(2012) 07 P&H CK 0122

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 1186 of 2010

M/s. Adarsh Rice Mills — APPELLANT

Vs

Punjab State Civil Supplies Corporation and Another — RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2012) 07 P&H CK 0122

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : Vishal Gupta, for the Appellant; Deepak Sabharwal, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—By this common judgment, I am also disposing of FAO No. 5563 of 2 01 0 titled Punjab State Civil Supplies Corporation versus M/s. Adarsh Rice Mills & another, in addition to the instant FAO No. 1186 of 2 01 0 titled M/s. Adarsh Rice Mills versus Punjab State Civil Supplies Corporation & another, because both these appeals have arisen out of the same judgment of the lower Court. Punjab State Civil Supplies Corporation-respondent No. 1 herein (PUNSUP) supplied paddy to M/s. Adarsh Rice Mills-appellant (Miller) for custom milling in paddy season 1994-95. Pursuant to arbitration clause in the agreement, dispute between the parties was referred to respondent No. 2-Arbitrator R. K. Gupta. Arbitrator gave his award dated 11.12.2 003 thereby awarding 217,68,396/- to PUNSUP recoverable from the Miller with interest at bank rate w.e.f. 01. 07.1995 till recovery.

2. The Miller filed application u/s 34 of the Arbitration and Conciliation Act, 1996 (in short, the Act) assailing the Arbitrator''s award on various grounds.

3. PUNSUP by filing reply opposed the application of the Miller.

4. Learned District Judge, Gurdaspur vide judgment dated 02.12.2 009 partly

allowed the application of the Miller and set aside the award of the Arbitrator regarding interest only, holding that the question of interest was excepted from the purview of the Arbitrator and was to be decided by the Managing Director of PUNSUP. Feeling aggrieved, the Miller has filed instant FAO No. 1186 of 2 01 0 praying that the award be set aside in to whereas PUNSUP has filed FAO No. 5563 of 2 01 0 praying that the award of the Arbitrator be upheld in to.

5. I have heard learned counsel for the parties and perused the case file.

6. Counsel for the Miller referring to clause 5(iii) and 6(i) of the agreement, contended that the question of economic cost of paddy for short supply of the rice as well as the question of interest thereon was within the purview of Managing Director of PUNSUP and was, therefore, excepted from the purview of the Arbitrator and consequently award of the Arbitrator on both counts is vitiated and is liable to be set aside in to.

7. On the other hand, counsel for the PUNSUP contended that in the revised claim before the Arbitrator, PUNSUP neither claimed one and half times of economic cost of the paddy nor claimed interest @ 21% per annum and, therefore, the matter of cost of shortfall of rice and interest (claimed at bank rate), were not excepted from the purview of the Arbitrator. It was also contended that the matter of penal rate of one and half times of economic cost of paddy was to be decided by the Managing Director regarding rice supplied by the Miller found to be not conforming to the specifications whereas the question of cost of paddy towards short supply of rice was not to be decided by the Managing Director and was, therefore, within the purview of the Arbitrator. It was also argued that in the revised claim before the Arbitrator, PUNSUP claimed interest at Bank rate and not @ 21 % per annum and, therefore, the question of interest at bank rate was within the purview of Arbitrator. Only question of penal interest @ 21% per annum was within the purview of Managing Director.

8. I have carefully considered the rival contentions. It is undisputed that if any matter was to be decided by the Managing Director, the same was excepted matter for the Arbitrator and was not to be adjudicated upon by the Arbitrator. The question that, therefore, arises for adjudication in these appeals is whether the cost of short supply of rice and interest at bank rate as awarded by the Arbitrator fell within excepted matters to be deiced by the Managing Director or fell within the purview of Arbitrator to adjudicate upon? For determining the same, relevant clauses of the agreement as referred to by counsel for the parties are reproduced hereunder:

5 (iii) In case there is shortfall in the recovery of rice provided in sub-clause (i) above the miller shall pay to the Punsup the cost of paddy equivalent to the short-fall at the rate of 1 1/2 times the economic cost of paddy.

6(i) The entire quantity of rice of all varities delivered by the Miller to the Punsup shall conform to the specification laid down in the Punjab rice procurement (LEVY) order, 1983 as amended from time to time and in shy other or

Notification issued by the State Government from time to time. The stocks of rice not conforming to the specifications as laid down, shall be liable to rejected to the respect of such quantity of rice which is not found to be within the specifications and the Miller shall be liable to offer fresh stocks of rice conforming to the specifications to the PUNSUP in the event of his failure to supply rice within the prescribed specifications shall be liable to pay to the PUNSUP for the quantity of rice short supplied at the penal rate of one and half times the economic cost of the converted variety of paddy equivalent to the shortages. The decision of the Managing Director, Punsup (hereinafter referred to as the Managing Director) in this behalf shall be final.

(ii)....xxxx....xxxx....xxxx

(iii) The miller shall complete delivery of rice within 10 days of issuance of paddy to him and rice due to the PUNSUP on the total quantity of paddy issued to him or in joint custody released at regular interval shall be delivered not later than the 28th February, 1995. The Miller shall further ensure milling of Punsup paddy and delivery of rice in the following manner:-

October/ November : 20%

December 2 6%

January 2 6%

February 28%

in the event of his failure to supply rice within the stipulated period he shall be liable to for an interest @ 2% on the basis of economic cost of left over quantity/ stocks of paddy/rice. The decision of Managing Director this behalf shall be final.

17. ARBITRATION. 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 in the contract) shall be referred to the sole arbitration of the Managing Director or any person appointed by her in this behalf.....xxxx

9. According to Clause 5(iii) of the agreement, in the case of shortfall in supply of rice, the miller had to pay cost of paddy equivalent to shortfall at 1 1/2 times of economic cost of paddy. Under clause 6(i), if the rice supplied by the Miller was not as per specifications, for the said shortfall, Miller had to pay penal rate of one and half times the economic cost of paddy equal to the shortage and in this regard, final decision was to be taken by the Managing Director. The same was thus excepted from the purview of the Arbitrator. Under clause 6(iii), for other shortfall in supply of rice, the Miller had to pay interest @ 21% on the basis of economic cost of paddy and question of said interest was to be decided finally by the Managing Director and thus excepted from the purview of the Arbitrator.

10. In the instant case, there was no claim regarding supply of rice not conforming to the specifications falling within the purview of Clause 6(i) of the

agreement which is excepted from the purview of Arbitrator. Consequently, contention of counsel for the Miller cannot be accepted. In addition to it, PUNSUP did not claim recovery of one and half times of economic cost of the paddy and rather claimed only cost of short quantity of rice which was not excepted from the purview of the Arbitrator. Similarly PUNSUP did not claim interest @ 21%, which was excepted from the purview of Arbitrator. PUNSUP rather claimed interest at bank rate, which was not excepted from the purview of the Arbitrator.

11. Counsel for the Miller contended that claim of PUNSUP regarding cost of rice (instead of one and half times of economic cost of paddy) and claim of interest at bank rate (instead of interest @ 21% per annum) was contrary to the agreement. This contention is also untenable in view of Arbitration clause 17 of the agreement according to which all disputes and differences (except the excepted matters) had to be resolved by the Arbitrator. Consequently the claim of cost of rice and claim of interest at bank rate cannot be said to be beyond or contrary to the agreement.

12. Resultantly, it emerges that award of the Arbitrator does not pertain to excepted matters. Consequently the award is not liable to be set aside. Impugned judgment of the lower Court partly setting aside the award regarding interest is, therefore, unsustainable because the question of interest at bank rate was not excepted from the purview of the Arbitrator. As a necessary consequence of the aforesaid discussion, FAO No. 1186 of 2 01 0 filed by the Miller is dismissed whereas FAO No. 5563 of 2 01 0 filed by PUNSUP is allowed. Impugned judgment of lower Court is set aside and application filed by the Miller u/s 34 of the Act is dismissed by upholding the Arbitrator''s award in to.

