

FAO No. 57 of 2001 and connected matters [1]

Date of decision: 15th May, 2023

Food Corporation of India and another
...Appellants

Parmod Kumar ...Respondent

Food Corporation of India and another ...Appellants

Rajinder Kumar ...Respondent

Food Corporation of India and another ...Appellants

M/s. Jagdamba Rice Mills ...Respondent

Food Corporation of India and another ...Appellants

M/s Hari Ram Kewal Krishan ...Respondent

Food Corporation of India and another ...Appellants

FAO No. 57 of 2001 and connected matters		[2]
Versus		
M/s. Vaishno Rice & General Mils		...Respondent
302-6	FAO-62-2001 (O&M)	
Food Corporation of India and another		...Appellants
Versus		
M/s. Gupta Rice Mills		...Respondent
302-7	FAO-63-2001 (O&M)	
Food Corporation of India and another		...Appellants
Versus		
M/s. Madan Lal Single Rice Mills		...Respondent
302-8	FAO-64-2001 (O&M)	
Food Corporation of India and another		...Appellants
Versus		
M/s. Bhola Shanker Rice Traders		...Respondent
302-9	FAO-65-2001 (O&M)	
Food Corporation of India and another		...Appellants
Versus		
Sh. Charanjit Singh		...Respondent
302-10	FAO-66-2001 (O&M)	
Food Corporation of India and another		...Appellants
Versus		
Ashok Kumar Proprietor		...Respondent

FAO No. 57 of 2001 and connected matters **[3]**

302-11 **FAO-67-2001 (O&M)**

Food Corporation of India and another ...Appellants

Versus

M/s. Bansal Rice Factory ...Respondent

302-12 **FAO-68-2001 (O&M)**

Food Corporation of India ...Appellant

Versus

M/s. Jagdamba Rice & General Mills ...Respondent

302-13 **FAO-69-2001 (O&M)**

Food Corporation of India ...Appellant

Versus

M/s. Bhola Shanker Rice Mills ...Respondent

302-14 **FAO-70-2001 (O&M)**

Food Corporation of India and another ...Appellants

Versus

Surinder Kumar Proprietor ...Respondent

302-15 **FAO-71-2001 (O&M)**

Food Corporation of India and another ...Appellants

Versus

M/s. Rising Star Oil & Rice Mills Pvt. Ltd. ...Respondent

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[4]

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. K. K. Gupta, Advocate for the appellant.
Mr. Rahul Sharma, Advocate for the respondent(s).

AVNEESH JHINGAN, J (Oral):

1. The afore-mentioned fifteen appeals are being disposed of by a single order as the facts and issue involved are similar.
2. For convenience, facts in FAO No. 57 of 2001 are being considered.
3. The relevant facts are that Food Corporation of India (for short, 'FCI') invited bid on 13.2.1996 for sale of paddy for the crop year 1994-95 stored at Centre Warehousing Corporation Godown, Bhasaur, District Dhuri. The respondent was the successful bidder. The tender was accepted on 30.3.1996. Notices dated 30.5.1996, 9.8.1996 and 12.8.1996 were issued by FCI to the respondent to deposit the cost of paddy and for lifting of the stock. On failure of the respondent to deposit the amount and lift the stock within seven days, notice dated 15.2.1999 was issued for invoking arbitration clause. On 9.3.1999, FCI filed a claim before Indian Council of Arbitration, New Delhi and deposited the fee and expenses. Initiation of arbitration proceedings were challenged by the respondent on 7.5.1999 by way of petition under Section 33 of the Indian Arbitration Act, 1940 (for short, 'the 1940 Act'). The petition was accepted on 12.10.2000, hence the present appeal.
4. The issue raised is that petition under Section 33 of the 1940 Act was not maintainable. The 1940 Act was repealed by ordinance dated

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26.3.1996 and the Ordinance came into force from 25.1.1996. The Ordinance was followed by Arbitration and Conciliation Act, 1996 (for short, 'the 1996 Act').

5. The question which arises in these appeals is whether the provisions of the 1940 Act would apply in the facts of the present case?

6. The issue is no longer *res integra* in view of the decision of the Supreme Court in ***M/s Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., 2001(6) SCC 356***. The relevant paragraph is reproduced below:

“From the plain and literal reading of the said provision and the Gazette Notification, it is clear that the Act came into force on 22.8.1996. But the purposive reading would show that the Act came into force in continuation of the first Ordinance which was brought into force on 25.1.1996. This makes the position clear that although the Act came into force on 22.8.1996, for all practical and legal purposes it shall be deemed to have been effective from 25.1.1996 particularly when the provisions of the Ordinance and the Act are similar and there is nothing in the Act to the contrary so as to make the Ordinance ineffective as to either its coming into force on 25.1.1996 or its continuation upto 22.8.1996. Thus we conclude that the Act was brought into force with effect from 22.8.1996 vide Notification No. G.S.R. 375 (E) dated 22.8.1996 published in the Gazette of India and that the Act being a continuation of the Ordinance is deemed to have been effective from 25.1.1996 when the first Ordinance came into force.”

7. In the case in hand, inviting of tender and the proceedings thereafter were subsequent to 26.1.1996 i.e. after repealing of the 1940 Act and coming into force of the 1996 Act. The Civil Judge erred in

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entertaining the petition under Section 33 of the 1940 Act. As the Civil Judge had no jurisdiction to entertain the petition, the observations made on other issues need not be expounded upon

8. Consequently, the appeals are allowed. The impugned order is set aside.

9. Since the main appeals have been allowed, pending application(s), if any, is rendered infructuous.

10. Photocopy of the order be placed on the file of each connected case.

**[AVNEESH JHINGAN]
JUDGE**

15th May, 2023
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |