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

Date of decision: 17th November, 2018

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O.M.P. 48/2014

FOOD CORPORATION OF INDIA, AMRITSAR Petitioner
Through: Mr. Mohan Lal Sharma, Advocate
(M-9811537909).
versus

M/S RAJVEER RICE & GENERAL MILLS Respondent
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. In this case, vide order dated 11th February, 2015 it was recorded that the Naib Nazir in Amritsar has confirmed the service of the notice on the Respondent. Despite the same, none has appeared in this matter for the last several hearings. Mr. Rajesh Chhetri, Advocate whose appearance has been marked on the last date today submits that he is not appearing in this matter and his appearance was wrongly recorded on the last date. It is rectified accordingly. Since, none appears for the Respondent, the Respondent is proceeded *ex-parte*.

2. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 challenges the award dated 31st July, 2013 passed by the Learned Sole Arbitrator.

3. The Petitioner – Food Corporation of India (*hereinafter*, 'FCI') and M/s Rajveer Rice and General Mills (*hereinafter* 'miller') had entered into a milling agreement dated 8th October, 1994. Under the said contract, the

millar was to mill the paddy and supply the rice to FCI. As per the contract, FCI had supplied the following quantities of paddy to the millar:

<u>Variety of paddy</u>	<u>Bags</u>	<u>Weight (Qtl.)</u>
Super Fine	28888	18775.70.00
Fine	13749	8928.95.00
Common	27794	18051.50.00

4. As per FCI, the following amount of paddy was milled by the millar upto 31st May, 1995:

<u>RAW PADDY</u>		
<u>Variety of paddy</u>	<u>Bags</u>	<u>Weight (Qtl.)</u>
Super Fine	28888	18408.02.600
Fine	13749	8758.11.300
Common	5036	3220.93.200
<u>PARBOILED PADDY</u>		
<u>Variety of paddy</u>	<u>Weight (Qtl.)</u>	
Super Fine	367-67-400	
Fine	170-83-700	
Common	65-72-800	

5. Thus, as per FCI, the balance paddy as on 1st June, 1995 lying with the millar was weighing 1476-84-000 quintals. Since this paddy was unmilled, it was sold to the millar at a lower price pursuant to a notice of open sale issued by the FCI.

6. The FCI, alleged breach of contract by the millar 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 averred that it had performed its part of the contract satisfactorily and had milled a considerable part of the paddy which was supplied to it. 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, the FCI's claim against it are completely baseless.

7. 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.
8. 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.”*

9. Apart from this, as per letter dated 8th November 2005, referred to in ***FCI v. S. K. International (supra)*** the clear understanding was that in cases where disputes were settled, no arbitrations were to be initiated. 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”

The said settlements were to be out of court/Arbitration. However, despite

the same, arbitrations were initiated and claims were pursued.

10. 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 at the price fixed in the said notices, and there is a clear statement acknowledging that there are no dues from this miller, the award is liable to be upheld.

11. Furthermore, in the present case, it was categorically observed by the Ld. Sole Arbitrator that there was a settlement in the case, and the duly executed deed of settlement was taken note of. The Arbitrator's finding reads:

“10. The detail of stored in the mill premises, paddy milled and balance paddy is given in para 2 above. Paddy to the tune of 1476-84-000 (Bags 22715) remained unmilled. The memorandum also record that as per Clause 8(iii) of the agreement, the miller was required to pay the cost of un-milled paddy at 1-1/2 time the economic cost of paddy which worked out to a claim of Rs.1,11,24,111/-. After adjustment of amount payable to the respondent, the net recoverable amount as per claimant is Rs.85,04,464/-. But, in view of the negotiations between the Corporation and the miller and the accounts having been settled between them, it was agreed that the Corporation will not pursue its claim against the miller before ICA and would refund the security deposit after adjustment of any statutory claims. It is also noted that the miller shall have no claim against the Corporation on any account whatsoever. There was no conditionality attached to any of the terms agreed upon between the parties. It is this deed of settlement which is being interpreted differently on either side. While the claimant contends that this deed is not enforceable legally, as the same

does carry approval of FCI, the respondent's stand is that the said deed was in pursuance of direction from FCI Headquarter and after execution of the same, not dispute survives between the parties.

11. Apart from the deed of settlement between the parties, it is also the admitted position that no loss has been caused to the claimant on account of un-milled paddy as the same had been purchased by the miller in terms of directions issued by the Government of India, Ministry of Food, on 14th March, 1995 to the MC, FCI. Vide this communication, Ministry had conveyed its approval for disposal of stock of paddy procured during khariff season 1994-95, through open sale. The rates for such sale were also prescribed. This instruction was given to release the storage space for storing incoming wheat for disposal of accumulated stock. In compliance of these directions, regional office directed all the district managers to obtain offers from interested parties to buy paddy lying in stocks of FCI and stored in the State of Punjab by FCI or Department of Food and Supplies, Government of India or Punjab State Warehousing Corporation. The paddy was to be issued after receipt of 100% pre-payment of the total sale price on first-come-first – served basis and where the stocks were stored in the milled premises, the miller was given the first preference for purchase. The respondent had purchased un-milled paddy only in pursuance of these directions. Considering these aspects, it is obvious that in effect, no loss was suffered by FCI on account of un-milled paddy. The claim is merely based on the clause in agreement that the miller was liable to pay 1 1/2 times the economic cost of the un-milled paddy. Under these circumstances, and as discussed in this and preceding paragraphs, I do not find any justification in the claim and the same is liable to be rejected.”

12. In light of the above facts, the reasoning of the Arbitrator is sound and

tenable inasmuch as once the FCI itself had fixed the rate for open sale of the paddy and the miller had purchased the entire unmilled paddy and paid the rate fixed by the FCI, the penal rate of the economic cost cannot be demanded by the FCI. Accordingly, the award does not warrant any interference. No other objections are pressed.

13. The OMP is, accordingly, dismissed.

**PRATHIBA M. SINGH
JUDGE**

NOVEMBER 17, 2018/Rahul

