

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

249 & 270 (7 cases)

ARB-227-2019 (O&M)
Date of Decision: 10.12.2024

M/s Ganpati Rice & General Mills

...Applicant

Versus

Haryana State Cooperative Supply & Marketing Federation Limited
and another

...Respondents

Sr. No.	Case No.	Applicant	Respondent(s)
2.	ARB-6883-2018 (O&M)	M/s Shree Ramji Riceland	State of Haryana and others
3.	ARB-130-2022 (O&M)	M/s Yamuna Rice and General Mills	Managing Director, Haryana Warehousing Corporation and another
4.	ARB-477-2023	M/s Goel Overseas	State of Haryana and others
5.	ARB-478-2023	M/s K D Overseas	State of Haryana and others
6.	ARB-480-2023	M/s R.R. Foods	State of Haryana and others
7.	ARB-484-2023	M/s Real Agro Foods	State of Haryana and others

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Aalok Jagga, Advocate for the applicant
(in ARB-227-2019)

Mr. Harmanjit Singh, Advocate
for Mr. Robin Dutt, Advocate for applicant
(in ARB-130-2022)

Mr. Vivek Goyal, Advocate and
Mr. Pardeep Sehrawat, Advocate for the applicant
(in ARB-6883-2018, ARB-477-2023, ARB-478-2023,
ARB-480-2023 & ARB-484-2023)

Ms. Fafia Gupta, Assistant Advocate General, Haryana

Mr. Prateek Mahajan, Advocate and
Mr. Mayank Vashishth, Advocate for respondents in ARB-227-
2019 & ARB-130-2022 and respondent Nos.2 and 3 in ARB-
6883-2018 and ARB-480-2023

JAGMOHAN BANSAL, J. (Oral)

1. As common issues are involved in all the captioned applications, with the consent of both sides, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from *ARB-227-2019*.

2. Through instant application under Section 11(5) & (6) of the Arbitration and Conciliation Act, 1996 (for short '**1996 Act**'), the applicant is seeking appointment of an Arbitrator.

3. The applicant is a rice miller. Pursuant to Custom Milling Policy, in the year 2018 the applicant entered into an agreement with respondent-State. As per agreement, the State agencies supplied paddy to the applicant who in turn had to supply rice. There is an arbitration clause in the agreement. As per said clause, dispute between the parties would be referred to the Arbitrator as per 1996 Act. There is exclusion clause in the said agreement. The exclusion clause provides that cases of fraud, theft or misappropriation on the part of miller would not be covered under arbitration agreement. For the ready reference, exclusion clause is reproduced as below:-

“Subject as aforesaid, the Arbitration and Conciliation, 1996, shall apply to the arbitration provided under the clause. However, the cases of fraud, theft or misappropriation etc. on the part of second party are not covered under this clause and in such cases legal proceedings as deemed fit will be initiated by the first party against the second party as well as against the sureties.”

4. Mr. Prateek Mahajan, Advocate submits that in view of exclusion clause, in case of fraud, theft or misappropriation of paddy on the part of miller, the matter cannot be referred to Arbitrator. There are serious



allegations of misappropriation of paddy against the applicant. The respondent lodged FIR against the applicant and police after completing investigation filed its report before the Trial Court and matter is pending for framing charge(s).

5. Mr. Aalok Jagga, Advocate, relying on a three Judge Bench judgment of Supreme Court in ***Vidya Drolia and others v. Durga Trading Corporation, (2021) 2 SCC 1*** submits that this Court while adjudication application under Section 11(6) of 1996 Act cannot decide question of non-arbitrable disputes. There is no allegation of fraud at the time of execution of agreement. On the basis of allegation of misappropriation of paddy, at a later stage, the applicant cannot be deprived to invoke arbitration clause. Supreme Court has clearly elucidated a fourfold test for determining whether subject matter of a dispute in an arbitration agreement is not arbitrable. If the said test is applied to instant case, the dispute raised by applicant cannot be held as non-arbitrable.

6. I have heard the arguments of learned counsel for both sides and perused the record with their able assistance.

7. The applicant is not disputing the fact that respondent has lodged FIR against it alleging misappropriation of paddy. The police has completed investigation and filed its report before the Trial Court. The applicant was allotted paddy for converting into rice. The paddy was allotted in terms of Custom Milling Policy framed by State Government. The respondent-State posed trust in the applicant and handed over paddy which was to be converted into rice. In the agreement, there is a specific exclusion clause. As per exclusion clause, in case of fraud, theft or misappropriation



relying upon afore-cited judgment of Supreme Court to contend that despite exclusion clause, the matter should be referred to the Arbitrator. As per Para 36 of the said judgment exclusion or non-arbitrability when clearly expressed would pose no difficulty and should be respected. Para 36 as well as Para 76 of the judgment wherein fourfold test has been laid down are reproduced as below:-

“36. Exclusion or non-arbitrability when clearly expressed would pose no difficulty and should be respected. However, exclusion or non-arbitrability of subjects or disputes from the purview of a private forum like arbitration by necessary implication requires setting out the principles that should be applied.

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76. In view of the above discussion, we would like to propound a fourfold test for determining when the subject-matter of a dispute in an arbitration agreement is not arbitrable:

(1) When cause of action and subject-matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem.

(2) When cause of action and subject-matter of the dispute affects third-party rights; have erga omnes effect; require centralised adjudication, and mutual adjudication would not be appropriate and enforceable;

(3) When cause of action and subject-matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable.

(4) When the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).

These tests are not watertight compartments; they dovetail and overlap, albeit when applied holistically and pragmatically will help and assist in determining and ascertaining with great degree of certainty when as per law in India, a dispute or subject-matter is



non-arbitrable. Only when the answer is affirmative that the subject-matter of the dispute would be non-arbitrable.

However, the aforesaid principles have to be applied with care and caution as observed in Olympus Superstructures (P) Ltd. [Olympus Superstructures (P) Ltd. v. Meena Vijay Khetan, (1999) 5 SCC 651] : (SCC p. 669, para 35)

“35. ... Reference is made there to certain disputes like criminal offences of a public nature, disputes arising out of illegal agreements and disputes relating to status, such as divorce, which cannot be referred to arbitration. It has, however, been held that if in respect of facts relating to a criminal matter, say, physical injury, if there is a right to damages for personal injury, then such a dispute can be referred to arbitration (Keir v. Leeman [Keir v. Leeman, (1846) 9 QB 371 : 115 ER 1315]). Similarly, it has been held that a husband and a wife may refer to arbitration the terms on which they shall separate, because they can make a valid agreement between themselves on that matter (Soilleux v. Herbst [Soilleux v. Herbst, (1801) 2 Bos & P 444 : 126 ER 1376] , Wilson v. Wilson [Wilson v. Wilson, (1848) 1 HL Cas 538] and Cahill v. Cahill [Cahill v. Cahill, (1883) LR 8 AC 420 (HL)]).”

8. From the perusal of para 36 and 76, it is evident that where there is specific exclusion clause, the matter should not be referred to Arbitrator. There is allegation of misappropriation of paddy belonging to the State. The allegation against the applicant is that he has committed an offence of breach of trust. It is not offence against an individual whereas alleged offence is against the State. Public money is involved, thus, there is need of adjudication by Courts instead of Arbitral Tribunal.

9. In the wake of above discussion and findings, this Court is of the considered opinion that present applications being bereft of merit deserve to be dismissed and accordingly dismissed.

11. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court/Civil Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

10.12.2024
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No