(2011) 01 P&H CK 0449

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 6205 of 2010 (O and M)

Krishna Rice and Genral Mill — APPELLANT

Vs

District Food and Supplies Controller and Another — RESPONDENT

Date of Decision : 18-01-2011

Acts Referred:
Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2011) 3 ARBLR 463 : (2011) 162 PLR 432

Hon'ble Judges : Mohinder Pal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohinder Pal, J.—The Appellant has preferred this appeal against the judgment dated 14.10.2010 passed by the learned District Judge, Yamuna Nagar at Jagadhri, whereby the objection petition filed by the Appellant u/s 34 of the Arbitration and Conciliation Act, 1996 (for short ''the Act'') against the Award dated 17.9.2008 passed by Mr. Baljit Kularia, Deputy Director, Food & Supplies -cum-Sole Arbitrator, Haryana, Chandigarh (Respondent No. 2) was dismissed.

2. As per facts of the case, the Appellant had entered into an agreement dated 8.10.2001 with the District Food and Supplies Controller, Yamuna Nagar, District Yamuna Nagar (Respondent No. 1) for milling of rice. As per the contention of Respondent No. 1, the Appellant had not supplied the milled rice as agreed by it (Appellant) during the stipulated period. The Appellant, according to Respondent No. 1, was deficient of 3266.64 quintals CMR (custom milled rice) upto the contractual period which was later on extended upto 31.7.2002 by Respondent No. 1. Thereafter, the Appellant supplied CMR as per directions of Respondent No. 1 to Food Corporation of India and deficiency was reduced to 989.33 quintals rice. The value of deficient rice was Rs. 10,31,149/-. The Appellant had deposited the entire amount of the outstanding rice with Respondent No. 1 claimed upto 31.1.2008. As per Respondent No. 1, a sum of Rs. 8,69,122/- was outstanding against the Appellant on account of interest. As such, Respondent No. 1 claimed

adjudication of the dispute before the Arbitrator (Respondent No. 2). The Arbitrator passed the Award dated 17.9.2008 holding the Appellant liable to pay an amount of Rs. 8,14,628/- upto 31.7.2008. The Appellant filed objections u/s 34 of the Act before the learned District Judge, Yamuna Nagar at Jagadhri. Objection petition has been dismissed by the District Judge vide judgment dated 14.10.2010. Hence this appeal by the Appellant.

3. I have heard Mr. V.K. Jindal, Advocate, appearing for the Appellant and Mr. Rajiv Kataria, Senior Deputy Advocate General, Haryana, appearing for the Respondents and have gone through the records of the case.

4. The objection petition was filed by the Appellant before the learned District Judge, inter alia, on the ground that the claim petition was barred by limitation; that no interest was claimed by Respondent No. 1 for a long span of five years; and that the Appellant had deposited Rs. 36,39,180/- in total and no claim was ever made by Respondent No. 1.

5. Learned Counsel for the Appellant has argued that the dispute which had been referred to Mr. Baljit Kularia, Deputy Director, Food & Supplies - cum- Sole Arbitrator, Haryana, Chandigarh (Respondent No. 2) by Respondent No. 1 was not of arbitrable nature in view of Clause 9 of the agreement dated 8.10.2001 executed between the parties.

6. Clause 9 of the agreement reads as under:

9. The entire quantity of rice of all varieties delivered by the miller to the Government shall conform to the specifications laid down in the Haryana Rice Procurement (Levy) Order, 1985 as amended from time, to time or in any other Order of Notification issued by the State Government from time to time. The stocks 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 DFSC for the quantity of rice short supplied, as penalty at the custom milling rate fixed by Government of India plus Reserve Bank of India, CCI, rate of interest from the date it becomes payable till the date of actual realization of the converted variety of rice. The decision of the Director Food and Supplies Haryana (hereinafter referred to as the Director) in this behalf shall be final.

7. Hon''ble Supreme Court, in the case of Rajasthan State Mines and Minerals Limited Vs. Eastern Engineering Enterprises and Another, held as under:

(f) To find out whether the Arbitrator has traveled beyond his jurisdiction, it would be necessary to consider the agreement between the parties containing the arbitration clause. The Arbitrator acting beyond his jurisdiction is a different ground from the error apparent on the face of the award.

(g) In order to determine whether the Arbitrator has acted in excess of his jurisdiction what has to be seen is whether the claimant could raise a particular claim before the Arbitrator. If there is a specific term in the contract or the law which does not permit or give the Arbitrator the power to decide the dispute raised by the claimant or there is a specific bar in the contract to the raising of the particular claim then the award passed by the arbitrator in respect thereof would be in excess of jurisdiction.

8. Clause 9 of the agreement ibid, quoted above, clearly provides that if the stocks of rice were not conforming to the specifications so laid down, the same were liable to be rejected in respect of such quantity of rice which was not found to be within the specifications and the miller (Appellant) was liable to pay to Respondent No. 1 for the quantity of rice short supplied, as penalty at the custom milling rate fixed by Government of India plus Reserve Bank of India, CCI, rate of interest from the date it became payable till the date of actual realization of the converted variety of rice. The decision of the Director, Food and Supplies Haryana in this behalf was to be final. In view of this clause of the agreement, the matter had to be referred by Respondent No. 1 to the Director, Food and Supplies, Haryana, who was to take the decision. As per this clause of the agreement, the interest could only be levied by the Director; meaning thereby the dispute with regard to interest was not arbitrable and the Arbitrator exceeded his jurisdiction by arbitrating the matter which was beyond his jurisdiction. This case is, thus, squarely covered by the observations of the Hon''ble Supreme Court in the case of Rajasthan State Mines and Minerals Ltd. (supra), repro duced above.

9. For the aforesaid reasons, this appeal is allowed, the impugned judgment passed by the learned District Judge is set aside, the objection petition filed by the Appellant u/s 34 of the Act is accepted and the Award dated 17.9.2008 passed by Respondent No. 2 is set aside. Of course, Respondent No. 1 will be at liberty to refer the matter to the Director, Food and Supplies, Haryana, for the levy of interest as per Clause 9 of the agreement ibid.