

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

FAO No.3069 of 2010
Decided on : 14.08.2015

Punjab State Civil Supplies Corp. Ltd. Appellant

vs.

M/s Lakshmi Rice Mills & ors. Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Deepali Puri, Advocate
for the appellants.

Mr. Mukand Gupta, Advocate
for the respondents.

Amit Rawal, J.(Oral)

Learned counsel for the appellant submits that in pursuance to the reference filed by the appellant -Punjab State Civil Supplies Corp. Ltd. (PUNSUP), the arbitrator after observing that the matter in dispute falls within the 'excepted clause' in spite of referring the matter, dismissed the reference by holding that their contract is void. She further submits that they have also made the same request but the Lower Court has made an illegal and adverse finding in not noticing the 'excepted clause'.

Learned counsel for the respondents submits that Arbitrator has rightly dismissed the claim though it has held that the case squarely falls within the 'excepted clause'. Therefore, the objection have rightly been dismissed.

I have heard learned counsel for the parties. It would be apt to refer the relevant part of the Award:

"The learned counsel for the respondents further drew my attention to para 6 of the claim petition wherein it is alleged that the dispute has arisen between the parties which is referenceable to Arbitration per terms and conditions of the agreement. The claimant has averred

that the respondents have committed the breach and terms of the agreement in as much as they did not mill the full quantity of paddy, they were liable to pay economic costs for which this claim has been filed. If it was so, the decision of the M.D. was to be final in view of Clause 6 of the agreement. Further, this dispute is beyond the purview of Clause 17 of the agreement which relates to Arbitration. This contention finds support from the ruling of our own high court reported as Krishna Rice Mills vs. Markfed (C.R. No.1708 of 2001 decided on 14.03.2002)."

Once the arbitrator had given the finding that the controversy in dispute falls within the excepted Clause 6 of the agreement, there was no occasion for the arbitrator to decide the claim. The lower court has also noticed this fact and upheld the erroneous and perverse finding.

Once the arbitrator did not have the jurisdiction, he could not have proceeded further with reference.

Accordingly, the impugned order dated 16.09.2009 and award dated 31.10.2002 are set aside. The matter is relegated to the Managing Director to try and entertain the controversy, which falls within the excepted clause.

Parties through their counsel are directed to appear before the Managing Director on 15.09.2015. It is made clear that the parties to lis shall be at liberty to file their claims or counter claims/defence before the Managing Director in accordance with law.

The appeal stands allowed.

14.08.2015
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(Amit Rawal)
Judge