

FAO No. 1181 of 2019 & connected case [1]

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Date of decision: 10th May, 2023

(1) FAO No. 1181 of 2019 (O&M)

M/s Fazilka Foods Pvt. Ltd.

Appellant

Versus

Punjab State Cooperative Supply and Marketing Federation Ltd. & others

Respondents

(1) FAO No. 1763 of 2019 (O&M)

The Punjab State Cooperative Supply and Marketing Federation Ltd.

Appellant

Versus

M/s Fazilka Foods Pvt. Ltd. and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Mukand Gupta, Advocate for the appellant in
FAO No. 1181 of 2019.
Mr. Amanpreet Singh, Advocate for the respondents in
FAO No. 1181 of 2019.
Mr. Naresh Gopal Sharma, Advocate for
Mr. Mehardeep Singh, Advocate for the appellant in
FAO No. 1763 of 2019.

AVNEESH JHINGAN, J (Oral):

1. This order shall dispose of the above mentioned two appeals as the facts and issues involved are similar. The facts are being considered from FAO No. 1181 of 2019.

2. M/s Fazilka Foods Pvt. Ltd. (hereinafter referred to as 'the miller') and Punjab State Cooperative Supply and Marketing Federation Ltd. (hereinafter referred to as 'Markfed') are in appeals aggrieved of the dismissal of objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act').

3. The brief facts are that miller and Markfed entered into an agreement dated 21.10.2010 for shelling of paddy for the crop year

2010-11. The date of supply was extended upto 30.6.2012. The arbitration proceedings were initiated at the instance of Markfed. Claim of Rs.4,10,73,261/- was made. During the pendency of proceedings, revised claim of Rs.5,18,08,047/- was filed in May, 2013. The arbitrator allowed the original claim of Markfed. The objections filed under Section 34 of the Act by both the parties were dismissed on 11.10.2018.

4. The undisputed facts are that Markfed made the original claim of Rs.4,10,73,261/- for failure of the miller to supply the milled rice within the stipulated period. There is no dispute between the parties that while filing the revised claim on the basis of instructions dated 6.12.2012, not only the amount was revised but the additional heads for claiming amounts were added. The evidence adduced by Markfed was vis-a-vis the revised claim. Original claim was not pressed by Markfed.

5. The grievance of learned counsel for the parties is that the arbitrator could not have considered and awarded the original claim made by Markfed in the absence of any evidence supporting the claim or the claim being pressed by Markfed.

6. The issue boils down to that both the parties are aggrieved of the award for considering and awarding the original claim which was neither pressed nor substantiated by leading evidence.

7. In such circumstances, the impugned order and the award are set aside.

8. The appeals are disposed of.

9. Needless to say that the parties would be at liberty to avail remedies in accordance with law including initiation of fresh arbitration.

10. Photocopy of the order be placed on the file of connected case.

[AVNEESH JHINGAN]
JUDGE

10th May, 2023
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1. Whether speaking/ reasoned	:	Yes / No
2. Whether reportable	:	Yes / No