IN THE COURT OF RAJIV KALRA (PB0098)
ADDITIONAL DISTRICT JUDGE, FARIDKOT

ARB/10/2021
PBFD01-002443-2017
Date of Institution: 14.07.2017
Received by transfer: 01.09.2021
Date of Decision: 18.11.2021

1. Punjab State Civil Supplies Corporation Ltd. (PUNSUP), Head office SCO No.36-40, Sector 34-A, Chandigarh, through its Deputy General Manager (Legal and Arbitration), Chandigarh, and
2. District Manager, Punjab State Civil Supplies Corporation Ltd. (PUNSUP), Faridkot.

.......*Objectors (The Corporation)*

Versus

1. M/s Bhullar Mini Rice Mills Gram Udyog Samiti (Regd.), village Laleanna, District Faridkot through its members:
   a) Shri Gurshawinder Singh (Chairman) son of S. Lakhwant Singh, residing near waterworks, Kotkapura, District Faridkot,
   b) Shri Sadhu Singh son of S. Bachittar Singh, resident of VPO Hari Nau, Faridkot,
   c) Shri Mandeep Singh son of S. Balvir Singh, residing near Government Girls School, Kotkapura, District Faridkot,
   d) Shri Sukhwinder Singh son of S. Gurnam Singh, resident of Partap Nagar, Kotkapura, District Faridkot,
   e) Shri Jasvir Singh son of S. Gurdev Singh, resident of VPO Hari Nau, Faridkot,
   f) Shri Baljinder Singh son of S. Sadhu Singh, resident of VPO Hari Nau, Faridkot, and
   g) Shri Balwinder Singh son of S. Nand Singh, resident of Chopra Wala Bagh, Kotkapura, District Faridkot, and

........*Respondent (The Miller)*

2. Kanwar Gulwant Singh, IAS (Retired), Sole Arbitrator, Arbitration Office, Head office SCO no.36-40, Section 34-A, Chandigarh.

........*Respondent (Sole Arbitrator)*

Objection petition under Section 34 of the Arbitration & Conciliation Act 1996 against the award dated 24.04.2017, received in the office of District Manager, PUNSUP, Faridkot on 03.05.2017, passed by Sh. Kanwar Gulwant Singh, IAS (Retired), Sole Arbitrator, respondent no.2, vide which the Ld. Arbitrator *has disallowed the claim of ₹5,34,431/- of the objectors.*

Prayer for accepting the objection petition and passing the arbitration award as per the claim petition submitted by the objectors before the Ld. Arbitrator.

Present:
Shri Amrit Bansal Advocate, counsel for the objectors (the corporation)
Shri Anil Kumar Chawla Advocate, counsel for respondents no.1 (a to g) (the miller).
Service of respondent no.2 (mentioned as serial no.4) dispensed with being a proforma respondent.

A W A R D

1) Feeling aggrieved and dissatisfied with the impugned arbitral award dated 24.04.2017 passed by the sole arbitrator, the objectors have preferred present objection petition under Section 34 of the Arbitration & Conciliation Act 1996, (for brevity ‘The Act 1996’). For the convenience of discussion, the parties will be referred to as ‘the corporation’ for the Punjab State Civil Supplies Corporation Ltd. (PUNSUP) and ‘the miller’ for M/s Bhullar Mini Rice Mills Gram Udyog Samiti (Regd.).

2) The facts necessary for adjudication of the present objection petition are that on 15.10.2011, the corporation entered into an agreement with the miller for custom milling of paddy for the crop year 2011-2012 and to supply resultant rice to the Food Corporation of India, in short, ‘FCI’, on behalf of the corporation within the stipulated period. Under such contract, the corporation had supplied 1,39,532 bags or 48,836.20 quintals of paddy to the miller and after deducting 1% driage, the miller was required to deliver resultant rice weighing 32,393.05 quintals resultant rice and the miller delivered 32,734.22 quintals of rice i.e., excess rice to the tune of 341.17 quintals. Since the miller had not returned the excess gunny

bags nor paid the price thereof, the corporation invoked the arbitration clause and served notice under Section 21 of the Act 1996 upon the miller.

3) As per the claim lodged by the corporation before the sole arbitrator, a total of 74,064 gunny bags were left with the miller after the delivery of the resultant rice. The miller has neither returned the gunny bags nor deposited the costs of bags as per the terms and conditions of the contract agreement. It has been claimed that the Government has fixed the price of one gunny bag to be ₹25.27 paise and the total price of 74,064 gunny bags at such rate came out to be ₹18,71,597/-. After taking into account such outstanding amount, VAT, and after deducting milling charges, etc., an amount of ₹11,82,003/- was recoverable as of 30.10.2015 and the corporation claimed such amount with interest @13% per annum and future interest at the same rate per annum from 01.11.2015 till its realization.

4) During arbitral proceedings, the corporation amended its milling account statement and furnished an amended claim demanding ₹7,96,269/- as the price of gunny bags left with the miller and ₹3,91,916/- as interest accrued @ 13% per annum from 01.01.2013 to 30.09.2015.

5) The miller deposited ₹7,96,269/- being costs of the surplus gunny bags during arbitral proceedings and the corporation further amended its claim demanding interest accrued @ 13% per annum from 01.01.2013 to 30.09.2016 amounting to ₹5,34,431/- recoverable from the miller.

6) In reply, the miller raised numerous legal objections on the grounds of limitation, appointment, and independence of the sole arbitrator

et al. On merits, the miller has categorically raised averments that the matter pertaining to recovery of the price of surplus gunny bags was not liable to be referred to the arbitration and the corporation was required to file a suit for recovery. Otherwise, as per clause 21 of the contract agreement, the corporation could recover the price of surplus gunny bags and nothing has been mentioned regarding the interest to be charged by the corporation and therefore, the corporation has wrongly charged the interest @ 13% per annum on the price of surplus gunny bags. It has been asserted that the miller has already deposited the price of surplus gunny bags amounting to ₹7,96,269/- during the arbitral proceedings.

7) After considering the case put forth by both sides, the sole arbitrator denied the claim of the corporation to recover the outstanding interest amount from the miller, and the relevant operative part of the impugned arbitral award is reproduced hereinbelow:

> *"...The only dispute was regarding payment of interest of the cost of bardana retained by the Respdt. miller. The contention of the Respdt. Miller in this regard is correct that he had paid the cost of bardana but the claimant did not issue the bill on the basis of which he could further dispose of bardana saying that they might require that bardana for filling bags of wheat in the coming wheat procurement season. On the other hand the claimant wrongly imposed interest which the respondent was not liable to pay. Rather if he could claim, the claimant could be liable for payment of interest from the date of deposit. This is clear from the*

statement of account filed with the revised claim in which the entire amount of cost of bardana has been shown as paid up and only the interest on this amount has been shown as Rs.5,34,431/- which was the only amount shown as outstanding. This amount was not payable by the Respdt. who was not liable to payment of the interest. Therefore, nil award is given in this case because no amount is recoverable from the Respdt. Miller….”

8) Feeling aggrieved by the arbitral award, the corporation has filed the instant objection petition under Section 34 of the Act 1996 against the decision of the sole arbitrator on the following grounds:

a) That the sole arbitrator has wrongly disallowed the amount of ₹5,34,431/- as the accrued amount of interest without assigning any reason.

b) That as per clause 18 of the agreement between the parties, the corporation is entitled to claim compound interest at the rate of 21% per annum, in case the miller failed to return the *bardana*, wooden crates, tarpaulins, etc. within the stipulated period.

c) That the sole arbitrator misconducted the arbitral proceedings while disallowing the claim of the corporation.

With these averments, the corporation has prayed to accept the objection petition and to allow the recovery of ₹5,34,431/- from the miller along with future interest at the rate of 13% per annum till its realization.

9) The miller admitted the deposit of costs of surplus gunny bags during arbitral proceedings and while defending the arbitral award, the miller raised the following averments in its reply:

a) That the miller has never violated the terms & conditions of the contract agreement.

b) That the miller asked the corporation to issue a bill for *bardana* (surplus gunny bags) left with the miller, so that the miller may make payment, but the corporation did not issue any bill till today.

c) That from the next crop year, the corporation stopped the agreement of milling with the miller, and thus, miller deposited the *bardana* charges with the corporation under coercion.

d) That in these compelling circumstances, the corporation was not entitled to claim any interest.

With these averments, the miller has prayed for dismissal of the objection petition.

10) I have heard learned counsels for both sides and with their able assistance, the material placed on record has been perused and scrutinized by me.

11) Learned counsel for the corporation has submitted that in terms of clause 18 of the agreement, the miller was required to return the excess gunny bags within the stipulated period and on its failure to return the same, the miller made itself liable to pay interest at the rate of 21% per annum. However, the corporation has claimed said interest at the rate of

13% per annum. Learned counsel for the corporation has further submitted that the sole arbitrator has failed to appreciate these facts and wrongly disallowed the claim of interest on delayed payment on flimsy grounds.

12) On the other hand, learned counsel for the miller has vehemently supported the findings of the sole arbitrator while contending that the corporation could not issue a bill of surplus *bardana* within the stipulated period and thus, it has no right to claim interest on the belated deposit of the costs of the surplus *bardana*.

13) I have considered the rival submissions of both sides.

14) The first aspect is regarding the procedure to be adopted for adjudication of the objection petition filed under S. 34 of the Act 1996. Hon'ble Supreme Court of India in *Fize Developer Pvt. Ltd. vs. AMCI (1) Inter-trade Pvt. Ltd. & another,* [2009(4) RCR Civil 288] and Hon'ble Punjab and Haryana High Court in *M/s Punjab State Industrial Dev. Corporation Ltd. v. Sunil K. Kansal,* [2012 SCC OnLine P&H 19641] have considered the object of the Act 1996 while holding that the scheme and provisions of the Act disclose two significant aspects relating to courts vis-à-vis arbitration. The first is that there should be minimal interference by courts in matters relating to arbitration. Second is the sense of urgency shown with reference to arbitration matters brought to court, requiring promptness in the disposal. With such observations, Hon’ble Court held that the scope of inquiry in a proceeding under Section 34 is restricted to consider whether any one of the grounds mentioned in Sub-section (2) of Section 34 exists for setting aside the award.

15) In the light of law down on the aspect of procedure for the hearing of objection petition, the following sole point for determination is found to be involved in the present petition:

a) Whether the impugned arbitral award is liable to be set aside for the reasons contained in the objection petitions preferred by the corporation?

16) As it is evident from the facts coming out from the case put forth by both parties, a surplus of a total of 74,064 gunny bags was left with the miller after delivery of the resultant rice under the contract agreement. The corporation claimed the price of surplus gunny bags with interest @ 13% per annum and invoked the arbitration clause. During the arbitral proceedings, the miller deposited a sum of ₹7,96,269/- as costs of the surplus bags and the corporation pursued the claim before the sole arbitrator for recovery of ₹5,34,431/- from the miller as interest accrued @ 13% per annum in the light of clause 18 of the contract agreement.

17) The sole arbitrator rejected such claim of the corporation for recovery of the accrued interest on the premise that the corporation has not issued the bill of such surplus gunny bags to the miller and thus, the miller could not use such surplus stock of gunny bags and in such eventuality, the corporation was not found entitled to recover the amount of accrued interest from the miller.

18) A careful perusal of the impugned arbitral award reveals that the sole arbitrator has considered the case put forth by both parties before adverting to declining the claim of the corporation for accrued interest by giving its findings on the issue. Now the question arises for consideration

regarding the adjudicatory role of this Court under Section 34 of the Act 1996.

19) In terms of Section 34 (2) of the Act 1996, the arbitral award may be set aside on the following grounds:

a) *Incapacity of a party* [S.34(2)(a)(i)],

b) *Invalid arbitration agreement by law* [S.34(2)(a)(ii)],

c) *Lack of notice of the appointment of an arbitrator or the arbitral proceedings* [S.34(2)(a)(iii)],

d) *Adjudicated matter not falling within terms or beyond the scope of arbitration agreement* [S.34(2)(a)(iv)],

e) *Lack of agreement regarding the composition of the arbitral tribunal or the arbitral procedure* [S.34(2)(a)(v)],

f) *Subject matter not capable of settlement by arbitration* [S.34(2)(b)(i)],

g) *Arbitral award in conflict with the public policy of India* [S.34(2)(b)(ii)], and

h) *Award vitiated by patent illegality appearing on the face of the award* [S.34(2A)].

The provision to S.34 (2A) clarifies that the award cannot be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

20) Hon'ble Supreme Court in *J.G. Engineers Pvt. Ltd. v. Union of India (UOI) and others,* [MANU/SC/0527/2011] has dealt with such point for consideration with regard to the role of Court and observed that:

> *"A Civil Court examining the validity of an arbitral award under Section 34 of the Act exercises supervisory and not appellate jurisdiction over the awards of an arbitral tribunal. A court can set aside an arbitral award, only if any*

of the grounds mentioned in Sections 34(2)(a)(i) to (v) or Section 34(2)(b)(i) and (ii), or Section 28(1)(a) or 28(3) read with Section 34(2)(b)(ii) of the Act, are made out. An award adjudicating claims which are 'excepted matters' excluded from the scope of arbitration, would violate Section 34(2)(a)(iv) and 34(2)(b) of the Act. Making an award allowing or granting a claim, contrary to any provision of the contract, would violate Section 34(2)(b)(ii) read with Section 28(3) of the Act."

21) Hon'ble Supreme Court in another case, *Oil & Natural Gas Corporation Ltd. v. SAW Pipes Ltd.,* [MANU/SC/0314/2003] has elaborated the phrase 'Public Policy of India' as occurring in S.34(2)(b)(ii) of the Act 1996. Hon'ble Court held that *the term 'public policy of India' is required to be interpreted in the context of the jurisdiction of the Court where the validity of award is challenged before it becomes final and executable.* It has been further observed by Hon'ble Court that *there is no necessity of giving a narrower meaning to the term 'public policy of India' and on the contrary, wider meaning is required to be given so that the 'patently illegal award' passed by the arbitral tribunal could be set aside.*

22) Now reverting to the case in hand and it is evident from the findings returned by the sole arbitrator are based upon the interpretation of the contract agreement. No point has been urged or any illegality pointed out in terms of Section 34, sub-section (2), or sub-section (2A) of the Act 1996. Nor there is any material before this court to return the findings that the sole arbitrator has either misconducted himself during arbitration

proceedings or the award passed by him is against public policy. Thus, there is no apparent illegality in the award as alleged by the corporation.

23) At this outset, it is relevant to mention here that a bunch of 62 civil writ petitions was filed by various rice millers before Hon'ble Punjab & Haryana High Court praying for issuance of a writ in the nature of *mandamus*, directing the respondents to take back, once used gunny bags, lying with the millers for the Kharif Marketing Season (KMS) 2010-11 to 2013-14, compelled to be retained by the millers at the rate of 60% of the cost and for a direction to the respondents not to recover the value of the once used gunny bags, as the act of respondents not allowing the use of once used gunny bags being wholly arbitrary and illegal.

24) The bunch of 62 writ petitions, afore referred, were dismissed by a common judgment dated 29.06.2016 passed in *Kharar Rice Mills, Kharar and others v. Union of India and others,* CWP no.5179 of 2014 with the observations that there was no challenge to the validity of *Guidelines for use of Paddy Released Jute Bags which have been used only once* dated 24.05.2013.

25) A Letters Patent Appeal bearing LPA no.800 of 2016 (O&M) was filed and the same was disposed of on 23.05.2016 as follows:

> *"Learned Counsel for the appellants states that since the learned Single Judge has relied upon the guidelines dated 24th May 2013 issued in respect of the paddy jute bags which have been used only once, he does not press this appeal as the authorities are bound to follow the above-stated guidelines. He submits that in the event of any non-*

compliance of these guidelines by the authorities, the appellants will take appropriate action based upon such fresh cause of action."

26) Thereafter, the present miller has also filed a writ petition, titled *The Bhullar Mini Rice Mills and others v. Union of India and others*, CWP no.20006 of 2016 and same was dismissed on 24.09.2016 in the light of previous judgment dated 29.02.2016 in lead case CWP no.5179 of 2014 (supra).

27) The present respondent miller preferred LPA-2045-2016 (O&M) challenging the levy of 60% cost including interest on 'once used gunny bags' for the crop year 2012-13 and consequently sought quashing of clause 18(1) of the Custom Milling Policy of KMS 2012-13 dated 27.09.2012. During the hearing of such petition, Hon'ble Court has observed that the writ petition was dismissed with a brief order observing that the policy sought to be quashed by the appellants was earlier upheld by the Hon'ble Single Judge in a bunch of writ petitions and Intra Court appeals filed against the said order including LPA-800-2016 were withdrawn on May 23, 2016. Hon'ble Court further observed that the respondents failed to disclose as to in what circumstances the interest has been levied on the value of gunny bags determined/fixed under the Government of India Policy. With such observation, Hon'ble Court held that unless there are some valid reasons to levy interest, the State of Punjab or its procurement agencies cannot indulge in unjust enrichment. With these observations, the appeals were allowed on 10.09.2018 in part with a direction to the Principal Secretary, Department of Food and Civil Supply,

Government of Punjab to consider and decide the following questions by way of a reasoned order:

i. Whether any interest has been levied by State of Punjab or its Procurement Agencies on the price of used Gunny Bags as fixed by Government of India/or its Agencies?

ii. If so, what is the basis of levying the interest by State of Punjab or its Procurement Agencies?

While formulating these questions, Hon'ble Court has directed the respondents to determine the same preferably after giving an opportunity of hearing to the representative of the appellant-rice millers or other stakeholders preferably within a period of three months from the date of receipt of a certified copy of the order

28) In compliance with such directions of Hon'ble Punjab and Haryana High Court vide judgment dated 10.09.2018, the Principal Secretary to Govt. of Punjab (Food, Civil Supplies, and Consumer Affairs), Punjab passed an order dated 13.02.2019 and the relevant part of such order is reproduced herein below:

> *"Milling bills are prepared according to the provisional cost sheets received from UOI and there is no clause of interest to be charged on the used gunny bags. It is known fact that Gunnies saved after delivery of Custom Milled Rice, because of peculiarity of the operation that though Packaging of equivalent paddy for 110 Kg rice requires four bags, however 100 Kg rice when delivered to FCI get packaged in 2 bags of 50 Kg only, the balance 2 bags are left*

with the millers only. The option therefore available with the agency is either to take the possession of these saved bags and put it under their own safe custody or to leave it with the Millers with a clear understanding that the same would be used at the time of Procurement during the next crop season.

As such if the millers keep the B-class bags under the safe custody and the same are used during the next crop season, it wouldn't be appropriate to penalize the miller with charging of an interest over and above the cost as per the formula prescribed in the guidelines……"

29) In the light of order dated 13.02.2019 passed by the Principal Secretary to Government of Punjab while interpreting the guidelines dated 24.05.2013 relating to the once used gunny bags, the corporation is rightly held by the sole arbitrator not entitled to claim interest over and above the costs of surplus gunny bags.

FINAL CONCLUSION

30) In the totality of discussion made above, the arbitration award is upheld, and the objection petition preferred by the corporation is hereby dismissed being bereft of any merit.

31) Counsel fee is assessed at ₹2,200. Memo of costs be prepared.

32) Copy of this award be placed upon with the arbitration record.

33) Record of this court be consigned.

PRONOUNCED IN OPEN COURT ON 18th NOVEMBER 2021

RAJIV KALRA (PB0098)
Additional District Judge, Faridkot

MEMO OF COSTS

S. no.	Purpose	Objectors ₹	Objectors Paise	Respondents ₹	Respondents Paise
1.	Stamp for objection petition	70	00	00	00
2.	Stamp for power of attorney	10	00	00	00
3	Process Fee	50	00	00	00
4.	Miscellaneous	10	00	00	00
5.	Pleader's Fee	CNF			
Total		**130**	**00**	**00**	**00**

GIVEN under hand and seal of Court on this 18th NOVEMBER 2021.

RAJIV KALRA (PB0098)
Additional District Judge, Faridkot

Typed by: Madan Lal
Reader Grade-1

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