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

Date of decision: 17th November, 2018

+ **O.M.P. 395/2012 & I.A. 7850/2012**

FCI, BHATINDA

..... Petitioner

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

versus

M/S HEMKUNT RICE MILLS & ITS PARTNER,
BHATINDA

..... Respondent

Through: Mr. Rajesh Chhetri, Mr. Pawan
Upadhyay, Mr. Rajeev Chhetri & Ms.
Meenakshi Rawat, Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 challenges the award dated 19th December, 2011 passed by the Learned Sole Arbitrator.
2. The Petitioner – Food Corporation of India (*hereinafter*, 'FCI') and M/s Hemkunt Rice Mills (*hereinafter* 'miller') had entered into a milling agreement dated 25th October, 1994. Under the said contract, the miller was to mill the paddy and supply rice to FCI. As per the contract, FCI had supplied 58610 bags (38096-50-000 quintals) of fine variety paddy to the miller for milling and to be delivered to FCI by 28th February, 1995. It is claimed by FCI that the miller had milled only 8307 bags (5291-56-000 quintals) of paddy by 25th March, 1995. The balance paddy in 50303 bags (32696-94-000 quintals) was not milled and had to be sold by FCI at a lower

price.

3. The FCI, alleged breach of contract by the miller and invoked arbitration for failure to mill the paddy on or before 28th February, 2018, claiming 1^{1/2} times rate of the unmilled paddy as the economic cost. The miller on the other hand claims that it had performed its part of the contract satisfactorily as it had milled 3796 bags of paddy and supplied it to FCI by 31st May, 1995. It had also purchased the unmilled paddy contained in 50303 bags after 1st June, 1995, and in any case before the extended period of 31st August, 1995. Thus, according to the miller, there was nothing outstanding left to be performed, and thus, FCI's claims against it are completely baseless.

4. 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.
5. 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."*

6. Here, the miller had purchased the entire balance quantity of unmilled paddy. The money in respect thereof had also been paid to the FCI. The Ld. Arbitrator has considered the various documents on record including a Zonal Committee report dated 24th August, 2004 for closure of all 374 arbitration/Court cases. In the said report, the following three categories of cases were considered as under:

“a) No. of cases where NDCs have already been issued 73 cases

b) No. of cases where F.C.I. has been able to received the required percentage of rice and/or also cash in lieu of rice for the rest of the paddy stocks resulting therein that F.C.I. 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 F.C.I. 40 cases
FIRs were filed followed by court cases both criminal cases/recovery suits.

Total 374 cases”

7. In the present case, the miller falls in category (b) above. As per the Ld. Arbitrator, the Zonal Committee report dated 24th August, 2004 was based on three principal documents. Relevant part of the Award discussing the said Report is extracted below:

“1.13 This committee report is based on the three principal documents as document no. 1 , 2 with its annexure I to XII and the document No.3 which contain the authority and final conclusion of the Zonal Committee described below:

• Document No.1 which is dated 15.09.2006 is the letter of the F.C.I., Headquarter, New Delhi, addressed to the General Manager (Region), F.C.I., Regional Office, Chandigarh (Punjab).

• Document No.2 Is the F.C.I., Zonal Office Committee report dated 24.08.2004 on settling 374, Arbitration/Court cases arising out of paddy shelling in Punjab Region during 1994-95 crop year.

The report is based on the documents as Annexures namely:

1. Annexure-I is the Zonal Manager office order No.Proc.30(64)/Rice Millers of Pb:/94-95/Vol.IX dated 16/19.01.2004 for constituting a committee of the following office of Zonal Office for studying the issue of cropping up of 374 arbitration cases arising out of paddy shelling during the crop year 1994-95 and suggest remedial action towards amicable settlement of the case.

1. Manager (Opn.)

2. Dy. Zonal Manager (N).II

3. Manager (Fin.)

4. Manager (Legal)

2. Annexure-II to VII are the dates of detailed discussions on 12.03.2004, 22.03.2004, 02.04.2004, 16.04.2004, 23.04.2004, 17.05.2004 and 02.07.2004 along with representatives of the various F.C.I. districts in Punjab Region and also with the representatives of Regional Office, Punjab on the subject.

3. Annexure-VIII to X pertaining to the economic cost prevailing at- the—time relevant time, paddy price fixed by the Govt. of India and the instructions of Govt. of India addressed to F.C.I, Headquarter, New Delhi extending the time of acceptance of rice till 31.08.1995 from 31.05.1995.

4. Annexure-XI is the statement of entire paddy sold out by F.C.I. to the parties/ millers who had purchased this paddy at the rate fixed by the Govt. of India and

had deposited the cost of paddy of F.C.I. Such amounts are also lying with F.C.I. as may be seen from these documents from the mill wise statement given by the concerned officers of various F.C.I. districts.

5. Annexure-XIX is the statement indicating therein individual mill wise paddy receipt and delivery of resultant rice, amount outstanding and details of payment of the outstanding amount by the miller either in the shape of cash or in the shape of rice, as the case may be. Such statement was directed to be signed by the Assistant Manager (Proc.), AM (Ac/s), of District Office concerned and countersigned by the District Manager.

• Document no.3 is the F.C.I. Zonal Office Committee report dated 06/08.09.2004 recommending that before initiation of any action on the basis of the recommendations of the Zonal Office CN) Committee, report dated 02.07.2004, the matter may be placed before the Managing Director for his approval of the recommendations whereby F.C.I. would be able to reduce 334 arbitration cases out of 374 arbitration cases in one go and will save huge time towards legal fees, cost of arbitration on TA/DA of several officers/officials.”

8. After considering the fact that there was no short fall either in the delivery of milled paddy or the service of the balance unmilled paddy, the Ld. Arbitrator gave the following findings:

“8. The miller performed the contract in all time from the date of its completion from 28.02.1995, extended date of 31.05.1995 & the last extended date of 31.08.1995. During this period, the entire paddy stored in the miller premises of the Respondents was partly milled, resultant rice duly delivered to F.C.I. as per specification and further remaining unmilled paddy was sold by the F.C.I. to the Respondents-miller which was duly purchased by the Respondents-miller against

price paid by bank draft.”

9. The Arbitrator thereafter concluded that there was novation of contract in view of the fact that the entire unmilled paddy was converted into a sale and there was no breach of contract which was attributable to the miller. After arriving at these conclusions, the Arbitrator held that in Issue no.1, a sum of Rs.1,19,350/- is awarded to the FCI, as the miller had retained 8525 bags of paddy and was held liable to pay for the same. Insofar as income tax exemption is concerned, the same was not allowed. Insofar as Issue no.2 is concerned, which related to claims for milling charges, stitching charges, and security deposit, the Ld. Arbitrator allowed the claim of Rs.8,377/-.

10. Apart from these amounts, the Ld. Arbitrator held that no other claims are liable to be granted, especially the claim of damages. Since the Respondent themselves had purchased the paddy on the terms and conditions prescribed by the FCI and also paid the rate as fixed by the Government, the Ld. Arbitrator's finding that there is no breach by the miller, does not warrant interference.

11. The petition is, accordingly, dismissed. All pending I.A.s are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

NOVEMBER 17, 2018/Rahul