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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5250-2014 (O&M)
Date of Decision:20.08.2025

MANAGING DIRECTOR, PUNJAB STATE CIVIL SUPPLIES CORPORATION LTD. AND ANOTHER

....Appellant(s)

Versus

M/S MAHAVIR RICE MILLS AND OTHERS

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Naresh Gopal Sharma, for the appellants.

Mr.Sanjeev Manrai, Senior Advocate with
Mr. S.P. Garg, Advocate, for respondents No.1 and 2.

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<u>JASGURPREET SINGH PURI, J. (Oral)</u>

1. The present is an appeal filed by the appellants challenging the order passed by the learned Additional District Judge, Chandigarh dated 23.10.2013, whereby the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') has been allowed and the award dated 01.06.2006 has been set aside and liberty has been granted to the MD, PUNSUP to proceed further afresh in accordance with law.

2. Learned counsel appearing on behalf of the appellants while giving the brief facts of the case submitted that there was an agreement between the appellants and the respondent-Mill for the year 2001-2002 dated 08.10.2001 by which the appellants-Corporation which is a Government Procurement Agency was to purchase the paddy from the open market and give

the same to the respondent-Miller for the purpose of shelling and thereafter, the rice which is a product of the shelling of the paddy is to be given back which ultimately would go to the FCI which is the central pool. However, after total paddy of 32728 quintals was supplied to the respondent-Miller, after calculating the percentage of the product of rice which is to come out from the total paddy shelled, there was a shortfall in the delivery of the rice back to the appellants or the FCI and because of the aforesaid shortfall, the arbitration clause which was a part of the agreement was invoked. By virtue of the arbitration clause which is Clause 21, the matter was referred to the Sole Arbitrator and the learned Arbitrator thereafter pronounced an Award dated 01.06.2006 (Annexure A-1). He submitted that against the aforesaid Award, which was pronounced, the respondent-Miller filed a petition under Section 34 of the Act which was allowed by the learned Additional District Judge, Chandigarh primarily on two grounds, firstly that the subject matter was not arbitrable in view of Clause 8 of the arbitration agreement and also while referring to various other judgments passed by Co-ordinate Benches of this Court and secondly, the total amount claimed was only Rs.31,89,309/- as on 31.12.2003 with future interest of 30% but the award which was pronounced was of the principal amount of Rs.64,11,832/- which was in excess of even the claim amount.

3. Learned counsel submitted that once the paddy was entrusted to the respondent-Miller, it was supposed to supply the entire product in the nature of rice after shelling the same and since as per the arbitration agreement Clause 21, which provides that all the disputes and differences arising out of or in any manner touching or concerning this agreement whatsoever shall be referred to the sole arbitration of the Managing Director, PUNSUP the same was so

referred to an independent Sole Arbitrator, namely, Sh. R. K. Gupta, who gave the award and therefore, it cannot be said that the nature of the subject matter was not arbitrable in nature and in this way, the learned Additional District Judge, Chandigarh has erroneously decided and set aside the award. So far as the second aspect is concerned, he submitted that the calculation of Rs.64,11,832/- was made on the basis of the calculation which was drawn up on the basis of the shortfall taking into account the cost factor and therefore, it cannot be said that the amount which was awarded by the Arbitral Tribunal was bad since the same was based upon the factual aspect.

4. On the other hand, Mr. Sanjeev Manrai, learned Senior Advocate assisting by Mr. S.P. Garg, Advocate submitted that the learned Arbitrator could not have proceeded with the arbitration proceedings because the subject matter of the present case was not arbitrable in nature and therefore, it was a good ground for interference and setting aside the award under Section 34 of the Act by the learned Additional District Judge, Chandigarh. While elaborating his arguments, he referred to the provisions of the argeement and more particularly Clause 8 and Clause 21 and submitted that as per Clause 8, in case the rice so milled did not conform to the specifications as laid down in the Punjab Rice Procurement (Levy) Order, 1983 amended from time to time and there was a shortfall of the supplied rice, then the decision of the same has to be taken by the Managing Director of the PUNSUP, who is the appellant in the present case and the decision of the Managing Director of PUNSUP shall be final as per the aforesaid Clause 8. He further submitted that the aforesaid Clause 8 is required to be read alongwith Clause 21 which is the arbitration clause and in the aforesaid arbitration clause there is an exception carved out that although all the disputes and differences arising out of or in any manner touching or concerning

this agreement whatsoever shall be referred to the sole arbitration of the Managing Director but subject to an express exception that in any matter the decision of which is expressely provided for in the contract which is to be referred to a particular authority, then it falls in the exception and therefore, non-arbitrable in nature and therefore, it was beyond the jurisdiction of the learned Arbitrator to have proceeded with the arbitration proceedings and pronounce an award. In this regard, he referred to various judgments passed by Coordinate Benches of this Court in ***Kailash Verma Versus Punjab Agro Industries Corporation and another, FAO No.1911 of 2006, decided on 20.12.2019, Shree Krishna Rice Mills Versus The Punjab State Coop. Supply and Marketing Federation Limited, 2003 (3) RCR (Civil) 254, Rajesh Garg Versus Punjab Agro Industries Corporation Ltd. (PAIC) and another, FAO No.5654 of 2005, decided on 24.01.2019, Narula Rice Mills Versus The Punjab State Civil Supplies Corporation Ltd. and others, FAO No.4374 of 2007, decided on 10.11.2009, M/s Shakti Traders and others Versus Punjab State Civil Supplies Corporation Ltd. (PUNSUP) and others, FAO No.2666 of 2007, decided on 06.08.2009, and M/s Lakshmi Overseas Ind. Ltd. Versus Punjab State Warehousing Corporation and another, CR No.6651 of 2013, decided on 27.02.2018.*** Some of the judgments are pertaining to the same organization who is the present appellant and some of the judgments pertain to another organization, namely, MARKFED. He submitted that in this way the learned Additional District Judge, Chandigarh has rightly interfered in exercise of powers under Section 34 of the Act because the award itself was without jurisdiction and it was a non-arbitrable subject matter and therefore under Section 34 of the Act, the learned Additional District Judge, Chandigarh has set aside the award.

5. I have heard the learned counsels for the parties.

6. The short point involved in the present case is as to whether the subject matter of the present case was arbitrable or not. In this regard, the terms of the agreement Exhibit PA dated 08.10.2001 is required to the considered. Clause 8 and Clause 21 are reproduced as under:-

> *"8. The entire quantity of rice of all varieties delivered by the miller to the FCI in PUNSUP Account shall conform to the specifications laid down in the Punjab Rice Procurement (Levy) Order, 1983, as amended from time to time or in any other order or notification issued by the State Government from time to time. The stocks of rice not conforming to the specifications so laid down shall be liable to be rejected in respect of such quantity of rice which is not found to be within the specifications and the miller shall be liable to pay to the PUNSUP for the quantity of rice short supplied, as penalty at the custom milling rate fixed by Govt. of India plus 21% interest from the date it becomes payable till date of actual ralization of the converted variety of rice. The decision of the Managing Director, PUNSUP (hereinafter referred to as the Managing Director of PUNSUP) in this behalf shall be final.*
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> *i) At the time of delivery, the stocks of rice shall be subjected to the inspection as per provisions of the Punjab Rice Procurement (Levy) order, 1983. Any quality allowance determined at the time of inspection according to the specifications shall be recovered from the Miller's bills.*
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> *ii) The miller shall be required to manufacture rice as per specifications laid down by Govt. of India and deliver the same to the Food Corporation of India at its Depots by 30.6.2002.*

In the event of his failure to supply rice within the stipulated period, he shall be liable for an interest @ 21% for the first year of default and @ 30% for the subsequent period on the custom milled price fixed by Govt. of India from the date it becomes payable till the date of actual realisation towards the left over quantity/stocks of paddy. The decision of the Managing Director PUNSUP in this behalf shall be final.

"21. All the disputes and difference arising out of 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 the Managing Director PUNSUP or any person appointed by him in this behalf. There will be no objection to any such appointment that the person appointed is or was an employee of Food and Supplies Department Punjab/PUNSUP or that he had to deal with the matter to which the contract related and that in the course of his duties such an employee of Food and Supplies Department, Punjab/PUNSUP had expressed views on all or any of the matters in disputes or difference. The award of such arbitration shall be final and binding on the parties to this contract. It is a term of this contract that in the event of the arbitrator being transferred or vacating his office or being unable to act for any reason, the Managing Director PUNSUP at the time of such transfer, vacation of office, death or inability shall appoint another person to act as arbitrator, such a person shall be entitled to proceed with reference from the stage where it was left by his predecessor."

7. A perusal of the aforesaid Clause 8 would show that whenever there were variation in the specification of rice which did not conform to the Punjab Rice Procurement (Levy) Order, 1983 as amended from time to time

and for the quantity of the rice short supplied then it has been so provided that a decision of the Managing Director, PUNSUP in this behalf shall be final. A further perusal of Clause 21 as reproduced above would show that although all the disputes and differences arising out of or in any manner touching or concerning this agreement were arbitrable in nature but an express exception has been carved out which says that except as any matter the decision of which is expressely provided for in the contract. In the aforesaid Clause 8 in case of variation in the quality i.e. quality of the rice pertaining to the specification and that of the shortfall of rice it is so expressely provided that the decision of the Managing Director, PUNSUP shall be final and therefore clearly the present exception clause would prevail over the general clause as so provided in Clause 21.

8. Various Co-ordinate Benches of this Court had occasion to deal with similar kind of situation and not only with regard to the present appellant, which is PUNSUP but also with regard to other organization i.e.MARKFED. In ***Kailash's case (Supra)*** reference was made to another judgment passed by this Court in ***Shree Krishna Rice Mills's case (Supra)*** and the clause pertaining to 8 in the present case and that of Clause 9.1 in aforesaid case was similar in nature. It was held that the subject matter was not arbitrable in nature because it fell in the category of the 'excepted clause'. In the aforesaid judgment of ***Shree Krishna Rice Mills (Supra)*** which pertained to MARKFED although the language used in the clause was not the same but the ratio of the aforesaid case pertaining to the fact that once there is an 'excepted clause' of shortfall then in that situation it was not arbitrable in nature. During the course of arguments, both the learned counsels for the parties have submitted that the aforesaid judgment of ***Shree Krishna Rice Mills (Supra)*** has since attained finality since

the SLP filed has been dismissed by Hon'ble Supreme Court. Similar is the position with regard to the other judgments i.e. ***Rajesh Garg Versus Punjab Agro Industries Corporation Ltd. (PAIC) and another, FAO No.5654 of 2005, decided on 24.01.2019, Narula Rice Mills Versus The Punjab State Civil Supplies Corporation Ltd. and others, FAO No.4374 of 2007, decided on 10.11.2009, M/s Shakti Traders and others Versus Punjab State Civil Supplies Corporation Ltd. (PUNSUP) and others, FAO No.2666 of 2007, decided on 06.08.2009, and M/s Lakshmi Overseas Ind. Ltd. Versus Punjab State Warehousing Corporation and another, CR No.6651 of 2013, decided on 27.02.2018.***

9. After hearing the learned counsels for the parties and perusing the aforesaid judgments, this Court is of the considered view that there is no merit in the present appeal and rather the case of the respondents is squarely covered by the aforesaid judgments. The reasoning given by the learned Additional District Judge, Chandigarh while setting aside the award is just and proper and in consonance with the judgments passed by Coordinate Benches of this Court as aforesaid.

10. Consequently, finding no merit in the present appeal, the same is hereby dismissed.

20.08.2025 **(JASGURPREET SINGH PURI)**
rakesh **JUDGE**

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No