

(2009) 03 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : CR No. 647 of 2006

Garg Rice Mills

APPELLANT

Vs

Managing Director, Punjab State Warehousing Corporation
and Another

RESPONDENT

Date of Decision : 17-03-2009

Acts Referred:

Arbitration Act, 1940 — Section 11, 37(2)

Citation : (2009) 03 P&H CK 0015

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—The Civil revision challenges the order passed by the sole arbitrator on 6.1.2006 rejecting the application filed on behalf of

the Respondent for termination of arbitration proceedings on a dispute arising out of a contract under which the Petitioner had executed a milling

agreement with the Governor of Punjab acting through the Director, Food and Supplies for milling paddy for the crop year 1999-2000. The

Punjab State Warehousing Corporation appointed Sh. V.P. Anand as Arbitrator to adjudicate the dispute between the parties. A challenge to the

Arbitration proceedings had been undertaken by the Petitioner on which the Arbitrator passed an order dated 24.2.2003 terminating the

arbitration proceedings between the parties.

2. This order had become final and the first Respondent filed a suit No. 546 before the Civil Judge (Sr. Divn.), Chandigarh which sets out facts

wholly in a different light. The facts set out in the suit were that after Sh. V.P. Anand was appointed as an Arbitrator claim statements were

received but the proceedings were getting stalled on account of the parties not paying the fee payable to the Arbitrator. The Managing Director of the Corporation had withdrawn the proceedings from the Arbitrator vide order dated 6.5.2003 and appointed new Arbitrator Sh.T.C. Gupta and communicated to the Petitioner. The first Arbitrator Sh. V.P. Gupta, however, insisted on the fees determined by him to be paid to him and he was retaining all the records that had been submitted to him as an Arbitrator. By the retention of the records and his insistence on payment of fees, the corporation did not want to participate in the proceedings before Sh. V.P. Anand and filed the instant suit for mandatory injunction directing Sh. V.P. Anand to hand over the entire papers to the Corporation and for permanent injunction restraining the Defendants to continue with the alleged arbitration proceedings which according to the Corporation had become totally illegal void and without jurisdiction. The Arbitrator Sh. V.P. Anand had made a short reply to the contentions raised by the Corporation and stated that he had already terminated the proceedings and he was ceased to be an Arbitrator and therefore, the suit against him was not maintainable. At that time the Corporation got the suit dismissed as withdrawn on 13.4.2004.

3. The second Arbitrator who had been appointed issued a notice of the proceedings to both the parties and at that time the Petitioner had filed his objections stating that a second appointment made by the Arbitrator was against law. The remedy of the Corporation, if at all, was to either challenge the order passed by the first Arbitrator by an appeal u/s 37(2)(a) of the Arbitration Act or seek for appointment of an Arbitrator in the manner provided u/s 11 of the Arbitration Act. The unilateral appointment made by the Corporation of another Arbitrator was not maintainable. Before the Arbitrator, the Petitioner seems to have contended that the first Arbitrator Sh. V.P. Anand had himself given an award and the Corporation was estopped from appointing new Arbitrator.

4. The second Arbitrator Sh. T.C. Gupta rejected the contention raised by the Petitioner and proceeded to carry on with the arbitral proceedings by observing that the order passed by the previous arbitrator on 24.4.2003 was not an award and he had actually ruled himself out as an Arbitrator as having been appointed without any authority by the Corporation.

The Arbitrator had himself ruled, ""the order of appointment of an Arbitrator dated 13.9.2002 was wrong, invalid and unlawful, not strictly within the provisions of Arbitration Clause 22 of the agreement. The arbitral proceedings, therefore, hereby ""terminated"". The sole arbitrator, therefore, observed that Sh. V.P. Anand's observations not to continue meant that there was no award, being merely an act of rejection of his own appointment as an arbitrator. On such observations, the second Arbitrator Sh. T.C. Gupta sought to continue the proceedings before him which is the subject of challenge in revision.

5. The contention of the counsel for the Petitioner is that when the Arbitrator ruled against his own jurisdiction, the Corporation had either a remedy to prefer an appeal u/s 37 (2) (a) and insist that the appointment was correct and the Arbitrator had a competence to continue the arbitral proceedings. If the Corporation was to accept the order of first Arbitrator that the Corporation did not have power to appoint an Arbitrator under Clause 22 of the agreement, it ought to have conceded that the objection taken by the Petitioner that an unilateral appointment of an Arbitrator was not contemplated under Clause 22 of the Agreement in which case the procedure could have been only by resort u/s 11 of the Arbitration Act, and hence a fresh appointment made again was clearly wrong.

6. I have no difficulty in finding that the second appointment by the Corporation was clearly wrong. The Corporation, if it had accepted the first Arbitrator's order ruling out his own jurisdiction on the ground that Clause 22 did not authorize an appointment it ought to have resorted to the remedy available u/s 11 of the Arbitration Act. If on the other hand, the order of the Arbitrator ruling out his own jurisdiction was wrong and Clause 22 of the agreement authorized such appointment, the remedy should have been to prefer an appeal before a competent Court u/s 37(2)

(a). The fresh appointment made by the Corporation is violative of the procedure under the Arbitration Act. The appointment of second Arbitrator in the manner done flies in the face of the reasoning of the first Arbitrator ruling out his own jurisdiction. The objection of the Petitioner that the second Arbitrator had no jurisdiction is well founded in such circumstances and the Civil Revision is allowed. There could be no longer continuation of proceedings before Sh. T.C. Gupta, the Arbitrator who is

purported to have been appointed second time by the Corporation.

7. The Civil revision is allowed. There shall, however, be no order as to costs.