

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) No.1894/1998 & CS(OS) No.2162/1998**

% **30th August, 2012**

TINNA OVERSEAS LIMITED Plaintiff
Through: Mr. M.Dutta, Adv.

VERSUS

FOOD CORPORATION OF INDIA Defendant
Through: Ms. Aparna Mattoo, Adv. for
Ms. Kiran Suri, Adv.

&

TINNA FINEX LIMITED Plaintiff
Through: Mr. M.Dutta, Adv.

VERSUS

FOOD CORPORATION OF INDIA Defendant
Through: Ms. Aparna Mattoo, Adv. for
Ms. Kiran Suri, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Both these suits are being disposed of by this common judgment as facts and issues are more or less identical. For the sake of convenience reference is being made to the facts of CS(OS) No.1894/1998.

2. The plaintiff is the buyer and the defendant is the seller. The defendant/Food Corporation of India entered into contracts with different persons for sale of fine and superfine rice. Contracts were entered into with such buyers who had to export the rice. The plaintiff was one such buyer from the defendant. The case as stated in the plaint is that the parties are governed by the contract dated 25.4.1995, Ex.D2, and as per which the defendant was entitled to only take the price as specifically provided therein i.e. in other words it is pleaded that the defendant could not enhance the price from the price as provided in Ex.D2. It is further pleaded in the plaint that the plaintiff on the basis of this contract entered into further contracts with foreign buyers and for this additional reason also the defendant was not entitled to claim the increase in price. The plaintiff has filed this suit for recovery of the increased prices which the plaintiff was forced to pay to the defendant.

3. In the written statement, the defendant has referred to the contract, Ex.D2 and stated that the prices as stated therein are not fixed but the prices as per Clause (c) at page 2 of Annexure 1 were to be the prices as applicable on the date of delivery. That the price stated is only a tentative price is also clear from Note 1 to Annexure I which states that the rates are valid 'till further orders'. It is argued that the price is fixed not by the

defendant/FCI but by the Government of India, and the defendant simply implements the orders of the Government of India, and which prices are applicable across the board to all buyers.

4. The following issues in this case were framed on 13.8.2003:

- “1. Whether the plaintiff is entitled to recover a sum of ₹3,16,40,408.22 in light of the averments made in the plaint? OPP.
2. Whether the plaintiff is entitled to interest on the amounts due to it? If yes, at what rate and to what amount? OPP.
3. Whether the defendant is entitled to increase the price in light of the Government of India instructions and contrary to the contract between the parties? OPD.
4. Relief.”

Issue No.1

5. Since for determination of this issue, certain Clauses of the contract are necessarily to be referred to, the said Clauses are being reproduced as under:-

“No.J/1(6)/94/TOL/S.III
M/s. Tina Overseas Ltd.
New Delhi.

APRIL 25, 1995

Sub: Offer of Fine(raw/boiled) and Superfine (raw/boiled) rice by FCI for sale under Open Market Sales Scheme for purposes of exports.

Ref: Your Telex/FAX/Letter No.
Dated 18/4/95.

Dear Sirs,

This is in the context of your reference(s) captioned above wherein you have expressed interest for purchase of rice-fine(raw/boiled) and/or superfine (raw/boiled) under Open Market Sales Scheme (OMSS) from FCI for purposes of exports. In this regard, you are informed that while FCI has decided sale of FCI rice to prospective buyers aiming for exports and would consider your request as well on merits subject to your response which should reach latest by 4th May 1995 if you still have interest in purchase of rice from FCI.

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3. Above information/documents alongwith Extent Monay tot he extent of 1% (ONE PERCENT) of the total value of the quantity which you intent to purchase from FCI should accompany the offer letter in the form of Bank Draft drawn in favour of "Food Corporation of India" payable at New Delhi and drawn on any nationalised scheduled bank preferably State Bank of India.

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5. The prices meant for sales of rice by FCI under the Open Market Sales Scheme for purposes of exports are enclosed- Annexure- 'I'. Kindly note that FCI will be offering stocks of rice, if any, subject to availability on "as-is-where-is" basis without any guarantee with regard to specifications. FCI will, however, offer rice of 1994-95 crop 'A' & 'B' categories to buyers aiming for exports. Deliveries will be given ex-FCI depots on FOT (free on truck) basis and you will be required to lift stocks within a free period of "15 FCI working days" failing which FCI will levy storage charges of Paise 10 per Bag/per Day or part thereof subject to a minimum of 40 paise per bag. These charges will be recovered in respect of the entire quantity of the unlifted stocks at the end of the free period before the delivery of such stocks is actually effected. FCI would try to cooperate in giving deliveries by operating separate

delivery points for you and can give before or after office hours also subject to your meeting the OTA cost of Staff detained/deployed.

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ANNEXURE – ‘I’

STATE WISE PRICES MEANT FOR SALE OF RICE BY FCI UNDER OMSS FOR PURPOSES OF EXPORTS

Sl. Name of the State/ PRICE OF FINE/ SUPERFINE RICE UNDER
No. Port Towns EXPORT ORIENTED OPEN SALE SCHEME
(RATE: RS/PER MT)

	FINE (RAW/BOILED)	SUPERFINE (RAW/BOILED)
.....		

.....

13(a)A.P.Kakinada/Vizag*	6400	6700
(b) Rest of A.P.	6300	6600

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NOTES

1. Above rates are effective from 24.4.95 and would be valid till further orders

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- a)
- b)
- c) Rates applicable on the date of delivery would be applicable. This will be concition of sale of rice by FCI”

6. Once a written contract is entered into in writing between the parties, Sections 91 and 92 of the Evidence Act, 1872 provide that nothing can be pleaded so as to contradict or vary the terms of the written contract. Also it is settled principle of law that a contract has to be read as a whole. No doubt as per Para 3 one per cent of the earnest money deposit was taken

on the basis that the delivery was to be effected within one month, however, it is not the case of the plaintiff that the defendant was bound to deliver the stock within one month. Such could also not be the case as the contract does not require deliveries to be compulsorily made in one month. There is no such pleading and therefore there is no such evidence on behalf of the plaintiff. What is pleaded and urged on behalf of the plaintiff is only that the prices are fixed because fixed prices are stated in Annexure 1 and the prices are also fixed because of the aforesaid para 3 of the contract, Ex.D2 pertaining to earnest money deposit. Another reason for claiming that the price should not be unilaterally varied by the defendant is that the plaintiff had entered into further contracts with the buyers abroad and therefore the plaintiff cannot be put at a disadvantage.

In my opinion, the arguments as urged on behalf of the plaintiff carry no weight. Once the contract is read as a whole, Clause (c) specifically provides that the rates which would be applicable would be those on the date of delivery i.e. the rates would be as prevalent (i.e.variable) on the date of delivery of the rice. I thus really fail to understand as to how the plaintiff can argue that it was a fixed price contract. The prices stated in Annexure I were only indicative, and this becomes clear not only from Clause (c) stated above, but the Note 1 of

Annexure I which specifically states that the rates would be applicable only till further orders i.e. the rates are tentative and changeable under further orders. Merely because the plaintiff has entered into further contracts with buyers abroad cannot mean that the terms of the contract, Ex.D2 entered into between the plaintiff and the defendants can be contradicted by the plaintiff. In fact if the plaintiff was prudent, it would not have entered into the fixed price contracts with the buyers abroad. At this stage, I must hasten to add that I am presuming that the plaintiff entered into fixed price contracts with the foreign buyers, inasmuch as, except making an oral statement in the pleadings and in the depositions, the contracts with the foreign buyers have not been filed and proved to show that the contracts with the foreign buyers were at fixed prices. In any case, the contracts of the plaintiff with the foreign buyers have no bearing for the interpretation of the contract, Ex.D2 entered into between the plaintiff and the defendant.

7. Learned counsel for the plaintiff sought to place reliance on Section 5 of the Sale of Goods Act, 1930 which reads as under:-

“Section 5. - Contract of Sale how made.”-(1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed.

(2) Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.”

8. Once again, I fail to understand how can Section 5 help the plaintiff because Section 5 does not say that if the parties agreed that the price were to be variable and as prevalent on the date of the delivery, the seller cannot claim such price as prevalent on the date of delivery. It is not disputed that the plaintiff was only charged price as payable on the date of delivery, and which price was charged not only from the plaintiff but also from other buyers to whom rice was sold by the defendant.

9. Learned counsel for the plaintiff has placed reliance upon a Full Bench judgment of the Madras High Court in *Alumminum Industries Ltd. Vs. Minerals & Metals Trading Corp. AIR 1998 Madras 239* to canvass the proposition that the price prevalent on the date of delivery cannot apply. I have gone through the facts of the cited case. In the facts of the cited case the prices as payable on the date of delivery were held not to be payable because the buyer/plaintiff in that case had gone for taking of delivery, however, for frivolous reasons delivery was refused and given on a later date when the price had increased, and consequently, it was held by the Full Bench that the seller cannot take advantage of his own wrong i.e. once delivery was not given after completion of all formalities by the buyer

i.e. delivery could not have been stopped, and therefore if delivery was illegally stopped and the price thereafter increased, increased prices could not be paid. The cited case has therefore no relevance to the facts of the present case.

10. In view of the above, I hold issue no.1 against the plaintiff and hold that the plaintiff is not entitled to the suit claim.

Issue No.2

11. Since issue no.1 has been held against the plaintiff, there does not arise any issue of granting any interest to the plaintiff.

Issue No.3

12. Issue no.3 is also decided against the plaintiff inasmuch as while discussing issue no.1, I have already observed that the defendant is entitled to increase the price inasmuch as the contract itself provided that the prices as indicated in Annexure 1 were only indicative and the prices which would be prevalent on the actual date of delivery would be charged. This is also further made clear by Note 1 of the contract which shows that the prices as stated in Annexure 1 are only applicable till further orders i.e. the prices were not fixed/firm but were variable.

Relief.

13. In view of the above, the suit of the plaintiff will stand dismissed. Considering the fact that the suit has been pending since 1998 i.e. for over 14 years, and since the defendant would have been put to expenditure, considering the fact that the plaintiff has no case whatsoever, and the defendant was forced to enter into litigation, the defendant will be entitled to actual costs and which I quantify at ₹50,000/- for each of the suit. I exercise my powers under Rule 14 of the Delhi High Court (Original Side) Rules, 1967 to exempt the applicability of the rules with regard to costs and apply the ratio of the recent judgment of the Supreme Court in *Ramrameshwari Devi and Others v. Nirmala Devi and Others*, (2011) 8 SCC 249, which states that it is high time that the actual costs should be awarded. Decree sheet be prepared.

14. Suit No.2162/1998 will also stand dismissed in view of the aforesaid discussion, and also with costs of ₹50,000/- in favour of the defendant and against the plaintiff. Decree sheet be prepared in this suit also.

VALMIKI J. MEHTA, J

AUGUST 30, 2012
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