified and held the claimant entitled thereto as well as entitled to 50% of the rent, storage, watch and ward charges.

Finding of the learned Arbitrator on two of the issues against the present appellant were challenged by it before the learned Additional District Judge, Panchkula, in a petition under Section 34 of the Act.

Award of Rs. 7,79,656/- *qua* deduction by the appellant towards holding charges and award of Rs. 8,20,229/- i.e., 50% of Rs. 16,40,458/- on account of expenses incurred by the claimant towards rent, storage, watch and ward charges, was challenged before the learned Additional District Judge, Panchkula.

Learned Additional District Judge, Panchkula, vide impugned decision dated 16.11.2019, upheld the award of Rs. 7,79,656/-, while holding that award of Rs.8,20,229/- was beyond the scope of the agreement, thereby while partly allowing the objections, set aside the award, on said issue, in favour of the appellant.

Aggrieved from decision of the learned Additional District Judge, Panchkula, in respect to the deduction on holding charges, present appeal has been filed.

Learned counsel for the appellant argues that the learned Additional District Judge, Panchkula, has erred in not allowing the petition under Section 34 of the Act filed by the appellant, in *toto*.

Heard learned counsel for the appellant and have gone through the file with his assistance.

It is a matter of record that as per agreement between the parties, entire quantity of the Custom Milling Rice (for short 'CMR') had to be delivered by the miller by March 2010. Claimant was bound to supply the CMR as per the schedule mentioned in the agreement. In case, it failed to supply the entire quantity of CMR as per the schedule, HAFED was entitled to deduct the amount, for delay in delivery of the CMR. However, it is not denied that the period of 01.10.2009 to 31.03.2010, was extended as 15.11.2009 to 30.06.2010. Learned Additional District Judge, Panchkula, has specifically referred to the statement of RW-1-Vikas Deswal. It is specifically observed that the real cause of delayed delivery of CMR was shortage of staff and space with the FCI. Claimant duly produced copies of entries in paddy and rice registers maintained by it in terms of the agreement between the parties. With there being nothing on record to show that the claimant did not have enough stock to deliver milling rice in accordance with the schedule revised as per decision CA-1, the learned Additional District Judge, Panchkula, has correctly upheld the award of the Arbitrator on this issue.

Learned counsel for the appellant is unable to deny the evidence on record which clearly reflects that miller-claimant was in-fact not at fault for the delay. The period was extended and delayed delivery was indeed due to shortage of staff and space with the FCI. It is a matter of record that the appellant acts as an agent of the FCI. Learned counsel is further unable to deny that the FCI has not deducted any amount payable to the appellant against the cost of paddy, due to delayed delivery of rice. Therefore, observation by the learned Additional District Judge, Panchkula, that deduction of the amount by the appellant under the head of holding charges, would amount to unjust enrichment, is justified.

Keeping in view the facts and circumstances as discussed above, impugned order dated 16.11.2019, passed by the learned Additional District Judge, Panchkula, is upheld.

There is a delay of 26 days in filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in filing of this appeal is rendered academic. Application is disposed of accordingly.

No other argument has been raised.

Present appeal is, consequently, dismissed with no order as to cost.

[LISA GILL]
Judge

27.10.2021
s.khan

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