

(2013) 02 P&H CK 0233

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. 1231 of 2009 (O and M)

M/s. New Sharma Rice Mills and
Others

APPELLANT

Vs

Punjab Agro Food Grains
Corporation and Another

RESPONDENT

Date of Decision: Feb. 1, 2013

Hon'ble Judges: A.N. Jindal, J

Bench: Single Bench

Advocate: H.S. Saggu, for the Appellant; Somesh Gupta, for the Respondent

Judgement

A.N. Jindal, J.

The learned Single Judge, vide judgment dated 10.9.2009, while holding that the case of the appellants fell in excepted clause and, therefore, the same was beyond the purview of the arbitrator and without jurisdiction, accepted the appeal and left it to the Managing Director to decide about the claim in question. Feeling aggrieved, the Punjab State Civil Supplies Corporation moved an application for review of the said judgment on the ground that there is a mistake apparent on the record as claim of the PUNSUP-respondent was never beyond the purview of the arbitrator as such the award was quite valid, therefore, this court vide order dated 1.4.2010, agreed with the arguments advanced by the learned counsel for the respondent-PUNSUP and accepted the review petition with the following observations:--

As per the facts in the present case, the appellant miller herein was required to deliver 81780 bags weighing 53157 qtls of paddy up to 31.12.1999. The appellant-miller had delivered only 15951.35 qtls of rice. The miller did not supply 18951.62 qtls rice at all. Thus, in the present case, the shortage was not because the rice did not meet the specifications but the same was on account of no delivery at all and therefore, the same does not fall under an excepted matter.

Learned counsel for the appellant has pointed out to certain judgments from where it is evident that even the shortage on account of no delivery at all, is also an excepted matter. However, the fact remains that this has not been dealt with in the order dated 10.09.2009 which is sought to be reviewed.

It is apparent that there is an inadvertent error in the order as the agreement of PUNSUP was taken into consideration instead of the agreement between the miller and respondent i.e. Punjab Agro Food Grains Corporation, Sangrur. It is also apparent that the distinction between the short delivery on account of no delivery at all viz--viz shortage of delivery on account of rice not meeting the specifications, has not been taken into consideration.

In view of the above, the review petition is allowed and the order dated 10.09.2009 passed in FAO No. 1231 of 2009 is recalled and the matter is ordered to be listed for hearing before the appropriate Bench as per roster. Accordingly, it is clarified that the interim order dated 18.03.2009 passed before the order sought to be reviewed staying the execution of the award shall remain in operation.

2. This order having become final, makes the decks clear for this court to decide the appeal on merits.

3. The learned counsel for the appellant has again raised the same pleas as were raised earlier that the case of the appellant falls within the excepted matter and is beyond the jurisdiction of the arbitrator. In this regard, I need to examine the claim of the claimant.

4. As per agreement dated 12.1.1999, it was agreed between the parties that for the crop year 1998-99, the miller shall be supplied 5316 MT paddy for custom milling thereof up to 28.2.1999 or up to the date extended by the Government of India, which was extended up to 31.12.1999 and the miller had to deliver the resulted rice to the FCI in the account of the Corporation. In accordance with the agreement, the Corporation delivered 81780 bags weighing 53157 quintals of paddy to the miller. The miller had to deliver the resulted rice to the FCI to the tune of 34902.88.620 quintals of rice up to 28.2.1999 which date was further extended up to 31.12.1999, but the miller could deliver only 15951.35 quintals of rice against which issuable paddy to the miller was 37375 bags weighing 24293.75 quintals. As such, there had to be 44405 bags containing 28863.25 quintals of paddy in the stock with the miller against which 18951.53.62 quintals of rice had become due. Again on 31.12.1999, the miller committed before the Managing Director of the Corporation and other officers to complete the delivery of rice by 31.12.1999, but the miller failed to deliver the same except for the three consignments. On 7.1.2000, the PAIC carried out joint physical verification along with the officers of food and supplies Department and the P.V. Committee found only 9700 bags of paddy lying in the yard of the miller. There was found a net shortage of 34705 bags of paddy weighing 22558.25 quintals against which 14811.74.695 quintals rice was due. As the miller failed to mill the

paddy, the sale of 9700 bags containing 6305 quintals of paddy was made through open auction at the risk and cost of the miller as per terms of the agreement to the highest bidder at the rate of Rs. 225/- per quintal. The total price received from the bidder was Rs. 11,18,914/- in respect of 4925.62 quintals of paddy found on 100% weighment as against 6305 quintals of paddy contained in 9700 bags. After deducting the amount due to the miller on account of milling of 23807.875 quintals paddy, stitching charges of 16824 bags and amount recovered by the sale of paddy through open auction and further adding the cost of 300 crates, 46 poly covers and 234 sheets, the amount recoverable comes to Rs. 1,89,49,237/- and further adding interest at the rate of 21% for the first year and 30% for the subsequent years, it comes to Rs. 5,89,58,713/-. Originally the claim for recovery of Rs. 1,46,55,455/- including interest at the rate 21% per annum up to 15.3.2000 and further interest at the rate of 30% per annum till recovery was filed on 30.3.2000. Thereafter, the Corporation preferred amended claim before the arbitrator in respect of the amount of Rs. 5,89,58,713/-. The miller did not cooperate in the arbitration proceedings and by virtue of the order dated 17.11.2004, the miller having failed to file the written reply to the amended claim petition, the arbitrator proceeded for recording evidence of the Corporation. On the basis of the evidence led by the Corporation, the arbitrator passed the award dated 10.3.2005 in a sum of Rs. 5,89,58,713/-.

5. On examination of the original claim as well as the amended claim, it transpires that none of the claims as raised by the appellant is qua the penalty or economic costs on account of short fall due to the non supply of paddy within specifications. The learned counsel for the appellant has placed reliance mainly on two clauses i.e. Clause 9 and 22 of the agreement. Clause 9 of the agreement reads as under:--

9. The entire quantity of rice of all varieties delivered by the miller to the Punjab Agro Inds. Ltd. Bhawanigarh (Chandigarh) shall conform to the specifications laid down in the Punjab Rice Procurement (Levy) Order, 1983, as amended from time to time or in any other order or notification issued by the State Govt. from time to time. The stocks of rice not conforming to the specifications so laid down, shall be liable to be rejected in respect of such quantity of rice which is not found to be within specifications and the miller shall be liable to pay to the govt. or procuring agency for the quantity or rice short supplied, a penalty at the custom milling rate fixed by Govt. of India plus 21% interest from the date of it becomes payable till the date of actual realisation of the converted variety of rice. The decision of the Managing Director Punjab Agro Inds. Ltd. Bhawanigarh (Chandigarh) hereinafter referred to as the Managing Director) in this behalf shall be final.

ii) At the time of delivery, the stock of rice shall be subjected to the inspection as per provisions of the Punjab Rice Procurement (Levy) Order, 1983. Any quality allowance determined at the time of inspection according to the specifications shall be recovered from the Miller's bills.

iii) The miller shall complete delivery of rice within ten days of the issuance of paddy to him and rice due to Punjab Agro Ind. Ltd. Bhawanigarh (Chandigarh) on the total quantity of paddy issued to him or in joint custody released at regular intervals shall be delivered not later than the 28th Feb, 1999 or up to the period extended by Govt. of India from time to time. In the event of his failure to supply rice within the stipulated period he shall be liable for an interest at the rate of 21% for the first year of default and at the rate of 30% for the subsequent period on the custom milled price fixed by Govt. of India from the date it becomes payable till the date of actual realisation towards the left over quantity/stocks of paddy. The decision of the M.D. Punjab Agro Inds. Limited, Bhawanigarh (Chandigarh) in this behalf shall be final.

6. According to the clause 9 of the agreement, the quantity of the rice, if short supplied, which does not conform to the prescribed specifications, then the penalty at the rate of 1- = times of the economic costs of the converted variety of the paddy could be imposed and decision in this regard by the Managing Director was final. This event was intentionally kept out of the purview of the arbitrator as the miller was bound to supply the rice within specifications and the decision regarding the loss caused by the Miller on account of short supply due to non conforming to the specifications was left with the Managing Director which could be taken by him at the spot that the said supply was not within the prescribed specifications and the penalty to the extent of 1- = times along with interest @ 21% per annum on the basis of the economic costs of less quantity/stock of paddy could be imposed upon the miller for such default.

7. According to Clause 22 of the agreement, all the disputes could be referred to the arbitrator except those for which decision has been expressly provided by the contract. The decision regarding shortage on the failure to supply rice within the prescribed specifications was kept as excepted matter under this Clause and certainly beyond the scope of the arbitrator. Clause 22 of the agreement reads as under:--

22. Arbitration: All the disputes and the 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 in the contract), shall be referred to the Arbitration of the M.D. PUNSUP or any person appointed by him in this behalf....

8. No doubt, if the appellant was failure to supply the rice within the prescribed specifications then, PUNSUP was at liberty to impose penalty @ 1- = times of the economic costs of the variety of the paddy and the Managing Director was to decide about the same but here is not the case where some claim was raised by the PUNSUP regarding shortage and imposition of the economic costs.

9. However, the case of the appellant falls within clause 7 and 8 of the agreement which reads as under:--

7. (i) The miller shall be responsible for the safe custody of paddy lifted till the delivery of rice as per out-turn ratio fixed by the Govt. Miller shall also make good losses that may be incurred in paddy and rice during transit/storage at the price of rice fixed by FCI plus interest at the rate of 21% from the date it become payable till the date of actual realization of the converted variety of paddy and/or rice towards the short fall.

(ii) The out turn ratio fixed by the Govt. of India as applicable on date is as follows:--

(a) 67% for raw varieties of all categories in the state;

(b) 68% for par boiled of all categories in the State. The rice miller shall be allowed any relaxation if approved by the Govt. of India on conduct of fresh tests on out turn ratio.

8. The miller shall ensure that:--

i) The resultant rice after milling or paddy is acriated for 72 hours before bagging.

ii) The degree of polish given to rice shall be 5%.

iii) In case there is a shortfall in the recovery of rice provided in sub-clause (i) above the miller shall pay to the Govt. the price of rice fixed by FCI plus interest at the rate of 21% from the date it becomes payable till the date of actual realization equivalent to the short fall.

iv) The by-products viz. Broken rice, rice kani, phuk (rice husk) and rice bran etc. obtain in the shelling of paddy shall be the property of the miller and the Govt./agency shall have no right or responsibility in regard to these.

v) The miller will be paid milling and other admissible charges at the convenience of the Govt. Agency after the milling operations are completed and the entire rice is delivered to Central Pool.

10. On reading of the aforesaid clauses of the agreement it transpires that heavy responsibility of delivery of rice proportionate to the paddy supplied was imposed upon the miller and on failure to supply the miller was bound to compensate the loss. These two clauses are not covered under the excepted matter.

11. As such, the arguments raised by the learned counsel for the appellants stand repelled.

12. No other argument has been raised.

13. Having scrutinized the impugned award as well as the order passed by the District Judge, both stand to scrutiny of law and do not deserve interference at my end. Dismissed.