SUPREME COURT OF INDIA

Food Corporation of India

Vs.

Surana Commercial Co.

(S.N. Variava and H.K. Sema JJ.)

19.09.2003

JUDGMENT

S.N.Variava, J.

1. This Appeal is against a judgment of the Andhra Pradesh High Court dated 21^st March, 1996.

2. Briefly stated the facts are as follows:

3. The Appellant had agreed to supply arhar dal to the Army Purchase Organisation, Reserve Grain Depot, Lucknow. They therefore invited tenders for milling arhar whole into dal. The Respondents submitted two tenders; one for conversion of 1,500 metric tonnes of arhar whole into dal and the second for converting 2,000 metric tones. These tenders were submitted on 10^th May, 1977 and 1^st August, 1977. Both these tenders were accepted by the Appellant and two Agreements were entered into between the parties.

4. The Respondents delivered 1607.495 tonnes of arhar dal, which was accepted by the Appellants. The Appellant then sent the same to the Army, but the Army rejected 786.505 tonnes of dal on the ground that the same did not conform to specifications. The Appellant asked the Respondents to take back the rejected dal and to upgrade it. A supplemental agreement was then entered into to upgrade and replace the rejected dal. The Respondents took back 208.245 tonnes of dal and replaced 23.945 tonnes. The Respondent thereafter delivered 47.388 tonnes on 5.6.1978; 23.750 tonnes on 8.6.1978 and 23.655 on 9.6.78 after duly upgrading the same. Thus, out of 184.400 tonnes of rejected dal, the Respondents were still having 89.607 tonnes in their custody. Thereafter the Respondents did not replace any further dal. The Appellant tried to get the dal upgraded from some other contractor but nobody agreed to upgrade the dal. Ultimately the Appellants sold off the dal in an auction sale for a sum of Rs. 9,60,111.

5. The Appellant then filed a suit for damages for non delivery of 89.607 tonnes at the rate of Rs. 600 per quintal amounting to Rs. 5,37,642/-. They also claimed damages of Rs. 25,09,449/- and Rs. 16,46,463.37 towards interest. The suit was decreed for a sum of Rs. 537642 being price for non-delivery of 89.607 tonnes of dal. However, the remaining claim

was rejected on the ground that they arose only under the supplemental agreement and the supplemental agreement had been entered into by the Respondent under duress and coercion and that there was no consideration for the same.

6. The Appeal of the Appellant has been dismissed by the impugned judgment. In the impugned judgment it has been held that there was no duress or coercion but the finding that there was no consideration for the supplemental agreement has been upheld.

7. The Respondents have remained absent even though served.

8. On behalf of the Appellant it has been submitted that he supplemental agreement was part and parcel of the original agreement and that therefore no further consideration was required. We are unable to accept this submission. The original agreements were for converting arhar whole into dal, whereas supplemental agreement was for upgrading dal which has already been supplied and accepted by the Appellant. Once the Appellant accepted the dal, the obligation under the original agreements came to an end. Thus it could not be said that the supplemental agreement was part and parcel of the original agreement.

9. It was next submitted that the Respondents had failed to supply the full quantity under the original agreement. It was submitted that the Respondents had committed a breach of the original agreement and for this reason the Appellants are entitled to recover damages. We however find that this is not the claim in the suit. There is no claim in the suit for non-supply under the original agreements. The claim in the suit is based only on the supplemental agreement.

10. It was next submitted that under the original agreement the Respondents had given bank guarantee. It was submitted that the consideration for the supplemental agreement was the forbearance on the part of the Appellants agreement not to enforce those bank guarantees. In this behalf reliance was placed on the definition of the term "consideration" in Section 2(d) of the Contract Act, which reads as follows:

> "When, at the desire of the promisor, promises or any other person has done or abstained from doing, or does not abstains from doing or promises to do or to abstain from doing, something, such act or abstinence or promise is called consideration for the promise."

11. Undoubtedly, if the promisor abstains from doing something that could be consideration for the contract. However, in the supplemental agreement there is no mention that the consideration is non-enforcement of bank guarantees. Further the Respondents had delivered the dal. The Appellants has accepted the dal. Thus the Respondents could not be said to be in breach of the original agreement. If the Respondents were not in breach of the original agreement, then the bank guarantees could not have been enforced by the Appellant. Lastly and most importantly in the suit it is not claimed that the consideration for the supplemental agreement was not the enforcement of the bank guarantees.

12. For all these reasons, we are in agreement with the reasoning given in the impugned judgment that the supplemental agreement was without consideration.

13. We therefore see no reason to interfere. Accordingly the Appeal stands dismissed. There shall be no order as to costs.