

(2016) 01 P&H CK 0199

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 5182 of 2009, FAO No. 1362 of 2007 and FAO No. 719 of 2007

Punjab State Civil Supplies Corporation Ltd. (PUNSUP) and
another

APPELLANT

Vs

M/s Luxmi Rice Mills and others

RESPONDENT

Date of Decision : 27-01-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 4

Citation : (2016) 2 PLR 265

Hon'ble Judges : Amit Rawal, J.

Bench : Single Bench

Advocate : Deepali Puri, Advocate, Karan Gupta, Advocate, Swaran Sandhir, Advocate. in FAO No. 5182 of 2009, for the Appellant; Swaran Sandhir, Advocate. in FAO No. 1362 of 2007 and FAO No. 5182 of 2009, for the Respondent

Final Decision : Dismissed

Judgement

Amit Rawal, J.(Oral) - This order of mine shall dispose of three appeals. Two appeals bearing FAO No. 5182 of 2009 and FAO No. 1362 of 2007 have been filed at the instance of PUNSUP. FAO No. 719 of 2007 has been filed at the instance of the miller.

2. The controversy involved in all the aforementioned cases is same therefore, are disposed of by a common order.

3. For the sake of convenience, the facts are being taken from FAO No. 5182 of 2009.

4. Mr. Karan Gupta, and Ms. Deepali Puri, learned counsel appearing on behalf of the appellant submits that the present appeals have arisen against the order dated 18.5.2009 whereby the objections filed under Section 34 of Arbitration and Conciliation Act, 1996 (hereinafter called as "the Act") filed at the instance of the rice miller have been allowed and the award dated 17.6.2005 has been set aside

whereas in other case i.e. FAO No. 1362 of 2007 and FAO No. 719 of 2007 the objections filed at the instance of the miller have been partly accepted and the award dated 4.8.2003 has been set aside to some extent.

5. The PUNSUP in the aforementioned cases claimed compensation on account of late delivery including 21% interest.

6. Learned counsel appearing on behalf of the appellants in the aforementioned cases submits that the miller had not taken objections as per the provisions of Section 16 of the Act, therefore, the objections before the objecting court by raising the plea that the objections were falling within the excepted clause in view of provisions of Section 4 of the Act, was not maintainable. In essence, the miller is deemed to have waived its right. Even otherwise, the agreement in so many clauses entered into between the miller and PUNSUP envisage charging of 21% interest whereas as per certain clauses the Managing Director is empowered to grant interest @ of 21%.

7. Be that as it may, once the miller has waived of the right to take these objections, even claim was falling within the excepted clause, objections were not maintainable, therefore, the order of the objecting court referred above is liable to be set aside. In support of their contentions they have relied upon the judgments in M/s Gupta Rice Mill (P) Ltd. v. The Punjab State Co-operative Supply and Marketing Federation Ltd. and another, 2013 RCR (Civil) 371 and FAO No. 1576 of 2008 decided on 23.12.2015 in State of Haryana v. M/s Mehta Construction Co. and another which is based on the judgment of Hon'ble Supreme Court in Narayan Prasad Lohia v. Nikunj Kumar Lohia and others, 2002 AIR (SC) 1139.

8. Mr. Swaran Sandhir, Advocate appearing on behalf of the appellant in FAO No. 719 of 2007 submits that the award of the arbitrator is erroneous, inasmuch as he has awarded the claim of the PUNSUP which was falling within the excepted clause and the same could not have been adjudicated upon by the arbitrator. In essence, the arbitrator did not have jurisdiction and the objections were falling within the realm of Section 34 of the Act.

9. In order to rebut the argument Mr. Karan Gupta, and Ms. Deepali Puri, learned counsel for the appellants, he submits that there is no illegality and perversity in the order passed by the objecting court as the objections were falling within the parameters of Section 34 of the Act.

10. I have heard learned counsel for the parties and appraised the paper book.

11. The appeals filed at the instance of the PUNSUP are allowed whereas that of the miller is liable to be dismissed on the following points.

12. Section 4 of the Act, deals with the provisions of waiver of right to object viz-a-viz jurisdiction of the arbitrator.

13. From the perusal of the award it is discernible that the miller has not taken

objections viz-a-viz jurisdiction, thus deemed to have waived the right viz-a-viz jurisdiction of the arbitrator, therefore, the objections before the objecting court were not maintainable. This aspect has totally been not noticed by the objecting court. I am of the view that the decision rendered by this Court State of Haryana's case (supra) whereby ratio decidendi culled out by Hon''ble Supreme Court in Narayan Prasad Lohia's case (supra) has been relied, the miller has failed to take objections as enshrined under Section 16 of the Act is squarely applicable to the case.

14. Accordingly, the impugned order of the objecting court in FAO No. 5182 of 2009 and FAO No. 1362 of 2007 is hereby set aside. The appeals stand allowed.

15. As far as the grievance of the miller in FAO No. 719 of 2007 is concerned the same analogy would apply as the miller has failed to take objections as per Section 16 of the Act. The jurisdiction of the arbitrator cannot be challenged before the objecting court by filing objections.

16. Accordingly FAO No. 719 of 207 is dismissed.