

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO(OS) No.484/2007

Food Corporation of India

.....Appellant through
Mr.Yashobant Das, Sr. Adv.
with Mr. Sukumar Pattjoshi,
Adv.

versus

Shanti Cereals (P) Ltd.

.....Respondent through
Mr. Vijay Tandon, Adv.

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Date of Hearing: March 10, 2010

Date of Decision: April 30, 2010

CORAM:

* HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether reporters of local papers may be allowed to see the Judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the Judgment should be reported in the Digest? | Yes |

VIKRAMAJIT SEN, J.

1. This Appeal assails the Order of the learned Single Judge dated 12.10.2007 dismissing the Objections filed by the Appellant against the Award dated 12.8.1999 by the learned Arbitral Tribunal whereby the claims of the Appellant, Food Corporation of India (FCI) came to be rejected by the Award.

2. The dispute arises from an Agreement between the parties for milling of 10,000 metric tons of paddy into rice by the Respondent. The Appellant is a statutory corporation of

Government of India established under the provisions of the Food Corporation Act, 1964 primarily entrusted with the purchase, storage, movement and sale of food grains in order to effectively implement the Food Policy of Government of India.

3. The facts, in a nutshell, leading to the dispute are that the Appellant, namely, FCI, entered into an agreement with the Respondent to mill 10,000 metric tons paddy which was to be carried out in three phases. Under the contract, the Respondent was to provide advance rice to the FCI in order to get equivalent paddy from them. Owing to the failure of the Respondent to supply the converted/processed paddy, the FCI brought a Claim against them through arbitration. Before the Arbitration Tribunal, the Appellant had alleged breach of contract by the Respondent for not milling the agreed bulk paddy. Claims were also raised against the paddy which according to Appellant was damaged because of it having been left lying unattended by the Respondent. The Respondent took the defence that the paddy which was supplied to them by the FCI was already of a substandard quality and, therefore, it was not contractually feasible to convert it into rice, and further that the paddy was damaged because of the fault of FCI as it was carelessly stored in the open.

4. The Arbitral Tribunal, after going into the facts of the case and considering the rival contentions of the parties, has returned the following findings:-

1. The Respondent had informed the claimants of the fact of the paddy being highly in damaged condition; and thus further supplies were not effected to which no grievance is shown to have been raised by the FCI. Thus, the Claimants (FCI) had accepted the stand.

2. Though the agreement contained a clause that the work was to be executed at the risk of the Miller/Respondent. However, since no efforts were made by FCI to mitigate the losses by selling the rice to other mills, the Respondent could not be held liable for the losses.

5. These Findings were assailed by the Appellant by filing Objections before the learned Single Judge which have been dismissed vide Order dated 12.10.2007 against which the Appellant has filed the present Appeal. Mr. Yashobant Das, learned Senior Counsel for the Appellant, seeks to assail the Judgment of the learned Single Judge, and consequently the Arbitral Award, on the ground that the Award passed by the Tribunal is unsustainable in law as it is in contravention of the expressed terms of the contract between the parties. The agreement provided for a 'Speaking Award', whereas the Tribunal passed a nonspeaking Award inasmuch as no determination or dialectic had been articulated while rejecting some of its Claims and that the Award also did not deal with the contention of the Appellant that the Respondent was guilty of breach of contract which has amounted to great losses to FCI and the return of the

cost of the Gunny Bags. Thus, the procedure adopted was not in consonance with the law and Public Policy of India.

6. We have perused the Award and the Judgment of the learned Single Judge and do not find any appreciable ground that warrants our intervention in the impugned Judgment. The Award passed by the Tribunal, though brief and concise, is not a nonspeaking order, as noted by the learned Single Judge. The Award adequately sets out the reasons for rejecting the Claim of the Appellant. It is not required or expected of an Arbitral Tribunal to pass a verbose or detailed order to qualify the criteria of speaking Award.

7. Further, the argument of learned Senior Counsel for the Appellant that the rice supplied by FCI to the Respondent was not damaged and, in fact, was of a fine quality, cannot be sustained by us. As has been consistently held by this Court, as well as the Hon'ble Supreme Court, the forum to raise factual pleas and contentions in an arbitration matter is only the Arbitral Tribunal. It is against the proprietary of the legal regime, as well as the mandate of law set out in Section 34 of the Arbitration and Conciliation Act, 1996 that the Courts in Objection (and more so in appeal under Section 37) should entertain the arguments that are purely factual in nature. There is no gainsaying that the Arbitral Tribunal is the master of the factual arena and has the right to even go wrong while deciding the factual issues, unless there is something manifest from the face of the Award that is so grave as

to move the conscience of the Court that the error would result in a monumental miscarriage of justice.

8. The claim of Rs. 1,98,884/- pertains to the gunny bags which, according to Appellant, were used to carry the first and only installment of paddy to the Respondent; the Appellant asserts that the Claim has been completely ignored by the Arbitral Tribunal. In our opinion, no illegality has occurred that requires setting aside of Award on this score. No evidence has been shown by the Appellant of any demand for these gunny bags being made to the Respondent at any stage and/or that the same was either declined or not adhered to.

9. After considering the submissions of counsel for the Appellant and perusing the Award and the record, we find no manifest error that warrants our intervention in the Judgment of the learned Single Judge or the Arbitral Tribunal passed by the learned Arbitral Tribunal. Appellant has sought reliance on *ONGC v. Saw Pipes Ltd*, (2003) 5 SCC 705 and *Hindustan Zinc Ltd. -vs- Friends Coal Carbonisation*, (2006) 4 SCC 445 to argue that since the Arbitral Tribunal has made an Award in conflict with the express provisions of the subject Contract and the Arbitration Act, 1940, the same is open to scrutiny of the Court and liable to be set aside. In our considered opinion, reliance on both these Judgments is of no avail to the Appellant. In the present case, since the Respondent had written to the Appellant about the impossibility of

carrying out the contract because of the inferior quality of the paddy supplied to it, and no grievance having been raised to that effect at that time by the Appellant, the learned Arbitral Tribunal was justified in deciding the question of damages against the Appellant. In *Hindustan Zinc*, the Court noted an error apparent on the face of the Award which made it vulnerable and liable to be set aside. Learned Counsel for the Appellant has not pointed out any such error on the face of the Award.

10. In the light of the above noted facts and arguments, the Appellant has failed to make out any cause for our interference. The Appeal is, therefore, without merit and is dismissed.

(VIKRAMAJIT SEN)
JUDGE

(MANMOHAN SINGH)
JUDGE

April 30, 2010
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