

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

**FAO No. 277 of 2021 (O&M)
Date of Decision: March 25, 2022**

Punjab State Warehousing Corporation, Chandigarh

..... Petitioner(s)

Versus

M/s. SARR Freight Corporation and another

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ajay Pal Singh Saini, Advocate
for the appellant.

LISA GILL, J.

This appeal has been filed by the appellant Punjab State Warehousing Corporation, Chandigarh (for short PSWC) challenging decision dated 08.11.2019, passed by the learned Additional District Judge, Chandigarh, whereby petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act) filed by the appellant challenging award dated 27.11.2015 supplemented by further award dated 16.02.2016, passed by the sole Arbitrator – respondent no.2 has been rejected, thereby upholding the award passed by the sole Arbitrator.

Brief facts necessary for the adjudication of the matter are that respondent no.1-claimant submitted its tender on 02.07.2004 for appointment for transport contract for transportation of export laden (ISO) containers by road from Ludhiana, Jalandhar and Chheratta (Amritsar) to the Gateway Exit Ports of Mumbai/Gujrat in response to the tender floated by the appellant PSWC. The tender was accepted and agreement dated 02.11.2004 was executed. Claimant-respondent alleged that bills were raised

by it as per the terms and conditions of the contract but the appellant carried out illegal deduction of Rs.17,82,217/-. It was further claimed that the claimant deposited Rs.7,50,000/- as security (Rs.2,50,000/- for each dry port) at the time of signing of the agreement but the same was not refunded and that the appellant was also liable to pay interest on the bank guarantee of Rs.4,50,000/-. Total claim of Rs.44,48,996/- including 18% interest was raised by respondent no.1.

Respondent no.1 claimed that the appellant had illegally deducted the amount qua movement of empty containers as it had no right to do so as the contract was given on the composite price for shifting the empty containers from Ludhiana to various dry ports such as Ludhiana, Jalandhar and Chheratta and then transporting the loaded/stuffed containers to the Gateway Exit Ports of Gujrat and Mumbai. It is further stated that the claimant while giving the bid had taken into consideration that trailers of the claimant were to be stationed at Ludhiana and then moved from time to time to the dry ports on receipt of job orders and directions of PSWC and that the respondent had deliberately given the contract to another transport company i.e. M/s. Punjab Container Services to move the empty container from Ludhiana to other dry ports or stuffing points and deducted the amount paid to the above said party from the payments made to the respondent-claimant in violation of the terms and conditions of the contract. It is also claimed that no notice was ever served by the appellant-Corporation upon the claimant regarding its refusal to perform any part of the contract and taking the empty containers to the stipulated stuffing point. It is claimed that there was no delay on the part of the claimant in transporting the containers to the Gateway Exit Ports and the operations were completed before time but were

detained on the gate of the port. Hence, the time calculated in imposing the penalty was claimed to be erroneous. Respondent no.1 further claimed that penalty could be levied only by the Chief Manager Project but no notice had ever been given.

The claim was contested to be time barred by the appellant. Claim was also contested by the appellant while stating that performance of the claimant-respondent no.1 was not up to mark and non-provision of the required vehicle caused delayed movement of designated sealed ISO containers for which appellant received various letters from the concerned port Managers. It is stated that the agreement stipulates payment of awarded transportation rates to the claimant for the complete cycle of operations which includes shifting of designated empty ISO containers inventory from Ludhiana to CSFS/ICD facility of Ludhiana, Jalandhar and Chheratta for the purpose as mentioned above within the stipulated free time period and strictly on defined terms and conditions contained in the tender contract. The deductions were stated to have been made validly on account of movement of empty containers between defined locations, diesel hike, late delivery of containers and that a contract had been awarded separately in favour of M/s. Punjab Container Services owing to non-availability of sufficient empty containers of various shipping lines/empty ISO container.

With the dispute being raised Arbitrator was appointed by the Managing Director of the appellant-Corporation and award dated 27.11.2015 was passed. Learned Arbitrator rejected the objection regarding the claim being time barred while noting that payment of Rs.6,69,781/- was made by the Corporation on 16.07.2009 and when the Corporation refused to release further payment against pending bills, the claimant served a legal notice

dated 18.10.2009 invoking Clause XXII of the agreement requesting the Corporation for reference of the dispute to the Arbitral Tribunal for adjudication. Therefore, it was found that the claim was not time barred. Claims of respondent no.1 were dealt with by the learned Arbitrator as under:-

i). Deduction made by PSWC from the bills of the claimant (SAAR) for the local transport of empty containers.

Learned Arbitrator has observed that the respondent-Corporation has admitted that as per the contract carriage of empty containers from Ludhiana (where the containers were released by the shipping lines) to dry ports of Ludhiana, Jalandhar and Chhehratta and then after stuffing transport of the loaded containers to Gateway Exit Ports of Gujrat and Mumbai constituted one cycle and could not have been bifurcated, was admitted by the respondent-Corporation in its affidavit while referring to the whole Corporation as one cycle. In this factual matrix it is observed that there was no occasion for the Corporation to bring in a new contractor M/s. Punjab Container Services for local carriage of empty containers between Ludhiana Railhead and CSFS/ICD stations at Ludhiana, Jalandhar and Chhehratta. It was found that no deficiency was there in the performance of the contractor. In this situation it was observed that the ends of justice would be met if 50% of the amount claimed by respondent no.1 is awarded. Accordingly, Rs.5,25,547.50/- was awarded.

ii). Claim on account of hike of diesel prices.

In respect to the claim on account of hike of diesel prices, respondent no.1 was held entitled only to the sum of Rs.3,17,372/- and rest of the claim as detailed in the award was rejected.

iii) Penalty on account of delay in delivery of the containers at Gateway Exit Ports.

In respect to the penalty on account of delay in delivery of the containers at Gateway Exit Points, no relief was afforded to the claimant-respondent no.1.

iv) Amount of Rs.1,57,600/- in respect of Ludhiana Port on account of late delivery for the period from 01.8.2004.

Claim was rejected.

Claimant-respondent no.1 was held entitled to amount of Rs.8,42,919.50/- (as corrected vide order dated 16.02.2016) (Rs.5,25,547-50/- on account of transportation of empty containers and Rs.3,17,372/- on account of diesel hike). So an award of Rs.8,42,919-50/- was made in favour of claimant (M/s. Sarr Freights Corporation). The claimant was also held entitled to 12% interest from the date of accrual to the date of its actual realization. The claim of the M/s. Sarr Freights Corporation to interest on the bank guarantees was also rejected. The respondent-Corporation was, however, directed to discharge the bank guarantees, if not already done. The respondent corporation was further directed to refund the security amount of Rs.7,50,000/- deposited with them for the three contracts for Ludhiana, Jalandhar & Chhehertta.

An application under Section 33 of the Arbitration and Conciliation Act, 1996 was disposed of on 16.02.2016 for correction of typographical errors.

Learned Additional District Judge, Chandigarh vide order dated 08.11.2019 dismissed the petition under Section 34 of the Arbitration and Conciliation Act, 1996, while not finding any ground for interference.

Aggrieved therefrom present appeal has been filed.

Learned counsel for the appellant vehemently argued that order dated 08.11.2019 as well as award dated 27.11.2015 should be set aside. It was submitted that the Arbitrator has dealt with excepted matters and travelled beyond his jurisdiction. Furthermore the claim raised by respondent no.1 was clearly barred by limitation, therefore, could not have been entertained at all. It is stated that the Arbitrator could not have awarded interest on the security amount as per clause XI of the agreement. Moreover, the Arbitrator could not enter the said subject matter as per Clause XXII(a) of the agreement. Learned counsel submits that as per Clause XXII of the agreement, which provides for resolution of dispute between the parties through arbitration clearly provides that certain matters contained in Clause III to VI, X to XV and XXIV were excepted matters. The issue regarding security deposit is covered under Clause XI but has been wrongly adjudicated upon by the Arbitrator. It is submitted that learned Additional District Judge, Chandigarh has glossed lost over the arguments raised on behalf of the appellant and has grossly erred in passing the impugned order. It is, thus, prayed that this appeal be allowed and impugned order dated 08.11.2019, passed by the learned Additional District Judge, Chandigarh, whereby petition under Section 34 of the Act, filed by the appellant challenging award dated 27.11.2015 supplemented by further award dated 16.02.2016, passed by the sole Arbitrator – respondent no.2, be set aside, consequently setting aside the said awards.

I have heard learned counsel for the appellant and have gone through the record with his assistance.

The factual sequence of events is not disputed by the appellant.

Argument that the claim raised by respondent no.1 was barred by limitation,

is, however, not substantiated or borne out from the record. Learned Arbitrator has correctly observed that payment was made by the Corporation on 16.07.2009 and respondent no.1 had promptly raised the objection in October, 2009. In this view of the matter, it cannot be held that as agreement dated 02.11.2004 was to expire after three years from the date of its execution, the claim raised by respondent no.1 was time barred.

It was vehemently argued by learned counsel for the appellant that there is a specific negative covenant in respect to payment of interest on the amount of security deposit lying with the Corporation as per Clause XI of the agreement. It is to be noted at this stage that a perusal of the award reveals that no interest has been awarded by the learned Arbitrator on the security amount of Rs.7,50,000/-. Respondent no.1 was held entitled to total amount of Rs.8,42,919.50/- (Rs.5,25,547-50/- on account of transportation of empty containers and Rs.3,17,372/- on account of diesel hike). An award of Rs.8,42,919-50/- was made in favour of claimant (M/s. Sarr Freights Corporation). The claimant was also held entitled to 12% interest from the date of accrual to the date of its actual realization. The claim of the M/s. Sarr Freights Corporation to interest on the bank guarantees was also rejected. The respondent-Corporation was, however, directed to discharge the bank guarantees, if not already done. The respondent corporation was further directed to refund the security amount of Rs.7,50,000/- deposited with them for the three contracts for Ludhiana, Jalandhar & Chhehertta. Therefore, I do not find any merit in this argument raised on behalf of the appellant.

Learned counsel for the appellant had also argued that the learned Arbitrator has travelled beyond his jurisdiction. Yet again, I do not

find any merit in this argument and the same is rejected. It is relevant to note that the Arbitrator in this case was appointed in terms of Clause XXII of the agreement, which provides that all disputes and differences arising out of or in any way touching or concerning the contract, shall be referred to the sole Arbitrator i.e. Managing Director of the Punjab State Warehousing Corporation, Chandigarh or any other person authorised by him in writing. The Arbitrator was admittedly appointed by the appellant-Corporation. There is no allegation of any misconduct etc. on the part of the Arbitrator appointed by the appellant itself. Clause XII(a) of the agreement reads as under:-

“The personnel in different categories will have to be positioned by the contractor, especially such people who have exposure to computerized operation keeping in view the fact those operations at the Dry Ports (Container Freight Stations/Inland Container Depots), PSWC is to be computerized. This would be needed for smooth operations of the work of handling, transport, storage, inspection of the work of container/cargo. In the event of any fault or defaults on any particular day/days on the part of the contractors in providing adequate equipment, vehicles or personnel or to perform any of the service mentioned herein efficiently and to the entire satisfaction of the Chief Manager (Projects) or his authorized representative who, in his absolute discretion, without prejudice to other right and remedies under his contract, shall have the right to recover by way of compensation from the contractors a sum as deemed fit, besides making alternate arrangements to cope-up with the work at risk and cost of the contractors who will be liable to compensate the consequential damages, if any. This decision of the Chief Manager (Projects), on the question whether the Contractors has committed such a fault or has failed to perform any of the services efficiently and also his liability for payment of compensation and its quantum, shall be final and binding on the contractors.”

It is to be reiterated that the respondent-Corporation itself appointed the sole Arbitrator for resolution of all the disputes arising between the parties on the claim being raised by respondent no.1.

The Corporation did not at that stage place the matter before the Chief Manager Projects. Clearly, the entire matter was placed before the Arbitrator by the Corporation itself, therefore, in any case, it does not lie with the appellant-Corporation to take up this plea after passing of the award. No such objection had been taken by the Corporation before the Arbitrator, therefore, I do not find any ground whatsoever to interfere in this appeal.

No other argument was addressed.

This appeal is dismissed with no order as to costs. Pending applications, if any, are disposed of accordingly.

(Lisa Gill)
Judge

25.03.2022
Sunil

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