

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

**FAO-4134-2014 (O&M)
Date of Decision: 18.07.2022**

**PUNJAB STATE CIVIL SUPPLIES CORPORATION LTD.,
(PUNSUP), CHANDIGARH**

..... Appellant(s)

Versus

M/S. ASHOKA RICE MILLS AND OTHERS

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Deepak Sabherwal, Advocate
for the appellant.

Mr. Manjeet Pathania, Advocate
for the respondents.

LISA GILL, J.

This appeal has been filed by the Punjab State Civil Supplies Corporation (PUNSUP) challenging order dated 05.07.2013 as well as award dated 06.04.2007, passed by the learned Sole Arbitrator.

Learned counsel for the appellant submits that agreement dated 03.10.1994 was executed between the respondent-miller and appellant for shelling of paddy for the crop year 1994-1995. Appellant-claimant corporation supplied 40611 bags of fine quality paddy weighing 26397 quintals. Respondent, it is stated, was to deliver the milled rice to the FCI on PUNSUP account. Respondent firm delivered fine quality rice weighing 13283.75 quintals but remaining quantity of rice weighing 4048.62 quintals was not delivered by the respondents. Matter in dispute was referred to the Sole Arbitrator for settlement of the dispute which arose between the

parties. Mr. Gurdarshan Singh, MCD, PUNSUP was appointed as an Arbitrator on 30.04.1998. Statement of claim for a sum of about Rs.34 lacs was filed by the appellant on 24.08.1998 and revised statement of claim of Rs.1,70,878.54/- along with interest w.e.f. 01.01.2001 was filed on 08.04.2003. However, said Arbitrator passed away in the year 2006 and a retired District and Sessions Judge was appointed as the sole Arbitrator vide order dated 24.07.2006, passed by the Managing Director of the appellant-Corporation.

Learned Arbitrator pronounced award dated 06.04.2007 for a sum of Rs. 25,072.27 with interest @ 9% per annum from 01.07.1995 till payment. However, it was observed that the Managing Director would be at liberty to take his own decision in accordance with law on matters which are reserved for decision of the Managing Director under Clause 6 of the contract agreement dated 03.10.1994 between the parties and that the Managing Director would also be at liberty to pass an order in accordance with law and Clause 17 of the agreement for forfeiture/refund of security amount, after complying with requirements of Clause 17. For the matters not covered under the agreement, the parties were given liberty to seek remedy (if any) in accordance with law.

Aggrieved therefrom, petition under Section 34 of the Arbitration Act was filed by the appellant with a prayer that claim of Rs.82,192.66 along with future interest @ 12% till realization be allowed. Said petition has been dismissed by the learned Additional District Judge, Chandigarh, vide impugned order dated 05.07.2013. It is held by learned Additional District Judge, Chandigarh that award dated 06.04.2007, passed by the Sole Arbitrator was correctly passed on the basis of material on

record and no ground whatsoever for impugning the same within four corners of Section 34 of the Arbitration Act was made out. Aggrieved therefrom present appeal has been filed.

Learned counsel for the appellant submits that learned Arbitrator has failed to decide all the claims as raised before him and wrongly held that it is the Managing Director who should decide the matters falling under Clause 6 and 17 of the agreement. All the matters, it is submitted, should have been decided by the learned Arbitrator himself.

Clause 17 of the agreement reads as under:-

“Arbitration: All the disputes and differences arising out or in any manner touching of concerning to is agreement whatsoever (except as to any matter and the decision of which is expressly provided for in the contract) she be referred to the sale arbitration of the Managing Director or any person appointed by him in this behalf. It will be no objection to any such appointment that the person appointed is or was as employee of Punjab State Civil supplies corporation Limited or that he had to deal with the matters in which the contract relate and that in the course of his duties such as employee of the Punsup he had expressed view on all or any of the matters in disputes or difference. The aware of such arbitration shall be final and binding on the parties to this contract. It is a term of this contract that in the event of the arbitration be transferred or vacating his office dying or being unable to act for any person the Managing Director at the time of such transfer, vacation of office, dead or in ability shall be point and the person act as arbitration. Such a person shall be entitled to proceed with reference from the stage where it was left by his predecessor.”

In respect to claim of the appellant regarding interest on late delivery and interest on late deposit, learned Arbitrator while referring to Clause 6(iii) of the contract agreement specifically observed that these matters were exclusively reserved to be decided by the Managing Director whose decision on the matters would be final. It is in this view of the matter that these items not falling within the jurisdiction of the Sole Arbitrator were not decided by him and it was left upon to the Managing Director to decide the same in accordance with the terms and conditions of the contract.

Learned counsel for the appellant is unable to deny that as per Clause 6, the same would indeed be an excepted clause and would not fall within the purview of the Arbitrator. Similarly, sale of paddy was not found to be a part of the contract agreement between the parties. Learned counsel for the appellant is unable to point out any ground whatsoever, which makes out any ground for setting aside the well reasoned impugned order dated 05.07.2013 as well as award dated 06.04.2007, passed by the learned Sole Arbitrator.

At this stage, learned counsel for the appellant prays that liberty may, however, be afforded to the Managing Director of the Corporation to take action/decision in terms of award dated 06.04.2007, in accordance with law. Learned counsel for the respondents does not raise any objection to such prayer.

Accordingly, this appeal is dismissed with liberty to the Managing Director to take a decision in accordance with law, in terms of the liberty afforded vide award dated 06.04.2007.

(LISA GILL)
JUDGE

18.07.2022

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