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**(2009) 10 SHI CK 0048**  
**In the High Court Of Himachal Pradesh**

H.P. Horticulture Produce Marketing and Processing  
Corporation Ltd. (HPMC)

APPELLANT

Vs

Truck Operator's Union

RESPONDENT

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**Date of Decision :** 20-10-2009

**Acts Referred:**

Arbitration and Conciliation Act, 1996 — Section 34

**Citation :** (2009) 3 ShimLC 413

**Hon'ble Judges :** V.K. Ahuja, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

V.K. Ahuja, J.—This order shall dispose of the application filed by the petitioner/non-claimant u/s 34 of the Arbitration and Conciliation Act, 1996, hereinafter referred to as "the Act", for setting aside the award dated 13.12.2005 passed in Arbitration Case No. 1 of 2004 by the sole Arbitrator.

2. Briefly stated, the facts of the case are that the petitioner is a body corporate registered under Companies Act, 1956, who entered into an agreement with the respondent/claimant through Shri Balbir Banshtu, its president, vide a written agreement dated 8th August, 2003, for the carriage of culled-apples from various collection centers of Rohru/Chirgaon areas to its Fruit Processing Plant, Jarol, Jabli, Cold Storage Parwanoo and any other specified destination. According to the terms of the agreement, the respondent/claimant, was to have a fleet of minimum 50 trucks registered with them and the petitioner had agreed to pay freight to the respondent at the rate of 0.81 paisa per Kg. for transportation of fruit. There were also provision as to how the losses are to be assessed in case there was some loss in weight of apple sent through the trucks and other terms and conditions were also embodied in the agreement. There was also a clause for reference to the Arbitrator to be appointed by the Managing Director of H.P.M.C.

3. The respondent started transportation of culled-apples from various collection centers but a dispute arose in between the parties. The matter was referred to

the sole Arbitrator Shri Surinder Singh Thakur, L.R.-cum-Principal Secretary (Law) to the Government of H.P., who entered into reference and gave his impugned award, which is under challenge by the petitioner.

4. The claimant had submitted a bill of Rs. 20,76,675/- on account of transportation of culled-apples to different destination points and the petitioner withheld a sum of Rs. 14,13,360/- and also the security amount of Rs. 2,50,000/- of the respondent/claimant. In all, the claimant was paid Rs. 3,15,182/- out of the bill raised by the respondent for Rs. 20,76,675. The Arbitrator as per the impugned award allowed the claim of the respondent/claimant and directed the petitioner to refund a sum of Rs. 16,15,360/- alongwith interest at the rate of 12%. The petitioner was also directed to return the security amount of Rs. 2,50,000/- to the claimant/ respondent within two months, failing which, interest at the rate of 8% per annum was also payable.

5. Being aggrieved by the said award passed by the sole Arbitrator, the petitioner/non-claimant filed the present objections. Reply to the objections was filed by the respondent. Rejoinder was filed by the petitioner. No evidence was led by either of the parties and oral submissions were made by both the parties in support of the objections and the reply filed by them.

6. I have heard the learned Counsel for the parties and have gone through the record of the case.

7. The submissions made by the petitioner/non-claimant are that the award is unjust, unreasonable and is against the expressed terms of contract. It was also submitted that the learned Arbitrator had failed to interpret the unambiguous terms of the contract providing for the liquidated damages in case of breach of contract. It was also submitted that the claimant was required to provide trucks for transportation of the culled-apples and on failure to do so, the claimant was required to make good the loss which had been proved before the learned Arbitrator but he had not considered the same. It was also submitted that forfeiture of the security amount was one of the agreed terms for breach of the contract and the award passed by the Arbitrator illegally directing the non-claimant to refund the said amount alongwith interest and those findings given by the learned Arbitrator are patently illegal and are liable to be set aside. It was further submitted that the findings of the learned Arbitrator are against the terms of the agreement and as such, the provisions of Section 34 of the Arbitration Act were attracted. It was further submitted that the learned Arbitrator is not a Civil Court and has to decide the reference not arbitrarily, it has to interpret the terms of the agreement and cannot go beyond it.

8. On the other hand, the learned Counsel for the respondent submitted that the jurisdiction of the Arbitrator is to decide the breach as per law and terms of the agreement and there is no distinction in case the adjudication is being done by the Arbitrator or Civil Court since the Arbitrator is exercising the powers of Court while deciding the dispute in between the parties. These findings are to be given

by him on the basis of evidence led and the terms of the contract. It was further submitted that the Arbitrator had framed the issues, his jurisdiction had not been challenged and the question of interpretation of the contract, its appreciation or the adequacy of the evidence or in-sufficiency is within the domain of the Arbitrator and is not liable to be questioned before the Civil Court. It was further submitted that the decision of the Arbitrator may be erroneous but it is not liable to be interfered with by way of objections filed u/s 34 of the Act. It was further submitted that the Arbitrator had not acted in violation of any law and the reasonableness has to be considered by the Court and a perusal of the award shows that the award in question is reasonable and calls for no interference by this Court.

9. To substantiate his submissions that the jurisdiction of this Court is limited and that the adequacy or inadequacy of evidence is not to be considered and other such submissions, the learned Counsel for the respondent had relied upon the following decisions:

10. The decision in *Hindustan Tea Co. Vs. K. Sashikant Co. and Another*, was relied upon. The observations made in Para-2 are relevant and are being reproduced below:

Under the law, the arbitrator is made the final arbiter of the dispute between the parties. The award is not open to challenge on the ground that the Arbitrator has reached a wrong conclusion or has failed to appreciate facts.

Where the award which was a reasoned one was challenged on the ground that the arbitrator acted contrary to the provisions of Section 70 of the Contract Act, it was held that the same could not be set aside.

11. Reliance was also placed upon the decision in *Sudarsan Trading Co. Vs. Government of Kerala and Another*, . The observations made in Para 29 are relevant and are being reproduced below:

It is not open to the Court to probe the mental process of the arbitrator and speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. In the instant case the arbitrator has merely set out the claims and given the history of the claims and then awarded certain amount. He has not spoken his mind indicating why he has done what he has done; he has narrated only how he came to make the award. In absence of any reasons for making the award, it is not open to the Court to interfere with the award. Furthermore, in any event, reasonableness of the reasons given by the arbitrator, cannot be challenged. Appraisal of evidence by the arbitrator is never a matter which the Court questions and considers. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisal of the evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the Court to take upon itself the task of being a judge on the evidence before the arbitrator.

12. It was further held in the above case that interpretation of contract is a matter for the Arbitrator to decide. It was held that the Court cannot substitute its own decision.

13. I may make a reference to the latest decision of the Apex Court in *McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others*, The observations made in paras 46, 48, 52, 58, 59 and 60 are relevant which are being reproduced below:

In terms of the 1996 Act, a departure was made so far as the jurisdiction of the Court to set aside an arbitral award is concerned vis-a-vis the earlier Act. Whereas under Sections 30 and 33 of the 1940 Act, the power of the Court was wide, Section 34 of the 1996 Act brings about certain changes envisaged thereunder. Section 30 of the Arbitration Act, 1940 did not contain the expression "error of law....". The same was added by judicial interpretation.

While interpreting Section 30 of the 1940 Act, a question had been raised before the Courts as to whether the principle of law applied by the arbitrator was (a) erroneous or otherwise, or (b) wrong principle was applied. If, however, no dispute existed as on the date of invocation, the question could not have been gone into by the arbitrator.

The 1996 Act makes provision for the supervisory role of Courts, for the review of the arbitral award only to ensure fairness. Intervention of the Court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The Court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the Court at minimum level and this can be justified as the parties to the agreement make a conscious decision to exclude the Court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.

The arbitral award can be set aside if it is contrary to (a) fundamental policy of Indian law; (b) the interests of India; (c) justice or morality; or (d) if it is patently illegal or arbitrary. Such patent illegality, however, must go to the root of the matter. The public policy violation, indisputably, should be so unfair and unreasonable as to shock the conscience of the Court. Lastly, where the arbitrator, however, has gone contrary to or beyond the expressed law of the contract or granted relief in the matter not in dispute, would come within the purview of Section 34 of the Act.

What would constitute public policy is a matter dependant upon the nature of transaction and nature of statute. For the said purpose, the pleadings of the parties and the materials brought on record would be relevant to enable the Court to judge what is in public good or public interest, and what would otherwise be injurious to the public good at the relevant point, as contradistinguished from the policy of a particular Government.

14. It is, therefore, clear from the above discussion that the jurisdiction of this Court is limited while considering the award u/s 34 of "the Act". It is clear that supervisory role of the Court has been kept at a minimum level and interference is envisaged only in cases of fraud or bias, violation of the principles of natural justice etc. The interference on the ground of "patent illegality" is permissible only if the same goes to the root of the matter and the "public policy" violation should be so unfair and unreasonable as to shock the conscience of the Court. What would constitute "public policy" is a matter dependant upon the nature of the transaction and the statute.

15. It is, therefore, clear from the above discussion that this Court is not sitting in appeal over the findings recorded by the learned Arbitrator and there has not to be reappraisal of the evidence, which has been led before the learned Arbitrator. After the amendment of the Act in the Arbitration and Conciliation Act, 1996, the jurisdiction of the Court is limited u/s 34 of the Act and it can consider the objections only if the award is in any manner against the term "public policy", which has to be liberally interpreted keeping in view the facts of the case. A perusal of the objections filed by the petitioner shows that neither there are any specific allegations that the award was against "public policy" nor it was clarified as to which findings or objections made by the learned Arbitrator were against "public policy" except the general allegations that the award was against the expressed terms of contract and was unjust, unreasonable, unsustainable and patently illegal. To my mind, according to law as it stands, the objections can be considered by the Court only if the award is against the "public policy", for which there has to be specific allegations as to how it was against the term "public policy". The allegations made are vague in nature and it cannot be said that the provisions of Section 34 of the Act are attracted to the present facts.

16. I have also gone through the impugned award passed by the learned Arbitrator and a perusal of the same shows that the learned Arbitrator had mentioned the background of the case, the dispute raised by the respondents and the claim of the petitioner/non-claimant. The learned Arbitrator had even gone to the extent of framing points for determination on the basis of the pleadings as in the cases which are tried by a Civil Court. These points, framed to my mind, show that the dispute in between the parties was clear and the findings were recorded in regard to all the points raised by both the parties, which approach of the learned Arbitrator can be said to be correct and separate findings were given on the different points. The findings had been given by the learned Arbitrator on the basis of the evidence led by the parties and this Court cannot consider the objections and consider the evidence as if it was hearing the appeal as against the judgment of the Civil Court. The jurisdiction of the Court is limited and the award can be set aside if it is against "public policy" and there is nothing on record to substantiate as to how the award is against the term "public policy". The question of interpretation of the agreement and its terms and sufficiency of evidence was within the domain of the Arbitrator and accordingly, no case is made out for allowing the objections filed by the petitioner, which are

not sustainable and as such, they are liable to be dismissed.

17. In view of the above discussion, I accordingly, hold that there is no merit in the application filed by the petitioner/non-claimant u/s 34 of the Act and as such, the same is dismissed accordingly. There is no order as to costs.