

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

FAO-3116-2019 (O&M)

Date of Decision: 20th March, 2023

M/s Shree Ganesh Rice Mills and another

... Appellants

Versus

The Punjab State Civil Supplies Corporation Limited and others

... Respondents

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ishan Gupta, Advocate for the appellants.
Mr. Arjun Dhaliwal, Advocate
for Ms. Deepli Puri, Advocate and for the respondents.

AVNEESH JHINGAN , J.(Oral)

1. This appeal under Section 37 of Arbitration and Conciliation Act, 1996 is filed aggrieved of order dated 12.2.2019 modifying the award dated 8.4.2015.

2. The grievance raised in the appeal is that in exercise of power under Section 34 of the Act, the award can not be modified.

3. Brief facts are that parties entered into an agreement for milling of rice for the crop year 2010-2011. The dispute between the parties was referred to the Arbitrator and the proceedings culminated into award dated 8.4.2015. In objection filed by the appellant, the award was modified.

4. The issue involved in the present appeal is no longer *res integra* and is covered by the decision of the Supreme Court in ***Project Director, National Highways No. 45-E and 220 National Highways Authority of India v. M. Hakeem and another, 2021(9) SCC 1.***

5. The Supreme Court after considering its earlier decisions in

328 and *Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies Pvt. Ltd.*, 2021 SCC Online 157, held that there is no power under Section 34 of the Act to modify the arbitral award. The relevant portion is quoted below:

“39. As has been pointed out by us hereinabove, McDermott (supra) has been followed by this Court in Kinnari Mullick (supra). Also, in Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies Pvt. Ltd., 2021 SCC OnLine SC 157, a recent judgment of this Court also followed McDermott (supra) stating that there is no power to modify an arbitral award under Section 34 as follows: -

(f) In law, where the Court sets aside the award passed by the majority members of the tribunal, the underlying disputes would require to be decided afresh in an appropriate proceeding.

Under Section 34 of the Arbitration Act, the Court may either dismiss the objections filed, and uphold the award, or set aside the award if the grounds contained in sub-sections (2) and (2A) are made out. There is no power to modify an arbitral award.

40. It can therefore be said that this question has now been settled finally by at least 3 decisions of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act, as also to ignore the fact that the 1996 Act was enacted based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in Redfern and Hunter on International Arbitration, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the ‘limited remedy’ under Section 34 is co- terminus with the ‘limited right’, namely, either to set aside an award or remand the matter

under the circumstances mentioned in Section 34 of the Arbitration Act, 1996.”

6. Learned counsel for the respondents is not in a position to dispute the legal proposition in view of the decision of the Supreme Court cited above.

7. Consequently, the impugned order is set aside and the matter is remanded back to the Court concerned to decide the objections under Section 34 of the Act afresh in accordance with law.

8. Since the main case has been decided, the pending application(s), if any is rendered infructuous.

(AVNEESH JHINGAN)
JUDGE

20th March, 2023

anuradha

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No