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Neutral Citation No. - 2025:AHC:7981-DB

Court No. - 39
Case :- WRIT - C No. - 41517 of 2024
Petitioner :- M/S. Arya Rice Mill
Respondent :- State Of U.P. And 6 Others
Counsel for Petitioner :- Sadhana Dubey,Shashi Kant Shukla
Counsel for Respondent :- C.S.C.

Hon'ble Siddhartha Varma,J.
Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondent.

2. Present writ petition seeks to challenge an order dated 19.11.2024 passed by respondent no.3, in his capacity as Arbitrator, and the subsequent recovery certificates dated 20.11.2024 issued by respondent no.2, and also the order dated 29.11.2024 passed by respondent no.6, restraining the petitioner from hulling of Custom Milled Rice (CMR) for the year 2024-25.

3. The petitioner has described itself as a firm engaged in the business of hulling paddy to convert it into rice. In respect of dues regarding CMR deficit, for the year 2018-19, recovery certificates dated 4.3.2020 were issued against the petitioner. Certain representations are stated to have been moved against the aforesaid recovery certificates. Subsequently, a citation dated 29.5.2023 was issued in pursuance of the recovery certificates issued earlier.

4. The petitioner, at this stage, preferred a writ petition, being Writ-C No.22401 of 2023 which, vide order dated 2.8.2023, was permitted to be withdrawn with liberty to avail the remedy of arbitration by approaching the Arbitrator.

5. The petitioner, thereafter approached respondent no.2 for initiation of arbitration proceedings. It is stated that respondent no.2 appointed himself as an Arbitrator and after hearing the parties, has passed an order

dated 19.11.2024, rejecting the representation/claim of the petitioner. Consequent to the aforesaid order, recovery certificates dated 20.11.2024 have been issued by respondent no.2, and also an order dated 29.11.2024 has been passed by respondent no.6, whereby the petitioner has been restrained from hulling work of CMR for the year 2024-25 till further orders.

6. The only ground that has been pressed before us by learned counsel for the petitioner to assail the order dated 19.11.2024 passed by the Arbitrator is that respondent no.2/Executive Director, U P State Employees' Welfare Corporation, had issued the recovery certificates earlier, and therefore, he could not have been appointed as Arbitrator in the case.

7. Learned counsel for the State, referring to Section 21 of the Code of Civil Procedure, 1908[1], has submitted that the objection to the jurisdiction or objection to a person being Arbitrator ought to have been raised at the very first instance. He has also submitted that the objection also sought to have been made to the effect that the petitioner had been prejudiced because of the fact that the Arbitrator, i.e. the Executive Director was appointed as an Arbitrator.

8. Having heard learned counsel for the petitioner and learned counsel for the State, we find that it is not disputed that the petitioner did not raise any objection with regard to the appointment of the Executive Director as an Arbitrator in the case at the very first instance. Counsel for the petitioner has not been able to point out as to what prejudice was caused to the petitioner by the fact that the Executive Director was appointed as an Arbitrator.

9. The principles underlying in Section 21 of the CPC are to the effect that objection to jurisdiction, particularly in regard to territorial or pecuniary jurisdiction, are to be taken at the earliest possible opportunity and in any case, before settlement of issues. The law is well settled on the

1 CPC

point that if such objection is not taken at the earliest, it cannot be allowed at a subsequent stage.

10. Section 21 of CPC, in fact, gives statutory recognition to the principle that objection with regard to jurisdiction can be waived, and that subsequently, on account of this waiver, the party concerned would be precluded from taking any such objection.

11. The general law relating to arbitration is contained in the Arbitration and Conciliation Act, 1996, which was enacted to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto. Section 16 of the Arbitration and Conciliation Act, 1996[2] provides for challenge to the jurisdictional authority of the Arbitral Tribunal. In terms of sub-section (2) thereof, a plea that the arbitral tribunal does not have jurisdiction should be raised not later than the submission of the defence. If the excess of jurisdiction crops up during the proceedings, the objection should be made at that very time. In any case, objection on the question of jurisdiction has to be made before the arbitral tribunal itself, and the arbitral tribunal has the power to rule on its own jurisdiction.

12. In the instant case, learned counsel for the petitioner has not been able to point out that the petitioner had raised any objection with regard to the competence or the jurisdiction of the Arbitrator during the course of the arbitration proceedings. The petitioner, having participated in the proceedings without any objection in regard to the jurisdiction or any perceived bias of the Arbitrator, the same would dis-entitle the petitioner from raising any such objection in subsequent proceedings.

13. Under such circumstances, we refrain from interfering in this case and accordingly, the writ petition is **dismissed**.

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2 Act, 1996

14. The petitioner may avail such other legal remedy as may be available to it under law.

Order Date :- 17.1.2025
Manish Kr/RKK/-

(Dr Y K Srivastava, J) (Siddhartha Varma, J)

Digitally signed by :-
RAJ KUMAR KANNAUJIA
High Court of Judicature at Allahabad