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

Date of decision: 3rd **March, 2023**

(1) FAO No. 6377 of 2013

M/s Rai Industrial Corporation

Appellant

Versus

Punjab State Civil Supplies Corporation Ltd. and others

Respondents

(2) FAO No. 643 of 2014

Punjab State Civil Supplies Corporation Ltd.

Appellant

Versus

M/s Rai Industrial Corporation and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Ritam Aggarwal, Advocate for the appellant in FAO No. 6377of 2013 and
Mr. Anil Sharma, Advocate for the appellant in FAO No. 643 of 2014.
Mr. Deepak Sabherwal, Advocate for respondents No. 1 and 2 in FAO No. 6377 of 2013.

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AVNEESH JHINGAN, J (Oral):

1. This order shall dispose of the above mentioned two appeals as the issue involved therein is common.

2. For the sake of convenience, the facts are being taken from FAO No. 6377 of 2013.

3. Both the parties aggrieved of decision of objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the

1996 Act') are before this court by filing appeals under Section 37 of the Act.

4. The facts shorn off unnecessary details are that the parties entered into a custom milling agreement on 20.9.2001 for the crop year 2001-02. M/s Rai Industrial Corporation (hereinafter referred to as 'the miller') was supplied 38317 quintals of paddy for custom milling. 9828 quintals of paddy was shifted to other rice mills by Punjab State Civil Supplies Corporation (for short, 'the Corporation'). The miller shelled 13638 quintals of paddy and delivered 9274 quintals of rice. The miller failed to deliver remaining rice within the stipulated period and as per the terms and conditions, 6817 quintals of paddy was auctioned by the Corporation at the risk and cost of the miller. During physical verification, 8029 quintals of paddy was found short. The Corporation claimed the amount for shortage of paddy and also the differential amount between procurement and auction price. The dispute was referred to the sole arbitrator. The proceedings culminated into award dated 28.12.2017. The objections filed by both the parties under Section 34 of the Act were dismissed, hence the present appeals.

5. Learned counsel for the miller submits that the arbitrator failed to consider the evidence adduced and the credit of amount received by the Corporation from auction of the paddy was not given.

6. Learned counsel for the Corporation refutes the contentions and submits that the difference of the procurement and the auction price was not awarded.

7. There is no quarrel on the proposition that one of the ground for interference under Sections 34 and 37 of the Act is patent illegality. The contravention of a substantive law including the provisions of the Act brings the case within the ambit of patent illegality.

8. It would be gainful to cite following decisions.

In ***Tamilnadu Electricity Board v. M/s Bridge Tunnel Constructions, 1997(4) SCC 121***, the Supreme Court observed:

> *"The Parliament has expressed the legislative judgement that the award shall state reasons upon which it is based unless parties have agreed otherwise or the award is covered on*

agreed terms under Section 30 of the new Act.

Thus, the law on the award, as governed by the new Act, is other way about of the pre-existing law; it mandates that the award should state the reasons upon which it is based. In other words, unless (a) the parties have agreed that no reasons are to be given or (b) the award is an arbitral award on agreed terms under Section 30 of the new Act, the award should state the reasons in support of determination of the liability/non-liability. Thereby, legislature has not accepted the ratio of the Constitution Bench in the Chokhamal Contractor's case that the award, being in the private law field, need not be a speaking award even where the award relates to the contact of private parties or between person and the Government or public sector undertakings. The principle is the same, namely the award is governed by Section 31(3).”

8.1. The Supreme Court in ***Oil & Natural Gas Corporation Ltd. v. SAW Pipes Ltd., 2003(5) SCC 705*** *held:*

“Similarly, if the award is non-speaking one and is in violation of Section 31(3), can such award be set aside? In our view, reading Section 34 conjointly with other provisions of the Act, it appears that the legislative intent could not be that if the award is in contravention of the provisions of the Act, still however, it could not be set aside by the court. If it is held that such award could not be interfered, it would be contrary to basic concept of justice. If the arbitral tribunal has not followed the mandatory procedure prescribed under the Act, it would mean that it has acted beyond its jurisdiction and thereby the award would be patently illegal which could be set aside under Section 34.”

8.2 In ***M/s Som Datt Builders Ltd. v. State of Kerala, 2009(10) SCC 259,*** the Supreme Court held:

“25. The requirement of reasons in support of the award under Section 31(3) is not an empty formality. It guarantees

> *fair and legitimate consideration of the controversy by the arbitral tribunal. It is true that arbitral tribunal is not expected to write judgment like a court nor it is expected to give elaborate and detailed reasons in support of its finding/s but mere noticing the submissions of the parties or reference to documents is no substitute for reasons which the arbitral tribunal is obliged to give. Howsoever brief these may be, reasons must be indicated in the award as that would reflect thought process leading to a particular conclusion. To satisfy the requirement of Section 31(3), the reasons must be stated by the arbitral tribunal upon which the award is based; want of reasons would make such award legally flawed. In what we have discussed above, it cannot be said that High Court was wrong in observing that no reasons have been assigned by the arbitral tribunal as to whether the period of completion extended by the employer for 18 months was due to reasons not attributable to the claimant. However, in our view, the High Court ought to have given the arbitral tribunal an opportunity to give reasons."*

8.3 The Supreme Court in ***State of Chhattisgarh v. Sale Udyog Private Ltd., (2022) 2 SCC 275,*** held:

> "14. The law on interference in matters of Awards under the 1996 Act has been circumscribed with the object of minimising interference by courts in arbitration matters. One of the grounds on which an Award may be set aside is "patent illegality". What would constitute "patent illegality" has been elaborated in Associate Builders v. Delhi Development Authority, where "patent illegality" that broadly falls under the head of "Public Policy", has been divided into three sub-heads in the following words:-
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> > *"...42. In the 1996 Act, this principle is substituted by the "patent illegality" principle which, in turn, contains three subheads:*

42.1. (a) A contravention of the substantive law of India would result in the death knell of an Arbitral Award. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. This again is really a contravention of Section 28(1)(a) of the Act, which reads as under:

"28. Rules applicable to substance of dispute. – (1) Where the place of arbitration is situated in India-

(a) In an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;"

42.2. (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality – for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside.

42.3. (c) Equally, the third subhead of patent illegality is really a contravention of Section 28(3) of the Arbitration Act, which reads as under:

*"28. Rules applicable to substance of dispute. – (1) – (2) ****

(3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction." [2015] 3 SCC 49

This last contravention must be understood with a caveat. An Arbitral Tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. 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."*

8.4 The Supreme Court in ***National Highways Authority of India v. Sri P. Nagaraju @ Chelluvaish and another, 2022(3) RCR (Civil) 604***, held:

24. Leaving aside the facts in the instant case for a while, if in a matter as against the determination of the market value by the SLAO, the land loser had referred to the exemplar sale deeds and seeks higher compensation than prescribed in the guidance value, and in that circumstance, if no reasons are assigned by the learned Arbitrator for such determination and either approves the SLAO award or awards a lesser amount than the actual entitlement, in such circumstance the arbitration process which is thrust on the land loser should not be an impediment and limited interference should not be a reason to deny the just and fair compensation. In such cases while examining the award in the limited scope under Section 34 of Act, 1996, the Court is required to take note as to whether the evidence available on record has been adverted to and has been taken note by the Arbitrator in determining the just compensation failing which it will fall foul of Section 31(3) and amount to patent illegality. Therefore, while examining the award within the parameters permissible under Section 34 of Act, 1996 and while examining the determination of compensation as provided under Sections 26 and 28 of the RFCTLARR Act, 2013, the concept of just compensation for the acquired land should be kept in view while taking note of the award considering the sufficiency of the reasons given in the award for the ultimate conclusion. In such event an error if found, though it would not be possible for the Court entertaining the petition under Section 34 or for *the appellate court under Section 37 of Act 1996 to modify the award and alter the compensation as it was open to the court in the reference proceedings under Section 18 of the old Land Acquisition Act or an appeal under Section 54 of that act, it should certainly be open to the court exercising power under Section 34 of Act, 1996 to set aside the award by indicating reasons and remitting the matter to the Arbitrator to reconsider the same in accordance with law. The said exercise can be undertaken to the limited extent without entering into merits where it is seen that the Arbitrator has on the face of the award not appropriately considered the material on record or has not recorded reasons for placing reliance on materials available on record in the background of requirement under RFCTLARR Act, 2013."*

[Emphasis supplied]

9. The award as stipulated in Section 31(3) of the Act should contain reasons to support the conclusion arrived at, unless otherwise agreed between the parties. There is nothing on record to show that parties agreed that no reasons are to be given in award.

10. In paragraph No. 8 of the award, the arbitrator considering the evidence concluded that after supply of 9274 quintals of rice, there was balance of 14846.045 quintals of un-milled paddy with the miller. From the remaining un-milled paddy, 6817.38 quintals paddy was auctioned @ Rs. 317/- per quintal. In other words, the paddy was procured @ Rs.688/- per quintal but was auctioned @ Rs.317/- per quintal. Taking into account the paddy auctioned and lying with the miller due to pendency of court case, the shortage of 7658.62 quintals was quantified and the amount of Rs.52,69,743.25 was awarded @ Rs.688/- per quintal. The loss sustained by the Corporation in auction of 6817.38 quintals of paddy though noted but was not considered while making calculations.

11. There are no reasons given for not awarding difference of auction price and procurement price of paddy despite noting the said facts and that there was evidence to this effect on record.

12. The contention of learned counsel for the miller that credit of the auctioned amount was not given to the miller is noted to be rejected. As discussed above, the arbitrator failed to take into consideration the loss sustained by the Corporation in auction of paddy i.e. the difference between procurement and auction price hence, there was no occasion for giving credit of auction price of paddy. It would not be out of place to mention that there was no challenge posed by miller in arbitration proceedings regarding shortage.

13. Considering the facts of the case, it would have been appropriate to send the matter for clarification to the arbitrator for reconciliation of the findings recorded and the calculations made. However, in view of the limited jurisdiction under Section 37 of the Act and considering that the award was passed way back in 2007, this court is left with no alternative but to set aside the award leaving the parties with liberty to avail remedies in accordance with law.

14. The appeal of the Corporation is allowed and the appeal of the miller is dismissed.

15. Since the main appeals have been disposed of, pending application, if any, is rendered infructuous.

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

[AVNEESH JHINGAN]
JUDGE

3rd March, 2023
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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No