2023:PHHC:127952-DB

FAO-CARB-17-2023

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-CARB-17-2023 (O&M)
Date of decision : 20.09.2023

M/s Dashmesh Rice & General Mills, Hathoor

..... Appellant

VERSUS

Punjab State Grains Procurement Corporation Limited and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Ayush Gupta, Advocate for
Mr. Kartik Sharma, Advocate, for the appellant.

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HARPREET KAUR JEEWAN, J.

1. The present appeal has been filed under Section 13 of the Commercial Courts Act, 2015 impugning the order dated 06.03.2018 whereby petition under Section 34 of the Arbitration & Conciliation Act, 1996 (for short 'the Act') was dismissed and the Arbitral Award dated 02.07.2014 (Annexure A-1) was upheld. Challenge has also been made to the order dated 13.03.2023 (Annexure A-17) passed by Additional District Judge, Ludhiana, who did not interfere in the impugned order dated 06.03.2018 while declining the review application.

2. As per averments of the appellant, the appellant and respondent No.1 entered into an agreement dated 20.10.2009 (Annexure A-2) whereby the appellant had agreed to mill the paddy for the crop season 2009-10. Subsequently, another agreement dated 25.10.2010 (Annexure A-3) was also executed between the parties for the crop season 2010-11. The appellant

delivered rice weighing 23,924.67 quintals for the year 2009-10 but the remaining rice weighing 23,740.50 could not be delivered to the Food Corporation of India (for short 'FCI') due to non-availability of space at the depot of the FCI. The appellant filed Civil Writ Petition No.6465 of 2011 before this High Court for issuance of directions to the respondent concerned for lifting of rice for the season 2010-11. The aforesaid writ petition was disposed of, vide order dated 08.04.2011 (Annexure A-4), with a direction to the concerned respondent, to consider the claim of the appellant, in accordance with law, within a period of one month. However, the said order was not complied with by respondent No.1, as such, the appellant filed contempt petition No.1646 of 2011 before this court, which had been disposed of, vide order dated 19.03.2012 (Annexure P-5), by observing that the appellant may approach the appropriate forum for redressal of its grievance.

2.1. Respondent No.1 filed a claim for recovery on the basis of agreement dated 20.10.2009 under Section 23 of the Act before Dr. Bhupinderpal Singh, Sole Arbitrator-cum-Joint Director, Food & Civil Supplies at Chandigarh. A separate claim was also filed before the said arbitrator for recovery on the basis of agreement dated 25.10.2010. The appellant filed objections to the said recovery applications. Appellant has further averred that the arbitration proceedings were transferred to Sh. Amarjit Singh Katari-respondent No.2 who did not issue any notice to the appellant and without considering the objections filed by the appellant, had passed the Arbitral Award dated 02.07.2014 and ordered for recovery of Rs.10,15,08,537/- alongwith interest @ 12% per annum from the date of institution of the claim petition till its realization, and the costs of Rs.50,000/- incurred on the said proceedings.

2.2 The appellant moved a petition under Section 34 of the Act with a prayer for setting aside the Award dated 02.07.2014. However, the said petition was dismissed by Additional District Judge, Commercial Court, Ludhiana, vide impugned order dated 06.03.2018.

2.3 The appellant filed a petition under Section 9 of the Act with a prayer to open the locks put up by respondent No.1 at the mill premises. However, the said petition was dismissed vide order dated 07.01.2016. The review application filed by the appellant was allowed by the Additional District Judge, Ludhiana vide order dated 13.03.2023 and the petition under Section 9 of the Act filed by the appellant was also disposed of vide order dated 13.03.2023 (Annexure A-21), by appointing the DSP/SSP, Jagraon as the Local Commissioner for breaking open the locks of the premises with the help of the officials of the Corporation and in the presence of the miller. Further direction was also issued that officials of the corporation shall be allowed firstly to inspect the paddy/rice stock and thereafter, the same shall be handed over to the officials of the Corporation after assessing its value in terms of money. It was contended by the appellant that the sheller, machinery, trucks and other assets of the appellant are still in the possession of respondent No.1.

3. The Additional District Judge, Commercial Court, Ludhiana dismissed the petition under Section 34 of the Act by holding that the liability to deliver the rice was not disputed by the appellant. It was observed that during the pendency of the arbitration proceedings, the appellant filed an application under Section 17 of the Act stating that he was ready to

deposit the cost of the rice at the rate of Rs.800/- per quintal for the crop year 2009-10 and at the rate of Rs.900/- per quintal for the crop year 2010-11 after sale as the rice was a perishable item and it was deteriorating due to moisture and hot weather. It was further observed that the appellant did not dispute his liability to return the rice after milling or to pay the price of the rice. The objection raised by the appellant that the rice could not be supplied due to paucity of space with the FCI, was also held to be of no help to the appellant since he has not disputed his liability. It was also observed that Award cannot be set aside as it is not capricious, arbitrary or against the public policy.

4. Learned counsel for the appellant contended that the arbitration proceedings were transferred to respondent No.2, who did not issue any notice to the appellant and the Arbitral Award dated 02.07.2014 (Annexure A-1) was passed in haste without hearing the appellant. The appellant was not aware that the Award has been transferred by Dr. Bhupinderpal Singh, Sole Arbitrator-cum-Joint Director, Food & Civil Supplies at Chandigarh, and was to be heard by respondent No.2. As such, the appellant had suffered the said Award at its back, but this fact was not appreciated by the Additional District Judge, Ludhiana, while dismissing the petition under Section 34 of the Act.

5. Keeping in view the contentions raised by the learned counsel for the appellant and availability of the record on the paper-book, we do not find it necessary to issue notice to the respondents.

6. We have considered the contentions raised by the learned counsel for the appellant.

7. The scope of Section 34 of the Act and the scope of an appeal under Section 37 of the Arbitration Act has been discussed by the Hon'ble Apex Court in UHL Power Company Limited vs. State of Himachal Pradesh (2022) 4 SCC 116, wherein it has been observed by the Hon'ble Apex Court as under :-

> *"16. As it is, the jurisdiction conferred on Courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an Appellate Court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In MMTC Limited v. Vedanta Limited 7, the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act has been explained in the following words:*
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>> *"11. As far as Section 34 is concerned, the position is well- settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract."*
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> *17. A similar view, as stated above, has been taken by this Court in K. Sugumar v. Hindustan Petroleum Corporation Ltd.8, where it has been observed as follows:-*
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>> *"2. The contours of the power of the Court under Section 34 of the Act are too well established to*

> *require any reiteration. Even a bare reading of Section 34 of the Act indicates the highly constricted power of the civil court to interfere with an arbitral award. The reason for this is obvious. When parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum. Interference will be justified only in cases of commission of misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity by the arbitrator."*

18. It has also been held time and again by this Court that if there are two plausible interpretations of the terms and conditions of the contract, then no fault can be found, if the learned Arbitrator proceeds to accept one interpretation as against the other. In Dyna Technologies (P) Ltd. V. Crompton Greaves Ltd. 9, the limitations on the Court while exercising powers under Section 34 of the Arbitration Act has been highlighted thus: "24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated."

19. In Parsa Kente Collieries Limited v. Rajasthan Rajya Vidyut Utpadan Nigam Limited, adverting to the previous decisions of this Court in McDermott International Inc. v. Burn

Standard Co. Ltd. And Others and Rashtriya Ispat Nigam Ltd. V. Dewan Chand Ram Saran, wherein it has been observed that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if a term of the contract has been construed in a reasonable manner, then the award ought not to be set aside on this ground, it has been held thus:

> *"9.1 ……….It is further observed and held that construction of the terms of a contract is primarily for an Arbitrator to decide unless the Arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do. It is further observed by this Court in the aforesaid decision in paragraph 33 that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the Arbitrator on facts has necessarily to pass muster as the Arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It is further observed that thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score.*
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> *9.2 Similar is the view taken by this Court in NHAI v. ITD Cementation (India) Ltd., SCC para 25 and SAIL v. Gupta Brother Steel Tubes Ltd. SCC para 29."*

20. In Dyna Technologies (P) Ltd. (supra), the view taken above has been reiterated in the following words:

> *"25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."*

21. An identical line of reasoning has been adopted in South East Asia Marine Engg. & Constructions Ltd.[SEAMAC Limited] V. Oil India Ltd. and it has been held as follows:

"12. It is a settled position that a court can set aside the award only on the grounds as provided in the Arbitration Act as

interpreted by the courts. Recently, this Court in Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., laid down the scope of such interference. This Court observed as follows :

> *"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated."*

13. It is also settled law that where two views are possible, the Court cannot interfere in the plausible view taken by the arbitrator supported by reasoning. This Court in Dyna Technologies observed as under : (SCC p.12, para 25)

> *25. Moreover, umpteen number of judgments of this Court have categorically held that the Court should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act." [emphasis supplied]"*

8. We have considered the contention raised by learned counsel for the appellant that the appellant was not aware of the transfer of the proceedings before respondent No.2. Perusal of the short order dated 02.07.2014 (Annexure A-1) recorded by the Arbitrator clearly reveals that the arbitral proceedings were received by way of transfer on 23.05.2014 and

thereafter, notice was issued to the parties for appearance for 04.06.2014. However, the respondent-firm (appellant herein) did not appear on the said date. Thereafter, a notice was again issued to it for 18.06.2014 and intimation had also been given to its counsel for that date fixed. But, there was no representation on behalf of it on 18.06.2014. Again another notice was issued to it for 02.07.2014. However despite service, none appeared on behalf of the appellant. Thereafter, the Arbitrator observed that the respondent (appellant) had intentionally failed to appear. As such, further proceedings were conducted and Arbitral Award was passed.

9. Perusal of the Award dated 02.07.2014 (Annexure A-1) also indicates that the appellant had filed a reply and the contentions made in the reply were considered by the Arbitrator as recorded in para No.6 of the Award. The Arbitrator has further observed in para No.7 of the Award that before filing the written statement to both the claim petitions (original claim petition and the amended claim petition), the respondent (appellant herein) appeared before Dr. Bhupinderpal Singh, the then Arbitrator, on 17.09.2012, and consented for conducting the arbitration proceedings by him in both the cases. This fact has also been recorded by the Arbitrator that arbitration proceedings were conducted with the consent of both the parties. The Arbitrator has also taken into consideration the statement dated 13.12.2012 made by Prem Kumar, owner of the appellant-firm that the appellant was ready to deliver 47 trucks of rice for the crop year 2009-10 and 92 trucks for the crop year 2010-11. As such, we are of the considered opinion that the appellant was having the knowledge of the arbitral proceedings and did not appear before respondent No.2 after the proceedings were transferred before him.

10. Learned counsel for the appellant further submitted that respondent No.1 adopted a pick and choose policy and started lifting the rice from other mills and started taking delivery of the rice for the year 2010-11 whereas the rice for the year 2009-10 was not lifted from the premises of the appellant. The appellant suffered huge loss for the year 2010-11 as it could not even take the paddy as per the capacity of the mill since the paddy for the year 2009-10 was already stored in the premises of the mill which could not be delivered to FCI. The appellant had to buy space for FCI for which he paid a sum of Rs.1,50,000/- through a demand draft dated 05.07.2011 (Annexure A-6) and another payment of Rs.1,10,000/- was also made by way of a demand draft dated 03.05.2011 (Annexure A-7).

11. The counsel for appellant further contended that the Market Committee, Hathur conducted a physical verification of the mill premises and submitted a report dated 10.10.2011 (Annexure A-8) reporting that 12241.70 quintals of rice for the year 2009-10 and 26535.4 quintals of rice for the year 2010-11 were available in the mill premises at the time of conducting the physical verification. The mill premises were already taken over by respondent No.1 and at that time, there was no shortage of rice. It was further alleged that even the officials of respondent No.1 had conducted a physical verification of the mill premises and submitted a report dated 12.12.2011 (Annexure P-9) verifying the availability of stock of rice for the crop years 2009-10 and 2010-11 and reported that there was no shortage of the stock rice for the said years. It was further contended that as per the subsequent physical verification reports dated 10.07.2014 (Annexure A-10) and 18.12.2017 (Annexure A-11), there was no shortage of rice for the said crop years.

12. It was also submitted that the mill premises were in custody of respondent No.1, who did not take any measure to protect and preserve the rice stock lying in the mill premises and did not use preservatives for the protection of the rice stock, a such, any loss to the rice stock cannot be attributed to the appellant in any circumstance.

13. Learned counsel for the appellant also contended that there was no fault on the part of the appellant and the loss, if any, has been caused due to the negligence on the part of respondent No.1, which was in possession of the Mill where the stock was stored. Even the stock was in the possession of respondent No.1. However, these facts have neither been taken into consideration by the Arbitrator nor have been considered by the Additional District Judge, while dismissing the petition under Section 34 of the Act.

14. We have considered the above contentions. The Arbitrator has observed that Prem Kumar, owner of the appellant-firm, was ready to deposit the amount at a specified rate for the balance rice and paddy and he was also ready to pay the amount in installments. On the basis of said statement made by the owner of the appellant-firm, the Arbitrator had concluded that the Miller had accepted the claim of the claimants. The Arbitrator has also considered the averments raised in the written statement by the appellant that the FCI was not ready to accept the delivery of the rice on account of shortage of space. The Arbitrator has rejected the said contentions observing that there is nothing on record to show that the respondent had lodged any complaint with the higher authorities of FCI. As such, the said contentions were rightly rejected by the Arbitrator and the reasons recorded by the Arbitrator are based on record.

15. We have also considered the submissions made by the learned counsel for the appellant that the appellant had to buy space for storing the paddy on behalf of FCI and it made the payment through demand drafts (Annexures A-6 to A-7). As discussed above, the Arbitrator has observed that the miller/appellant did not make a complaint to any of the authorities in this regard. As such, the said contention was rightly not believed by the Arbitrator. Merely on the basis of demand drafts dated 05.07.2011 dated 03.05.2011 (Annexures A-6 and A-7), amounting to Rs.1,50,000/- and Rs.1,10,000/-, respectively, issued in favour of the Area Manager, FCI, Ludhiana, no conclusion can be drawn that the same were pertaining to the payment made for storage of paddy/rice which was not lifted by the FCI. In fact, both the demand drafts (Annexures A-6 and A-7) are issued in favour of the Area Manager, FCI, Ludhiana, and in no way, connected with payment made to any third party regarding rent for the space for storing the paddy rice on behalf of FCI. The contention raised by the appellant that he had incurred expenses on account of storage of paddy as it was not being lifted by the FCI, stands shattered.

16. The appellant has further relied upon various verification reports Annexures A-8 to A-11 and submitted that there was no shortage of the paddy/rice as per the said reports. We have also considered the contentions raised on behalf of the appellant that the premises were locked. The said contentions have also been raised for the first time before this Court. The appellant did not raise any such argument before the Arbitrator nor the same were a part of the pleadings before the Arbitrator. As such, the Award cannot be set aside only on such belated arguments and when no such plea was even raised before the Additional District & Sessions Judge. The

reports (Annexures A-8 and A-9) are of 10.10.2011 and 12.12.2011, respectively, i.e. prior to passing of the Arbitral Award dated 02.07.2014. Before passing the Award, the appellant filed objections under Section 36 of the Act. These reports were not pleaded by the appellant in the said objection petition. Perusal of the objection petition (Annexure P-16) further reveals that the termination of the arbitration proceedings was sought under Section 36 of the Act *inter alia* on the ground of non-maintainability i.e. there were two different agreements for the crop years 2009-10 and 2010-11, respectively. However, a joint claim petition was filed by the authorities. Secondly, the competency of the Director Food and Supplies being an Arbitrator was challenged alleging that the agreement having not been signed by the competent person on behalf of the appellant-firm. Apart from this, the appellant had taken a plea that there was a clause in the agreement which provides that in case, the miller fails to mill the paddy within the stipulated period, the Corporation/claimant has a remedy to get it milled from other rice miller(s), but the said clause was not complied with by the Corporation. In the objection petition (Annexure P-16), which was filed on 17.06.2013, no such plea was taken that the appellant was ready and willing to deliver the rice for the crop season 2009-10 or that it has incurred any expenses for storage of the rice as FCI was having shortage of space. The said argument has been raised for the first time before this Court, which is an afterthought just to delay the proceedings. In the absence of any such pleadings and furthermore that none appeared on behalf of the appellant before the Arbitrator, no inference can be drawn that the Arbitrator has not considered the facts and evidence on record.

17. There is no patent illegality in the findings arrived at by the Arbitrator as well as by the Additional District Judge, Ludhiana, while passing the impugned orders. As such, the Arbitral Award is not against the public policy, rather there is a huge outstanding towards the appellant, as the Award for recovery of Rs.10,15,08,537/- alongwith interest @ 12% per annum, was passed against it in the year 2014 and after a lapse of more than 09 years, but no payment has been made to respondent No.1-Department. As such, the appellant has caused a loss to the govt. organization which is dealing with procurement of foodgrains.

18. There is nothing on record to suggest that any other view could have been taken by the Arbitrator or upon which an interference could have been made by the Additional District Judge, Ludhiana, while passing the impugned orders.

19. In view of the above, we find no merit in the present appeal. As such, the same is hereby dismissed with costs of Rs.20,000/- to be paid by the appellant to respondent No.1.

(G. S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

20.09.2023
parveen kumar

Whether speaking / reasoned Yes/No
Whether Reportable Yes/No