IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 22159 of 2020 (O&M)

Date of decision:- **18.05.2022**

Karnal Singh and others .....Petitioners

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE.

Present:- Mr. Saurabh Bajaj, Advocate,
for the petitioners.

Mr. Deepak Balyan, Addl. Advocate General, Haryana,
for respondent No.1.

Mr. Lokesh Sinhal, Advocate,
for respondents No.2 & 4.

Mr. Puneet Bali, Senior Advocate with
Mr. Surjit Bhadu, Advocate,
Mr. Sachin Jain, Advocate,
Mr. Nihit Lomis, Advocate, for respondent No.3.

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RAVI SHANKER JHA, CHIEF JUSTICE (oral)

This petition has been filed by the petitioner being aggrieved by an order dated 24.07.2020 (Annexure P-32) passed by the respondent-authorities by which respondent No.4-Haryana State Federation of Cooperative Sugar Mills Ltd. with the approval of State Government has permitted respondent No.3 to remove clauses 8(b) and 8(k) of the agreement to sell dated 19.01.2007.

Brief facts leading to the filing of the present petition are that the State Government had established Bhuna Cooperative Sugar Mills Ltd. Bhuna, Tehsil and District Fatehabad. However, as the said mill was running in perpetual losses, the State Government took a decision on 20.03.2006 to close it down. The mill was placed under liquidation on 18.07.2006. Some of the persons being aggrieved by the said decision of the State Government to close down the mill filed a Civil Writ Petition No. 17372 of 2006 before this Court which was eventually dismissed on 03.11.2006:-

> ***"Present : Sh. Bhag Singh, Advocate, for the petitioners.***
>
> ***The petitioners have prayed for quashing of the decision dated 20.03.2006 (Annexure P/6) whereby it has been decided to sell the Bhuna Cooperative Sugar Mill.***
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> ***A perusal of the impugned order shows that the Bhuna Cooperative Sugar Mill has been incurring financial losses every year and the total loss as on 31.03.2005 has accumulated to Rs. 171.95 crores. The State Government, before closing down the said sugar mill has tried very hard to revive the same but as adequate supply of sugarcane is not forthcoming, therefore, the sugar mill has gone in heavy losses. There is no ground to quash the decision of the State Government and accordingly, the writ petition is dismissed. The petitioners, may, however, file a representation before an appropriate competent authority, for redressal of their grievance i.e. with regard to reappointing them in service with the new management or in any other department of the State Government. In case any such representation is filed by the petitioners, the same shall be decided within six months from the date of filing of that representation."***

Thereafter in view of the decision of the State Government, the mill was put to auction by the Official Liquidator and was purchased by respondent No.3 in auction on 09.11.2006 for a consideration of Rs.40.25 crores against a reserved price of Rs.32 crores. However, as even respondent No.3 remained unsuccessful to run the mill, it ceased to operate since the year 2009 and was shut down. Thereafter, all the employees of the Bhuna Cooperative Sugar Mills Ltd. Bhuna filed Civil Writ Petition No. 17837 of 2006 (*Bhim Sain and others versus State of Haryana and others)* before this Court seeking reappointment/readjustment/resettlement, which was disposed of on 28.01.2015 in view of the statement made by learned counsel for the respondents that all the employees of the mill as also the other casual employees, have either been adjusted by the State Government in other sugar mills/cooperative societies or granted voluntary retirement by paying them the requisite amount.

In the meanwhile, as there was a dispute in respect of the payment to be made by respondent No.3 to the State Government for the purchase of the mill and also because the State Government was demanding certain extra amount, which remained outstanding in the name of one N.K.Jain, the petitioners filed an Arbitration Case No. 119 of 2008 before this Court for reference of the dispute between respondent No.3 and the State Government to an arbitrator to be appointed by the Court. Accordingly the arbitration application was allowed on 02.11.2010 and the matter was referred to the sole arbitrator, namely, Justice R.K.Nehru, a former Judge of Jammu & Kashmir High Court, for arbitration, who rendered an award on 25.07.2013:-

"(vi) That the sole arbitrator announced its award on 25.07.2013 in the following terms:-

1. ***Claimant is not liable to be fastened with the liability in M/s N.K.Jain's case.***
2. ***The claimant is entitled to recover Rs.30,84,428/- from the liquidator respondent on account of the payment of excise duty, penalty and interest payable to the Excise Department due to quantity of molasses found short at the time of handing over possession of the assets of the mill to the claimant. He is entitled to adjust this amount towards the payment of balance of sale price of Rs.20 crores.***
3. ***Claimant is liable to pay balance sale consideration of Rs.20 crores to respondent as held hereinbefore.***
4. ***As held and awarded earlier that in case the claimant does not deposit the balance payment of sale price on or before the expiry of three months from the date of receipt of a signed copy of this award along with interest @ 6% per annum w.e.f. the date of award till deposit then he will be liable to pay interest on Rs.20 crores @ 10% per annum w.e.f. 09.02.2010 till date of actual payment. On receipt of full sale consideration, the assets of the mill will be transferred to the claimant, who is already in possession thereof.***
5. ***Cost. The respondent had declined to pay 50% of the fee of the Arbitrator and hence whole of Rs.11/- lacs of the said fee was paid by the claimant. Accordingly, I hold that claimant shall also be entitled to recover Rs.11/- lacs from the respondent on this account and adjust the same to the balance sale amount payable by the claimant to the respondent."***

Against the award passed by the arbitrator, the Official Liquidator filed objections under section 34 of the Arbitration and Conciliation Act, 1996 before the District Court at Panchkula which were dismissed vide order dated 09.03.2015. The relevant part of the order dated 09.03.2015 reads as follow:-

> ***"Hence due to the reasons stated herein before the Award passed by the learned arbitrator is not suffering from any patent illegality or infirmity warranting the interference of this Court under section 34 of the Act because the grounds pleaded are not falling in the ambit of Sections 32 and 33 of the Act, rather the award is well reasoned having dealt with every fact and circumstance of the case in hand and it appeals to the conscience of the Court and the law cited by the counsel for the petitioner referred in para no.14 of this order is not at par with the facts and circumstances of the case, it being having its own peculiarity of facts."***

The FAO No. 2325 of 2015 (O&M) filed by Official Liquidator Bhuna Cooperative Sugar Mills Ltd. against the order dated 09.03.2015 was disposed of vide order dated 18.04.2018, as parties had settled the dispute:-

> "***With the intervention of the counsel for the parties this dispute has been settled. On instructions from Sh. Satish Kumar, Assistant to the Official Liquidator-Bhuna Cooperative Sugar Mills, who is present in Court, counsel for the appellant states that in case the respondent is ready to shoulder the liability of the payment which has to be made to Sh. N.K. Jain, the appellant would have no objection if the rest of the award is upheld. On instructions from Sh. Sukhvir Singh Sandhar, Chairman of the respondent-company, counsel for the respondent has accepted this offer.***
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> ***In the circumstances, the award is upheld subject to payment of Rs.250.02 lakhs by the respondent to the official liquidator within a period of two weeks from the date of receipt of a certified copy of this order.***
>
> ***Appeal is disposed of in the above terms.***
>
> ***Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of."***

Respondent No.3 filed an execution petition before the Executing Court of Additional District Judge, Panchkula seeking execution of the award as well as direction to the Official Liquidator to transfer the mill in terms of the award passed by the arbitrator as the necessary amount had been deposited by respondent No.3-purchaser.

The matter was considered at length as the petitioner had objected to clauses 8(b) and 8(k) contained in the sale agreement dated 19.01.2007 wherein there was a mandate requiring respondent No.3 to continue to operate the sugar mill under any circumstances and also to rehabilitate the employees. The Executing Court decided the execution application on 29.07.2018 in terms of the award dated 25.07.2013 with the following observations:-

> ***"21. It is for the competent authority to decide whether the sale deed can be executed in favour of the DH without taking any undertaking regarding the compliance of the terms and conditions mentioned in the sale agreement dated 19.01.2007 or not. If the DH is aggrieved of seeking of such undertaking by the JD and if DH is apprehending that giving of such undertaking will cause prejudice to its rights in any manner, DH may approach the competent authority for waiver of such conditions and this Court has no power to decide about the waiver of the terms and conditions or legality of such said terms and conditions and other question relating to that issue.***
>
> ***22. However, in case the DH will give undertaking regarding compliance of the terms and conditions mentioned in the agreement dated 19.01.2007 after transferring of the title in its favour as per the notice issued, JD shall be bound to execute the sale deed within three weeks from the date of giving of such undertaking as per the***

statement made by the JD in Court. The application is disposed of accordingly."

Pursuant to the aforesaid order of the Executing Court, respondent No.3 initially filed an undertaking dated 16.11.2018 in terms of the award and the order of the Executing Court, upon which the sale deed was executed on 29.01.2019.

Respondent No.3 thereafter filed a representation on 24.01.2020 before the authorities concerned for waiving of conditions contained in clause 8(b) and 8(k) of the sale agreement dated 19.01.2007 in terms of the liberty granted by the Executing Court. The request made by respondent No.3 was duly considered and examined by the several authorities whereafter necessary approvals were granted by the State Government. Whereupon Haryana State Federation Cooperative Sugar Mills Ltd. (respondents No.2 and 4) vide the impugned order dated 24.07.2020 conveyed the approvals granted by the State Government to respondent No.3. Being aggrieved by the said order, the present petition has been filed by the petitioners.

The State of Haryana in its affidavit also stated that the representation of respondent No.3 for waiver of the conditions was also examined in the light of non-availability of the sugarcane in the assigned area of Bhuna Cooperative Sugar Mills Ltd. and a legal opinion in respect of closure of the mill was also obtained from the office of Advocate General, Haryana, who opined that in view of clear provisions of Sections 11 and 12 of the Transfer of Property Act, 1882, the clause or the rider contained in the sale deed in terms of clauses 8(b) and 8(k) was in fact inoperative in law and was void, as a result of which the permission was granted to waive the conditions.

At the out-set, it is noted that previously the petitioners had filed a petition allegedly in public interest i.e. CWP-PIL No. 129 of 2020. However, when confronted with the maintainability of the said petition, learned counsel for the petitioner had withdrawn the said petition leaving open the issues to be decided in appropriate proceedings vide order dated 29.09.2020. Subsequently after withdrawal of the said Public Interest Litigation, the petitioners had filed the present petition claiming that the order passed by the Government permitting removal of conditions No. 8(b) and 8(k) of the agreement dated 19.01.2007 is arbitrary and against the provisions of law.

At the very outset, this Court questioned the maintainability of the petition at the behest of the petitioners. Learned counsel for the petitioners submits that one of the petitioners is an erstwhile employee of the Bhuna Cooperative Sugar Mills Ltd. Bhuna, Tehsil and District Fatehabad, Haryana and other petitioners are the farmers whose land had been acquired for the purposes of setting up the aforesaid sugar mill. It is submitted that Bhuna Cooperative Sugar Mills Ltd. Bhuna was under liquidation and therefore, it was sold to respondent No.3 with specific conditions contained in clauses 8(b) and 8(k) of the sale agreement dated 19.01.2007 that respondent No.3 shall run and operate the mill subject to those conditions:-

> ***"8(b) That the second party shall run and operate the mill under due process of law and shall retain all the existing staff on the agreed terms and conditions failing which the agreement shall be liable to be cancelled at the instances of the first party.***
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> ***8(k) That the second party shall not alienate any property and has furnished advance post dated cheques for the amounts of installments towards total sale consideration as security as per details given below:-***

Sr. No.	Cheque No.	Date	Bank	Amount
1	792405	13.02.2007	SBI Phagwara	10.00 crore
2	792406	13.05.2008	SBI Phagwara	20.00 crore

It has also been pointed out by the respondents in their return that petitioner No.3 herein was one of the employees of erstwhile Bhuna Cooperative Sugar Mills Ltd., who had opted for voluntary retirement on 03.03.2009 and had even received an amount of Rs.3,66,954/- and executed the necessary documents in this regard.

Having heard learned counsel for the petitioners and looking to the history of the case specifically the fact that the decision of the State Government to sell the mill dated 20.03.2006 had been upheld by this Court vide order dated 03.11.2006 in Civil Writ Petition No. 17372 of 2006 and all the employees of the Government sugar mills working with respondent No.3 were resettled/reappointed or granted voluntary retirement by the authorities after making due payments in view of the orders passed by this Court in Civil Writ Petition No. 17837 of 2006 dated 28.01.2015, we do not find that the petitioners have been able to establish any right or any cause of action to assail the order of the State Government dated 24.07.2020. The petition filed by the petitioners is, therefore, misconceived. However, we may take note of the fact that this Court only for the purposes of satisfying itself had directed the State Government as well as Haryana State Federation of Cooperative Sugar Mills Ltd. as well as the petitioners to file affidavits in respect of the conditions and the facts leading to waiver of clauses 8(b) and 8(k) of the agreement to sell dated 19.01.2007.

The State of Haryana has filed an affidavit on 17.11.2021 wherein it has been stated that after the sale of the mill to respondent No.3, it could function only for a short period of 3 to 4 years, whereafter it was closed down. Upon which, respondent No.3 gave offer in writing to the effect that he was unable to run the sugar mill and may, therefore, be permitted to close down or the State Government may buy it back or operate the same with its own resources. The Cane Commissioner, Haryana to verify the aforesaid situation constituted a Committee, who submitted its report dated 20.08.2019:-

"**The detailed report of this Committees as follows:-**

Haryana Government has started the Bhuna Cooperative Sugar Mill in the year 1992 and was run by Government till 2006. Then in the year 2006 by M/s Wahid Sandhar Sugar Ltd. Phagwara purchased this sugar mills. After purchasing the Wahid Sandhar Group started the said sugar in the year 2006-07 and operated this Mill lupto season 2008-09.

Recommended varieties of sugarcane grown in this area:-

1. **Early variety-COJ-85.**
2. **Mid Variety-COH-119, CO-7717.**

Possibilities of Availability of Sugar Cane:

At present, the Sugar Cane area under all villages of this Sugar Mill is 2601ha. Which is not sufficient to run the Sugar mill of capacity 2500 TCD. AS per the observations of the Committee, it is found that there are some possibilities of increasing the cane area in all the villages of this Sugar Mill as well as Paniwala Mota Sugar Mill 74 Gram Panchayats of Bhuna Sugar Mill area have given a written assurance for increasing cane area if Wahid Sandhar Group or any other group/starts this sugar mill.

Quality of Soil

The Soil of this sugar mill area is Sandy loam, Loam & clay loam, which are suitable for sugar cane

cultivation. The soil from Bhuna area to Jakhal area are best suitable for sugarcane cultivation. However, the soil towards Bhuna to Fatehabad side is sandy loam and the irrigation facilities in this area are also poor. The soil in and around Fatehabad are also best for Sugar cane cultivation.

Suggestions & Recommended for Agronomical practices:

The area under Sugar Cane and good recovery both can be increased by adopting the following practices by the farmers which will be beneficial for both farmer and Sugar Mill:-

1. **50% area of sugarcane should be sown under early varieties so that mill can be started at an early stage, area farmers can sow wheat in the sugarcane ratoon fields...**
2. **At least 20-25% area should be sown as autumn planting.**
3. **Best ratoon management practices be adopted for increasing yield of sugarcane.**
4. **Efforts should be made so that the recovery of plantcane can be earlier, because in some parts the recovery in plant can delayed in this guar mill area.**
5. **Farmers of this area have all the implements like Tractor, Trolley, Ridger, tractor operated; spray pump and other implement which are useful in sugarcane cultivation.**

However, the two members of the Committee from Wahid Sandhar Sugar Mill, Phagwara is of the view that looking at the present scenario of Sugar since last 3 years where in Punjab and Haryana has been most effected with the falling prices of sugar. We would like to bring to your kind attention that our company would not be able to run the Sugar Mill under such stringent conditions. We welcome the Government to come up with a plan in which they can buy back the plant and run the sugar mill under their Governance by paying us the appropriate price of the sugar mill.

Recommendations of the Committee

Analyzing all the facts, Committee is of the view that sugarcane area in this Sugar Mill area can be increased if the Sugar Mill is started. The payment of

Sugar Cane must be insured in time to the farmers, because in the past year farmers did not get their sugar cane payment in time and faith of the farmers towards Sugar Mill management was broken. Hence the farmers left to sow the sugarcane crop.

Sd/-Committee Members."

The State in its affidavit has further stated that though the Sugar Mill had needed viable cane production of 27.5 lacs quintals, however, the maximum production in the area of the mill was 28.12 lacs quintals in the year 2001-02 and it was about 20 lacs quintals in the subsequent years and therefore, cane production in the area was and is not sufficient to viably operate the sugar mill. It has further been stated in the affidavit by the State Government that in view of the recommendations of the High Powered Committee and the request made by respondent No.3, the viability of the offer made by respondent No.3 to buy back the mill and to operate the same was also examined. However, as the same was found to be financially unviable, therefore, the State Government after examining the report of the Committee and the other documents submitted by the Haryana State Federation of Cooperative Sugar Mills Ltd. granted approval of waiver of conditions 8(b) and 8(k) of the agreement to sell dated 19.01.2007 and the decision thereof was duly communicated to respondent No.3 by respondents No.2 and 4 vide the impugned communication dated 24.07.2020.

It is pertinent to note that the petitioners have only challenged the communication dated 24.07.2020 made by respondents No.2 and 4 and have not challenged the decision of the State Government permitting waiver of the conditions 8(b) and 8(k) of the agreement to sell.

Respondent No.3 in the affidavit filed before this Court has submitted that the petitioners had purchased the Bhuna Sugar Mill by paying price in terms of the award and got the sale deed executed by submitting an undertaking. He, however, submits that in terms of the order passed by the Executing Court and the liberty granted therein, he had approached the respondent-authorities by filing a representation on 24.01.2020 seeking deletion/removal of conditions 8(b) and 8(k) of the agreement to sell dated 19.01.2007 as it was impossible for respondent No.3 to comply with the same. He further submits that the decision to sell the mill by the State Government dated 20.03.2006 on account of its failure has been approved by this Court. The employees of the mill have also been readjusted/resettled/reappointed and granted voluntary retirement in terms of the order passed by this Court. It is submitted that if conditions 8(b) and 8(k) of the agreement to sell are examined with reference to and in juxtaposition of the orders passed by this Court, it would clearly establish that the agreement and its clauses stood frustrated and negated by the orders passed by this Court itself. It is further stated in the affidavit that the decision of the State Government to close down the sugar mill was approved by this Court vide order dated 03.11.2006 (ibid) and the employees were directed to be resettled/rehabilitated/reappointed elsewhere, the concerned conditions, namely, 8(b) and 8(k) of the agreement to sell had been rendered negated and otiose.

Respondent No.3 has also filed an affidavit stating that today also he stands with his undertaking that he is willing to first offer the State Government to repurchase the mill and take it on any agreed price or on the price on which the best offer is received by respondent No.3. Respondent No.3 further stated that he needs the amount urgently as the dues amounting to more than the consideration amount that he would probably receive, have to be paid to the farmers falling within the area of another sugarcane mill run by respondent company at Phagwara.

In view of the aforesaid facts and circumstances, we do not find any illegality in the order passed by the respondent-authorities dated 24.07.2020 communicating the decision of the State Government to respondent No.3 regarding removal of clauses 8(b) and 8(k) of the agreement to sell dated 19.01.2007. Accordingly, the petition filed by the petitioners stands dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

18.05.2022
ravinder

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