# Ram Sarup Goyal Vs State of Punjab

## Regular Second Appeal No. 686 of 1999

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Nov. 3, 2001

**Acts Referred:**
Arbitration Act, 1940 â€" Section 32

**Hon'ble Judges:** M.L. Singhal, J

**Bench:** Single Bench

**Advocate:** M.L. Saggar with Mr. G.P. Vashisht, for the Appellant; R.P.S. Athwal, D.A.G., Punjab, for the Respondent

**Final Decision:** Dismissed

## Judgement

M.L. Singhal, J.
The Regular Second Appeal is directed against the judgment and decree dated 9.12.1997 of Additional District Judge,

Ludhiana, whereby he dismissed the Appellant-Plaintiff"s appeal from the judgment and decree dated 14.8.1996 of Civil Judge, Junior Division,

Ludhiana dismissing the Plaintiff-Appellant"s suit for declaration and mandatory injunction filed against the State of Punjab and others.

Facts.

2. Plaintiff (Ram Sarup Goyal) Depot Holder RD No. 397-B-XXVI filed suit for declaration against the State of Punjab to the effect that order

dated 10.2.1987 cancelling this depot passed by District Food and Supplies Controller, Ludhiana was illegal, unlawful, mala fide, capricious, ultra

vires and was not binding on him and for mandatory injunction directing the Defendants to restore the supply of ration to this depot situated at

Sargodha Colony, Model Gram Town, Ludhiana. It is alleged in the plaint that he was allotted this depot vide order dated 17.9.1981. Since then,

he had been running this ration depot. Ration depot was checked every month by Inspector, Food and Supplies, Ludhiana and he made report to

the department that depot was being run according to the instructions of the District Food and Supplies Controller, Ludhiana and it was after

receipt of report by him that the quota for the next month used to be released. Record of the depot was lost on 13.6.1985. Report was lodged

with Police Station Division No. 5, Ludhiana on 13.6.1985. Intimation was given to the District Food and Supplies Controller, Ludhiana, vide

report No. 6680 dated 13.6.1985. In November, 1985, he was asked to produce the record. He informed that the record was lost in June, 1985

and intimation had already been given to the office. Depot was cancelled vide order dated 16.1.1986 in which it was mentioned that he had failed

to produce the record and depot was liable to be cancelled. No notice dated 16.9.1985 was issued by the office to him. He made representation

to the Deputy Director (Field) Food and Supplies, Patiala. Representation was rejected on 10.2.1987. Cancellation of the depot by the

Defendants was illegal, unlawful arbitrary, capricious and mala fides. Deputy Director (Field) Food and Supplies, Patiala had granted stay to one

Puran Singh though his case was similar to his case. Rather charges were relating to one Gurcharan Singh the holder of depot RD No. 381,

Deputy Director (Field) Food and Supplies, Patiala levied a fine of Rs. 50/- only. Entry was made in the fine register of the department dated

15.6.1985. Plaintiff challenged the cancellation of his ration depot on the ground of discrimination. He prayed for mandatory injunction directing the

Defendants to restore the supply to ration depot No. RD No. 397 situated at Sargodha Colony, Model Gram Town, Ludhiana, which was being

held by him and withdraw the said order dated 10.2.1987.

3. Defendant contested the suit of the Plaintiff urging that Plaintiffs suit was not maintainable as the Plaintiff had not exhausted other remedies. Civil

Court had no jurisdiction to entertain the suit. Suit was not maintainable as the depot had already been cancelled on 16.1.1986. Most of the depot

holders had committed irregularities and so that their record could not be checked, they concocted an excuse that the record was lost or

misplaced. Plaintiff also made false report at Police Station Division No. 5, Ludhiana. Depot holders obtained kerosene oil for distribution to the

consumers against permits. They did not make supplies to the consumers instead misappropriated the supplies. Record of the Plaintiff was sought

to be inspected by Director Food and Supplies, Punjab, Chandigarh. Depot was cancelled vide order dated 16.1.1986 for non-production of the

record. Show cause notice dated 16.9.1985 was issued by the District Food and Supplies Controller, Ludhiana. Plaintiff made representation to

Deputy Director (Field) Food and Supplies, Patiala and the same was rejected on 10.2.1987. Cancellation of the ration depot of the Plaintiff was

legal, lawful and constitutional. As to what punishment was to be awarded to the ration depot holders that was dependent upon the seriousness of

the irregularity and it was in the discretion of the District Food and Supplies. Ration depot being held by the Plaintiff was cancelled on 16.1.1986

after giving him an opportunity of personal hearing.

4. On the pleadings of the parties, the following issues were framed by the trial Court:

1. Whether the order dated 10.2.1987 is illegal? OPP

2. Whether the Plaintiff is entitled for the restoration of supply regarding the ration depot?OPP

3. Whether the suit is not maintainable?OPD

4. Whether the civil Court has got no jurisdiction to entertain the present suit?OPD

5. Whether the suit is not maintainable?OPD

6. Relief.

5. Plaintiffs suit was dismissed by Civil Judge, Junior Division, Ludhiana vide order dated 14.8.1996, in view of his findings, that there was no

illegality in the order dated 10.2.1987 passed by the Defendants cancelling the ration depot of the Plaintiff. It was also found that the civil Court

had no jurisdiction to entertain the suit as in view of Section 32 of the Indian Arbitration Act, no civil suit lay to challenge the validity of the

arbitration proceedings or the award. Plaintiff could have filed petition/objection against that act if he was aggrieved by the order of Deputy

Director (Field) Food and Supplies, Patiala. It was found that in view of Clause 11 of the agreement Ex. D1, Plaintiff could have sought arbitration

of the Director, Food and Supplies and the award of the arbitrator was to be conclusive and binding on both the parties.

6. Not satisfied with the judgment and decree of Civil Judge, Junior Division, Ludhiana, Plaintiff went in appeal. Appeal was dismissed by

Additional District Judge, Ludhiana vide order dated 9.12.1997.

7. Not satisfied with the judgment and decree of Additional District Judge, Ludhiana, Plaintiff has come up in further appeal to this Court.

8. Learned Counsel for the Appellant submitted that the Appellant was holding ration depot and he was running ration depot.-Every month ration

depot used to be checked by the Inspector Food and Supplies. It was only after the working of the ration depot was found in order that quota for

the next month was released. In June 1985, the record of the depot was lost. In this regard, he lodged report with the police. He informed the

office of District Food and Supplies Controller vide report No. 6680 dated 13.6.1985. The ration depot was cancelled vide order dated

16.1.1986. Prior to the cancellation of the ration depot, no show cause notice was given to him. He made representation to the Deputy Director

(Field) Food and Supplies, Patiala which was rejected on 10.2.1987. It was submitted by the Learned Counsel for the Appellant that he could not

produce the record of the ration depot for being checked as the same was lost in June 1985. He had been earlier submitting the record of the

ration depot for being checked by the department and the department found the record in order and released quota to him every month. It was

submitted that Plaintiff had been running he ration depot in accordance with law and procedure. It was after the previously supplied ration was

found to have been distributed correctly that the new supply was released. It was submitted that Plaintiff had been running the ration depot in

accordance with law and procedure. It was after the previously supplied ration was found to have been distributed correctly that the new supply

was released. It was submitted that for similar lapses, the ration depot of one Puran Singh was cancelled but the same was restored on his

representation. In similar circumstances, ration depot of one Gurcharan Singh was cancelled. It was restored after imposing fine of Rs. 50/- on him.

His case in nut-shell is that he could not produce the record of the ration depot as it was lost. Earlier, he had been producing the record of the

ration depot and it was found in order. Supplies used to be made every month to the ration depot when it was found that the supplies made

previously had been distributed to the consumers correctly. Sh. Amarjit Singh DFSO Ludhiana DW1 stated that in the year 1985 Shri Ronki Ram

Inspector, Food and Supplies was authorised to check the ration depot of the Plaintiff. On 4.1.1995 he wrote a letter to District Food and

Supplies Controller, Ludhiana that he had gone to check the ration depot of the Plaintiff but the same was found closed. That letter Ex. D1. was

signed by Shri Ronki Ram. Thereupon, show cause notice was issued to the Plaintiff by DFSC Ludhiana Ex. D2. Shri Bikkar Singh Sevadar went

to the ration depot of the Plaintiff for service of notice Ex. D2 to him but he came back with the reply that the depot was lying closed. Ex. D3 is

report made by Shri Bikkar Singh. Depot Holders were in the habit of lodging reports with the concerned Police Stations regarding the loss of the

record of the ration depots whenever they were called upon to have the record of the ration depots checked. In view of this habit which was

growing among depot holders, District Food and Supplies Controller, Ludhiana wrote a letter to SSP not to permit the recording of such reports

without holding inquiry whether the depot record had really been lost. SSP Ludhiana was requested to send the list of such depot holders, who

had made similar reports with the Police Stations. Name of the Plaintiff figures in that list. DFSC called upon the Plaintiff vide letters dated

29.11.1985 and 16.1.1986 to show cause and satisfy him about the genuineness of the report. He appeared before the District Food and Supplies

Controller and stated that the record of his ration depot had been lost. His explanation did not find favour with the DFSC. He accordingly ordered

the cancellation of ration depot licence. He appealed against that order which was rejected by Deputy Director (Field) Food and Supplies Patiala.

Learned Counsel for the Appellant submitted that Shri Amarjit Singh DFSCO DW1 has stated in cross-examination that there was no report ever

made by any Inspector Food and Supplies in respect of the Plaintiff''s depot that any deficiency had been found. He stated that when the Inspector

went to check the ration depot of the Plaintiff, the depot was found closed. Every time when the Inspector, Food and Supplies visited the ration

depot of Plaintiff, he found the same closed. Special staff came in the month of March 1985 and the depot of the Plaintiff was found closed. It was

submitted by the Learned Counsel for the Appellant that how could the Appellant bungle with the supplies made to his ration depot when the new

supplies were released only when the previous supplies were found to have been distributed to the consumers correctly. Shri Amarjit Singh DW-1

stated that the depot holders used to submit indent form for the supply of the material. Before issuance of fresh material, the indent was passed by

the Inspector concerned. Separate registers are maintained for every item being sold.

9. Learned DAG Punjab, on the other hand, submitted that Shri Ronki Ram, Inspector, Food and Supplies wanted to check the ration depot of

the Plaintiff. To avoid checking by him, he lodged report with the police regarding the loss of the record of his ration depot. As per the report of

Shri Ronki Ram, Inspector, Food and Supplies, Plaintiff did not account for certain supplies received against certain indents and most of the

indents for getting supplies were not gov approved by the Plaintiff from Inspector Ronki Ram. On the basis of the report of Ronki Ram, the depot

holder was issued show cause notice by the department on 8.1.1985. He gave no reply. Report Ex. D3 made by Shri Bikkar Singh is dated

10.1.1985 which shows that on 8.1.1985 the depot was lying closed. It was on 13.6.1985 that Plaintiff lodged report with Police Station Division

No. 5, Ludhiana, regarding the loss of the record of the ration depot. District Food and Supplies Controller felt that this report was manipulated,

as if this report had been genuine, this report would not have been made at a juncture when the department was after checking his ration depot but

he was stalling his ration depot being checked. Plaintiff''s ration depot licence was cancelled vide order dated 16.9.1986. Plaintiff went in appeal to

the Deputy Director (Field) Food and Supplies, Patiala who disposed of the appeal vide order dated 9/10.2.1987 Ex. PW4/6. It is pointed out in

the order Ex. /PW4/6 that the DFSC Ludhiana cancelled his licence on account of the grave deficiencies which were pointed out to him by the

representative of the District Food and Supplies Controller, Ludhiana to him when he was hearing this appeal. It is also pointed out in Ex. PW4/67

that the Plaintiff ex-depot holder could not falsify the district Food and Supplies Controller who had pointed out grave deficiencies in him.

10. Learned Counsel for the Appellant submitted that similar deficiencies have been found in the working of the ration depot of one Puran Singh

but his ration depot was restored. Suffice it to say, the ration depot of Puran Singh was not restored by the department but was restored by the

Court. as regards Gurcharan Singh, Amarjit Singh DFSO DW1 has stated that his report was not cancelled at any stage.

11. As per Clause 4 of the agreement, the distributor is required to keep accounts, send returns and furnish information as may be required by the

authorities. As per Clause 5, the distributor is required to maintain a family-wise register in respect of the area assigned. He is to ensure that the

supplies of the commodities to the facilities are issued in a regulated manner. The distributor i.e. depot holder is required to make available all the

books of the account, registers and returns on demand which may be prescribed by the authorities, for inspection by the authorities or by any

officer or official authorised for the purpose. Clause 18 of the agreement provides that the agreement provides that the agreement can be

terminated by the authorities without any notice to the depot holder/distributor. Plaintiff did not produce the record before the checking party which

came from the head office i.e. Chandigarh for checking the record. Show cause notice was issued to him dated 16.9.1995, though no show cause

notice was required to be given as per Clause 10 of the agreement which bears the signature of the Plaintiff. In this case, thus although no show

cause notice was required to have been given to him, show cause notice was given to him. Depot was cancelled after issuing show cause notice

and after giving him personal hearing. Rules of natural justice have thus been complied with. District Food and Supplies Controller was competent

to terminate the agreement. He could cancel the depot. Show cause notice had been received by him as admitted by him in his cross examination.

It was submitted that instead of coming to the civil Court, the Plaintiff should have sought reference to arbitration in view of Clause 11 of the

agreement. Clause 11 of the agreement lays down that if any question or dispute shall at any time arise between the parties with respect to the

meaning of any clause of this agreement of the rights or liabilities of the parties here to respectively hereunder, then such question or dispute shall be

referred to the arbitration of the Director (Field) Food and Supplies and Joint Secretary to Govt. of Punjab, Food and Supplies Department,

acting as such at the time of reference or such other persons as he may, by general or special order appoint in this behalf. The award of the

arbitrator shall be conclusive and binding on both parties. Plaintiff appealed to the Deputy Director (Field) Food and Supplies, Patiala who acted

as an arbitrator and gave award Ex. PW4/6, according to which, the ration depot licence of the Plaintiff had been justifiably cancelled by the

District Food and Supplies Controller, Ludhiana. Plaintiff should have challenged the award on the grounds on which the award of an arbitrator is

challenged. In this case, the ration depot licence of the Plaintiff was cancelled after opportunity to show cause had been given to him. Rationed

commodities are distributed to the consumers through public distribution system. If instead of distributing the rationed commodities to the

consumers, the ration depot holders sells them in black, the ration depot licence has to be cancelled. In this case, it has not come forth why the

Plaintiff ran away from getting his ration depot checked in June, 1985. Report about loss of ration depot record made in June, 1985 does not

speak of his bona fides. In my opinion, in equity also, the ration depot licence of the Plaintiff was justifiably cancelled.

12. For the reasons given above, this appeal fails and is dismissed with no order as to costs.