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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1585-2011 (O&M)
Date of decision : 02.09.2016

Food Corporation of India, District Office, Rohtak

... Appellant

Versus

M/s Raj Group of Industries and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.K. Gupta, Advocate
for the appellant (in FAO-1585-2011, FAO-1586-2011,
FAO Nos.6544 to 6547-2012,
for respondent No.1 in FAO-3856-2008.
Mr. Sanjay Majithia, Senior Advocate with
Mr. Inderjeet Singh, Advocate
for the appellant (in FAO-3856-2008) and
for respondents No.1 and 2
(in FAO-1585-2011 & FAO-1586-2011).
Mr. Arpandee Narula, Advocate for
Mr. Rahul Sharma, Advocate
for respondent Nos.1, 2, 4 to 6 (in FAO-6544-2012),
for respondents in FAO No.6545 of 2012.
Mr.S.K.Yadav, Advocate, for respondents No.1 and 2
in FAO No.6546 and 6547 of 2012.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of appeals bearing FAO No.1585 of 2011 titled as “Food Corporation of India V/s M/s Raj Group of Industries and others”, FAO No.1586 of 2011 titled as “Food Corporation of India V/s M/s Raj Group of Industries and others”, FAO No.3856 of 2008 titled as “M/s Raj Group of Industries and another V/s Food Corporation of India and others”, FAO No.6544 of 2012 titled as “Food Corporation of India V/s M/s Jagdamba Rice Company and

others”, FAO No.6545 of 2012 titled as “Food Corporation of India V/s M/s Aggarwal Enterprises and others”, FAO No.6546 of 2012 titled as “Food Corporation of India V/s M/s Vishal Enterprises and others”, FAO No.6547 of 2012 titled as “Food Corporation of India V/s M/s Vishal Enterprises and others”,

CM No.4543-CII-2011

For the reasons stated in the application, the delay of 855 days in re-filing the appeal is condoned.

FAO No.1585 of 2011

The appellant is aggrieved of the findings rendered by the objecting court whereby their objection qua award have been allowed but submits that the order of the objecting court if read does not lead to anywhere, for, there is no order of accepting the claim of the FCI in essence, award remains un-executable. He submits that the contract 17.8.1995 was entered into between the miller and the FCI and the period of delivery of the paddy was up to 15.9.1999 which was extended to 28.2.1996. As per the terms and conditions of the agreement, the issue of lifting of paddy was either be limited to the extent of bank guarantee or advance rice delivered by the miller to the corporation. There are two quality of rice, i.e., fine and super fine. The claim was with regard to non-payment of advance rice. There is no dispute qua super fine as the miller in this regard had supplied the advance rice. The contract was terminated vide order dated 28.2.1996 as the contract contained resolution of dispute through arbitration, the matter was referred to the arbitrator. Both the parties filed claim and counter claim.

The arbitrator partly allowed the claim but did not agree with regard to

claim of 1½ economic times milled paddy (fine). However, the same was objected to but the objecting court after examining the evidence both oral and documentary set aside the findings but there is no order for implementation of the award, therefore, the present appeal. This court during the course of hearing when confronted Mr.Gupta of having availed the remedy of modification or recall of the order but answer given that there is no remedy under the Act. In this backdrop, that the present appeals have been filed.

Per contra, Mr.Majithia learned senior counsel assisted by Mr.Inderjeet Singh submits that in the FAOs filed at the behest of miller against the findings rendered by the learned objecting court that the objecting court ought not to have sit on the arm chair of the arbitrator and re-appreciate and re-examine the entire evidence. Objections were not falling within the realm of the Section 34 of the Act there has been a misreading and misconstrual of the evidence by the objecting court inasmuch as that as per letter 7.8.1995 written by the District Manager to the Assistant Manager the factum of receipt of the advance rice of super fine quality was not in dispute.

Mr.Y.P.Saxena witness of the FCI also in the cross-examination admitted that various advance rice was paid by the miller though he did not specify about fine or super fine. The fact would be that there had been part performance on the part of the miller, therefore, the claim of the FCI was neither here nor there, muchless, misconceived and urges this Court to affirm the findings of the arbitrator.

I have heard the learned counsel for the parties and perused the

paperbook.

I am agreement with the submission of Mr.Majithia and disagreement with the submission of Mr.Gupta, for, the statement of the witnesses noticed above leaves no manner of doubt that miller had performed its part of the contract by supplying advance rice. In my view, FCI has failed to establish the distinction between the deposit of the advance rice qua “fine and super fine”. This act has totally escaped the notice of the objecting court, which in my view could not have at all acted as an appellate court over the award of the arbitrator. The objections under Section 34 are not to be treated as first appeal. There are parameters under which it could entertain and decide. In my view, the objections were not falling within the realm of the aforementioned provisions. Even the miller had also supplied the milled rice against the release orders qua super fine. I am of the view that onus to claim 1 ½ economic time as per terms and conditions of the agreement would be on the FCI which has not been established. It is also settled law that the objecting court cannot sit on the arm chair of the arbitrator and re-appreciate the evidence. For the foregoing reasons, I am of the view that the order of the objecting court is set aside and the award of the arbitrator is restored. The appeals at the instance of the FCI is dismissed, however, at the instance of the miller are allowed.

September 2, 2016
Paritosh Kumar

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**

