IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1351 of 2013 (O&M)
DATE OF DECISION:18.11.2016

Food Corporation of India ...Appellant

Vs.

M/s Des Raj and Sons (through its proprietor) and another ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.K.Gupta, Advocate for the appellant.

Mr. Gagandeep Singh Sirphikhi, Advocate for respondent No.1.

AMIT RAWAL, J.(ORAL)

The appellant-FCI is aggrieved of the impugned order, whereby, the objections filed against the declining of the claim and allowing of the counter-claim by the Arbitrator has been dismissed.

Mr. K.K.Gupta, learned counsel appearing on behalf of the appellant-FCI submits that following claim was lodged against the miller which is as under:-

	Super Fine	***Common***
Claim amount: as detailed above	*Rs.9,43,687.46*	*Rs. 769.38*
Amount Recoverable on account of:		
Cost of Gunnies retained by miller @ Rs. 13.41p.	*Rs.1,32,973.56*	*Rs. 45,795.15*
Sales Tax @ Rs.4.40+surcharge	*Rs. 5,850.84*	*Rs. 2,014.99*
Income Tax on milling/Stitching/		
Total amount recoverable from Miller	*Rs.11,24,928.81*	*Rs.69,469.46*
Amount payable to Miller:-		
Milling Charges @ Rs. 9/- per qtl.	*Rs.1,02,715.04*	*Rs.36,021.57*
Stitching charges @ Rs.1.25	*Rs.10,000.00*	*Rs.3,585.00*
Security amount	*Rs.30,000.00*	*Rs.-*
Cost of gunnies	*Rs.1,73,000.00*	*Rs.-*

Total amount payable to Miller	*Rs.3,15,715.04*	*Rs.39,606.57*
Net amount recoverable		
Total amount recoverable	*Rs.11,24,928.81*	*Rs.69,469.46*
Total amount payable to Miller	*Rs.3,15,715.04*	*Rs.39,606.57*
Net amounts recoverable	*Rs. 8,09,213.77*	*Rs.29,862.89*
Net Recoverable from Miller	*Rs.8,39,076.66*	

It is alleged by the FCI that Miller failed to pay the aforesaid amount of Rs.8,39,076.66 despite notice of demand No.D/22(4)/paddy/stored/94-95 dated 21.10.1997 and have now claimed the same with interest both pendentelite and future @ 18% per annum till realisation, cost of petition Rs.20,000.00/- and costs of the arbitration proceedings."

The Arbitrator has mis-conducted, much less, committed patent illegality in rejecting the claim on the ground that the selling of the paddy in open market was the fault of FCI and, therefore, miller could not have been fastened the liability. In fact, the miller did not mill the paddy therefore it was sold in open market as the last date for delivery of the milled rice had expired. Counter-claim has erroneously been allowed though it has been adjusted viz-a-viz, the claim of the appellant but miller was not entitled to the same. All these points were raised before the Objecting Court but the same has not weighed in the mind of the Court and resulting into dismissal.

Mr. K.K.Gupta, further submits that findings of the Arbitrator regarding sale of the paddy is fully misplaced, for, the same was sold in pursuance to the order passed by this Hon'ble Court in disposing of the Public Interest Litigation.

Learned counsel appearing on behalf of the miller submits that neither the Objecting Court, much less, this Court can re-appreciate the evidence as it is not falling within the parameters of Section 34 of the Act and thus urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and record of the trial Court.

The aforesaid claim was objected to by the miller and also filed the counter claim. The miller stated that the FCI after receiving the milled rice for sometime changed the track and obtained the approval of ministry to dispose of the stocks of paddy procured in Punjab through open sale as it would have helped in overcoming the problem of storage space. The extension of time upto 31.05.1995, granted on 25.05.1995 was nothing but force miller to purchase paddy stored in the mill premises. The miller was asked either to deliver balance rice within few days or purchase the balance paddy @ Rs.442/- per quintal by depositing the cost of paddy immediately, otherwise all the damages, loses, penalty charges would be recovered. The categoric stand of the miller that FCI cannot be allowed to take the advantage of their own wrong as the entire basis of their claim was one and half times of economic cost which according to miller was only applicable in three situations as carved out in Clauses 7, 8, 9(i) and 16(c) of the contract. The miller denied and disputed the claim of sum of Rs.1,78,768.71/- towards the cost of empty gunny bags and also rate of Rs.13.41/- per bag. Even the claim of sale tax and income tax was also particularly denied on the ground that the aforementioned provisions of the Act was not applicable nor any tax was ever paid by FCI. The arbitrator rejected the claim petition on the premise that the FCI could not establish the claim based upon one and a half economic cost of paddy in the absence of any shortfall or other circumstances. The alleged default was on account of non-milling but not on account of any loss or shortfall either of rice or paddy. In every arbitration case, either the claimant or counter claimant in order to support their pleas have to establish through documentary evidence.

During the course of the hearing, this Court called upon Mr. K. K. Gupta, Advocate to point out from the record of the arbitrator as to which documentary evidence had been placed on record to establish the claim before the arbitrator. The same was not pointed out, even this Court had an occasion to browse record but finds that except the self serving statement in the shape of affidavit reiterating the claim petition, there is no other evidence on record. Even in the rejoinder or claim petition, there is no reference to sale of paddy in open market in pursuance to the direction given by the Court as urged before this Court. The FCI has also failed to place on record any material regarding the claim qua the gunny bags, much less, the sale tax and income tax.

It is strange that the officers at the helm of the affairs, file the claim just for the sake of it but do not establish, which is not backed by any foundation or documentary evidence resulting into incurring of the expenditure of the litigation and interest and the expenses of the arbitrator. Even when the arbitrator has rendered the finding against the procuring agency, the objections in a routine manner were filed without examining, that the scope of objection under Section 34 of the 1996 Act is very limited. The provisions of Section 34 of the Act has been pondered upon by the Hon'ble Supreme Court time and again and the recent judgments rendered in **National Highways Authority of India Vs. Cementation India Ltd. 2015(3) R. A. J. I** as well as **Navodya Mass Entertainment Ltd. Vs. JM Combines 2015(5) SCC 698**, it has been held that until and unless there is a patent illegality which has been brought within the ambit of public policy, the award cannot be set aside.

It has also been held that if the appellate Court or objecting

Court on re-examination of the evidence forms different opinion than the one arrived at by the arbitrator, is impermissible unless there is patent illegality. The litigation at the hands of the procuring agency is being dealt with very carelessly and irresponsibly. Tax payer money is being dealt with in a most contumacious manner. Before parting with the judgment, I intend to impose a cost of Rs.10,000/- to be recovered from the officer concerned, in accordance with law as the filing of the claim and objections was nothing but a complete irresponsible and casual approach.

Appeal is accordingly dismissed.

18.11.2016 **(AMIT RAWAL)**
rimpal/smriti **JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No