IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-468-2014 (O&M)
Date of Decision:27.01.2026

Punjab State Civil Supplies Corporation Limited

.......Appellant

Versus

M/S Amit Rice Mills and others

......Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Deepak Sabherwal, Advocate for the appellant.

Mr. Akhil Kashyap, Advocate for respondents No.1 and 2.

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JASGURPREET SINGH PURI J.(Oral)

1. The present appeal is the first appeal assailing the judgment dated 28.09.2013 passed by learned District Judge, Moga, whereby the objections filed by the respondents herein against the present appellant were allowed and the arbitral award dated 11.03.2010 passed by learned Arbitrator was ordered to be set aside.

2. While giving the brief facts of the present case, learned counsel for the appellant submitted that there was an agreement between the appellant and the respondents.The appellant is a procurement agency which after purchasing the paddy from the market, is required to deliver the same

to respondent-Rice Sheller for the purpose of shelling of the paddy. As per the Government policy a fixed percentage of the rice so shelled was required to be returned back to the appellant which was then to be given to the Government. However, in the present case, when the respondents were entrusted with 69,736 bags of paddy, they failed to return the shelled rice to the appellant according to the terms of the agreement and the Government policy, which led to a dispute between the parties. He submitted that in pursuance of the arbitration clause contained in the agreement, namely Clause No. 22, it is provided that all 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 sole arbitration of the Managing Director, PUNSUP or any other person appointed by him in this behalf. He further submitted that in pursuance of the aforesaid clause, the matter was referred to the learned Arbitrator, who, after hearing the parties, passed an award on the claim made by the appellant–procurement agency. The said award was passed on 11.03.2010 and has been annexed with the present appeal. Vide the aforesaid award, the claim of the appellant–procurement agency was allowed against the respondents–rice sheller.

3. He submitted that the aforesaid award having been passed in favour of the appellant was assailed by the respondents by filing objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") before learned District Judge, Moga. Learned

District Judge, Moga vide impugned judgment dated 28.09.2013, set aside the award on the ground that the matter was non-arbitrable in nature in view of the existence of an exclusion clause also termed as the "Exempted Category" clause as contained in Clause 9 of the aforesaid agreement. He further submitted that on this premise, the arbitral award was set aside on the ground that the subject matter of the dispute fell within the "Exempted Category" as per the aforesaid Clause 9 of the aforesaid agreement and the same is under challenge in the present appeal filed under Section 37 of the Act.

4. While making submissions, learned counsel for the appellant submitted that the subject matter did not fall in the exempted category because it is a case where the paddy was supplied to the respondents but they did not return the rice to the appellant and therefore it was not a case of lack of specification but it was a case where rice was short supplied by them. While referring to the aforesaid Clause 9, which provides that the decision is to be taken by the Managing Director, PUNSUP, he submitted that the aforesaid is applicable only when the penalty at the rate of 1.5 times of the economic cost plus 21% interest is to be imposed, only then it falls in the exempted category, otherwise it does not fall in the exempted category and therefore falls under Clause 7 and therefore the dispute was arbitrable in nature and the award has been rightly passed and the impugned judgment passed by learned District Judge, Moga, is erroneous and is liable to be set aside.

5. On the other hand, learned counsel appearing on behalf of the respondents submitted that the present subject matter, in which a dispute arose between the parties pertaining to the short supply of the paddy supplied by the respondents to the appellant, falls within Clause 9 and therefore it was non-arbitrable in nature. Consequently, learned District Judge, Moga has rightly set aside the award passed by learned Arbitrator on the ground that it was non-arbitrable. He referred to a judgment of the co-ordinate Bench of this Court passed in CR No.1780 of 2001 titled as ***Shree Krishna Rice Mills Vs. The Punjab State Co-op. Supply & Marketing Federation Ltd., 2003(3) RCR (Civil) 254,*** and submitted that the aforesaid judgment has also been upheld by Hon'ble Supreme Court, whereby the Special Leave Petition filed therein was dismissed.

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

7. Before proceeding further, the clauses which have been **referred** to by the learned counsels for the parties are required to be reproduced as under:

> ***Clause 7-*** *The miller shall be responsible for the safe custody of paddy lifted till the delivery of rice as per out-turn ratio fixed by Government. Miller shall also make good the losses that may be incurred in paddy and rice during transit/storage at the rates of custom milled rice fixed by Government of India plus interest at the rates of 21% from the date it becomes payable till till the date of actual realisation of the converted variety of paddy or rice toward the short fall."*
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> *"9. The entire quantity of rice of all varieties*

delivered by the miller to PUNSUP 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 stock 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 milled rate fixed by Govt. of India plus 21% interest from the date it becomes payable till date of actual realization 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.

i) At the time of delivery, the stacks 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.

ii) The miller shall complete delivery of rice within 10 (ten days of the issuance of paddy to him. Rice due to PUNSUP on the total quantity of paddy issued to him or in joint custody released at regular intervals, shall be delivered not later than the 28th Feb.2001 as per following schedule or upto the period extended by the Government of India:-

October/November 2000	*20%*
December 2000	*27%*
January 2001	*27%*
February	*26%*

In the event of his failure to supply rice within the stipulated period, he shall be liable to 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.”

22. 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 matter 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.”

8. A perusal of the aforesaid Clause 7 would show that it provides that the miller shall be responsible for the safe custody of paddy lifted till the delivery of rice and the miller shall also make good the losses that may be incurred in paddy and rice during transit/storage at the rates of custom milled rice fixed by Government of India alongwith interest @ 21% from the date it becomes payable till the date of actual realisation of the converted variety of paddy or rice towards the short fall. It was the argument of learned counsel for the appellant that the subject matter falls under clause 7 of the agreement and therefore the claim was filed in this regard.

9. A perusal of Clause 9 of the aforesaid agreement would show that it provides for the liability of the miller in the event of a shortfall in the specifications and the quantity of rice. It also provides for a penalty at the custom rates fixed by the Government of India which according to learned counsel for the appellant, was one and a half times along with 21% interest. A further perusal of the aforesaid would show that it provides with regard to the aforesaid subject matter that the decision of the Managing Director of PUNSUP is stated to be final. This clause provides not only with regard to low specifications or non-conforming specifications but also with regard to the quantity of rice short supplied which according to the aforesaid clause, falls within the decision making power of the Managing Director of PUNSUP. It was the argument of learned counsel for the respondents that

the subject matter falls within the aforesaid Clause No.9 and that the decision as to whether there was a non-compliance in specifications or whether it was a case of rice being short supplied shall in either situation, be final with the Managing Director of PUNSUP.

10. Clause No. 22 provides for the arbitration process and states that all disputes and differences 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 way the arbitration clause provides that in case of any dispute, the same is to be referred to the Managing Director of appellant-PUNSUP who may himself or any other person appointed by him on his behalf, be appointed as the arbitrator for adjudication of the dispute. However, at the same time it also expressly and specifically provides that matters which are otherwise expressly provided for in the contract are not to be referred for arbitration. In other words, except for any matter the decision of which is expressly provided for in the contract, all other disputes are to be referred to arbitration. Thus, while an arbitration clause exists, the clause itself provides an exception with regard to matters expressly governed by the contract which fall within the decision-making power of the Managing Director, PUNSUP and shall not be referred to arbitration.

11. A conjoint reading of the aforesaid clauses would show that in

case the subject matter of the dispute falls in the 'excepted category,' then it is non-arbitrable in nature; otherwise, any other dispute would be arbitrable. The subject matter of the present case relates to the shelling of rice by the respondent-rice sheller and as per Clause No. 9 any rice which does not comply with the specifications provided by the Government or any shortfall would be decided by the Managing Director PUNSUP. Clause 9 when read with Clause 22, clearly shows that the present subject matter falls in the excepted category under Clause 9 because as per learned counsels for the parties the paddy which was shelled, no rice was supplied to the procurement agency which is the appellant in the present appeal. Therefore, it is clearly a case of a short supply of rice which was never supplied as per the claim.

12. An argument was raised by learned counsel for the appellant that Clause 7 would be applicable to the present case. A perusal of Clause 7 would show that it so provides in terms of the agreement with regard to fixing of the responsibility for the safe custody of paddy. However, Clauses 7 and 9 cannot be read separately and they are to be read in unison. Once there is a provision under Clause 22 for exclusion of certain disputes being exempted and those subject matters which are to be excluded have to be specifically so included in the agreement that the same are to be decided by the Managing Director of PUNSUP then the language of Clause 9 of the agreement clearly shows that when there is a short supply of rice then it is the Managing Director of PUNSUP who is to decide the issue and therefore

the matter is non-arbitrable in nature.

13. This Court had an occasion to deal with a similar proposition in FAO No. 5250 of 2014, titled ***Managing Director Punjab State Civil Supplies Corporation and another*** Vs. ***M/s Mahavir Rice Mills and others, which also pertained to the appellant-PUNSUP***. In the aforesaid judgment, reference was made to various other judgments passed by the Coordinate Benches of this Court and Hon'ble Supreme Court, including the judgment referred to by learned counsel for the respondents i.e.***, Shree Krishna Rice Mills Vs. The Punjab State Co-op. Supply & Marketing Federation Ltd.*** (Supra). In the judgment passed by this Court in FAO No. 5250 of 2014, the relevant clause which was similar to the present Clause No. 9, was numbered as Clause 8 but was similar in language. Likewise, Clause 21 therein was identical to Clause 22 of the present agreement. The relevant portion of the aforesaid judgment passed by this Court in ***Shree Krishna Rice Mills's*** case (supra) is reproduced as under:-

> "*Therefore, in view of the discussion above, I hold that the dispute regarding economic cost and award of interest is covered by Clauses 5 and 6 read with Clause 18 of the agreement and it was to be decided by the M.D. himself and there was no need to refer the same to the arbitrator. In fact, the Arbitrator was right in terminating the proceedings as it was a frivolous reference. Thus, the order of the learned Additional District Judge is set- aside being illegal and*

perverse and based on mis-interpretation of Clauses 5 and 6 read with Clause 18 of the agreement and consequently, the order of the Arbitrator dated 13.1.1998 is restored".

14. In view of the aforesaid facts and circumstances, this Court is of the considered view that there is no illegality or perversity in the judgment passed by learned District Judge, Moga, since the subject matter of the present case clearly fell within the excepted category and therefore it was non-arbitrable in nature. Once the subject matter was required to be decided by the M.D. PUNSUP himself in pursuance of Clause 9, it could not have been referred to the arbitrator in view of the specific exclusion contained in Clause 22 of the aforesaid agreement.

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

(JASGURPREET SINGH PURI)
JUDGE

27.01.2026
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No