IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CM No. 25122-CII of 2015 in/and
FAO No. 10161 of 2014
Date of decision : December 1, 2015

Food Corporation of India

.... Appellant

Versus

M/s Chotani Rice Mills and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rajesh Garg, Senior Advocate with
Ms. Nimrata Shergill, Advocate
for the applicant-appellant.

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1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).
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For the reasons stated in the application, application is allowed.

The appeal is restored back to its original number.

The appeal is taken on board.

FAO No. 10161 of 2014

The Food Corporation of India is in appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') against the dismissal of their objection vide order dated 9.1.2014 for setting aside of the award dated 9.9.2003.

Mr. Rajesh Garg, learned Senior counsel assisted by Ms. Nimrata Shergill submits that as per the terms and conditions of the agreement the paddy was to be kept in the premises of the miller in joint custody/care. Since there were floods in the year 1995, the entire paddy was destroyed, therefore, the claim was lodged before the arbitrator keeping in view of the arbitration clause and the matter was referred to the Arbitrator. Before the arbitrator claim of ₹1,29,00,192/- was raised. However, the arbitrator erroneously declined the same and only awarded a sum of ₹912.36 along with interest @ 12% per annum from the date of award till the payment in favour of claimant and against the respondent.

The aforementioned award of the arbitrator is not in consonance with the terms and conditions of the agreement, therefore, the objections were within the parameters of Section 34 of the Act.

He further submits that it was incumbent upon the miller to get the paddy insured, therefore, no fault can be attributed to the Food Corporation of India, thus, there is illegality and perversity in the award of the arbitrator as well as order of the objecting court.

I have heard learned counsel for the appellant and appraised the paper book.

From the perusal of the award, it is revealed that the Food Corporation of India had lost the claim against the Insurance Company in the National Consumer Forum but yet the arbitrator did not accept the claim of the miller and observed that the claim at the behest of the Food Corporation of India was maintainable. Outcome of the case before the National Consumer Forum has not been brought to the notice of this court, much less before the objecting court. Thus, the plea that the miller was required to get the stock of un-milled rice/paddy insured is not sustainable. In my view, the arbitrator has assigned valid reasons for declining the award. The paddy was destroyed in the floods. The observation rendered by the arbitrator reads thus:-

> "We do not agree with this argument for two reasons. Firsty there is no duty cast on the miller to preserve the paddy against natural elements. The stock was in joint custody of FCI and the respondent miller. The miller had agreed to store the paddy free of cost in its premises. But FCI was equally in possession as there was joint custody. FCI had posted watch and ward. If the miller did not take steps to protect it against rains FCI could have done it as it was their property. Paddy was issued to the miller against the release order issued by FCI after the miller had deposited advance rice. The miller cannot be held responsible if there were incessant rains and floods resulting in damage to the paddy. This was an act of God and beyond the control of the miller.
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> Act of God means an operation of natural forces(as opposed to the act of man) which it was not reasonably possible to forsee and guard against, like lightening, extra ordinary weather conditions such as snow, storm or flood. In such

cases each contracting party is relieved of the obligation or liability to which he would otherwise be subject.

F.C.I.'s own case is that in the night of 4/5 September 1995 and thereafter, there were heavy rains in Ambala and its adjoining areas and due to this rain there was flood in Ambala and paddy stored in different mill premises, including of the respondent, got damaged. This was an Act of God and beyond the control of the miller and FCI. Act of God means an operation of natural forces which it was not reasonably possible to forsee and guard against. In such cases each contracting party is relieved of the obligations or liability to which he would otherwise be subject. The paddy deteriorated as a result of unpresendented rains for which the miller cannot be held liable. It is unncessary for us to refer to the material on record which speaks of the F.C.I's responsibility to preserve and protect the paddy particularly after the rains. There were discussions and correspondence for segregation and shifting of stocks but no tangible steps were taken by FCI perhaps because the problem was colosal.

On 12.9.1995 the respondent requested the Senior Regional Manager FC HRO Chandigarh for segregation of flood affected paddy and to issue it to the Mills for milling on actual weight basis.

It is true that impossibility of performance was temporary. Time was extended from October, 1995 to March 1996 when the fury of the flood had spent itself and Ambala skies became clear. But during this time FCI was not willing to segregate the sound from the flood affected paddy without which it was not possible to mill the paddy. On 17.2.1996 "sale of sound paddy" was advertised. On 23.12.1996 paddy advertised for sale was declared to be "unfit for milling. Ultimately the thing perished and nothing remained to be milled. Thus ended the story of this contract.

The letter dated 18.9.1995 from District Manager to Assistant Manger, Ambala Cantt.is indeed revealing. It says paddy was stored in the open in mill's premises as there was no space in covered godown. When suggestion was made for shifting of the paddy to covered space this was turned down. The District Manager said that "the shifting of paddy stored in Kacha ground will have huge financial implications. " Right in September, 1995 after the flood and the fate of this contract was sealed."

It is now a settled law that as to under what circumstances the award has to be interfered with. The question which has now been raised in the aforementioned appeal has already been answered by the Hon'ble Supreme Court in catena of judgments wherein it has been laid down that until and unless the award suffers from illegality as statutorily prescribed under Section 31 (3) of the Act, the same cannot be interfered with. In this context I intend to refer the judgments of Hon'ble Supreme Court in **Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49 and Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC**

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698. In the aforementioned judgment the Hon'ble Supreme Court had culled out the ratio decidendi by holding that until and unless there is an error apparent on the face of record or the arbitrator has not followed statutory legal position, it is only in these circumstances it would be justified interfering with the award. The High Court should not act as a Court of appeal and reappraise the material/evidence and embarked on a path by substitution in its own view. The Arbitrator has dealt with the dispute which was contemplated and was within the scope of it.

It is now a settled law that the Arbitrator is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

In my view, no error of law arise from the award. The award is perfect and justified and the objections filed against the same were wholly misconceived.

There is no merit in the aforementioned appeal.

The appeal is accordingly dismissed.

(AMIT RAWAL)
JUDGE

December 1, 2015
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