



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**CMPMO No.143 of 2014
Reserved on: 04.11.2025
Decided on: 26.11.2025**

M/s Mariental India Pvt. Ltd., New Delhi	... Petitioner
--	----------------

Versus

Himachal Pradesh State Co-operative Marketing and Consumer's Federation Ltd. & others	... Respondents
--	-----------------

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?¹

For the petitioner	:	Mr. Ashok Sud, Senior Advocate, with Mr. Rajat, Advocate.
For the respondent	:	Mr. Vijay Singh Thakur, Advocate, for respondent No.1. Mr. Pushpinder Jaswal, Additional Advocate General, for respondents- No.2 and 3-State.

Ajay Mohan Goel, Judge

By way of this petition, the petitioner has, *inter alia*,
prayed for the following reliefs:-

“(i) That the impugned Orders/Award dated 3.8.10 and the order dated 30.10.2013 passed by Special Secretary (Cooperation) to the Government of Himachal Pradesh (Learned Appellate Authority) in case No.23/010 titled M/S Mariental India Pvt. Ltd. Versus Himachal Pradesh State Cooperative Marketing Consumer's Federation Ltd (HIMFED) alongwith order dated 3.8.2010 passed by learned Arbitrator/Joint Registrar Credit), Cooperative Societies H.P., Shimla be set aside, quashed and any other appropriate order direction and writ may kindly be

¹ Whether reporters of the local papers may be allowed to see the judgment?



issued in favour of petitioner against the respondents;

(ii) The Claim Petition/Reference titled M/S Mariental India Pvt. Ltd. Versus Himachal Pradesh State Cooperative Marketing Consumer's Federation Ltd (HIMFED) preferred before the learned Arbitrator be allowed with costs.

(iii) It is further prayed that the records from both the said Authorities and Appellate Authority below may kindly be called and be perused and examined in the interest of justice."

2. Brief facts necessary for the adjudication of this petition are that according to the petitioner in the month of May, 2007, the respondent-Federation invited tenders for detailed engineering service for setting up a Controller Atmosphere (CA) Cold Store at Rai, Sonipat, Haryana with 1000 MT Capacity and multi chambers, pursuant thereto. The petitioner also submitted its tender. The respondent-Federation awarded the aforesaid engineering consultancy to petitioner vide Letter of Award dated 15.05.2007 (Annexure P-1). The petitioner was awarded the said consultancy work at an agreed fee of Rs.14,00,000/-, on terms and conditions mentioned in tender published 20.04.2007 (Annexure P-2). As per the petitioner, in compliance to the terms of Letter of Award, it submitted Performance Guarantee in the shape of a bank guarantee of Rs.5,00,000/- on 23.05.2007, issued by Punjab National Bank, Fire Station Rajindra Palace Branch, New Delhi. An agreement was



entered into between the parties on 25.05.2007. The time schedule for implementation of the Project was about 8 months commencing from 15th day of the issue of Letter of Award, dated 15.05.2007. The work was to be completed by 31.01.2008. In terms of Clause-7 of the Agreement, the petitioner was entitled for consultancy fee of Rs. 14,00,000/- to be paid in eight installments besides service tax at the rate of 12.35%. 10% security was to be deducted from every bill and same was to be released after six months of the completion/ commissioning of the Store. After the execution of an agreement on 25.05.2007, the petitioner vide letter dated 28.05.2007, called upon the respondent-Federation to make payment of the first advance installment and also intimated that the claimant was in the process of obtaining quotation from the Company for conducting soil strength analysis and also for the preparation of counter plan at the site. According to the petitioner, vide subsequent letter dated 01.06.2007, it submitted PERT Chart covering the end-to-end activities of schedule of Project implementation and again made request to the Federation for the release of the first installment. On 08.06.2007, the petitioner submitted three quotations from different Companies experienced in conducting soil strength analysis and requested the Federation to place order and make available the Soil Investigation Report at the earliest. This was a pre-requirement for designing of the building structure of the Cold Stores. Respondent-



Federation much belatedly made available the Soil Investigation Report which was received by the claimant on 04.07.2007. On 25.07.2007, the petitioner submitted Design/Specification Draft Tender documents complete in all respect, for procuring imported process equipment etc. As per the terms and conditions of the contract, after receipt of these documents, the Federation was to immediately take action for inviting tender and award tender to the Civil Contractor for construction of civil work of the building and invite offers for plant and machinery. However, respondent in clear breach of the contract and gross negligence, did not finalize the tender to appoint the construction agency for execution of the civil work in time bound schedule. According to the petitioner, it was not supposed to submit the details of bills of quantity and worksheets with estimates of cost of each item involved in civil construction. Respondent-Federation in the meeting on 16.07.2007, called upon the petitioner to submit above details and the petitioner submitted that through preparation of said details involved enormous hours of work, yet, it cooperated with the Federation and undertook the said work in good faith and successfully completed the same and submitted the same to the respondent vide letter dated 28.07.2007. The Federation issued an advertisement for appointment of civil contractor only on 28.09.2007. It failed to finalize the civil contractor or award the work in time, which was supposed to be awarded in the



month of July/August 2007. Further, as per the petitioner under the terms and conditions of the contract, the respondent-Federation was required to get approved the building plan from the Town Planner, Kundli, Haryana, however, respondent-Federation insisted the petitioner to get the said plan approved which was beyond the scope of petitioner's service and obligation under the contract. Yet, the petitioner in good faith and in the interest of the Project, devoted manpower, time and cost and finally got the plan approved in a short period of time on 30.10.2007. After submission of various drawings, designs, plans, etc., the petitioner proceeded with the work in terms of contract and on 12.11.2007, it submitted complete electrical designs and details etc., although, the Civil Contractor was not appointed and no civil work was started. The petitioner completed all the remaining engineering designs, documents etc., as envisaged in the Agreement from time to time. Respondent-Federation committed fundamental breaches of the contract by not releasing the payments whatsoever. Yet, on 04.01.2008, the Federation illegally rescinded the contract by making false allegations, attributing delay on the part of the petitioner in submitting documents/drawings and illegally imposing penalty of Rs. 6,50,000/- without any plausible reason. In light of this development and subsequent developments, the petitioner filed a claim petition under Section 72 of the Himachal Pradesh State Co-operative Societies Act, 1968.



3. The claim petition was dismissed by the learned Arbitrator, that is Joint Registrar (Credit), Co-operative Societies, Himachal Pradesh, in terms of order dated 03.08.2010 (Annexure P-28).

4. Feeling aggrieved, the petitioner filed an appeal and the same was dismissed by the Appellate Authority on 30.10.2013 (Annexure P-29).

5. Feeling aggrieved, the petitioner has preferred this petition.

6. I have heard learned Senior Counsel for the petitioner, learned Counsel for the respondent-Federation as also learned Additional Advocate General.

7. A perusal of the Award demonstrates that the claimant sought recovery of Rs.24,05,796/- with future and pendent lit interest, which was disputed by the Federation.

8. Learned Arbitrator framed the following Issues for adjudication:-

“(i) Whether the claimant is entitled for recovery of Rs.24,05,796.00 with interest @ 18% per annum as alleged? OPC.

(ii) Whether the claim is not maintainable as alleged? OPR.

(iii) Whether the claimant is estopped from filing the present claim? OPR.

(iv) Whether the claimant has no cause of action to file



present claim? OPR.

(v) Whether the penalty imposed by the respondent is in accordance with law/agreement?

(vi) Relief, if any.”

9. Learned Arbitrator after taking note of the contentions of the respective parties, returned the findings that the record and the exhibited documents demonstrated that delay in the submission of documents as per time schedule, was mainly on the part of the claimant, which resulted in subsequent delay in the appointment of contractor etc.

10. While deciding Issue No.1, learned Arbitrator held that in terms of the record, the claimant had submitted relevant documents/drawing etc. of CA storage to the respondent-Federation with the request to submit applications along with drawings for obtaining approval from HSIDC at Rai, on 07.08.2007, vide Ext.P-25. Thereafter, on 09.08.2007, the claimant submitted five sets of drawings printed in A0 size for submission to Town Planner, HSIDC for obtaining approval of building plan. Vide communication dated 12.08.2007, the claimant submitted six sets of drawings as required by the concerned Authority for obtaining necessary approval for starting construction of the building for CA Cold Storage. Learned Arbitrator further held that it was evident from above documents placed on record that the claimant at the very first instance either had no knowledge of the requirement of concerned



Authorities, i.e. HSIDC/HUDA for approval of building plan or failed to submit the required documents as per requirements of the concerned Authority to the respondent within time frame for obtaining approval. The communications dated 07.08.2007 to 12.08.2007 clearly established that the claimant failed to submit the complete documents as per the requirement of the Authorities concerned within the time frame in one go and submitted the same in parts on various dates. Learned Arbitrator also held that the Respondent-Federation vide communication dated 13.08.2007 (Ext.P-27) was forced to issue notice to petitioner for causing delay in execution of Project and that it was the obligation of the claimant to get drawings/ documents prepared for obtaining such statutory approval and supply the approved drawings and original Sanction Letter from HSIDC to respondents within time frame agreed. However, the approval/ sanction of Building Plan was awarded by HSIDC vide Ext.P-44 on 30.10.2007, whereas HIMFED had floated tender on 28.09.2007, asking for pre-qualification from firms/contractor. The bids stated to be received from two firms and opened on 23.10.2007, which could not be finalized as per settled norms as the requirement of participation in such tender was minimum three. Learned Arbitrator further returned the finding that the evidence on record established the fact that vide communication dated 13.10.2007 (Ext.P-42), the claimant submitted the revised



estimate of capital cost of the Project and the Project cost was enhanced from rupees 1265.01 lac to rupees 1996.62 lac attributing the reasons for escalation to steep hike in cost index of building construction by 53% in last three years. Learned Arbitrator also held that record revealed that after escalation of the cost of Project, Respondent-Federation found it unviable as the loan was sanctioned by NCDC, Delhi for the Project at initial capital cost of rupees 1265.01 lac and there was no additional availability of funds with respondent-Federation to meet the escalated capital cost of the Project. It held that DPR of the project was prepared by the claimant for respondent-Federation and it is hard to digest the fact as to why escalation of cost index and inflationary trends etc. were not kept in mind keeping in view the rising trends in the market at the time of the formulation of DPR. Learned Arbitrator held that sudden hike of more than 60% of the Project cost was bound to make such project unviable and respondent-Federation had no choice in the facts of circumstances but to shelve the Project. Learned Arbitrator also held that the evidence from record established that after delay in execution and escalation of capital cost of the Project, respondent-Federation rescinded the contract on 04.01.2008. The claimant averred that respondents illegally rescinded the contract by levelling false allegations and attributing delay upon the claimant without any plausible justification. Learned Arbitrator held that the issue of



imposing penalty of Rs.6,50,000/- on claimant was decided by learned Civil Judge, Senior Division, Shimla, vide order dated 15.09.2009 and claimant failed to make out the case to establish lapse on the part of respondents for allegedly causing delay in the execution of the Project. It, thereafter, held that the Agreement entered into between the parties clearly spelled out the obligations, duties and rights of the parties to contract. Learned Arbitrator further observed that the contract was not bilateral as was being urged by the claimant and nothing more was to be done by the respondent-Federation except to bear the cost of testing and startup operations etc. and tools of the officials. Learned Arbitrator also held that relevant clauses of the agreement demonstrated that main obligation viz-a-viz timely execution of the Project rested on the claimant and the claimant failed to adhere to the same. The Project failed to take off within stipulated period resulting in escalation of cost and elapse of time allowed by HSIDC for execution of the Project. On these bases, it answered Issue No.1 against the claimant.

11. With regard to Issue No.2, Learned Arbitrator held that as Issue No.1 was decided in favour of the respondents, therefore, Issue No.2 was also being decided on the basis of the findings returned qua Issue No.1. Issues No.3 and 4 were decided in favour of the claimant. With regard to Issue No.5, learned Arbitrator held that as said Issue stood decided by Learned Civil Judge, Senior Division,



Shimla, therefore, no order was required to be passed on the said Issue. The claim petition was accordingly dismissed by the Learned Arbitrator.

12. In appeal, the Appellate Authority upheld the findings returned by the learned Arbitrator by returning the following findings:

“I have given my thoughtful consideration to arguments putforth by Learned counsel for both the parties and deeply perused the order of lower court 3.8.2010. From the arguments made in this case and agreement dated 25.5.2007 between the parties clearly spells out the obligations, duties and rights of the parties to contract. That contract is not bilateral as being made out by claimant and except to bear the cost of testing and start up operations etc. and tour of the officials of claimant, nothing more was to be done by the respondent federation. The relevant clauses of the agreement already referred in paras supra vouch for it. Thus the main obligations vis-à-vis as timely execution of the project as per Pert- chart rested on claimant and he failed to adhere to it. The project resultantly failed to take off within stipulated period resulting in escalation of costs and elapse of the time. The court below has passed, the order based on the record produced, evidences/statement 20 MAY recorded, cross examination, case law, decision of Hon’ble Civil Court, agreement and relevant record relied upon by the parties in support of their contentions, and the findings on each issue were recorded to dispose of the case as per record, facts, terms of agreement and law. I do



not find any infirmity in the order of the lower court passed on 3.8.2010 and the same is just, fair and passed after proper application of mind hence upheld Hence appeal dismissed.. File be consigned to record room after completion. Order reserved on 30.9.2010 released on 30.10.2013.”

13. Having heard Learned Senior Counsel for the petitioner as also learned Counsel for the respondents, this Court is of the considered view that the appellate order passed in the present case by the Authority is not sustainable in the eyes of law on the ground that the same is not a speaking order at all.

14. Learned Arbitrator, in length, dealt with the respective contentions of the parties and decided the claim petition.

15. Feeling aggrieved, the petitioner herein preferred an appeal against the said Award and as the Appellate Authority was the last fact finding Authority on the issue, it was incumbent upon the said Authority to have had dealt with the grounds of appeal in *extensio* and answered the same on the basis of the evidence on record. However, the Appellate Authority had failed to do so. In fact, a perusal of the impugned Appellate Order demonstrates that the same is not only a cryptic and non-speaking, but in said order all that did the Appellate Authority is that it picks up a few sentences from the findings returned by the learned Arbitrator and culminated the same as an Appellate Order. The appeal filed, could not have



been dealt with in such a cryptic manner as has been done in the present case. Herein, the arbitration proceedings were undertaken under Section 72 of the Himachal Pradesh Co-operative Societies Act, 1968 and the appellate power has also been exercised by the Authority in terms of the provisions of this Act. Therefore, the Appellate Authority was duty bound to apply its Quasi-Judicial mind and threshout the grounds of appeal viz-a-viz the claim petition as well as the response filed thereto and the findings returned by the learned Arbitrator and the appeal could not have been dismissed almost summarily, as has been done in the present case.

16. Accordingly, in light of the observations made hereinabove, this petition is allowed. Order dated 30.10.2013, passed by the Appellate Authority in Case No.23/010 is quashed and set aside and the matter is remanded back to the Appellate Authority to decide the same afresh after hearing the parties and by passing a reasoned order. Needful be done expeditiously and within a period of three months from today.

17. The petition stands disposed of. Pending miscellaneous application(s), if any also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

November , 2025
(Rishi)