

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

**LPA-1322-2023 (O&M)
Date of decision:05.12.2023**

The Punjab State Cooperative Supplies and Marketing Federation Ltd.

... Appellant

Vs.

Rajinder Singh & others

... Respondents

**CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL.
HON'BLE MRS. JUSTICE SUKHVINDER KAUR.**

Present: Mr. Mrigank Sharma, Advocate for
Ms. Puneet Kaur Sekhon, Advocate for the appellant.

...

SUKHVINDER KAUR, J.

1. The present Intra Court Appeal is directed against the order dated 19.04.2023 passed by a learned Single Judge of this Court, whereby Civil Writ Petition No.29145 of 2022 filed by the appellant has been dismissed.

2. The brief facts are that respondents no.1 and 2 were joint custodians of wheat stock for the year 2001-02 which had been stored at Mrs. Surinder Kaur Open Complex, Moga. Despite providing of reasonable amount of pesticides and wheat specials, they failed to take care of the health of the stock and were unable to liquidate the same. It resulted in the damage of 1869.5 tonnes of wheat of Markfed, which was declared unfit for human consumption by the FCI and was categorized as cattle feed. It had to be sold by Markfed at a lower rate and it resulted in a loss of Rs.2,17,34,331/- to the State exchequer. To recover the said loss,

the appellant approached the Additional Registrar, Cooperative Societies, Punjab, Chandigarh. The matter was referred to be decided through arbitration. Thereafter vide award dated 23.10.2020, the arbitrator rejected the appellant's claim. It was held that the shortage was confirmed by Markfed in the year 2006 but the arbitration proceedings against the respondents regarding the above said shortage were initiated only in the year 2015 i.e. after a delay of 9 years. Aggrieved of the aforesaid award, the appellant filed an appeal before the Registrar, Cooperative Societies, Punjab, which was also dismissed on 27.07.2021. Thereafter, the appellant knocked the doors of this Court by filing a writ petition being CWP-29145-2022 – The Punjab State Cooperative Supplies and Marketing Federation Limited Vs. Rajinder Singh & others. The said writ petition was also dismissed by a learned Single Judge of this Court on 19.04.2023. Hence, the present intra Court appeal.

3. It has been contended by the learned counsel for the appellant that the learned Single Judge has failed to appreciate that the provisions of Limitation Act, 1963 are not applicable to the initiation of arbitration proceedings in respect of the claims made and adjudicated upon under Sections 55 and 56 of the Punjab Cooperative Societies Act, 1961. He has further contended that the learned Single Judge while passing the impugned order has also not taken note of the fact that it was the duty of the custodians/respondents no.1 and 2 to safeguard the wheat stock and to protect it from any damage, more so when all the resources to take necessary measures in the said regard were duly made available to them by the appellant. He has submitted that any shortfall and damage to the

wheat stock due to the negligence on the part of the custodians to maintain its health/quality would be the liability of the custodians, but they have been exonerated from the entire liability merely because the difference price was received by the appellant. He has urged that the learned Single Judge has not appreciated that the authorities below had not appreciated the evidence and pleadings of the appellant and had based their finding on conjectures and surmises and as the respondents being custodians caused a huge loss of public money, therefore, they cannot evade their liability and must pay loss caused by them and has prayed that this appeal may be accepted and order of the learned Single Judge may be set aside.

4. We have heard learned counsel for the appellant and have perused the record thoroughly.

5. The undisputed facts which emerge from the arguments raised on behalf of the appellant as also from the scrutiny of the record are that the arbitration proceedings for recovery of shortage of the wheat stock for the year 2001-02 were initiated in the year 2015, after a period of 9 years despite its confirmation by the Markfed in the year 2006. The learned Single Judge has rightly observed that from the perusal of the order dated 23.10.2020 of the Additional Registrar (Credit), Cooperative Societies, Punjab, it is revealed that the arbitration proceedings were not rejected merely on the ground of delay but on merits as well, as witnesses had also been examined and findings were based on the material available on the record. As per the committee report it came to light that due to

some difficulties, the stock was not dispatched on time. A perusal of the aforesaid order reveals that it has been specifically mentioned therein that the stock purchased by the appellant/Markfed was rain effected and lustre loss due to rain and stored in the open plinths. It has also been observed therein that if the stock stored by the appellant/Markfed in open place is not cleared for 6 years then the shortfall in that stock cannot be blamed on the custodians of that stock, especially when the higher officials of Markfed had been duly informed every month about the quality of this stock.

6. The learned Single Judge has rightly observed that it had also come forth from the testimony of the witnesses that Markfed submitted the report that under OMSS(D) scheme on loss of stock due to non-disposal of the same within stipulated time, the sale difference of Rs.6,56,03,246/- had been recovered from the FCI by the Markfed. Thus once the sale difference had been recovered from the FCI, then no recovery ought to be effected from respondents no.1 and 2.

7. The learned Single Judge has further rightly held that as per the judgment rendered by this Court in **Krishan Kumar Sharma Vs. Rajpur Sallapur Cooperative Agricultural Services Society Limited** **2001 (3) PLR 283**, that Article 137 of the Limitation Act is applicable to any petition or application filed under any Act and therefore, arbitration proceedings for recovery undertaken after expiry of 3 years period of limitation are barred by Article 137 of the Limitation Act.

8. As already observed, in the instant case, this fact cannot be brushed aside that arbitration proceedings for recovery of shortage of

wheat stock for the year 2001-02 had been initiated only in the year 2015, after a long gap of 9 years when it had been confirmed by the Markfed in the year 2006.

9. In the light of the afore discussion, we do not find any illegality or infirmity in the order passed by the learned Single Judge. Finding no merit in the instant intra Court appeal, the same is hereby dismissed.

10. It is also held that it would be necessary for the M.D. to conduct the fact finding enquiry, whenever delay of more than 3 years is there on the part of certain officials, initiating the arbitration proceedings.

11. Pending application(s), if any, shall also stand disposed of.

(DEEPAK SIBAL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

05.12.2023
harjeet

- | | |
|-------------------------------|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |