

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

**CR No.3232 of 2021 (O&M)
Date of Decision: April 21, 2022**

M/S G.D. AGRO FOODS

..... Petitioner(s)

Versus

PUNJAB STATE WAREHOUSING CORPORATION & ANOTHER

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Aditya Grover, Advocate
for the petitioner.

Mr. Jastej Singh, Advocate
for respondent no.1.

Service upon respondent no.2 already dispensed with
vide order dated 20.12.2021.

LISA GILL, J.

This civil revision has been filed by the petitioner for setting aside order dated 29.11.2021 (Annexure P-24), passed by respondent no.2—the Sole Arbitrator, wherein cross-examination was closed by order and application under Section 29-A of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Arbitration Act) filed by the respondent with regard to termination of mandate of the learned sole Arbitrator, was directed to be disposed of along with the main case at the time of award and matter listed for arguments.

Brief facts necessary for adjudication of this matter as pleaded in this petition are that petitioner and respondent no.1 i.e. the Punjab State Warehousing Corporation (for short PSWC) entered into a milling agreement on 21.10.2017 for custom milling of the central pool paddy

stocks pertaining to crop year 2017-18 and delivery of rice to FCI, as per various clauses of Punjab Rice Procurement, (Levy) Order, 1983 as amended from time to time. Allotment of paddy was made to the petitioner, however, dispute arose between the parties. FIR under Section 323, 324, 325 IPC was registered against the petitioner at Police Station Badhni Kalan and when the petitioner was under arrest, it is alleged that the rice mill was illegally taken over by the respondent-Corporation.

Sole Arbitrator was appointed by respondent no.1 on 10th of July, 2018 and claim for recovery of Rs.1,99,69,774/- was filed by respondent no.1, which included the component of interest calculated up to 15.06.2018 with a claim of further interest at the rate applicable till recovery of the claim amount. It is further stated that respondent no.1 filed an application under Section 17 of the Arbitration Act, which was allowed on 13.08.2018. An application under Section 12 of the Arbitration Act (Annexure P-4) was filed on 31.08.2018 by the petitioner to which reply (Annexure P-5) was filed by respondent no.1. Said application was rejected on 18.03.2019 (Annexure P-7) by the learned Arbitrator. An application under Section 16 of the Arbitration Act (Annexure P-8) is also stated to have been filed by the petitioner on 31.08.2018. Reply to the same was filed by respondent no.1 with written submissions stated to have been submitted by the petitioner on 28.01.2019. Application under Section 16 of the Arbitration Act was dismissed by the learned Arbitrator on 18.03.2019 (Annexure P-11). It is further stated that petitioner on 14.01.2019 filed an application under Section 19 of the Arbitration Act with regard to venue and timings of the arbitration proceedings (Annexure P-12), which was dismissed by the learned Arbitrator on 18.03.2019 (Annexure P-14).

Ultimately, petitioner is stated to have filed its reply to the claim on 15.04.2019. Replication thereto was filed by respondent no.1 on 08.07.2019. Subsequently, petitioner filed its counter claim on 15.03.2021 inter alia seeking recovery of Rs.3,45,86,016/- along with interest. Reply thereto was filed by the Corporation with a rejoinder also being submitted by the petitioner. The matter was thereafter listed for claimant's evidence. Averments have been made in the petition regarding certain adjournments being given by the learned Arbitrator to facilitate the officials of respondent no.1 but not for once facilitating the petitioner. Convenience of the officials of the claimant-Corporation, it is stated, was taken into account looking to the paddy season. Ultimately, petitioner, it is stated, filed an application dated 29.11.2021 seeking termination of the mandate of the learned Arbitrator on the grounds that the Arbitrator seems to be bent upon obliging the claimant-Corporation as he was granting adjournments at their asking without even seeking concurrence from the petitioner leading to a reasonable apprehension in the mind of the petitioner regarding absence of impartiality of the learned Arbitrator. It is further stated that as the learned Arbitrator had entered reference in the year 2018 as per provisions of the then Section 29-A of the Arbitration Act, arbitration proceedings had to be concluded within 12 months from the date of entering reference and it is only with consent of parties that an extension of six months could be sought, failing which mandate of the Arbitrator stands terminated unless extended by the Court.

Learned Arbitrator vide impugned order dated 29.11.2021, while observing that number of chances had been given to the counsel for the present petitioner for cross-examination of the DM, PSWC, Moga but there appeared to be an attempt of delay the matter on one pretext or the

other and that the petitioner seems to be attempting to take benefit of procedural lapses created by him, therefore, cross-examination was closed by order and it was directed that the application would be disposed of at the time of award. Aggrieved therefrom present revision petition has been filed.

Learned counsel for the petitioner vehemently argued that as per provisions of Section 29-A of the Arbitration Act, as it stood when the Arbitrator entered reference, mandate of the Arbitrator would automatically stand terminated on expiry of the period of 12 months from the date he entered reference, until and unless specifically extended by an order of the Court of competent jurisdiction. Learned counsel for the petitioner urged that a perusal of the zimni orders would reveal that adjournments were given at the asking of the counsel for the respondent-Corporation whereas when an adjournment was sought even for a genuine cause by the counsel for the petitioner, there was much reluctance and on one occasion even cost was imposed upon the petitioner while adjourning the matter. Learned counsel for the petitioner had argued that the present is a case which falls under the category of exceptional rarity, which calls for intervention of this Court at this stage. Proceedings before the Arbitrator, it is submitted, should not be permitted to continue in this manner. It is submitted that the proceedings before the Arbitrator are by themselves illegal and learned Arbitrator is proceeding without jurisdiction. It is thus prayed that this revision petition be allowed.

Per contra, learned counsel for respondent no.1 while refuting the arguments raised on behalf of the petitioner, submits that there is no infirmity in the impugned order which deserves to be upheld. It is further

submitted that petitioner has sought to mislead the Court inasmuch as all the facts have not been delineated in the revision petition. Learned counsel for respondent no.1 submits that FIR no.66 dated 01.06.2018 was registered against petitioner for misappropriation of the paddy entrusted by respondent no.1 and that he was convicted in another case, which has been mentioned in the revision petition in paragraph 3(IV). It is further stated that petitioner suffered a statement before the police on 15.06.2018 allowing respondent no.1 to take possession of the paddy belonging to respondent no.1 from the mill of the petitioner. These facts, it is stated, have not been mentioned in the revision petition. Learned counsel for respondent no.1 further argued that petitioner at each and every stage has tried to delay the disposal of the claim petition as is apparent from the sequence of events. Counsel for the petitioner is stated to have taken adjournments for cross-examination of the witness of the respondents on various occasions. Counsel was also changed by it on a number of occasions. Despite various opportunities, cross-examination was not completed by the petitioner on one pretext or the other and the learned Arbitrator had always facilitated the petitioner for completion of cross-examination. However, the petitioner instead of completing the cross-examination, filed an application for termination of proceedings under Section 29-A of the Arbitration Act in an absolutely unwarranted and vexatious manner. It is submitted that pleadings were completed on 15.06.2021, therefore, the period of one year has to be reckoned from that date. Period in question is still not complete, therefore, it cannot be said that mandate of the Arbitrator stands terminated. Learned counsel for respondent no.1 argued that Section 29 of the Arbitration Act being a procedural clause, it is the amended provision, which would be

applicable and moreover, the said Section is merely directory in nature. It is thus prayed that the present revision petition be dismissed being devoid of any merit.

I have heard learned counsel for the parties at length and have gone through the file with their assistance.

There is no dispute in so far as entering of the parties into agreement dated 21.10.2017 is concerned as well as arising of the dispute between them. It is further a matter of record that the Sole Arbitrator in this case was appointed on 10.07.2018. Challenge in the present revision petition is to order dated 29.11.2021, Annexure P-24, whereby the learned Arbitrator has closed the cross-examination by order and has directed that application seeking termination of mandate in terms of Section 29-A of the Arbitration Act will be disposed of alongwith the main case at the time of award. Primary argument raised by learned counsel for the petitioner is that once the mandate stands terminated, continuation of the proceedings before the learned Arbitrator is unjustified and illegal and there is no question of keeping the application pending till the passing of the award.

At this stage, it is relevant to refer to Section 29-A of the Arbitration Act as it stood prior to the amended Act, 2019 and as amended in 2019:-

Section 29A prior to its amendment	Section 29A after amendment in 2019
“(1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference. Explanation – For the purpose of this subsection, an arbitral tribunal shall	“(1) The award in matters other than international commercial arbitration, shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of

be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.....”.	Section 23: Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-Section (4) of Section 23.”
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Learned counsel for the petitioner has argued that the parties shall be governed by the unamended provision as the Arbitrator was appointed on 10.07.2018 whereas learned counsel for respondent no.1 argued that it is the amended provision, which shall be applicable. While being conscious of the fact that application dated 29.11.2021 filed by the petitioner seeking termination of the mandate is still pending before the learned Arbitrator, reference is made to these provisions as categoric arguments had been raised in this respect. It is relevant to note that the petitioner has not at any stage raised such an objection and has even proceeded to file its reply to the claim petition besides its counter claim subsequent to the lapse of one year since the learned Arbitrator entered reference. It is further relevant to note that the amended Section 23(4) and 29(a)(1) of the Arbitration Act are procedural in nature, therefore, said provisions have been held to be applicable retrospectively to all pending arbitral proceedings as on the effective date i.e. 30.08.2019. Gainful reference in this regard can be made to judgments of the Delhi High Court in ***Shapoorji Pallonji and Co. Private Ltd. Vs. Jindal India Thermal Power Ltd., 2021(5) RAJ 189*** and ***ONGC Petro Additions Ltd. Vs. Ferns***

Construction Co. Inc, 2020(3) RCR (Civil) 522 as well as judgment of the Hon'ble High Court of Orissa in ***M/s. SARA International Pvt. Ltd. Vs. South Eastern Railways and another, 2021(2) RAJ 394***. In this view of the matter, I desist from making any further observations keeping in view the pendency of the application before the learned Arbitrator except to say that there is no infirmity in keeping the application pending to be disposed of at the time of passing of the award.

It had also been argued by learned counsel for the petitioner that gross injustice had been meted out to the petitioner by not permitting the counsel for the petitioner to cross-examine the witness in question though major stress all along was laid on the aspect that the learned Arbitrator could not have proceeded with the matter due to termination of the mandate in terms of Section 29-A of the Arbitration Act.

It is a settled position of law that this Court in proceedings under Article 227 of the Constitution of India would be extremely circumspect in interfering in arbitration proceedings. It has been held by the Hon'ble Supreme Court in ***M/s. Deep Industries Ltd. Vs. Oil and Natural Gas Corporation Ltd. and another, 2020(15) SCC 706*** that interference by Courts is restricted to orders which are patently lacking inherent jurisdiction. The Hon'ble Supreme Court in ***Bhaven Construction through Authorised Signatory Premjibhai K. Shah Vs. Executive Engineer Sardar Sarovar Narmada Nigam Ltd. and another, 2022(1) SCC 75***, held that the Court should interfere only in cases of exceptional rarity, wherein one party is left remediless under the statute or clear 'bad faith' is shown by one of the parties and that there should be no interjection of the arbitral process in a routine manner.

Learned counsel for the petitioner has been unable to point out a case of any exceptional rarity, which would persuade this Court to interfere and neither is the petitioner left remediless by passing of the impugned order.

Keeping in view the facts and circumstances of this case, I do not find any ground whatsoever for setting aside the impugned order dated 29.11.2021. Needless to say the parties are at liberty to raise all legally permissible pleas available to them before the learned Arbitrator/competent authority.

No other argument has been addressed.

This revision petition is dismissed being devoid of any merit. No separate order need be passed in pending applications, if any, which stand disposed of accordingly.

21.04.2022

Sunil

**(Lisa Gill)
Judge**

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