

**In the High Court for the States of Punjab and Haryana  
At Chandigarh**

FAO-1518-2018 (O&M)  
Date of Decision:-14.09.2023

The Punjab State Co-Operative Supply and  
Marketing Federation Ltd Sangrur

... Petitioner

Versus

Parkash Industries and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present:- Mr. A.S.Sidhu, Advocate, for the petitioner.

Mr. Mukand Gupta, Advocate, for respondent No.1.

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**GURVINDER SINGH GILL, J.**

1. The short point involved herein is as to whether the Arbitrator while passing an award can grant relief which otherwise falls in the excepted clause of the agreement between the parties.
2. A few facts necessary to notice for disposal of this petition are that the appellant-Punjab State Co-operative Supply and Marketing Federation (hereinafter referred to as 'MARKFED') had entered into a contract with the respondent for milling of paddy vide agreement dated 17.10.1996. A dispute having arisen amongst the parties, arbitration was invoked by the appellant. The Arbitrator passed its award dated 23.6.2004 in favour of the appellant for

recovery of an amount of Rs.13,34,835/- from the respondents which included interest @ 21% amounting to Rs.4,37,014/-.

3. The aforesaid award was challenged by the miller/respondent No.1 by way of filing a petition under Section 34 of the Arbitration and Conciliation Act 1996 before the District Judge, Sangrur. Learned District Judge set aside the award of the Arbitrator while observing that the Arbitrator had returned findings in respect of an excepted clause i.e. awarding of interest @ 21% per annum vide judgment dated 28.9.2017, which has been assailed before this Court.
4. Learned counsel for the appellant-MARKFED, vehemently argued that the impugned order cannot sustain inasmuch as the Managing Director, MARKFED as per the agreement could delegate his powers to any of his subordinates and since the award in question has been passed by the Deputy Chief Manager, MARKFED Chandigarh, the sanctity of the same could not be called to question.
5. On the other hand, learned counsel for respondent No.1 argued that having regard to the specific excepted clause in the agreement, the Arbitrator could not have rendered his award in respect of the same.
6. This Court has considered the rival submissions.
7. The relevant extract from the agreement dated 17.10.1996 is reproduced here under:

“6. ....

- iii) In case there is shortfall in the recovery of rice provided in sub-clause (I) above the miller shall pay to the Markfed the cost of paddy equivalent to the shortfall at the rate of @ 1-1/2 time the economic cost of paddy.

7. ....
- iii. ....

In the event of his failure to supply rice within the stipulated period he shall liable for an interest @ 21% on the basis of economic cost of the left over quantity/stocks of paddy/rice. The decision of MD, Markfed in this behalf shall be final.

20. ARBITRATION :-

All the disputed and difference arising out or in any manner touching or concerning this agreement whatsoever (except as to any matter the decision of which is expressly provided for in the contract) shall be referred to the sole arbitration of M.D Markfed or any person appointed by him in this behalf.  
.....”

8. A perusal of the contract entered into amongst the parties particularly the clauses reproduced above, show that while a dispute amongst the contracting parties is to be referred to an Arbitrator but the question as regards payment of penal interest @ 21% per annum on the economic cost of the quantity/stocks of paddy/rice is to be taken by Managing Director, MARKFED whose decision shall be final. Clause 20 providing for arbitration shows that any matter in respect of which there is a specific provision for a decision to be taken is specifically excluded from the scope of arbitration. While Clause 7 (iii) specifically provides that the decision regarding imposition of interest @ 21% per annum is to be taken by Managing Director whose decision is final, Clause 20 provides for exception of such decisions from the scope of arbitration. In the present case the Arbitrator has thus exceeded the jurisdiction by stepping into the domain which has been carved out exclusively for the Managing Director i.e. the

decision regarding imposition of interest @ 21% per annum, which the Arbitrator could not have touched. There is nothing on record or in the Arbitration clause to show that the said power regarding imposition of interest @ 21% per annum could be delegated by the Managing Director. This court finds support from a decision of this Court in Shree Krishna Rice Mills Vs. The Punjab State Co-op. Supply & Marketing Federation Ltd. 2003(3) RCR (Civil) 254, wherein also in case of an excepted clause, the reference of the matter to Arbitrator was held to be beyond the scope of arbitration clauses. In these circumstances the learned District Judge, Sangrur having set aside the award of the Arbitrator, cannot be said to have acted in any perverse manner. Rather, he has acted in accordance with the terms which had been agreed amongst the parties. It is well settled that the Court of learned District Judge while adjudicating upon a petition under Section 34 of the Arbitration and Conciliation Act 1996 does not have any power to modify the award of the Arbitrator. Thus, the learned Court had no option but to set aside the award in question. As such, this Court does not find any infirmity in the impugned order and the same is hereby upheld.

9. The petition is sans merit and the same is hereby dismissed.

14.09.2023

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( GURVINDER SINGH GILL )  
JUDGE

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No