

FAO No. 1325 of 2013

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

FAO No. 1325 of 2013 (O&M)

Date of decision: 13th March, 2023

M/s Kalwanoo Rice Mills and others

Appellants

Versus

Punjab Warehousing Corporation Ltd. & another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vishal Gupta, Advocate for the appellants.
Mr. Tarun Seth, Advocate for
Mr. Sumit Jain, Advocate for the respondents.

AVNEESH JHINGAN, J (Oral):

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') is filed by M/s Kalwanoo Rice Mills (for short, 'the mill') and others, aggrieved of order dated 4.9.2012 allowing the objections under Section 34 of the Act.

2. The brief facts necessary for adjudication of the appeal are that the Punjab Ware Housing Corporation Ltd. (for short, 'the Corporation') on 30.9.1999 entered into a custom milling agreement with the mill. For the claim raised by the Corporation, the matter was referred to the sole arbitrator. The mill filed a counter claim and the proceedings culminated in award dated 11.9.2004. The objections filed by the Corporation were allowed on 4.9.2012, hence the present appeal.

3. The award was set aside on the grounds that the arbitrator went

beyond the terms and conditions of the agreement in awarding the amount for usage of space in the mill for storage of paddy and keeping staff for maintenance of paddy. Further, that the pleadings of the mill relied upon were not supported by an affidavit. It was taken note of that the Corporation had filed a suit for mandatory injunction for direction to the arbitrator to hand over the original record along with arbitration proceedings and restraining him to continue with the proceedings. The suit was withdrawn on the basis of a statement made by the arbitrator through his counsel that he will continue with arbitration proceedings on the same terms and conditions and would return all the documents including arbitration proceedings. Further that the letter dated 17.10.2002 showed that the arbitrator was to be paid Rs.4,000/- per case but the arbitrator assessed his own fee, directed the parties to deposit it. The mill deposited the fee but the Corporation did not pay the fee. It was concluded that from the conduct of the arbitrator bias cannot be ruled out.

4. Learned counsel for the appellant submits that bias cannot be a ground for setting aside the award. The contention is that as per clause 16 of the agreement the appellant was entitled to labour, transport and incidental charges. The argument is that the award is in consonance with the terms and conditions of the agreement.

5. Learned counsel for the respondent defends the impugned order.

6. Heard learned counsel for the parties and perused the record. There is no challenge to findings that pleadings un-supported by an affidavit were completely relied upon by the arbitrator for passing the

award.

7. The contention is that amount for usage of space for storing paddy and keeping maintenance staff was as per clause 16 of lacks merit.

Clause 16 is reproduced below:

“16. The delivery of rice shall be deemed to have been completed by the miller after the stocks are loaded into wagons or delivered into the godowns as per directions of the authorised/responsible official of the agency after necessary weighment/inspection and approval of the quantity in accordance with the prescribed procedure of the state govt. at the cost of the miller. It will be the responsibility of the miller to supply 'A' note weight check memo and all other relevant documents to the concerned agency within a fortnight of delivery of rice for claiming payment from FCI, failing which he shall be liable to pay 21% interest for the delayed period. All expenditure including labour, transportation and any other incidental expenditure etc. incurred in connection with the lifting of paddy from storage points or any other place and delivery of rice shall be borne by the miller and payable by the agency. The miller shall submit necessary documents in this regard to the agency in time.”

8. Clause 16 of the terms and conditions of the agreement deals with deemed completion of delivery of rice. As per clause all expenditures including labour, transport and other incidental charges with regard to lifting of paddy from place of storage to place of delivery was to be borne

by the Corporation. The interpretation of clause 16 to mean that expenses for usage for storing the paddy and keeping maintenance staff would be covered in phrase “any other incidental expenditure” is misplaced. It was rightly held in the impugned order that the arbitrator went beyond the terms and conditions by concluding that time was the essence of the contract resultantly the appellant was entitled even to expenses not specifically mentioned in the terms and conditions

9. The issue that the award cannot be set aside on the ground of bias lacks merit but may not be expounded at this stage as there is no challenge to conclusion that the award was passed by accepting pleadings not supported by affidavit. The award was set aside on number of grounds and one unchallenged ground would suffice the setting aside of the award.

10. No interference is called for in the impugned order.

11. The appeal is dismissed.

12. Since the main appeal has been dismissed, pending application if any is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

13th March, 2023
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |