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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 15.03.2018

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LPA 420/2017 & CM No. 21435/2017

ZILE SINGH

..... Appellant

Through: Mr. Nikhil Bhardwaj, Advocate.

versus

FOOD CORPORATION OF INDIA & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE REKHA PALLI

SIDDHARTH MRIDUL, J. (ORAL)

1. The present appeal under Clause 10 of the Letters Patent assails the order dated 09.03.2017 passed by a learned Single Judge in Writ Petition (Civil) No. 5289/2007 titled as “*Sh. Zile Singh vs. Food Corporation of India & Ors*”.

2. Learned counsel appearing on behalf of the appellant would urge that although numerous grounds were stated in the writ petition instituted on behalf of the appellants, the learned Single Judge did not consider them in accordance with law while rendering the impugned order. It is asserted that the learned Single Judge fell into error in not appreciating that the subject enquiry had been conducted in violation of the principles of natural justice and was consequently vitiated.

3. In order to effectively determine the solitary contention made on behalf of the appellant, it would be appropriate to extract the relevant paragraphs of the impugned order:-

“2. The only issue which is argued before this Court on behalf of the petitioner is that the total loss calculated of Rs.19,30,678.24 is incorrect inasmuch as the loss would actually come to a closer figure of only Rs.14 lacs. How this loss comes to only Rs.14 lacs is as per arguments as stated below.

3. It is an admitted fact, as per both the parties, that the total quantity of stocks in the subject train was 5780 bags totalling to 5234.40 quintals. The issue is that what is the cost of rice to the respondent no.1 of this total quantity of rice, what is the price at which such rice was sold being the lesser price on account of bad quality rice on account of excess percentage of broken grains and total loss therefore for the entire rice, and consequently the 7% portion of the total loss, inasmuch as, out of the total rice in the subject train only 7% of the stocks were under the storage of the petitioner.

4. There is a chart which is filed at page 97 of the paper book of this writ petition and which is an exhibited document in the departmental proceedings. This chart besides showing the total number of bags in the train at 5780 bags totalling to 5234.40 quintals also gives the rate per quintal at which rice was sold and which varies between Rs.751 to Rs.651. With the consent of the parties an average figure of Rs.700 per quintals has been taken by this Court. The figure of 5234.40 quintals when multiplied by the figure of Rs.700 per quintal comes to approximately Rs.36,75,000/- and which figure is taken as Rs.37,00,000/- is the price at which the total stocks in the subject train were sold.

5. The question now is that what was the cost price to the respondent no.1 of this total stock of 5234.40 quintals. The cost price of this 5234.40 quintals is stated in the document of the respondent no.1 itself, and which is said to be an exhibited document in the departmental proceedings, showing that the respondent no.1 has taken the cost price at the time of sale of Rs.972 per quintal. Therefore, the cost price of the total stocks in

the subject train would come to approximately Rs.51 lacs being the figure of Rs.971 multiplied by 5234. The loss therefore as per the counsel for the petitioner calculated comes to the difference of Rs.51,00,000 minus Rs.37,00,000/- and which is Rs.14 lacs. It is therefore argued that the enquiry officer has ex-facie wrongly taken the loss figure at Rs.19,30,678.24 whereas it should be taken as Rs.14 lacs, and consequently, it is argued that figure of Rs.2 lacs to be recovered from the petitioner has to be proportionately reduced and which figure would come to Rs.1,50,000/-

6. *I have put the aforesaid arguments urged on behalf of the petitioner along with the calculations to counsel for the respondent no.1 and the counsel for the respondent no.1 so far as the figures of the total quantity of rice, the cost price/issue price of the respondent no.1 with respect to this total quantity of rice at an average figure of Rs.700 per quintal, the actual sale price of the total stocks of 5234 quintals etc etc, and so far as the figures are concerned, could not seriously dispute the same because they arise from the documents of the respondent no.1 itself, filed as annexures to the writ petition, and said to be part and parcel of the departmental proceedings/enquiry proceedings.*

7. *Accordingly, I find that the total loss which should be attributable to the petitioner, because the loss is not of Rs.19 lacs but actually is only Rs.14 lacs, and therefore, the impugned order imposing punishment upon the petitioner of Rs.2 lacs is modified to a penalty of Rs.1,50,000/-."*

4. A bare reading of the above extracted paragraphs clearly and unequivocally reflects that the only issue argued before the learned Single Judge on behalf of the appellant was that the total loss calculated to Rs. 19,30,678.24/- in order to recover Rs. 2 lacs on

account of loss caused by him to the statutory corporation at the rate of 7% of the amount was incorrect, inasmuch as, the loss would actually come to a lesser figure to the tune of only Rs. 14 lacs. It would further reflect that with the consent of the parties, learned Single Judge arrived at an average figure of Rs. 700/- per quintal and thereby reduced the figure of Rs. 2 lacs to be recovered from the appellant to a sum of Rs. 1,50,000/- .

5. It is trite to state that when a bare perusal of the impugned order shows clear and voluntary abandonment of other grounds available to the appellant before the learned Single Judge, it is not open to him to urge those grounds before an appellate Court. A litigant cannot be allowed to take an advantage of his own default and be permitted to approbate and reprobate at the same time. Courts of law are meant for just determination of the rights of parties and not as a forum to be manipulated at the whims of the litigant.

6. In view of the foregoing, the present appeal is devoid of merits and is dismissed.

SIDDHARTH MRIDUL, J

REKHA PALLI, J

MARCH 15, 2018/ss