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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 23rd October, 2018

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O.M.P. 347/2012

FOOD CORPORATION OF INDIA, FEROZEPUR Petitioner

Through: Mr. Mohan Lal Sharma, Advocate
(M-9811537909).

versus

M/S JAI AMBE RICE MILLS & ITS PARTNER,
FEROZEPUR

..... Respondent

Through: Mr. Rajesh Chhetri, Mr. Rajeev
Chhetri, Mr. Pawan Upadhyay,
Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition has been filed challenging the award dated 19th December, 2011 by which the learned Sole Arbitrator has rejected various claims of the Food Corporation of India (*hereinafter*, 'FCI') and directed the Respondent/miller (*hereinafter*, 'miller') to pay to FCI a sum of Rs.70,462.20/-.

2. FCI i.e., the claimant before the learned Arbitrator had entered into an agreement dated 20th February, 1995 for storage cum milling of paddy. The total quantity of paddy stored in the miller's premises was 37920 bags (24648-00-000 quintals) of superfine paddy and 160 bags (104-00 quintals) of common variety paddy. The Miller was to mill the paddy and return the same to FCI at the agreed price. The milling was to be completed by 28th February, 1995, however, extendable till 31st May, 1995 and thereafter to

31st August 1995, at the option of the miller. One of the clauses of the contract required the miller to pay the economic cost i.e., 1 ½ times the rate of the paddy in the relevant season.

3. As against the paddy stored in the miller's premises, the miller supplied a total of 3750 bags (3548-00-000 quintals) of superfine rice. The balance paddy in the miller's premises was 29729 bags (19323-87-000 quintals) of superfine paddy and 160 bags (104-00 quintals) of common variety paddy. Due to various policy decisions taken by the Government/FCI, an announcement was made for sale of unmilled paddy in the open market, initially in March 1995 and again in August 1995. The unmilled paddy in the Miller's premises, was sold in the open market and a total sum of Rs.69,84,699/- was recovered. FCI calculated the cost of the balance paddy @ 1½ times of the economic cost, which worked out to Rs.1,70,14,772/-. After deducting the value recovered from the unmilled paddy, FCI made a claim against the miller.

4. According to FCI, It was the case of FCI that the miller failed to comply with the terms and conditions of the milling contract, and was liable to pay damages.

5. The miller moved an application under Section 16 of the Arbitration and Conciliation Act, 1996 and the case of the miller was that the appointment of Arbitrator was not in accordance with the provisions of the agreement. It was further submitted that the proceedings were initiated beyond the period of limitation. Vide order dated 16th May, 2011, the learned Arbitrator decided the objection as to maintainability and rejected the same.

6. On merits, it was the case of the miller that there were no dues that

were to be paid to FCI. It was further submitted that the concerned office of FCI had issued a no dues certificate and had entered into a settlement. Thus, the miller argued that there are no live claims for adjudication.

7. It was further submitted by the miller that since the entire unmilled paddy was sold in the open market, the penalty clause was not applicable, as FCI had made huge profits by fixing the rate for open sale. FCI had taken into consideration the various factors before fixing the rate. The miller also argued that FCI was guilty of concealment of material facts before the learned Arbitrator.

8. FCI adduced evidence of its area manager and Shri Surinder Kumar Narun deposed on behalf of the miller. The witness on behalf of miller, who was one of the partners, relied upon the notice for open sale issued by the FCI dated 14th March, 1995.

9. The findings of the Arbitrator are as under:-

- a. That there exists a valid and binding agreement between the parties.
- b. That time for milling was not the essence of the contract, as the time was repeatedly being extended till 31st May, 1995 and then 30th June, 1995, and thereafter till 31st August, 1995.
- c. That the agreement dated 20th February, 1995 was converted into an agreement for sale and purchase of balance paddy and hence, there was novation of the contract. Thus, breach could not be attributed against the miller, in view of Section 62 of the Indian Contract Act, 1872.
- d. Pursuant to the open sale notices, the millers had themselves purchased the paddy. Thus, there was no liability to pay damages, as

at the time when the purchase was made by the miller, the FCI accepted the purchase price, without claiming any damages.

- e. FCI was to be paid the cost of gunnies, including the sales tax, of Rs.70,462 and the millers were entitled to sum of Rs.97,648/- which included milling charges, stitching charges, transportation charges and refund of security deposit. Thus, FCI had to pay to the miller a sum of Rs.27,186/-. No interest was awarded by the learned Arbitrator.

10. The main objection of FCI is that the paddy having not been milled, there is a clear breach of contract. On the other hand, on behalf of the miller it is submitted that a no dues certificate was issued and the disputes were settled with FCI, so economic cost is not liable to be paid.

11. This Court has had the occasion to deal with a similar matter of the same season 1994-95, in *FCI v. S. K. International [OMP 487/2011 decision dated 23rd October, 2018]* (hereinafter, '*FCI v. S.K. International*'). The facts, in the present case, are similar to the said case. After a perusal of the various policy decisions of the government, the various circulars issued, etc., this Court has arrived at the following conclusions/findings:

- a. That during the season of 1994-95 a large number of contracts of similar nature were entered into;
- b. Though the paddy was stored in the miller's premises, but it was in joint custody of the miller and FCI;
- c. That several millers had milled the paddy but FCI could not accept the supplies of the rice for various reasons.

- d. Various policy decisions were taken, pursuant to which the government decided to issue notices for open sale of unmilled paddy. The said open sale notices were issued in March, 1995 and August, 1995.
 - e. Pursuant to the said open sale notices, several millers purchased the unmilled paddy or the same was sold in the open market.
 - f. Question of award of damages would have arisen if there was a breach of contract, whereas there was a supervening circumstance before the completion of the contract period i.e. the purchase under the open sale notices.
 - g. The Government also took policy decisions to enter into settlements with the millers.
 - h. Insofar as the millers, who had purchased the paddy was concerned, no legal claims were to be pursued against them.
 - i. Primarily legal claims were to be pursued against the millers who had pilfered or siphoned off unmilled paddy.
 - j. In several cases, no dues certificate and settlements were entered into.
12. Under these circumstances, in ***FCI v. S. K. International (supra)***, this Court has held as under:

“38. The intervening circumstances of notices for open sale during the currency of the contract go to the root of the matter insofar as it relates to implementation of the contract by the millers. The documents on record do demonstrate that a policy decision was taken not to create distress for the millers due to various reasons, not attributable to the millers and in view of the same the decision for open sale with

the preferential right to the millers to buy was taken. The FCI cannot be seen to argue that it is entitled to the price of the unmilled paddy at the rates fixed by it and in addition it is entitled to 1 ½ times the rate of the paddy in the form of the economic cost. Such a double benefit cannot be granted, especially in cases where the millers have acted in a bonafide manner.

39. *The court cannot lose sight of the fact that awards have to be passed in consonance with public policy. The documents on record show that there were various levels of consultation which went into the decision to sell the paddy by means of open sale. This shows that the Government had reconciled to the fact that the best step to take was to sell in the market and recover the cost of the paddy. Further the FCI was also given a benefit of Rs. 120 crores by the Central Government to compensate for the losses suffered by it. This is evident from letter dated 29th March, 2000.*

40. *The initiation of arbitration claim against the millers in the light of open sale notices and the correspondence, which is set out in the present case, clearly seems to be an erroneous step by the FCI against the miller and the documents on record shows clearly that even in the settlements entered into by FCI, it did not insist on the 1½ times of the economic cost of paddy. FCI is clearly being selective in the manner in which the arbitration cases are being pursued for more than two decades now. The FCI itself having taken a decision and given the option to the miller to purchase the paddy or having recovered the cost of the paddy by selling in the open market, was clearly in the knowledge of the fact that it had taken a policy decision consciously not to press the claim of economic cost. Despite this, in the arbitration proceedings it raised claims for the same which are totally untenable - except in the case where the millers had indulged in pilferage and siphoning off of paddy. Thus, the claim of 1½ times of the economic cost is not liable to be*

granted in favour of the FCI, in the facts of the present case.”

13. In the present case also the miller purchased the entire stock of unmilled paddy and paid the cost of the unmilled paddy. There was a clear understanding that pursuant to the open sale notices, once the miller purchases the paddy, no legal claims would survive against. Despite this being the position, in the present case, criminal proceedings were also initiated against the miller.

14. A perusal of the documents on record shows that in fact, in the open sale, preference was being given to the millers to purchase the stock. Open sale notices were issued during the currency of the agreement. The circulars issued by the Government, taking the decision for open sale of the paddy, also show that the reasons for the said notices were multifarious.

15. In the present case, the partners of the miller were, in fact, forced to file for anticipatory bail before the High Court. The records clearly point to the fact that FCI, in fact, had settled the matter but pursued arbitration for various reasons, which are not decipherable. The understanding as per the letter dated 8th November 2005 referred to in *FCI v. S.K. International (supra)* was that in cases where disputes were settled, no arbitrations were to be initiated. The said settlements were to be out of court/Arbitration. The said letter reads as under:

**“FOOD CORPORATION OF INDIA
REGIONAL OFFICE: PUNJAB
BAY NO.34-38, SECTOR 31-A
CHANDIGARH**

**No.D/22(4)/Paddy-sh-cum-stg./ICA-corres/
94-95/Vol.III/**

Dated :- 08-11-2005

*The District Manager,
Food Corporation of India,
Distt. Office,
Amritsar/Bhatinda/Chandigarh/Faridkot/
Ferozepur/Gurdaspur/Jalandhar/
Ludhiana/Patiala & Sangrur.*

*Sub:- 374 Paddy shelling cases pending
with ICA New Delhi relating to
Paddy shelling contract 1994-95
...regarding.*

Sir,

*Kindly refer to the communication on the
subject cited above.*

*In this context, it is informed that the above
matter has been examined in this office in
consultation with AGM(Legal) and Finance(local).
The photo copy of relevant noting sheet. Report of
Zonal Office Committee dated 24.8.04 & letter of
Zonal office No.Proc.30(64)Rice Millers of Ph/94-
95/05/NZ/Vol.XII dated 14.10.05 are enclosed
herewith.*

*The detailed list of Arbitration cases as
mentioned in Zonal Office Committee report is
given under:*

- (a) No. of cases where NDCs have been already
issued – 73 cases*
- (b) No. of cases where FCI has been able to
recover the required percentage of rice or
also cash in lieu of rice for the rest of the
paddy stocks resulting therein that FCI does
not have any claim/demand from the party =
261 cases*
- (c) No. of cases consequent upon
pilferage/dispersal of stocks by the parties at
their own without knowledge of FCI. FIRs*

were filled followed by court cases both criminal cases/ recovery suits – 40 cases.”

Negotiations may be held with these 40 millers who wish to deposit FCI claim for settling the long pending dispute out of court/Arbitration.

You are therefore, requested to examine each and every case in the light of direction imparted by the Committee report of Zonal office and further requested to get compromise petition from such rice millers in consultation with FCI empanelled Advocate to be submitted to ICA indicating security deposits. After that take up the matter with ICA for refund of tentative amount deposited with ICA in each case for FCI share. The above said process be completed within fortnight positively. Further requested to furnish party-wise(details as listed) under Col.A.B & C details of cases to this office immediately.

*Encls:- Photo copy of Zonal office
Committee report.*

*2. Photocopy of letter no. Proc.
30(64)Rice Millers of
Ph/94-95/05/NZ/
Vol.XII dt 14.10.2005*

Yours faithfully,

Sd/-

*Assistant General Manager (Comml.)
for Regional Manager”*

However, despite the same, arbitrations were initiated and claims were pursued.

16. The fact that FCI settled with a large number of millers is not in dispute. In some cases, the settlement amounts have been less than 10% of the claimed amount due. Since the entire unmilled paddy has been sold pursuant to the open sale notices and there is a clear statement

acknowledging that there are no dues from this miller, the award is not liable to be set aside.

17. The award records that the matter was settled. The learned Arbitrator's view that the matter stood settled, once the miller purchased the unmilled paddy, cannot be faulted with and is, in fact, the correct view. No interference is called for. The OMP is, accordingly, dismissed.

PRATHIBA M. SINGH
JUDGE

OCTOBER 23, 2018/dk

