

**SUPREME COURT OF INDIA**

Markfed Vanaspati & Allied Industries

Vs.

Union of India

(Tarun Chatterjee and Dalveer Bhandari JJ.)

14.09.2007

**JUDGMENT**

**DALVEER BHANDARI, J.**

1. This appeal is directed against the judgment of the Division Bench of the Delhi High Court dated 17.4.2006 passed in FAO (OS) No. 206/2006.

2. The respondent, Union of India, issued tender dated 29th June, 1989 for purchase of oil. The appellant offered to supply 1600 metric tons of different categories of oil vide quotation dated 15th July, 1989, the details of which are as under:-

1. 200 MT @ 24,150/- per MT by 31.8.89 (Refined Cotton Seed Oil)
2. 500 MT @ Rs.21,500/- per MT by 31.8.1989 (Rapeseed Oil)
3. 300 MT @ Rs.24,550/- per MT by 30.9.1989 (Refined Soyabean Oil)
4. 500 MT @ Rs.22,000/- per MT by 30.9.1989 (Rapeseed Oil).

3. The respondent-Union of India accepted the offer given by the appellant and consequently the respondent issued tender in the form of a letter dated 22nd August, 1989. The appellant failed to supply the oil as per the delivery schedule. The time for supply was extended, reserving the respondents right to levy liquidated damages. All the supplies could not be delivered. The contract was cancelled and the appellant resorted to force majeure clause.

4. The dispute was referred to an arbitrator. The sole arbitrator made and published his award on 20th June, 1995. The appellant prayed before the arbitrator that in view of the extension of time on various occasions, the time was not the essence of the contract. The appellant has admitted various delays including in furnishing security, but stated that the same were unintentional.

5. It may be pertinent to mention that the objections regarding limitation and jurisdiction were given up by the appellant before the Division Bench of the High Court.