
(2002) 03 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1780 of 2001

Shree Krishna Rice Mills

APPELLANT

Vs

The Punjab State Co-op. Supply and Marketing Federation
Ltd.

RESPONDENT

Date of Decision : 14-03-2002

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 16

Citation : (2003) 3 ARBLR 565 : (2003) 2 CivCC 167 : (2003) 135 PLR 341 :
(2003) 3 RCR(Civil) 254

Hon'ble Judges : K.C. Gupta, J

Bench : Single Bench

Advocate : Vinay Mittal and Raman Walia, for the Appellant; Amar Vivek, for the Respondent

Final Decision : Allowed

Judgement

K.C. Gupta, J.—This order shall dispose of fifteen revision petitions bearing No. 1780 of 2001 (M/s Shree Krishna Rice Mills v. The Punjab State Co-operative Supply and Marketing Federation Ltd. Chandigarh); 1781 of 2001 (M/s Amrik Singh Joginder Singh v. The Punjab State Co-operative Supply and Marketing Federation Ltd. Chandigarh), 1782 of 2001 (M/s Ram Chand Sohan Lal v. The Punjab State Co-operative Supply and Marketing Federation Ltd., Chandigarh), 1784 of 2001 (M/s Singla Rice Mills v. The Punjab State Co-operative Supply and Marketing Federation Ltd. Chandigarh), 1785 of 2001 (M/s Bajaj Rice Mills v. The Punjab State Co-operative Supply and Marketing Federation Ltd. Chandigarh), 1786 of 2001 (M/s Sanjiv Jain & Company v. The Punjab State Co-operative Supply and Marketing Federation Ltd. Chandigarh), 1787 of 2001 (M/s Jai Bharat Rice Mills v. The Punjab State Co-operative Supply and Marketing Federation Ltd. Chandigarh), 1788 of 2001 (M/s Shiv Shanker Rice Mills v. The Punjab State Cooperative Supply and Marketing Federation Ltd. Chandigarh), 1789 of 2001 (M/s Arora Rice Mills v. The Punjab State Co-operative Supply and Marketing Federation Ltd. Chandigarh), 1790 of 2001 (M/s Shah Rice Mills v. The Punjab

State Co-operative Supply and Marketing Federation Ltd., Chandigarh), 1791 of 2001 (M/s Dashmesh Enterprises v. The Punjab State Cooperative Supply and Marketing Federation Ltd. Chandigarh), 1792 of 2001 (M/s Pardeep Rice Mills v. The Punjab State Co-operative Supply and Marketing Federation Ltd. Chandigarh), 1793 of 2001 (M/s Khalsa Rice & General Mills v. The Punjab State Co-operative Supply and Marketing Federation Ltd, Chandigarh), 1794 of 2001 (M/s Karnal Rice Mills v. the Punjab State Co-operative Supply and Marketing Federation Ltd. Chandigarh), as common question of law and fact is involved and all these revisions have arisen from the common judgment dated 30.11.2000 passed by the Additional District Judge, Ferozepur.

2. Briefly stated the facts as culled out from Civil Revision No. 1780 of 2001 and that during the year 1994-95, Markfed had procured paddy, being one of the procuring agencies in custom milling of paddy and delivery of milled rice to Food Corporation of India in the central pool. An agreement was executed between the Markfed and the petitioner firm who was a miller for shelling the paddy for the year 1994-95. The rice miller was required to deliver the stocks of rice till 28.2.1995 in terms of the agreement but it was alleged that the miller delivered limited quantity of rice and, therefore failed to adhere to the delivery schedule and committed breach of contract.

3. Alleging these facts, the Markfed claimed various amounts as the alleged damages/loss/compensation and also the amount of interest @ 21% per annum. In this manner, the Markfed claimed 1.5 times economic cost alongwith 21% per annum. In this manner, the Markfed claimed 1.5 times economic cost alongwith 21% interest alleging that losses had been suffered by it because of the petitioner firm.

4. That Managing Director of Markfed, vide order dated 3.4.1997, appointed Shri P.K.. Chatopadhaya as Arbitrator for the adjudication of the alleged dispute between the petitioner firm and the Punjab State Co-operative Supply and Marketing Federation Limited (Markfed).

5. The petitioner firm received the notice from the Arbitrator to appear before him on 28.4.1997 at Ferozepur. The petitioner firm accordingly appeared before the Arbitrator and filed an application for termination of the proceedings as the Markfed had failed to comply with the mandatory provisions of Sections 8(2), 16, 23 and 25 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as "the Act") and for rejection of the claim of the Markfed alongwith the reference made by the Managing Director being against the mandatory provisions of the Act and also being time barred.

6. The Arbitrator, vide his interim award dated 13.1.1998, held that as per Clause 18 of the agreement under which the matter in dispute was referred to him for arbitration, all disputes arising out of the aforesaid agreement (except as to any matter, decision of which is expressly provided for in the contract) shall be referable to the said arbitration of the Managing Director or any other person

appointed by him on his behalf. Thus, it was observed by the Arbitrator only regarding 1.5 times economic cost of paddy and 21% interest per annum and as the aforesaid matters were already covered under Clauses 5 and 6 of the agreement dated 26.9.1994 between the parties, so, there was no other dispute between the parties and the same could not be referred to the Arbitration.

7. It was also held that the claim filed by the Markfed was time barred and further the Markfed did not furnish complete copy of the agreement and as such, the reference on that basis was bad. Consequently, the Arbitrator terminated the arbitration proceedings. However, it observed that the Markfed/claimant had a right to complete the documents and make a request for fresh reference, if permitted by law, or to take other appropriate legal steps for the recovery against the respondent, if any, as per Clauses 5 and 6 of the agreement.

8. Aggrieved by the interim award dated 13.1.1996, the Markfed filed an appeal which was heard by the Additional District Judge, Ferozepur. He vide judgment dated 30.11.2000, accepted the appeal filed by the Markfed and set-aside the interim order passed by the Arbitrator and directed the Arbitrator to proceed further according to law.

9. Aggrieved by the said judgment dated 30.11.2000, the petitioner firm has filed the present revision petition. Fourteen other Civil Revisions were also filed on the same ground.

I have heard Shri Vinay Mittal, Sr. Advocate with Mr. Raman Walia, counsel for the petitioner, Shri Amar Vivek, counsel for the respondent and carefully gone through the file.

Clause 18 of the agreement, under which a reference of the dispute was made to the Arbitrator by the Managing Director of Markfed, reads as under:-

"CLAUSE 18:

ARBITRATIONS: All disputes and differences 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 for in the contract) shall be referred to the sole arbitrator of the M.D. or any other person appointed by him in this behalf. It will be no objection to any such appointment that the person appointed is or was an employee of Markfed or that he had to deal with the matters in which the contract relates and that in the course of his duties such an employee of the Markfed he had expressed views on all or any of the matter in dispute or difference. The award of such arbitration shall be final and binding on the parties to this contract. It is a term of this contract that in the event of the arbitrations being transferred or vacating his office, dying or being unable to act for any reason the M.D. at the time of the such transfer, vacation of office, death or inability shall appoint another person to act as arbitrator. Such a person shall be entitled to proceed with reference from the stage where it was left by his predecessor:

Provided further that any demand for arbitration in respect of any claims of the Miller, under the contract shall be in writing and made within one year of the date of completion of the period of contract. If the demand is not made within the period of (sic) claims of the Miller shall be deemed to have been waived off and absolutely barred and the M.D. shall be discharged and released of all liabilities under the contract in respect of these claims."

10. Therefore, according to this clause, if the decision of any matter, which is expressly provided for in the contract, shall not be referred to the Arbitrator of the M.D. or any other person appointed by him in this behalf.

11. It may also be pertinent to reproduce the relevant extract of Clauses 5 & 6 of the agreement: Clause 5:

I & II xxx xxx xxx

III) In case there is a shortfall in the recovery of rice provided in Sub-clause (1) above the miller shall pay to the Markfed the cost of paddy equivalent to the shortfall at the rate of 1.5 times the economic cost of paddy.

Clause 6:

I, II & III. xxx xxx xxx

In the event of his failure to supply within the stipulated period, he shall be liable for an interest @ 21% on the basis of economic cost of left over quantity/stocks of paddy/rice. The decision of the Markfed Director in this behalf shall be final."

12. Therefore, the combined reading of Clauses 18, 5 & 6 of the aforesaid agreement, clearly show that all disputes between the Markfed and the miller were liable to be referred to the arbitration concerning the agreement except disputes regarding the matters, the decision of which is expressly provided for in the contract. Under Clauses 5 & 6 of the aforesaid agreement, the decision with regard to 1.5 times economic costs and interest @ 21% is clearly provided in the agreement itself and as such, the aforesaid matters were not liable to be referred to the Arbitrator and reference in this regard was beyond the scope of arbitration clauses and the proceedings before the Arbitrator were clearly liable to be terminated on the short ground alone. In such circumstances, neither the Managing Director had any authority to refer aforesaid dispute to the Arbitrator, nor the Arbitrator had any jurisdiction to continue with the proceedings under any circumstances. The observation of the learned Additional District Judge at page 13 of the Judgment that the claim with regard to the economic cost and interest was liable to be decided by the Arbitrator and the dispute is not frivolous, is not based on the appreciation of Clause 18 read with Clauses 5 and 6 of the agreement but he has misinterpreted these clauses and had failed to appreciate the same properly and as such, has misdirected himself. Consequently, the findings of the Additional District Judge on this score cannot be sustained.

13. Counsel for the petitioner also contended that the reference was to be made to the Arbitrator within a period of one year from the completion of the period of contract i.e., 28.2.1995 but the dispute was referred by the Managing Director of the Markfed in the year 1997 and as such, it was hopelessly barred by limitation. In my opinion, the contention of learned counsel is not tenable. Section 28 of the Contract Act states that every agreement, by which any party thereto is restricted absolutely from enforcing his right under or in respect of any contract, by the usual legal proceedings in ordinary tribunals or which limits the time within which he may, thus enforce his right is void to that extent. Under Article 137 of the Limitation Act, the period prescribed to refer the matter to Arbitration is three years from the date of accrual of cause of action. In the agreement, it was provided that the miller would have the period of one year to make the reference while the Markfed would have the period of three years to refer the matter for arbitration. This is certainly not equitable. According to Section 28 of the Contract Act, the clause vide which the miller had been given a period of one year to make reference of the dispute to the Arbitrator will be void to that extent and not whole of the contract and as such, the miller would also have three years as provided under Article 137 of the Contract Act. Thus, the claim preferred by the Markfed is not time barred.

14. Counsel for the petitioner also contended that the reference was not proper as the original agreement or the duly certified copy thereof was not annexed with reference. It is true that the Arbitrator had observed in his order that the original agreement or the certified copy thereof has not been produced and as such, the reference was not valid.

15. Therefore, in view of the discussion above, I hold that the dispute regarding economic cost and award of interest is covered by Clauses 5 and 6 read with Clause 18 of the agreement and it was to be decided by the M.D. himself and there was no need to refer the same to the arbitrator. In fact, the Arbitrator was right in terminating the proceedings as it was a frivolous reference. Thus, the order of the learned Additional District Judge is set aside being illegal and perverse and based on mis-interpretation of Clauses 5 and 6 read with Clause 18 of the agreement had consequently, the order of the Arbitrator dated 13.1.1998 is restored.

16. Hence, all the fifteen revision petitions are accepted on above terms. R.M.S.