

(2012) 07 P&H CK 0267
In the Punjab And Haryana At Chandigarh
Case No : FAO NO. 396 OF 2010 (O and M)

Punjab State Civil Supplies Corporation Ltd. and Another	APPELLANT
Vs	
M/s. Shiv Shankar Rice Mills Pvt. Ltd. and Another	RESPONDENT

Date of Decision : 18-07-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 16(2), 34, 4

Citation : (2012) 07 P&H CK 0267

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

Bench : Single Bench

Advocate : Rakesh Gupta, for the Appellant; S. K. Singla, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

L.N. Mittal, J.

CM No. 2516-CII of 2010

1. Heard. For reasons mentioned in the application, which is accompanied by affidavit, delay of 14 days in riling the appeal is condoned.

2. The application stands disposed of accordingly.

FAO No. 396 of 2010

3. Punjab State Civil Supplies Corporation Ltd. (PUNSUP) and its District Manager have filed this first appeal to assail judgment (Award) dated 26.03.2009 passed by learned District Judge, Kapurthala thereby allowing petition u/s 34 of the Arbitration and Conciliation Act, 1996 (in short, the Act) filed by M/s. Shiv Shankar Rice Mills Private Limited respondent No. 1 herein (Miller) for setting aside award dated 25.08.2004 passed by respondent No. 2-Arbitrator J. R. Singla.

4. Appellants supplied paddy to respondent No. 1 for custom milling. Dispute arose between the parties. The dispute was referred to respondent No. 2-

Arbitrator who gave the impugned award. Respondent No. 1 Miller filed petition u/s 34 of the Act alleging that the Arbitrator did not have jurisdiction to decide the matters which have been decided by him because decision thereon was to be taken by Managing Director of PUNSUP or by State and, therefore, the award is vitiated.

5. Appellants herein controverted the averments of the Miller and defended the award of the Arbitrator.

6. Learned District Judge, Kapurthala vide impugned judgment dated 26.03.2009 allowed the petition of the Miller. Feeling aggrieved, instant appeal has been filed by PUNSUP and its District Manager.

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

8. Counsel for the appellants contended that u/s 16(2) of the Act, the Miller had to raise objection regarding jurisdiction of the Arbitrator not later than the submission of the statement of defence but no such objection was raised either in statement of defence before the Arbitrator or prior to it and, therefore, at subsequent stage, the Miller was not entitled to raise the said objection. Reference in this regard was also made to Section 4 of the Act. Reliance in support of this contention was placed on judgment of this Court in the case of M/s. Gupta Rice Mill (P) Ltd. Versus Punjab State Co-operative Supply and Marketing Federation Ltd. reported as 2010(4) Civil Court Cases 597.

9. It was also contended by counsel for appellants that all the matters decided by the Arbitrator were within his purview and were not excepted matters and decision thereof had not been provided for otherwise in the agreement and, therefore, Arbitrator had jurisdiction to decide the aforesaid matters.

10. Per contra, counsel for respondent No. 1-Miller contended that objection regarding jurisdiction of the Arbitrator was raised before the Arbitrator himself at the stage of arguments and, therefore, there was no waiver of the said objection u/s 4 of the Act.

11. Counsel for respondent No. 1-Miller also contended that all the matters adjudicated upon by the Arbitrator were excepted matters and Arbitrator had no jurisdiction to adjudicate upon the same. Reference in this regard was made to Clauses 6, 7, 14 and 19 of the agreement.

12. I have carefully considered the aforesaid contentions. Section 16 (2) of the Act clearly stipulates that objection regarding jurisdiction of the Arbitrator has to be raised not later than the submission of statement of defence. In the instant case, no such objection was raised by the Miller before the Arbitrator either in statement of defence or prior to it. Consequently, no such objection could be taken by the Miller at the stage of arguments before the Arbitrator or in petition u/s 34 of the Act. This view finds support from judgment of this Court in the case of Gupta Rice Mill (supra). Consequently, the lower Court committed error and illegality in entertaining the aforesaid objection of the Miller u/s 34 of the Act.

13. In addition to the aforesaid, jurisdiction of the Arbitrator was also not barred in the matters adjudicated upon by him. Clause 7(iii) of the agreement refers to the delivery of the rice within stipulated period and provides for payment of interest @ 21 per cent per annum in case of failure. Decision regarding 21 per cent interest had to be taken by the Managing Director. However, in the instant case, PUNSUP claimed interest at Bank rate and not at 21 per cent per annum and, therefore, decision regarding the same was not to be taken by the Managing Director. The aforesaid clause also does not provide that decision regarding cost of short quantity of rice had to be taken by the Managing Director. On the contrary, Managing Director could take decision regarding cost of paddy qua rice which was not found according to specifications. In the instant case, Arbitrator has awarded cost of short quantity of rice and not cost of paddy or one and half times of economic cost of the paddy as stipulated in the agreement. As regards cost of gunny bags, Clause 14 of the agreement provides that rate of gunny bags was to be fixed by the State Government from time to time. However, the decision regarding short return of empty bags was not to be taken by the State Government. Consequently the said matter was also not excepted from the purview of the Arbitrator.

14. As regards amount of quality cuts, clause 7(ii) of the agreement relied on by counsel for the Miller provides that the Miller shall be liable to pay the same but it does not provide that Managing Director or any other authority had to decide the said matter. Consequently, Arbitrator had to decide the said matter. Arbitration Clause 19 of the agreement excluded from the purview of Arbitrator any matter decision of which is expressly provided for in the agreement. However, clause 7(ii) of the agreement does not provide for decision regarding quality cut amount by any other authority. Consequently the same had to be decided by the Arbitrator. Unreported judgments of this Court in the cases of FAO No. 1392 of 2007 titled M/s. Kultar Singh and Brothers and others versus Punjab State Civil Supplies Corporation Ltd. and others and FAO No. 3426 of 2008 titled The Punjab State Civil Supplies Corporation Ltd., Chandigarh versus M/s. Vohra Trading Company and others relied on by counsel for respondent No. 1-Miller are not applicable to the facts of the instant case. On the contrary, in unreported judgment of this Court dated 17.07.2012 in FAO No. 1186 of 2010 titled M/s. Adarsh Rice Mills versus Punjab State Civil Supplies Corporation & another, it has been held that these matters are within the purview of the Arbitrator.

15. For the reasons aforesaid, I find that objection relating to jurisdiction of the Arbitrator could not be raised by the miller in petition u/s 34 of the Act because it was not raised in statement of defence before the Arbitrator or prior to it. Moreover, the matters adjudicated upon by the Arbitrator were not excepted from his purview and Arbitrator had jurisdiction to adjudicate upon the same. Consequently impugned award of the Arbitrator is not liable to be set aside. Finding of the lower Court to the contrary is illegal and perverse. Resultantly the instant appeal is allowed. Impugned judgment dated 26.03.2009 passed by learned District Judge, Kapurthala is set aside. Petition u/s 34 of the Act filed by

Miller-respondent No. 1 herein stands dismissed. The parties shall bear their own costs.