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

Date of decision: 14th November, 2018

+ **O.M.P. 441/2011, I.As. 64/2017 & 65/2017**

UNION OF INDIA

..... Petitioner

Through: Ms. Saroj Bidawat, Advocate.
(M:9810340866)

versus

M/S PANIPAT FOODS LTD

..... Respondent

Through: Mr. B.S. Maan and Mr. Rohan
Nandal, Advocates. (M:9991999221)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The petition has been filed challenging the award dated 12th October, 2010 by which the claims of the Union of India were rejected by the learned Arbitrator.
2. The present petition has a chequered history. This is the second round of litigation between the parties. The Union of India had placed a contract for supply of peas on the Respondent contractor-M/s. Panipat Foods Ltd in 1978. According to the Union of India, the entire contracted quantity of peas which were supplied went bad during the warranty period of one year. The Petitioner had to lift back the quantity from its various depots across the country and finally had to bury the peas. Since the contractor failed to replace the peas and had received the full payment for the supplies made, the Union of India invoked arbitration. On the first occasion, award dated 28th

June, 1999 was passed by which the claims of Union of India were accepted. The said award was then filed before this Court for being made rule of Court, however objections were filed by the contractor. This Court on 5th July, 2006, while accepting that the warranty clause applies to this supply, however, set aside the award on the ground that the test reports were not given to the contractor. The matter was then remanded vide order dated 5th July, 2006.

3. Subsequent to the remand, the matter was referred to a new Arbitrator. Paragraph 6 of the impugned award dated 12th October, 2010 records as under: -

“6. As per directions given by Hon’ble High Court in their Order dated 5th July, 2006, the proper opportunity was given the Respondent’s Firm to see the ‘Test Report’ of the Claimant (Petitioner of before Hon’ble High Court) and the matter was decided/determined keeping in view of all directions, given by the Hon’ble High Court, in their above noted Order.”

4. In the second round, the test reports were duly supplied to the contractor. The original APO files i.e. the files of the Army Purchase Organization were produced before the learned Arbitrator.

5. However, the learned Arbitrator by the impugned award rejected the claims of the Union of India with the following findings in paragraph 10.6: -

“10.6 In view of the position discussed in foregoing para(s), it is observed that the action of Claimant/UOI, in ‘rejecting’, the material, supplied by the Respondent’s Firm was not in strict compliance of Standard Warranty Clause, applicable to this Contract, thus not legally sustainable in Law. Therefore, the claim of Claimant/UOI, ‘deserved’, to

be 'rejected'.”

6. A perusal of the above note shows that the award lacks any reasoning whatsoever because in the previous paragraphs i.e. 10.1 to 10.4, learned Arbitrator merely records the stand of the Union of India and in paragraph 10.5, the stand of the Respondent. The entire findings of the Arbitrator are contained in paragraph 10.6, which is totally unreasoned. There is no basis for holding that the rejection by the Union of India was not in compliance with the warranty clause.

7. The original files of the APO have also produced before the court today. A perusal of the records produced by learned counsel shows that the contractor himself had given letter dated 1st November, 1979 which reads as under: -

“our ref.PFL/DHI/79-80/949 November 1, 1979

*The Chief Director of Purchase,
Ministry of Agriculture & Irrigation,
Department of Food,
A.P.O.
Krishi Bhawan,
New Delhi*

Dear Sir,

*Sub: Supply of tinned food stuffs against
A/T/No.J/13068/4/283/78- Pur.V. dt.
10.11.78.*

*We thankfully acknowledge receipt of your letter of
even no. dt.26.10.79.*

*We shall be grateful, if, you could kindly allow us
to replace the stocks of dehydrated peas 1,190.000
Tonnes, which has declared 'gone bad with-in the
warranty period' at 342 coy ASC, Supply Depot*

Chandigarh.

We shall supply the goods at your Chandigarh Depot at our own cost after obtaining acceptance from CFL, Delhi. Your kind and sympathetic consideration in this connection is highly appreciated.

Thanking you,

*Yours sincerely,
For PANIPAT FOODS LTD.,*

*(V. MUKUNDAN)
SALES MANAGER”*

8. As per the above letter, it is clear that the contractor, who was well aware of the fact that the stock had gone bad within the warranty period, had in fact agreed to replace the stocks. A similar letter dated 23rd November, 1979 was also written by the contractor to the Government. These records have been completely ignored by the Arbitrator. In the first round also, the Arbitrator had perused all the APO files and come to the conclusion that the test reports of the Composite Food Laboratory had shown that the peas supplied were not worthy for human consumption. The present award being wholly unreasoned and lacking any legal or factual basis does not deserve to be sustained. In fact, the records of the APO ought to have been considered by the learned Arbitrator. The same not having been done, and the award being unreasoned, as per the settled law, the award deserves to be set aside.

9. In view of the fact that this is a very old dispute, the entire records of the APO which have been placed today before the Court shall be photocopied and filed before the Arbitrator. Copies of the same be supplied

to the Respondent. The arbitral record shall be transmitted to a newly appointed Arbitrator. Both parties agreed that an independent Arbitrator can be appointed.

10. Accordingly, **Mr. S.K. Tandon (Retd. ADJ-9811719888)** is appointed as Arbitrator to decide the matter on the basis of the existing record along with the APO records, copies of which would be supplied to the contractor. Pleadings were already completed in the arbitration proceedings. If the original arbitral record is not available, the UOI may reconstruct the record and file the same before the Ld. Arbitrator. The fee of the Arbitrator is fixed at Rs.1.5 lakhs which shall be shared by the parties. The arbitral proceedings shall be concluded and award shall be pronounced within a period of three months from today.

11. The O.M.P. is allowed in the above terms.

NOVEMBER 14, 2018

Rekha

**PRATHIBA M. SINGH
JUDGE**