THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 17.03.2017

+ FAO(OS) 79/2017

NATIONAL AGRICULTURAL CO-OPERATIVE MARKETING FEDERATION OF INDIA LTD (NAFED)... Appellant

versus

RAJASTHAN STATE CO-OPERATIVE OILSEED GROWERS FEDERATION OF INDIA LTD **...** Respondent

Advocates who appeared in this case:-

For the Appellant : Mr Aaditya Vijay Kumar with Mr Ajay Arjun Sharma
For the Respondent : Ms Manju Bhagat with Mr Shreshth Nanda

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM 10526/2017

Allowed subject to all just exceptions.

FAO(OS) 79/2017 & CM 10525/2017(stay)

1. This appeal is directed against the judgment and/or order dated 18.01.2017 delivered by a learned Single Judge of this Court in OMP 100/2010, which was a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act').

2. The said petition impugned the Award dated 18.11.2009 passed by a sole Arbitrator. The Award was made in respect of disputes which had arisen between the appellant and the respondent. The appellant is the National Agricultural Cooperative Marketing Federation of India Limited (NAFED) and the respondent is the Rajasthan State Cooperative Oilseed Growers Federation of India Limited which is also known as 'Tilam Sangh'.

3. The dispute pertained to the procurement of mustard seeds under the Price Support Scheme (PSS) for the *Rabi* 2005 season. The procurement of mustard seeds was to be made under an agreement entered into between NAFED and Tilam Sangh. The said agreement stipulated two-tier system of procurement, whereby Tilam Sangh (as also other State Cooperative Federations) would procure mustard seeds as agents of NAFED from the farmers, but through Primary Marketing Cooperative Societies. In other words, there was a two-tier system contemplated for procurement of mustard seeds. The first tier was the Primary Marketing Cooperative Society and the second tier was the State Cooperative Federations which were to function as agents of NAFED. Of course, the agreement made it

clear that the dealings between the State Cooperative Federations and the Primary Marketing Cooperative Societies would be on principal to principal basis without any involvement of NAFED.

4. For the services rendered by the State Cooperative Federations, they were to be paid service charge of 2% which was to be shared with the marketing societies on the value of naked seeds on satisfactory performance of the work and after scrutiny of the bills.

5. The dispute here relates to this service charge of 2%. It so happened that for the districts of Kota and Sri Ganganagar, the concerned State Cooperative Federation (i.e. Tilam Sangh) set up its own centres for procurement and, therefore, procured the mustard seeds without the intervening marketing society.

6. According to NAFED, this was a violation of the agreement between them as also the policy of procurement through a two-tier system under the Price Support Scheme. On the other hand, Tilam Sangh contended that there was no violation of the agreement inasmuch as the same had been permitted and it was within the knowledge of NAFED that under exceptional circumstances, which prevailed in Rajasthan and in particular

in Kota and Sri Ganganagar, Tilam Sangh was permitted to make procurement not through the Primary Cooperative Marketing Societies but directly, which it did.

7. The sole arbitrator, however, held in favour of NAFED by observing as under:-

> "11. On the perusal of available documents and material on record, it has been observed that the claimant had made its claim on the basis of actual procurement of mustard seed at Kota and Sri Ganganagar centres set up by them in order to achieve the procurement target as per the agreement. This act of the claimant was not in line with paragraph 1 of the Agreement which clearly stipulated that the supporters shall be required to purchase mustard seed in various centres / mandis of the state identified for the purpose, from the farmers, through the oil seeds growers co-operative societies of the respective areas under PSS. Such procurement by the claimant was in contravention to the principles of cooperatives as well as the PSS which promotes the Two Tier System in the rural areas. The act of the Claimant was more in the nature of commercial business solely undertaken with the motive Of profit earning, In the instant case, NAFED made payment to Tilam Sangh as compensation being equivalent to 1% commission for direct procurement and supervision together done by them, Thus, the claim, for additional 1% commission for supervision and administration did not appear to be acceptable."

8. The learned Single Judge, however, set aside this finding of the learned Arbitrator on the ground that the letter dated 18.02.2005, which had been issued by the Government of Rajasthan to the Administrative Officer/

Manager, NAFED, clearly indicated that the procurement was permitted through the centres set up by Tilam Sangh at, *inter alia*, district Kota and district Sri Ganganagar. According to the learned Single Judge, the learned Arbitrator had overlooked the letter dated 18.02.2005 from the State of Rajasthan to the NAFED which was before the learned Arbitrator. It is in this backdrop that the learned Single Judge concluded as under:-

> "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 negativing the Petitioner's claim for the balance 1% service charge is hereby set aside."

9. It is evident that the learned Single Judge has set aside this part of the Award, while upholding the findings on the other aspects only on the ground that a vital piece of evidence, which went to the root of the matter, had been ignored/not taken into consideration by the learned Arbitrator. This is certainly one of the grounds on which an Award or part of an Award can be set aside. Consequently, we do not find any reason to interfere with the decision of the learned Single Judge because it is absolutely clear that the learned Arbitrator had not taken into account this vital piece of

evidence, namely, the letter dated 18.02.2005 referred to above. The said letter clearly indicated that permission had been granted to Tilam Sangh to make the procurement through its own centres. The letter was addressed to NAFED and there is no denial of receipt of this letter. Therefore, clearly the permission was granted with the knowledge of NAFED.

10. Consequently, the appeal is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

ASHUTOSH KUMAR, J

MARCH 17, 2017
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