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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 13th September, 2018
+ **O.M.P. 117/2013**

FCI, LUDHIANA

..... Petitioner

Through: Mr. Mohan Lal Sharma, Advocate.

versus

M/S GUPTA RICE & GENERAL MILLS, LUDHIANA
& ANR

..... Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The Food Corporation of India (*hereinafter* 'FCI') has filed the present petition challenging the award dated 25th October, 2012 whereby all the claims of FCI had been rejected.
2. The chronology of facts and events are that an agreement was entered into on 13th October, 1994 between FCI and M/s. Gupta Rice and General Mills, Ludhiana – Respondent (*hereinafter*, 'Respondent'). As per the said agreement, the Respondent was to store paddy in its mill, and mill the same. After undertaking the process of milling, the resultant rice was to be supplied to FCI. The terms and conditions as contained in the contract are as under: -

**"AGREEMENT FOR STORAGE-CUM-MILLING
OF FCI PADDY STORED IN MILLERS PREMISES
INTO CONVENTIONAL RATE/PERIODICAL
RICE."**

- "1. *The miller shall be supplied paddy available at Jagraon as per the arrangements agreed upon by the miller and accepted by the Corporation.*
2. *The miller may associate himself at the time of*

paddy purchases in the mandis and weigh bridges to cross check its quality and quantity respectively. Paddy shall be moved from mandis to mill premises to be stored in joint custody of FCI and the miller and the transportation and stacking operations in mills premises shall be arranged and cost against these operations shall be borne by the Food Corporation of India.

The miller shall undertake storage of paddy in his premises without claiming any storage and preservation charges.

3. *The Miller shall undertake shelling of paddy at FCI applicable custom milling rate which will include all services as per details given below:-*

SERVICES :

- a) Lifting paddy from storage points in the mills, loading into trucks and carriage to the mills.*
- b) Drying of paddy;*
- c) Katal of paddy bags before dehusking;*
- d) Dehusking of paddy;*
- e) Filling of bags of rice prior to dara-making;*
- f) Dara making of rice bags and filling / sewing of bags;*
- g) Transportation of milled rice to railway stationed loading into wagons, inspection, weighment and sampling as per directions of the Corporation; or transportation of milled rice to the storage points to the Corporation including those of CWC/SWC hired godowns as per directions of the Corporation, unloading of trucks and delivery after inspection, weighment, sampling at scale point at the cost of miller.*

<i>Name of District</i>	<i>Name of the storage</i>	<i>Variety of paddy</i>	<i>Weight of the paddy in qtls. For which contract is</i>
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	<i>centre</i>		<i>to make for storage and milling.</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
<i>Ludhiana</i>	<i>Jagrao</i>	<i>Fine</i>	<i>40000 b/s=26000 qtls</i>
<i>Out-turn ratio for conservation of paddy into rice</i>	<i>Milling Rate</i>	<i>Qty. of paddy out of which (col.4) rice will be manufactured</i>	
<i>5</i>	<i>6</i>	<i>7</i>	
<i>P 67%</i>	<i>9 Rs.</i>	<i>25480 qtls 19071.60 rice</i>	

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7. *The miller shall be responsible for the safe custody miling of paddy issued to him for/delivery of rice, as per agreed and recovery of out-turn ratio. Miller shall also take good and losses that may be incurred in paddy/rice during transit/storage at 1.5 times the economic cost of the variety of paddy/rice towards the shortfall.*
- 8(iii) *In case there is shortfall in the recovery of rice the miller shall pay to the Corporation the cost of paddy equivalent to the shortfall at the rate of 1 & half times the economic cost of paddy.*
- 9(iii) *The miller shall complete delivery of rice within 10 days of issuance of paddy to him and rice due to the Corporation on the total quantity of paddy issued to him or in joint custody released at regular interval shall be delivered not later than the 28th February, 1995. The miller shall further ensure milling of paddy and delivery of rice in the following manner : -*

<i>October / November</i>	<i>20%</i>
<i>December</i>	<i>26%</i>
<i>January</i>	<i>26%</i>

February

26%

However, in case of process of milling is slowed down due to operational exigencies beyond the control of Miller/SRM may consider and extend the above mentioned milling schedule.

16(c) The miller shall be responsible to make good all shortages in paddy, rice and gunny bags that might occur while in his custody till the entire stocks are returned. These shortages can with the consent of the corporation be made good in kind according to the specification and variety of paddy, rice and gunny bags involved. In case the miller fails to do so, recovery would be made from him for shortages of paddy and rice at 1 & half times the economic cost of equivalent paddy/rice according to the variety involved."

3. A total 22611.55 quintals in 34787 bags of fine variety and 806.65 qtls in 1241 bags of common variety was stored in the Respondent's mill for the purposes of milling. Out of the fine variety of paddy stored, the Respondent milled only 6714.104 qtls of paddy in 10540 bags. Out of this, the Respondent could only supply 4498.45 qtls of rice in 4750 bags. Nothing was milled qua the common variety of paddy. The remaining paddy continued to be stored in the Respondent's premises. It was neither milled nor returned to FCI. The contract was for a period of around 4 months i.e., from 13th October, 1994 to 28th February, 1995. The contract was to be completed by 28th February, 1995 which was extended till 31st May, 1995. However, since the Respondent did not complete the milling, the left over paddy was considered to be sold and a sum of Rs.58,88,140/- was adjusted from the said sale. A huge loss was caused to the FCI because of which FCI invoked the arbitration clause in the agreement which is as under:

“21. ARBITRATION:-

All the disputes or differences but ever arising between the parties out of or relating to the agreement meaning and operation or effect of this agreement or the breach thereof shall be settled by the arbitration in accordance with the rules of arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding of the parties the Senior Regional Manager/ Zonal Manager of the corporation shall appoint/ nominate arbitrator out of person in the penal of the arbitrators maintained by ICA. It is the terms of this contract that in the event of arbitrator being transferred, vacation of office, death or in ability shall appoint another person out penal maintained by ICA to act as arbitrators. Such a person shall be entitled to proceed with reference from the stage where is left by his predecessor.

Provided further that any demand for arbitration in respect of any claim(s) of the miller, under the contract shall be in writing and mad within one year of the date of completion of expiry of the period of contract if the demand is not made within the period, claim(s) of the miller shall be deemed to have been waived off and absolutely barred and the corporation shall be discharged and released of all liabilities under the contract in respect of these claims.

The cost of proceeding in connection arbitration shall be the discretion of the arbitrator who may make suitable provision for the same in his award....”

4. Thereafter, FCI issued notice dated 5th November, 1997 to the Respondent and sought payment of a sum or Rs.76,35,557.07/-. Vide the said notice, the claims raised by FCI are as under: -

S. No.	DETAILS	FINE QUALITY	
		BAGS	QTY.
1.	Paddy stored in Mill 34787 premises of the respondent as per the Agreement	22611	22611-55

2.	<i>Paddy Milled upto 31.05.95 (Raw & Par boiled)</i>	10540	6714-10-400
3.	<i>Rice received upto 31.05.95 (Raw & Par boiled)</i>	4750	4498-45-000
4.	<i>Storage loss at the rate of 2% on paddy milled</i>		137-02-000
5.	<i>Balance paddy as on 01.06.95</i>	24247, fine 1241 common	115760-42-600 Fine 806-65-000 common
6.	<i>Cost of balance paddy @ Rs.837.17 of fine quality</i>		Rs.1,31,94,155 83 fine Rs.6,43,803-50 Common
7.	<i>Sale of paddy after 01.06.95 and amount realized.</i>		6000 qtl. Rs.58,88,140-66
8.	<i>Amount recoverable from the respondents</i>		Rs.79,49,818-67
9.	<i>Rice received after 31.05.95 in terms of paddy</i>		
10.	<i>Value of paddy</i>		Rs.2,68,775-78
11.	<i>Amount recoverable on account of quality cut/ - grunny bags retained sales tax/ income tax etc.</i>		Rs.1,11,012.28 Fine Rs.12,699-74 Common
12.	<i>Total amount recoverable</i>		Rs.80,73,530-72
13.	<i>Amount payable to the miller towards milling charges, Stitching charges</i>		Rs.67,541-59 Rs.6,656-25
14.	<i>Cost of gunnies</i>		Rs.65,000-00

15.	Security Amount		Rs.30,000-0
16.	Net recoverable as on 01.06.1995		Rs.76,35,557-07

5. Claim statement was filed by FCI before the Indian Council of Arbitration as per which it was acknowledged by FCI that the total sum recoverable from the miller for the unprocessed un-milled paddy was Rs.79,49,818.67/- from which the expenses payable to the Respondent were Rs.74,197.84/-. Accordingly, Rs.76,35,557.07/- was recoverable from the Respondent. Before the Arbitrator, it was the plea of FCI that the entire sum is payable by the Respondent.

6. In the award dated 25th October, 2012, the arbitrator has simply held that the Respondent did not appear despite repeated notices and hence nothing remains to be adjudicated. The reasoning given by the arbitrator is quite cryptic inasmuch as the Food Corporation of India had filed a detailed claim petition before the Indian Council of Arbitration along with the evidence by way of affidavit given all the details as to the paddy that was supplied. In the evidence by way of affidavit, the affidavit also deals with that there was no out of court settlement in the matter. However, none of these facts and documents have been considered by the arbitrator. The arbitrator has simply considered that despite publication notices, none appeared for the Respondent and there were more than 30 hearings, where the Respondent was unrepresented. In view thereof, he terminated the proceedings. There is no finding given on the merits of the dispute. Relevant paragraph of the award is set out herein below: -

“Claimant has argued the matter at length and have also filed written submission. An arbitrator need not to go

into the merits of the matter or the question as to whether the Arbitral Tribunal has been validly constituted, as in my opinion the matter can be decided on the basis of the merit. The respondent did not attend the first hearing before the arbitration tribunal dated 21/1/2011. The arbitrator directed the ICA to issue fresh notice to respondent to present with reply to the statement of claim filed by the claimant, thereafter ICA issued notice to the respondent at fresh address or authorized representatives to attend the hearing before the arbitrator tribunal. Second hearing was fixed on 22/7/2011..... the respondent by way of DASTI, but not filed after several hearings respondent did not appear and therefore proceeded ex-parte and thereafter notice was published in two local daily newspapers. The publication was sent by registered post to the respondent also there were approximately more than thirty hearings and none of the hearing was appeared by the respondent, the last hearing was fixed 17/8/2012. The award was reserved on 17/8/2012 and pronounced on 25/10/2012. In my opinion nothing more remains to be adjudicated in the present proceeding and the proceeding stands to be terminated.”

7. Without giving any findings on the claim of the Food Corporation of India, the arbitration could not have been terminated in this manner. The non-appearance of a party-respondent cannot result in dismissal of the claims. Such a course of action defies basic logic. The Claimant cannot be punished for the non-appearance of the Respondent. The Arbitrator has a duty to decide the claims in accordance with law. The Award is, therefore, not sustainable and, therefore, set aside.

8. OMP is allowed in the above terms.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 13, 2018

Rekha