

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

Date of decision: April 23, 2015

+ **OMP 632/2011**

FOOD CORPORATION OF INDIA

..... Petitioner

Through: Mr. Mohan Lal Sharma, Advocate

versus

M/S. KAPIL KUMAR & CO. & PARTNERS

..... Respondents

Through: Mr. David George & Mr.
Saiddharth Dutta, Advocates

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

1. The challenge in this petition is to the Award dated April 25, 2011 of the learned Arbitrator in the arbitration proceedings held before the Indian Council of Arbitration (ICA). The learned Arbitrator has rejected the claims of the petitioner both on the ground that the disputes have been settled in terms of settlement deed dated March 06, 2006 and even on merit the claims of the petitioner are not sustainable.

2. Some of the facts relevant for the purpose of this case are an

agreement dated October, 6, 1994 was executed by the Senior Regional Manager acting through District Manager, FCI Faridkot on behalf of the petitioner Corporation and the respondent M/s Kapil Kumar & Company and Partners in respect of the job of milling the paddy. The disputes arose between the parties. Suffice to state that the agreement had an Arbitration clause.

3. It was the case of the petitioner before the learned Arbitrator that in terms of agreement dated October 6, 1994, the petitioner had stored 6290.4 quintals of super fine paddy in 9832 bags in the premises of the respondent. After the respondent delivered a part of rice still 671.3 quintals in 872 bags, remained with the respondent. It was the case of the petitioner that the milling of the entire paddy was to be completed before February 28, 1995. However, on a representation of the millers in the entire Punjab State to the petitioner Corporation to provide relaxation in the norms of acceptance of quality of rice in view of poor quality of paddy, the stored paddy was not milled within the stipulated time. The petitioner Corporation alleged breach of contract and claimed an amount of Rs.3,99,139/- on account of above mentioned balance quantity of 671.3 quintals (872 bags) of paddy. The petitioner had also prayed for award of Rs.20,000/- towards cost of limitation along with interest @ 18% p.a.

4. The case of the respondent before the learned Arbitrator was primarily of limitation and the petitioner had already signed a settlement deed in the year 2006 and as per this deed, all matters have been amicably settled. It was the case that the paddy stored with miller was retrieved and sold by FCI under Government of India open auction policy for which there is no provision in the agreement. Therefore, no damages as alleged could be claimed by the petitioner. The learned Arbitrator had accepted the plea of settlement having entered on March 6, 2006. The relevant finding of the learned Arbitrator is as under:-

“Now, let us look at the Deed itself. Whether, it was subject to any such condition that it is subject to approval from head quarter of FCI. The answer is ‘No’. Settlement Deed does not have any such condition. It is signed by District Manager, FCI, Faridkot on behalf of Senior Regional Manager, FCI Regional office, Punjab, Chandigarh. Agreement between the parties is also between Senior Regional Manager, FCI through Distt. Manager, FCI and the Miller. That means signing authority on behalf of FCI, for the Agreement and for settled deed, is same. As per delegation of powers in FCI, vide circular No. F No. 10 (1)/2004-BC ddt. 14.01.2005, submitted by claimants as part of their written submissions, indicate that Regional Manager has full powers for settlement of cases out of court or withdrawing or dropping original matter. The Deed is signed by claimant with wide open eyes. Also, till

filing of the reply to written submissions of respondents, claimants never informed the respondents about invalidity of settlement deed.

From above discussion, I am of the opinion that the settlement deed dt. 06.03.2006 between the parties is valid and objection of claimant in this regard is not tenable.”

5. The learned Arbitrator has also discussed the case on merit, according to him 9832 bags (6390.40 MT) paddy was stored in the Miller’s premises out of which 8960 bags (5719.1 MT) of paddy were withdrawn by the petitioner Corporation by the contractual period of February, 1995. The balance paddy of 872 bags (671.3 MT) remained with the respondent till the extended period of contract i.e. May 31, 1995. Same was withdrawn by the FCI after the extended period was over and sold in open market.

6. The learned Arbitrator was of the following view:-

“Agreement between the parties was born on 06.10.1994 and paddy was stored in Miller’s premises shortly thereafter. If the Miller was not milling the paddy at all, what was being done by FCI? It was totally silent about non-performance of the other party till end of contract period. No notice was ever issued to Miller for his non-performance. FCI should have acted upon after noticing wilful non-performance. It could have easily terminated

the Agreement in the 2nd or 3rd month of Agreement itself and got the work done at the cost of Miller elsewhere as per provisions of Agreement. There is also nothing on record or brought to the notice of Tribunal, FCI's intention to sell the stored paddy and recover economic cost from Miller.

It is also not clear why FCI wants damages for 872 bags of paddy only whereas total paddy stored was 9832 bags and admittedly none of the paddy was milled and in turn, entire paddy was sold off by FCI. No explanation is available for it.

If the Millers were agitating for relaxation in norms of rice recovery and quality right from the beginning of Agreement period, it was for FCI to decide the matter one way or the other instead of dragging its feet till end of contract period, extend the contract period unilaterally and then selling off the paddy on their own volition.

From above discussion, FIC claim, on merit also, is not sustainable.”

7. Learned counsel for the petitioner would submit that the learned Arbitrator has erred in rejecting the claims on the ground the disputes

have been settled in terms of settlement deed dated March 6, 2006. He states that deed was forged. According to him, the document having been executed on March 6, 2006, was notarized much before that date i.e. March 1, 2006. He would dispute the conclusion of the learned Arbitrator even on merit.

8. On the other hand, learned counsel for the respondent would justify the award. According to him, the plea of forgery was never taken before the learned Arbitrator. He denied that the settlement was forged. He would rely upon a letter dated February, 18, 2014 written by the District Office, Moga to the Assistant General Manager (Commercial) Food Corporation of India, Regional Office Chandigarh, wherein the District Office has admitted that a settlement deed with M/s Kapil Kumar and Company, the respondent herein was executed. He would also refer to a judgment of the Division Bench of this Court in FAO (OS) 489/2011 ***FCI vs. M/s Deep Rice Mills*** decided on October 19, 2011, wherein the plea of the petitioner Corporation that the Area Manager had no authority to enter into a settlement, without the approval of the Chairman-cum-Managing Director of the FCI was rejected. According to him, when the entire paddy was lifted by the petitioner Corporation, no loss had been caused to the petitioner Corporation to even raise a dispute.

9. Having heard the learned counsel for the parties, this Court during

submissions had asked the counsel for the petitioner to substantiate his plea of forgery; he would state the settlement having executed on March 6, 2006 could not have been notarized on March 1, 2006. This fact does not have any effect on the authenticity of the document. I note the Moga Office of the petitioner Corporation in its communication dated February, 18, 2014 addressed to the Regional Office did accept the execution of the settlement deed with the respondent. I also note, no such plea was urged before the Arbitrator. If that be so the plea of forgery need to be rejected. The settlement having been entered wherein it has been agreed by the parties that the corporation will not pursue its claims against the respondent before the ICA and after adjustment of other statutory claims if any, the security deposit of the miller will also be refunded and the miller shall also have no claim whatsoever against the corporation, the consequences must necessarily follow.

10. The conclusion arrived at by the learned Arbitrator, which is reproduced above is justified. I note that the plea of competency of the District Manager/Regional Manager was upheld. The award also notes that a permission for amicable settlement of the arbitration cases was received from FCI Headquarters vide letter dated October 21, 2003 which contained the approval of MD FCI. The arbitrator also noted that the decision of CMD, FCI disavowing out of court settlement was of

September 15, 2006, whereas, the settlement executed in the case in hand was much before on March 5, 2006. That apart I note for benefit that the Division Bench in *M/s Deep Rice Mill* (Supra) where a similar argument of competency of the Area Manger was raised, it has held as under:-

“13. FCI gave no answer. It just said that the Area Manager, FCI did not have the authority to enter into the settlement.

14. Now, we find it surprising that if the Area Manager had no authority to sign the deed of settlement, why no disciplinary action has been taken against him till date. We highlight that Learned Counsel for the Appellant concedes that no disciplinary action has been initiated or is intended to be initiated against the Area Manager, FCI.

15. FCI is a statutory corporation. It is not the Government of India. Thus, concept of Business Allocation Rules would not be applicable to FCI. It relates to the indoor management of FCI as to who has the authority to act on behalf of FCI it was for FCI to have led evidence before the learned Arbitrator to show that the Area Manager was not authorized to enter into any such agreement and attempt made before us to rely upon some office orders is of no use. We highlight that before the learned Arbitrator the only stand taken was that the agreement in question did not have the approval of the Chairman-cum-Managing Director of FCI.

16. It was never told to M/s.Deep Rice Mills that the Area Manager has no authority to execute any deed of settlement. Learned counsel for the appellant has no answer to the question: If the Area Manager had no authority to enter into any settlement why was he put in the forefront to negotiate. To the preceding sentence, we need to add that Learned Counsel for FCI admits that a policy decision was taken to negotiate with the rice millers and try and resolve the dispute across the table. Learned Counsel further concedes that it was pursuant to the said policy decision that the Area Manager, FCI commenced the negotiations with M/s. Deep Rice Mills. Counsel concedes that there is no material with FCI to show that the brief entrusted to the Area Manager, FCI was to do preliminary ground-work i.e. if a settlement was possible, to outline the contours thereof and before finalizing the settlement to take the approval from the senior officers.”

11. In view of the aforesaid position and the authenticity of the deed having been established, the learned Arbitrator was right in holding that the settlement deed between the parties is valid.

12. Even on merit, the learned Arbitrator has held that the claims are not tenable. I agree with the conclusion of the learned Arbitrator. It is not a case where the miller, the respondent herein had misappropriated the paddy, rather there is a finding that the entire paddy was sold off by the FCI.

13. This Court is conscious of the fact that the issue in this petition is about the validity of an award. Within the contours of Section 34 of the Arbitration and Conciliation Act, I see no reason to interfere with the award. The present petition is dismissed.

(V.KAMESWAR RAO)
JUDGE

APRIL 23, 2015
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