

Food Corporation of India

Vs

Joginderpal Mohinderpal and Another

Civil Appeals Nos. 1945 and 1946 of 1989

(S. Ranganathan, Sabyasachi Mukharji JJ)

03.03.1989

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. Special leave granted.

2. This appeal arises from the decision of the High Court of Punjab and Haryana, dated December 11, 1984 dismissing the civil revision filed by the appellant. It appears that there was a contract entered into by the parties on or about May 15, 1979 which provided that the appellant would give to the respondent paddy to convert these into rice after lifting paddy from the godown of the appellant. There was an agreement between the parties for shelling of paddy into rice, after lifting the paddy from the godown of the appellant, at the rate of 70 per cent of the paddy. The shelling charge was Rs. 2.20 per quintal. The learned Subordinate Judge, First Class, directed on or about March 17, 1980 appointment of an arbitrator on an application by the respondent. On January 22, 1982, the arbitrator gave his award. The arbitrator did not allow the claims of the appellant as claimed as per the terms of the agreement. The arbitrator allowed certain claims. It is necessary, in view of the contentions that have been raised, to refer to the award of the arbitrator. After setting out the history the arbitrator dealt with the various contentions. It is not necessary to refer to all the contentions and points urged before the arbitrator and upon which he has made his award. It is sufficient if the relevant portions are dealt with. The arbitrator, inter alia, dealt with a claim of Rs. 55,060.29 which was claimed as penalty at Rs. 2 per qtl. for not lifting the balance of the paddy weighing 2765-3093 mts. The arbitrator noted that he had held that there was justification for the millers, millers being respondents herein, not to lift the paddy. Assuming, however, the arbitrator noted, that if it was decided that the millers were at fault in not lifting this paddy, the arbitrator expressed the opinion that the appellant could not recover the amount claimed by way of penalty. He expressed the view that in order to enable the appellant to claim the amount, it had to be shown that the actual losses were suffered by the Corporation. Otherwise, it could not be claimed as pre-estimated damages. Otherwise, it would only be penalty which could not be recovered. No evidence had been led for how many days the bags of the paddy remained in the godowns of the Corporation, the arbitrator noted, and what losses were incurred for getting it shelled from other quarters. The arbitrator referred to the affidavit of one M. S. Rawat, Asstt. Manager, that the Corporation had to get the unlifted paddy shelled by transporting to other centre as well as getting the same shelled at heavy additional expenditure. The arbitrator noted that there was not an iota of evidence on that point. So no actual losses stated to have been suffered by the Corporation and no proof thereof was there. The arbitrator further noted that an amount by way of penalty could be permitted if some losses were proved. He, accordingly, dismissed the claim of the appellant for Rs. 55,090.19.

3. The next claim dealt with by the arbitrator was the claim of Rs. 3,23,866.08 claimed by the Corporation as the cost of non-delivery of 137-39549 tonnes of rice at the rate of Rs. 165 per qtl. of paddy. The claim of the appellant was based on the basis that the appellant had converted the undelivered rice into paddy by multiplying it with 100/70 and it came to 123,87.11 tonnes. The arbitrator dealt with this question as follows :

At the rate of Rs. 165 per qtl. its price works at Rs. 3,23,856.08 According to provisions of clause g(i) of the contract, in the event of failure to supply rice within prescribed specification, the millers are liable to pay to the Corporation for the quantities of rice short supplied at the penal rate of 1 1/2 times the economic cost of the concerned variety of the paddy equivalent to the shortages. In the contract no definition of 'Economic Cost' is furnished nor is the expression anywhere defined in any law. However, Shri Pritam Singh in the statement attached to the affidavit works it out at Rs. 110 per qtl. The procurement price of paddy is Rs. 85 per qtl. as shown therein. He has added to it market fee and other charges including cost of gunny Rs. 2 and interest charges at Re. 1. Under the above clause of the contract, the Corporation has added 50 per cent penalty and thus claimed the price at Rs. 165 per qtl.

I do not think that the Corporation is entitled to such a fantastic rate particularly when the expression 'economic rate' has not been defined. Even if the statement of Shri Pritam Singh is accepted the maximum price of the rice at that time should be Rs. 100 per qtl. exclusive of gunny bag and interest charges to which in my opinion the Corporation is not entitled. The market rate did not exceed that amount at that time. So calculated at this rate the price of the undelivered rice will come to Rs. 1,96,277.00 to which the Corporation is entitled.

I may add here that the above amount has been allowed to the Corporation; besides from the evidence on the record I believe that the rice was short delivered. When the paddy had been accepted by the millers unconditionally and without any reservation, they were bound to give to the Corporation 70 per cent of the yield. As they did not do it, so they are liable to pay the price of the undelivered rice.

I have already stated above that the rice after shelling to be delivered to the Corporation under clause g(i) of the contract had to conform to the specification laid down by the Punjab Government under the Punjab Rice Procurement Price Control Order, 1968 issued on October 22, 1968, as amended from time to time. The Corporation states that the rice accepted by them was done subject to the quality rice which was permissible under clause g(ii) of the contract. This has been duly proved from the evidence placed on the record by the Corporation. Even Shri Anil Kumar, a partner of the millers firm admitted that they received an analysis report in respect of the rice which was accepted by the Corporation to continue that the Corporation was mentioned and that they did not appeal against the cut, though there was a provision in the said order to do so. It, therefore, means that the quality cut was admitted to have been correctly assessed under the said Punjab Rice Order and to that the millers submitted. This item is, therefore, allowed.

4. The respondent filed an application under Section 14 of the Arbitration Act, 1940 (hereinafter referred to as 'the Act') for filing of the award and prayed for making the award the rule of the court. The appellant on May 25, 1982 filed objections under Sections 30 and 33 of the Act. The learned Subordinate Judge, First Class, on December 2, 1982 found that the award was liable to be set aside and modified the award and passed a decree in favour of the appellant for the amount. On March 2,

1984, the Additional District Judge allowed the appeal by respondent and reversed the Subordinate Judge's order.

5. Aggrieved thereby, the appellant went in revision before the High Court. The High Court on December 11, 1984 dismissed the revision petition. Aggrieved thereby, the appellant has come up before this Court. It is, therefore, necessary to decide whether the High Court was right.

6. As mentioned hereinbefore, the learned Subordinate Judge had modified the award and passed a decree in favour of the appellant for the amount. The learned Additional District Judge, however, allowed the appeal of the respondent and reversed the decision of the learned Subordinate Judge. The High Court did not interfere with that decision because the High Court did not find any ground to interfere. The question therefore is, whether the learned Additional District Judge in the first appeal was right in holding that the award was not liable to be corrected in the manner done by the learned Subordinate Judge. The jurisdiction to interfere by the court of law of an award made by the arbitrator chosen by the parties is circumscribed. In India, there is a long history of arbitration. Arbitration is a mode of settlement of disputes and the differences between the parties apart from the courts of law. Arbitration has a tradition; it has a purpose. Arbitration, that is a reference of any particular dispute by consent of the parties to one or more persons chosen by the parties with or without an umpire and an award enforceable by the sovereign power was generally unknown to ancient India. Hindus recognised decisions of panchayats or bodies consisting of wealthy, influential and elderly men of the community and entrusted them with the power of management of their religious and social functions. The sanction against disobedience to their decision was excommunication, or ostracism and exclusion from all religious and social functions of the community. An agreement to abide by the decision of a panchayat and its decision with regard to the line of boundary was held not to be conclusive, since a reference to arbitration and award properly so called did not exist. See the observations in *Mokuddims of Kunkunwady v. Enamdar Brahmins of Soorpae* (3 Moo IA 383). See also *Bachawat's Law of Arbitration* at page 1.

7. When power came to the East India Company, they framed Regulations in exercise of the power vested in them by the British Government. Some of these Regulations were touching arbitration. *Bachwat* gives description off the evolution of the Arbitration Act, 1940. Therefore, arbitration as a mode for settlement of disputes between the parties, has a tradition in India. It has social purpose to fulfil today. It has a great urgency today when there has been an explosion of litigations in the courts off law established by the sovereign power. New rights created, or awareness of these rights the erosion of faith in the intrinsic sense of fairness of men, intolerant and uncompromising attitudes are all the factors which block out courts. The courts are full of litigations, which are pending for long time. Therefore, it should be the endeavour of those who are interested in the administration of justice to help settlement by arbitration, if possible. It has also a social efficacy being the decision by the consent of the parties. It has greater scope of acceptance today when there is a certain erosion of faith in view of the failure to appreciate the functions of the courts of law. It has also the advantage of not only quickness of decision but of simplicity of procedure. But in proceedings of arbitration there must be adherence to justice, equity, law and fair play in actions. However, the proceedings of arbitration must adhere to the principles of natural justice and must be in consonance with such practice and procedure which will lead to a proper resolution of the dispute and create confidence of the people for whose benefit these processes are resorted to. It is, therefore, the function of courts of law to oversee that the arbitrators act within the norms of justice. Once they do so and the award is clear, just and fair, the courts should, as far as possible, give effect to the award of the parties and make the parties compel to adhere to and obey the decision of their chosen adjudicator. It is in this perspective that one should view the scope and limit of correction by the

court of an award made by the arbitrator. We should make the law of arbitration simple, less technical and more responsive to the actual realities of the situation, but must be responsive to the canons of justice and fair play and make the arbitrator adhere to such process and norms which will create confidence, not only by doing justice between the parties, but by creating a sense that justice appears to have been done. Sections 30 and 33 of the Act provide for the grounds on which an award of the arbitrator can be set aside. These were mainly, until recent changes made by statutory laws in England, in consonance with the English principles of Common Law as adopted in India. So far as the material of the present purpose is concerned, an award of the arbitrator can only be interfered with or set aside or modified within the four corners of the procedure provided by the Act. It is necessary to find whether the arbitrator has misconducted himself or the proceedings legally in the sense whether the arbitrator has gone contrary to the terms of reference between the parties or whether the arbitrator has committed any error of law apparent on the face of the award. It is necessary to emphasise that these are grounds for setting aside the award but these are separate and distinct grounds. Halsbury's Laws of England. Vol. 2 4th edn., para 623 reiterates that an arbitrator's award may be set aside for error of law appearing on the face of it. Though this jurisdiction is not to be lightly exercised. The award can also be set aside if, inter alia, the arbitrator has misconducted himself or the proceedings. It is difficult to give an exhaustive definition what may amount to a misconduct on the part of the arbitrator. This is discussed in Halsbury's Laws of England (supra). It is not misconduct on the part of an arbitrator to come to an erroneous decision, whether his error is one of fact or law, and whether or not his findings of fact are supported by evidence. See the observations of Russell on Arbitration, 20th edn., page 422.

8. In the instant case, the arbitrator has chosen to make a speaking award, that is to say, he has given reasons for his conclusion. Whether he is obliged to give such reasons or not is another matter but since the arbitrator had chosen to give the reasons, unless it is demonstrated to this Court that such reasons are erroneous as such as propositions of law or a view which the arbitrator has taken is a view which it could not possibly be sustained on any views of the matter, 'then the challenge to the award of the arbitrator cannot be sustained. As has been emphasised in *M/s. Sudarsan Trading Co. v. Government of Kerala* ((1989) 2 SCC 38 : JT (1989) 1 SC 339) that an award could be set aside if the arbitrator has misconducted himself or the proceedings or has proceeded beyond jurisdiction. It could also be set aside where there are errors apparent on the face of the award. But these are separate and distinct grounds. In case of errors apparent on the face of the award, it can only be set aside if in the award, namely, in the award there is any proposition of law which is apparent on the face of the award, namely, in the award itself or any document incorporated in the award. See the observations of the Judicial Committee in *Champsey Bhara & Co. v. Jivraj Balloo Spinning & Weaving Co. Ltd.* (LR (1922-23) 50 IA 324 : AIR 1923 PC 66)

9. Dr. L. M. Singhvi, learned counsel for the appellant, urged before us that the arbitrator was wrong in not awarding 50 per cent of the added penalty as claimed by the appellant, as mentioned herein above. The appellant had claimed the price of Rs. 165 per qtl. The arbitrator was of the view that the expression 'Economic Rate' had not been defined. It is true that the expression 'Economic Rate' has not been used, but the expression 'Economic Cost' has been used. The arbitrator has noted that the market rate did not exceed that amount at that time. The amount of Rs. 100 per qtl. is mentioned of (sic) such a rate as the arbitrator had noted, could only be pre-estimated damages but this was not so according to the arbitrator. The arbitrator had construed the effect of clause g(i) of the contract as mentioned herein before. It cannot be said that such a construction is a construction which is not conceivable or possible. If that is the position assuming even for the sake of argument that there was some mistake in the construction, such a mistake is not amenable to be corrected in respect of the award by the court. This was, fair order after considering all the records. The conclusion arrived at

by the arbitrator is a plausible conclusion. The court has, in our opinion, no jurisdiction to interfere or modify the award in the manner sought for by the appellant and in the manner done by the learned Subordinate Judge in the first instance in this case. In that view of the matter, the learned Additional District Judge was justified in correcting the order of the learned Subordinate Judge and the High Court was also justified in not interfering with the order of the Additional District Judge. The award on the aspects canvassed before us by Dr. L. M. Singhvi is plausible construction of clause g(i) of the contract. It cannot, in our opinion, be interfered with either on the ground that there was error apparent on the face of the award or on the ground that the arbitrator has misconducted himself in not giving the effect to the penal rate as contemplated under clause g(i) of the contract referred to herein before in the award. Dr. Singhvi sought to urge that as per the terms of the contract the arbitrator was obliged to award penal rate in terms of the contract the arbitrator was obliged to award penal rate in terms of clause g(i) of the contract. The arbitrator has apparently not done so. He has a given reason why in not doing so. We do not agree. The arbitrator has discussed the effect of clause g(i). He has noted that unless there was evidence about which incidentally there was none, this amount could not be treated as a pre-estimate of damage. If that be so then it was penalty. It was not recoverable. Reasons may not be apparent, latent was there. Dr. Singhvi's objection therefore cannot be accepted.

10. Dr. Singhvi drew our attention to the observation of this Court in *M/s. Sudarsan Trading Co. ((1989) 2 SCC 38 : JT (1989) 1 SC 339)* at page 352 of the report (SCC p. 53 (para 28) where it was stated that if it was apparent from the award that a legal proposition which formed its basis was erroneous, the award was liable to be set aside. Dr. Singhvi sought to urge that when the arbitrator observed that "Corporation is not entitled to recover such a claim particularly when the 'Economic Rate' has not been defined", this, according to the statement of Dr. Singhvi, the arbitrator was mistaking the law, such a mistake of law is apparent on the face of it. It has to be borne in mind, however, that wrong statement or conclusion of law, assuming even that it was a wrong statement of law, was not wrong statement of the proposition of law which was the basis for decision in this award. Error of law as such is not to be presumed; if there is legal proposition which is the award and which is erroneous as observed in *Champsey Bhara & Co. (LR (1922-23) 50 IA 324 : AIR 1923 PC 66)*, then only the award can be set aside. There was no proposition of law; there was a legal deduction of law arrived at to say that the provisions of clause g(i) of the contract would be penal rate and such penal rate cannot be sustainable without evidence of the damages suffered to that extent. We are of the opinion that the arbitrator had taken a view which is a plausible view. Beyond this, the court has nothing to examine. It is not necessary for a court to examine the merits of the award with reference to the materials produced before the arbitrator. The court cannot sit in appeal over the views of the arbitrator by re-examining and re-assessing the materials. See the observations of this Court in *Puri Construction Pvt. Ltd. v. Union of India ((1989) 1 SCC 411)*.

11. In the aforesaid view of the matter, it appears to us that the learned Additional District Judge was right in the view it took and the High Court, therefore, was justified in dismissing the revision. The appeal, therefore, fails and is accordingly dismissed. No order as to costs.

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