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

R-306

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OMP 100/2010

**RAJASTHAN STATE CO-OPERATIVE OILSEED
GROWERS FEDERATION LTD. (TILAM SANGH) Petitioner**
Through: Ms. Manju Bhagat with Mr. Vineet
Bhagat, Advocates.

Versus

**NATIONAL AGRICULTURAL CO-OPERATIVE MARKETING
FEDERATION OF INDIA LTD (NAFED) Respondent**
Through: Mr. G.B. Tulsiani, Advocate

CORAM: JUSTICE S. MURALIDHAR

ORDER

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18.01.2017

1. The challenge in this petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') is to an impugned Award dated 18th November, 2009 passed by the learned sole Arbitrator in the disputes between the Petitioner, Rajasthan State Cooperative Oilseed Growers Federation Limited which is also known as Tilam Sangh and the Respondent, National Agricultural Cooperative Marketing Federation of India Limited (NAFED) arising out of an agreement entered into between them for the procurement of mustard seed under Price Support Scheme ('PSS') for Rabi 2005 Season.

2. In the said Agreement, Tilam Sangh was described as the 'Supporter' and it was "required to purchase mustard seed in the various centres/mandis of

the State identified for the purpose from the farmers through the Oilseed Growers Cooperative Societies of the respective areas under the Price Support Scheme.” It was further stated that “the stocks to be purchased shall conform to the prescribed quality/grade specifications and packed in the gunnies supplied by NAFED.” Under Clause 4.1, the Supporter was to procure the commodity directly from the farmers and the mustard seed was fixed at Rs. 1700 per gunny for the NAFED mustard seeds. Under Clause 8, the Supporter was to pay service charge of 2% “to be shared with the marketing society on the value of naked sees on satisfactory performance of the work and after scrutiny of the bills.” Clause 16 stated that in the event of any dispute and differences whatsoever arising between them, the disputes would be referred to the Central Registrar for decision in terms of Section 74 of the Multi-State Cooperative Societies Act, 1984.

3. It is stated that during MSP-2005, there was a large scale arrival of mustard in the State of Rajasthan. This necessitated the State Administration to open extra purchase centres in order to ease out the extraordinary situation. It is further stated that “the Petitioner under the directions of the State Government, opened extra purchase centres and deployed its own staff and also hired contract staff to man these centres.” The Petitioner purchased 480000 MT mustard seed at Kota and Sriganganagar centres directly from the farmers. To justify opening of procurement centres at the above two places which, admittedly, did not have any primary cooperative society, the Petitioner wrote a letter dated 18th February, 2005 issued by the Government of Rajasthan recognizing the mandis at Kota and Sri Ganganagar for the purpose of procurement. The averment to this effect is made in para 12 of

the petition and a copy of the said letter is enclosed as Annexure P/2.

4. Annexure P/2 is a Hindi document and a translation thereof has been filed. The said letter states that a telephone conversation took place on 17th February, 2005 between the Senior Advisor of NAFED Sri Singhal and the Administrative Manager, Tilam Sangh. Accordingly, the procurement of mustard seed under the Price Support Operation for Rabi 2005 Season for approximately 70,000 MT of mustard seed was given to the Tilam Sangh along with the Raifed. The letter proceeds to state that Tilam Sangh would buy mustard seed under PSS through its own Oilseed Grover's Cooperative Societies. It is further indicated that as a result of the meeting held on 17th February, 2005 and 18th February, 2005 with the Senior Advisor, NAFED, certain purchase centres as indicated in the letter were decided and permitted, which included the Districts of Boondi, Jhalawar, Kota, Sriganganagar and Chittaurgarh.

5. Interestingly, not only does the Respondent in its reply to this petition not deny that such a letter was issued but in its para-wise reply to paras 12 and 13 of the petition it does not dispute that such permission to have procurement centres at Kota and Sriganganagar was in fact given by the said letter.

6. As it transpired, since the Petitioner had procured mustard seeds at mandis at Kota and Sriganganagar which did not have primary cooperative societies, NAFED, in terms of its policy paid the Petitioner 1% service charge and not 2% as stipulated under Clause 8. Further, it claimed only 1% service charge from the Government of India (GOI) and refunded to GOI the

balance 1%.

7. The same stand was taken before the learned Arbitrator by NAFED. Its explanation was that since the Petitioner had procured mustard seeds from the said two centres in violation of the clauses in the agreement, NAFED was under no obligation to pay 2% service charges. The learned Arbitrator appears to have accepted the above explanation and negated the claim of the Petitioner for balance 1%. The precise finding of the learned Arbitrator was that “the Claimant had full knowledge about the non-existence of primary cooperative societies in both the districts, still they did not raise this point with NAFED at any stage of procurement nor did they request for change of the centres.”

8. The other point raised by the Petitioner was that the representative of NAFED was present at the time of extra procurement centres at Kota to guide and monitor the procurement process. However, the learned Arbitrator concluded that the mere presence of the said representative did not mean that he had any legal authority to allow the procurement of mustard seeds through extra procurement centres set up by Tilam Sangh. The learned Arbitrator concluded that “the responsibility for informing NAFED about the mode of procurement with or without the primary cooperative societies “was clearly that of the supporters Tilam Sangh.”

9. Having heard learned counsel for the parties, the Court is of the view that the vital document, viz., the letter dated 18th February, 2005 from the State of Rajasthan to the Petitioner, as referred to above, has been overlooked by the learned Arbitrator. Although during the course of his submissions,

learned counsel for the Respondent sought to suggest that the said letter was not placed before the learned Arbitrator, no such plea appears to have been taken by the Respondent in its reply filed before this Court. More importantly, the Respondent does not dispute that the said letter does exist. In fact, it has annexed a copy of the same letter along with its reply filed before this Court. Learned counsel for the Respondent was also unable to dispute the contents of the said letter which states that permission was granted to the Petitioner to procure mustard seeds at the above two centres after consulting the Senior Advisor of NAFED. Copies of the said letter were marked to both the Senior Advisor, NAFED, New Delhi as well as the Branch Manager of NAFED at Jaipur. Therefore, it cannot be said that NAFED was not aware of the above permission having been granted to the Petitioner by the Government of Rajasthan in consultation with NAFED.

10. In light of the above letter, the main case of the Respondent procurement at the two centres made by the Petitioner was without prior permission of NAFED and contrary to the agreement entered into between them should fail. Consequently, this Court is satisfied that the impugned Award is contrary to the fundamental policy in India inasmuch as it overlooked the above vital piece of evidence that goes into the root of the matter. The Award negating the Petitioner's claim for the balance 1% service charge is hereby set aside.

11. As regards the other two claims i.e., transportation charges and the bardana transport, loading and unloading, the Court finds that the Arbitrator has returned in the Award pure finding of facts which do not brook

interference.

12. The petition is disposed of in the above terms.

S.MURALIDHAR, J

JANUARY 18, 2017

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