IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 5862 of 2015 (O&M)
Date of decision: 9th March, 2023

Rajinder Virk

Appellant

Versus

Punjab State Cooperative Supply Marketing Federation Ltd. & others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Mukand Gupta, Advocate for the appellant.
Mr. Raj Kumar, Advocate for
Mr. Kunwar Rajan, Advocate for respondents No. 1 and 2.

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AVNEESH JHINGAN, J (Oral):

1. This appeal is filed aggrieved of dismissal of objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act')

2. The brief facts are that respondent No. 1 (hereinafter referred to as 'Markfed') entered into a custom rice milling agreement with M/s Guru Angad Dev Rice Mills, Mandvi (Moonak), Sangrur (hereinafter referred to as 'the mill'), sole proprietorship of Rajinder Virk (appellant). After entering into the agreement on 5.10.2007, the appellant without informing the Markfed leased out the mill to Harbans Singh. 71344 bags of paddy were stored in the premises and the mill was required to deliver 16730.17 quintals of rice whereas only 7006.70 quintals rice was delivered within the stipulated period. For the claim raised by Markfed, arbitrator was appointed. The mill was represented by the Harbans Singh and he filed reply. An award was passed on 1.6.2010 awarding Rs.77,73,860/- to the Markfed along with future interest @ 12% per annum.

3. Objections under Section 34 of the Act were filed by the

appellant taking a stand that Harbans Singh was not authorized to deal with Markfed on behalf of the mill. The paddy was not delivered to the appellant but to Harbans Singh. Further that no notice was served on the appellant by the arbitrator.

4. The objections were dismissed considering that (i) the appellant never remained in possession of the mill after 16.10.2007; (ii) the paddy was received by Harbans Singh on behalf of the appellant; (iii) it was considered that the appellant at first instance denied the execution of the agreement with Markfed but his stand was falsified by his admission in the objections filed by him where he admitted the execution of agreement; (iv) he also identified his signatures on the agreement which was placed on record; (v) there was an admission by the appellant with regard to execution of the lease deed between him and Harbans Singh;(vi) photocopy of the lease deed was produced before the arbitrator, the terms and conditions of the lease deed were perused and it was concluded that the appellant had given power to Harbans Singh to use the bank limit of the appellant and to contest the case in court of law; (vii) Harbans Singh was authorized to deal with Markfed, for receiving the paddy and delivering the rice and in the arbitration proceedings, Harbans Singh admitted that he had received paddy on behalf of the appellant and signed the receipt.

5. Learned counsel for the appellant submits that the award was passed without serving notice on the appellant. He further submits that the award is non-speaking.

6. Learned counsel for respondents No. 1 and 2 defends the impugned order and the award.

7. Heard learned counsel for the parties and perused the record with their able assistance.

8. Scope of interference under Section 37 of the Act is limited. Reference in this regard is made to the decision of the Supreme Court in ***Haryana Tourism Limited v. M/s Kandhari Beverages Limited, 2022 (3) SCC 237.***

9. The appellant without informing the Markfed leased out the mill to Harbans Singh. The mechanism adopted by the appellant was to keep the Markfed in dark and to get the agreement executed through

Harbans Singh who dealt with Markfed, received paddy, delivered rice and contested the arbitration proceedings on behalf of mill. At this belated stage, it does not lie in the mouth of the appellant that he was not served, especially when he was fence sitter after entering into an agreement with Markfed.

10. The contention that the award is a non-speaking is noted to be rejected. Supreme Court 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."*
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> *[Emphasis supplied]*

11. From the record, it is forthcoming that there was no serious opposition to the shortage of paddy or to less quantity of rice delivered. An attempt was made to explain shortage by stating that due to inferior quality

of paddy 67% of yield was not achieved. Suffice to say that no evidence was adduced to substantiate the defence taken. It will not be out of place to mention that the appellant was required to deliver 16730.17 quintals of rice against which only 7006.70 quintals of rice was supplied i.e. less than half. In absence of contest to claim made by Markfed, no detailed reasons were required. The arbitrator had taken into consideration the quantity of paddy supplied, rice delivered and also stock disposed of by Markfed.

12. No case is made out for interference under Section 37 of the Act, consequently the appeal is dismissed.

13. Since the main appeal has been dismissed, pending application, if any, is rendered infrufctuous.

[AVNEESH JHINGAN]
JUDGE

9th March, 2023
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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No