

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

Date of decision: 23rd March, 2023

- (1)

FAO No. 2091 of 2014 (O&M)

Punjab State Cooperative Supply and Marketing Federation Ltd.

Appellant

Versus

M/s Singla Timber Trading Company and others

Respondents
- (2)

FAO No. 2092 of 2014 (O&M)

Punjab State Cooperative Supply and Marketing Federation Ltd.

Appellant

Versus

M/s Jugal Kishore Aggarwal Saw Mills and others

Respondents
- (3)

FAO No. 2093 of 2014 (O&M)

Punjab State Cooperative Supply and Marketing Federation Ltd.

Appellant

Versus

M/s Ravinder Kumar and sons and others

Respondents
- (4)

FAO No. 2094 of 2014 (O&M)

Punjab State Cooperative Supply and Marketing Federation Ltd.

Appellant

Versus

M/s Shri Ram Bansal & Sons and others

Respondents
- (5)

FAO No. 2095 of 2014 (O&M)

Punjab State Cooperative Supply and Marketing Federation Ltd.

Appellant

Versus

M/s B. K. Singla and Bros. and others

FAO No. 2091 of 2014 and connected appeals
2023:PHHC:043766

[2]

Respondents

(6) FAO No. 2096 of 2014 (O&M)

Punjab State Cooperative Supply and Marketing Federation Ltd.

Appellant

Versus

M/s Punjab Traders Timber Merchants and others

Respondents

(7) FAO No. 2097 of 2014 (O&M)

Punjab State Cooperative Supply and Marketing Federation Ltd.

Appellant

Versus

M/s Navdeep Saw Mills and others

Respondents

(8) FAO No. 2098 of 2014 (O&M)

Punjab State Cooperative Supply and Marketing Federation Ltd.

Appellant

Versus

M/s Bansal Timber Supply Company and others

Respondents

(9) FAO No. 2099 of 2014 (O&M)

Punjab State Cooperative Supply and Marketing Federation Ltd.

Appellant

Versus

M/s Aay Gee Engineers and others

Respondents

(10) FAO No. 2100 of 2014 (O&M)

Punjab State Cooperative Supply and Marketing Federation Ltd.

Appellant

Versus

M/s Hukam Chand Trading Company and others

Respondents

(11) FAO No. 2101 of 2014 (O&M)

Punjab State Cooperative Supply and Marketing Federation Ltd.

Appellant

Versus

M/s Ashish Industries and others

Respondents

(12) FAO No. 2102 of 2014 (O&M)

Punjab State Cooperative Supply and Marketing Federation Ltd.

Appellant

Versus

M/s Sham Lal and Sons and others

Respondents

(13) FAO No. 2103 of 2014 (O&M)

Punjab State Cooperative Supply and Marketing Federation Ltd.

Appellant

Versus

M/s Durga Cable Industries and others

Respondents

(14) FAO No. 2104 of 2014 (O&M)

Punjab State Cooperative Supply and Marketing Federation Ltd.

Appellant

Versus

M/s Baba Farid Saw Mills and others

Respondents

(15) FAO No. 2105 of 2014 (O&M)

Punjab State Cooperative Supply and Marketing Federation Ltd.

Appellant

Versus

M/s Kalu Traders and other

Respondents

(16) FAO No. 2106 of 2014 (O&M)

Punjab State Cooperative Supply and Marketing Federation Ltd.

Appellant

Versus

M/s Balaji Enterprises and others

Respondents

(17) FAO No. 8024 of 2015 (O&M)

Punjab State Cooperative Supply and Marketing Federation Ltd.

Appellant

Versus

M/s Ashish Trading Company and others

Respondents

(18) FAO No. 8121 of 2015 (O&M)

Punjab State Cooperative Supply and Marketing Federation Ltd.

Appellant

Versus

M/s Mukesh and Company and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vikas Singh, Advocate for the appellant.
 Mr. Nandan Jindal and Mr. Surinder Garg, Advocates for the
 respondents.

AVNEESH JHINGAN, J (Oral):

1. The afore-mentioned appeals are being decided by a common order as it is not in dispute that the facts and issues involved are similar.
2. However, for the sake of convenience, the facts are being taken from FAO No. 2091 of 104.
3. The relevant facts are that Punjab State Cooperative Supply and Marketing Federation Ltd. (hereinafter referred to as “Markfed”) invited tender on 1.8.2008 for supply of wooden crates for storage of food grains in Kharif Season-2008-09. The NIT provided for dispute resolution

through arbitration. The respondent-concern (hereinafter referred to as 'the respondent') was allotted tender. The price fixed was Rs.376.40 per crate. The purchase order was placed on 5.9.2008. The matter was referred for arbitration at the instance of Markfed and the proceedings culminated in award dated 19.9.2012. The claim of the Markfed was rejected and directions were issued to the respondent for refund of security along with interest @ 12% per annum. The objections filed by the Markfed were dismissed on 5.2.2014.

4. The claim raised by the Markfed was based upon the condition quoted below:

“The price of the above said wooden crates shall be Rs.376.40 per crate inclusive of all taxes, levies, octroi etc. F.O.R. destination anywhere in Punjab and unloading at destination will be borne by the Markfed at its expenses.

In case, any state Government agency lowers the rate or accept wooden crates below this rate in kharif 2008-09 i.e. upto 31.3.2009 then that rate would be applicable and the payment will be made accordingly. If PSFDC happens to purchase the crates on lower rates and offer to supply crates then present approved tender rates then markfed will make payment to the respondents at the said rates.”

5. Reliance was placed upon a purchase order issued by PUNGRAIN on 5.2.2009 for purchase of crates @ Rs.311/- per crate. The arbitrator considering that no record was produced that crates were supplied in pursuance to the purchase order dated 5.2.2009 and also that

purchase order related to Rabi Season 2009-10, rejected the claim of the Markfed.

6. Learned counsel for the Markfed contends that as per the condition in case there was purchase of crates at a rate lower than the quoted by the respondent, then the Markfed shall pay the same rate to the respondent. It is further argued that the arbitrator in ordering refund of security along with interest went beyond the claim made.

7. Learned counsel for the respondent defends the award and the impugned order.

8. Heard learned counsel for the parties and perused the relevant record produced by them.

9. From a perusal of the condition with regard to rates, it is unambiguous that it was only in case the wooden crates at a lower rates are accepted by government agency for Kharif 2008-09. The condition clarified that the Kharif Season ends on 31.3.2009. The purchase order relied upon for Rabi Season 2009-10 was not relevant piece of evidence to bring the claim of Markfed within the condition of paying lower rates. It would be apposite to note that here was no evidence that wooden crates pursuant to purchase order were supplied to PUNGRAIN. Consequently, no case for interference under Section 37 of the Act is made out.

10. Vis-a-vis the second contention that the arbitrator went beyond the claim in ordering refund of security along with interest, learned counsel for the respondent submits that the award could not be executed as the execution proceedings were stayed by this Court vide order dated 29.4.2014. Further on instructions, it is submitted that the respondent shall

not be claiming refund of security on the basis of the award in question but seeks liberty to avail remedies in accordance with law.

11. In view of the statement made by learned counsel for the respondent and that the first contention made by learned counsel for appellant has been rejected on merits, there is no occasion for this court to set aside the award or the impugned order.

12. The appeals are accordingly disposed of with liberty sought by respondent.

13. There is no doubt that in eventuality of the respondents availing remedies, the court concerned would deal with the same in accordance with law considering the factum of pendency of appeal and operation of interim order during pendency of appeal.

Photocopy of this order be placed on the files of the connected appeals.

[AVNEESH JHINGAN]
JUDGE

23rd March, 2023
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |