

RA-CR-66-CII-2017 in FAO-5426-2009 and connected case 1

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

**RA-CR-66-CII-2017 in FAO-5426-2009
Date of Decision:29.01.2026**

**The Punjab State Co-operative Supply and Marketing Federation
Ltd.**

versus

.....applicant

M/s S.S. Gumber Rice Mills and another

.....Respondents

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RA-CR-41-CII-2017 in FAO-5427-2009

**The Punjab State Co-operative Supply and Marketing Federation
Ltd.**

Versus

.....applicant

**M/s M.L.Rice Mills Jalalabad (West), Tehsil Jalalabad (West), District
Ferozepur and another**

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Sumit Jain, Advocate and
Mr. Abhishek Arora, Advocate, for the applicant-appellant.

Mr. Akhil Kashyap, Advocate for respondent No.1.

JASGURPREET SINGH PURI J.(Oral)

1. Both the above-mentioned cases are being taken up together
for final disposal with the consent of learned counsel for the parties as the

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issues involved are inter-connected and therefore are being disposed of by this common order.

2. For the purpose of narrating the facts of the case, reference is made to RA-CR-66-CII-2017 in FAO-5426-2009

3. The present is a review application filed by the applicant-appellant seeking review of the judgment dated 16.10.2015 passed by a Coordinate Bench of this Court

4. Learned counsel appearing on behalf of the applicant-MARKFED submitted that in the award passed by learned Arbitrator, interest at the rate of only 18% has been granted, whereas, as per the terms of the contract, interest was required to be granted @ 21%. He submitted that because of the aforesaid reason, that the award was against the terms of the contract, the present application has been filed seeking review of the judgment passed by a Coordinate Bench of this Court whereby the first appeal under Section 37 of the Arbitration and Conciliation Act (hereinafter referred to as the 'Act') was dismissed.

5. While making submissions, learned counsel for the applicant-MARKFED, referred to Clause No.6(iii) of the agreement which provides that in the event of respondents' failure to supply rice within the stipulated period, they shall be liable to pay interest @ 21% on the basis of economic cost of left over quantity/stocks of paddy/rice. The decision of MARKFED Managing Director in this behalf shall be final.

6. Learned counsel further submitted that since it has specifically

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been provided in the terms of the agreement that where the miller has supplied rice beyond the stipulated period, he shall be liable to pay interest @ 21% on the basis of the economic cost, whereas learned Arbitrator has granted interest @ 18% and therefore the aforesaid award is contrary to the terms and conditions of the contract. Therefore, that part of the award is liable to be set aside.

7. On the other hand, learned counsel appearing on behalf of respondent No.1 submitted that no ground is made out for review in the present case in view of the fact that earlier the applicant-MARKFED had filed a claim before learned Arbitrator and thereafter a revised claim was also filed wherein interest at the bank rate was demanded. The learned Arbitrator thereupon awarded interest @ 18% per annum. However, the applicant was not entitled to the grant of interest @ 21% in pursuance of the aforesaid clause, inasmuch as under the said clause such interest falls within the “excepted category” since it specifically provides that the decision of the Managing Director of MARKFED in this behalf shall be final. Where the decision of the Managing Director is final, the same falls outside the purview of the arbitration process and becomes non-arbitrable in view of Clause 18 of the aforesaid agreement which provides for arbitration. This was the precise reason that learned Arbitrator also refused to grant interest @ 21%, holding the same to be outside the scope of learned Arbitrator. In this regard, he referred to paragraph No. 6 of the award, wherein it was observed by learned Arbitral Tribunal that it did not

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have jurisdiction to rule upon the aforesaid claim with regard to interest @21%, since the jurisdiction of the Arbitral Tribunal was ousted, the same being an “excepted category”. Therefore, the present review is liable to be dismissed as misconceived.

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

9. The grievance of the applicant in the present review application is that learned Arbitrator has granted interest at the rate of 18% on the delivery of rice, whereas in fact it ought to have been granted at the rate of 21% in pursuance of the aforesaid clause No.6. It was argued by learned counsel for the applicant that the award is contrary to the terms and conditions of the agreement. It would, therefore, be appropriate to refer to the relevant clauses of the agreement in this regard. Relevant portions of Clauses 6 (iii) and 18 are reproduced as under:—

6(iii) The Miller shall complete delivery of rice within 10 days of issuance of paddy to him and rice due to the Markfed on the total quantity of paddy issued to him or in joint custody released at regular interval shall be delivered not later than the 20th Feb, 1995. The Miller shall further ensure milling of Markfed paddy and delivery of rice in the following manner:

October/November 20%

December 26%

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January 26%

February 28%

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

“18. ARBITRATION:- 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 sole arbitrator of the MD or any person appointed by him in this behalf.

It will be no objection to any such appointment that the person appointed is or was an employee of MARKFED or that he had to deal with the matters in which the contract relates and that in the course of his duties such an employee of the MARKFED he had expressed views on all or any of the matters in dispute 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 arbitration being transferred or vacating his office dying or being unable to act for any

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reason the M.D. 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.

Provided further that any demand for arbitration in respect of any claim of the miller under the contract shall be in writing and made within one year of the date of completion of the period of contract. If the demand is not made within the period the claim of the miller shall be deemed to have been waived off and absolutely barred and the MD.D shall be discharged and released of all liabilities under the contract in respect of these claim.”

10. As per Clause 6(iii) of the agreement, it has been so provided that the miller shall complete the delivery of rice within the stipulated period. It has further been provided that in the event of failure to supply rice within the stipulated period, he shall be liable to pay interest @ 21% on the basis of the economic cost of the left over quantity/stocks of paddy/rice and the decision of the Managing Director of MARKFED in this behalf shall be final. A further perusal of Clause 18 would show that it provides for referring the matter to arbitration and stipulates that all the disputes and differences arising out of or in any manner touching or concerning this

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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 MD or any person appointed by him in this behalf. In other words, by way of the aforesaid arbitration clause, the excepted category matters cannot be considered or adjudicated upon by learned Arbitrator. It has been provided under the contract that where a decision is expressly to be taken by any other authority, the same cannot form the subject matter of the arbitration process. A perusal of the aforesaid Clause 6(iii), as reproduced above, would show that with regard to the interest @ 21%, it is further provided that the decision of the Managing Director of MARKFED will be final. Therefore, it is clear that the aforesaid rate of interest @ 21% which the applicant is claiming falls within the “excepted category” and accordingly, was not arbitrable in nature and therefore learned Arbitrator has not ruled upon the aforesaid prayer for grant of interest @ 21%. Para No.6 of the award passed by learned Arbitrator is reproduced as under:—

“6. Interest : *The liability for payment of interest is provided under clause 6 (iii) of the agreement which in part reads:*

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

It is note worthy that the basis for charging 21% interest

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is the economic cost of the left over quantity/stock of paddy. However, in this case the claimants have charged the cost of rice Rs.781.2/qlt equivalent to the paddy stock that had remained unmilled which is not as per the sub clause reproduced supra. It would also be observed that the final decision as to the rate of interest lies with the M.D. Markfed in terms of the exception contained in the Arbitration clause. Markfed counsel has not drawn this Tribunal's attention to any evidence showing that the MD had taken a decision in this behalf. This has been admitted by the Markfed witness in his cross examination, Besides, this witness also admitted that the interest has been charged @ bank rate which in fact amounts to charging compound interest. There is no provision in the agreement for charging compound interest. Therefore, this Tribunal finds its jurisdiction ousted vis-a-vis the imposition of interest. Being "excepted matter, it is beyond this Tribunal's jurisdiction to arbitrate on this aspect under clause 6 (iii)."

11. On the proposition of law pertaining to the non-arbitrability of certain matters concerning various procurement agencies of the State of Punjab, including MARKFED, PUNSUP, and other similar organizations, the law has been well settled. Various Coordinate Benches of this Court have dealt with similar situations, not only with regard to the present applicant- MARKFED, but also with regard to PUNSUP. ***In Shree Krishna Rice Mills v. The Punjab State Co-op. Supply & Marketing***

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Federation Ltd.,2003(3) RCR (Civil) 254, it was held that the subject matter was not arbitrable as it fell within the category of an ‘excepted clause’. The judgment in ***Shree Krishna Rice Mills’s*** case (Supra) has attained finality, as the Special Leave Petition filed against it was dismissed by the Hon’ble Supreme Court. The same position is reflected in other judgments, namely: ***Rajesh Garg v. Punjab Agro Industries Corporation Ltd. (FAO No.5654 of 2005, decided on 24.01.2019), Narula Rice Mills v. The Punjab State Civil Supplies Corporation Ltd. (FAO No.4374 of 2007, decided on 10.11.2009), M/s Shakti Traders v. Punjab State Civil Supplies Corporation Ltd. (FAO No.2666 of 2007, decided on 06.08.2009), and M/s Lakshmi Overseas Ind. Ltd. v. Punjab State Warehousing Corporation (CR No.6651 of 2013, decided on 27.02.2018).*** 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*

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read with Clause 18 of the agreement and consequently, the order of the Arbitrator dated 13.1.1998 is restored”.

12. Therefore, it is clear that the claim made by the learned counsel for the applicant regarding the grant of interest at the rate of 21% is misconceived. The same is contrary to the terms of the agreement and is not sustainable in view of the settled legal position as laid down in the aforesaid judgments passed by various Coordinate Benches of this Court.

13. This Court, therefore, finds no merit in the present review applications and consequently, the same are hereby dismissed.

(JASGURPREET SINGH PURI)
JUDGE

29.01.2026
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No