(1998) 07 DEL CK 0095

In the Delhi High Court

Case No : Suit No. 4423-A of 1992 and Suit No. 1036-A/97, S.No. 4423/92

A. Kanniah and others — APPELLANT

Vs

National Seeds Corporation Ltd. — RESPONDENT

Date of Decision : 01-07-1998

Acts Referred:

Citation : (1998) 74 DLT 773

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. S.K. Dholikia and Mr. K.B.S. Rajan, for the Appellant; Mr. K.C. Jain, for the Respondent

Judgement

K. Ramamoorthy, J.

1. The Arbitrator passed two awards one dated 5.6.1992 rejecting the claim of Shri A. Kanniah against M/s National Seeds Corporation Ltd. The second award is also of the same day that is rejecting the claim of N. Alagarisamy. These two awards are under challenge.

2. The learned counsel for the National Seeds Corporation (hereinafter referred to as the NSC) raised an objection that there was a delay of one month and 10 days in filing the objections by the Claimant and no sufficient cause have been shown for the delay. I have heard the learned counsel for the parties on this point and I am satisfied that the Claimant has shown sufficient cause for the delay and the delay is condoned.

3. Now I shall deal with the merits of the claims.

4. The Claimant Shri A.Kanniah has stated in the claim petition the facts culminating in the filling of the statement. In view of the narrow scope of the points involved, I shall referred to the facts which are necessary for the disposal of the matter. The claimant claimed to be a progressive agriculturist of Madurai District in the state of Tamil Nadu. He has got rich experience in massive

production of pulses and oil seeds. He had been supplying seeds to NSC. According to the Claimant the seeds production programme is one of the important aspect of the green revolution in our country. Having regard to this experience, the claimant would state that the production of good variety of seeds is essential for the farmers to get high yield from the crops.

5. There was an agreement between the Claimant and the NSC for the supply of C-152 variety of Cowpea seeds. The fact that the Claimant had supplied 233 M. Tons of Cowpea seeds C-152 variety as per the standards prescribed by the NSC and that was accepted by the NSC is not in dispute. The Claimant had been supplying the seeds in accordance with the terms of the agreement. According to the Claimant, while fixing the price the NSC had not acted in accordance with the terms of te agreement. What was to be fixed was average market price + 20%. The NSC fixed the price at 6.24 kg on the basis of the alleged market price of local variety of cowpea with moisture and substandard quality. The Claimant would state that the Statistical Assistant Director, Virudhunagar in Tamil Nadu had fairly stated that the maximum seeds average rate was Rs. 7.83 +20% per KG for the year 1988-89. The NSC had ignored the price indicated by the aforesaid officer. According to the Claimant the method adopted by the NSC was in violation of the terms of the agreement. The claimant would claim Rs.7,36,280/- 9.40 per KG for the supply of 233 M. Tons of cowpea C-152 seeds. The claimant has claimed interest 18% per annum on Rs.7,36,280/- that would come to Rs.1,76,550/- from 1.1.1989 The NSC in its counter has stated that the average market price prevailing in Madurai from 1.8.1989 to 15.9.1989 was Rs. 5.20 per KG per quintal. The NSC was liable to pay the average market price + 20%. The NSC has paid the claimant 6.24 per KG for the quantity of 233 M. Tons based on truly representative market rates.

6. The Claimant on 13.8.1991 filed his second statement of claim stating that he had supplied 66 M. Tons of PS 16 & J 851 for the year 1989-90. For Moong PS 16 the NSC had paid Rs.8.00 per KG and for K 851 8.25 per KG as against the claim of Rs. 10.80 per KG. The Claimant claimed to Rs. 1,76,550/-. The Claimant claimed interest 18% per annum on Rs. 1,76,550/- from 1.1.1990 up to the date of realisation. On the 9th December 1991, the NSC filed the counter to the second claim statement. It is stated that for PS 16, the NSC paid 825/- per quintal and for K-851 Rs. 800/- per quintal. The price was fixed on relevant consideration as determined from the average rate prevailing in Virudhunagar for the fortnight from 1.12.1989 to 15.12.1989. The NSC denied the claim of the claimant.

7. With reference to the second award on the claim of Shri N. Alagirisami, the claimant stated that he had supplied 395 metric tons of T-9 variety of black gram average market price + 20%. According to the claimant the NSC had fixed price on the basis of the alleged market price of local variety of cowpea with moisture and Sub Standards quality. The Claimant claimed the price Rs. 9.25 per kg. According to the Claimant the NSC had paid 7.96 per kg. Therefore the balance

payable was Rs.4,32,950/-. The claimant Mr. N. Alagarisamy who claimed interest 18% from 1.1.1990 till the date of payment.

8. On the facts with reference to both the Awards the only point for consideration before the Arbitrator was what was the basis on which the average market price could be arrived at and whether the NSC had paid the claimant on the basis of the average market price + 20% as per clause 3-A(1) of the terms and conditions in Schedule I of the agreement.

9. The arbitrator had observed that the agreement is silent on what is the average market price. The claimant examined himself as PW-1. He filed documents A-1 to A-13 and also MA-1 to MA-4.

10. The NSC examined Sh. Shivshankar, Seed Officer as RW-1 and filed documents B-1 to B-17 and MR 1 to MR-6. In respect of the second award on behalf of the claimant, Shri A. Kanniah was examined as PW-1 and documents BGA-1 to BGA-5 were filed.

11. In the oral evidence the claimant had stated the position about the prevailing rates of the seeds involved. The main thrust of the oral evidence on behalf of the Claimant is that the department has taken into consideration the average market rate of commercial product of cowpea and had not taken into consideration the average rates of Cowpea C-152 (seeds). The area Manager Madurai had called for the market rate of C-152 cowpea from the Inspector of Statistics Virudu nagar and the later had given a market rates of C-152 cowpea at Rs.783 per kg. The NSC had not taken into account this crucial material available for fixing the rates. The arbitrator had not considered in its proper perspective Ex. B-3 dated 4.11.1989, Ex.B-4 dated 6.11.1984 and Ex. MA-3 dated 26.2.1990. In Ex. B-3 the Superintendent, Regulated Market Virudhunagar, wrote to the Area Manager of the respondent stating " I am to state that cowpea is not notified agricultural produce for Virudhunagar regulated market. Moreover, there is no transaction of cowpea during the period from 16.8.89 to 31.8.89 in the regulated market virudhunagar. Hence, I am unable to furnish the market rate for the above period of this regulated marked." Similarly in Ex. B-4 dated 6.11.1989, the Secretary Madurai Market Committee Madurai wrote to the Area Manager NSC stating that "there are no arrivals of cowpea C-152 seeds in regulated market of Madurai Quid-a-Millath district and Dindigual during the period from 16.8.1989 to 31.08.1989 and Therefore not able to furnish the rates". Exhibit B-11 dated 28.11.1989 is a letter by Regional Manager to the Director Statistics, Department of Statistics, Madras, which was the same as Exhibit B-15 dated 12.10.1989. Ex. B-11 dated 28.11.1989 had been again marked as Ex. B-16 and this had not been noticed by the arbitrator.

12. Ex. B-5 dated 7.12.1989 was a reply by the Director of Statistics to Regional Manager NSCL which is in reply to Ex. B-11 (B-16) which reads as under:

Department of Statistics

Madras - 6

Dated: 7-12-1989

22, Karthigai, Sukla

Thiruvalluvar Anandu 2020

Letter No.169372/H1/89

From Thiru C. Sethu M.A. M.Sc.,

Director of Statistics.

To

The Regional Manager,

National Seeds Corporation Ltd.,

22-C Sidco Industrial Estate,

Ambattur, Madras - 600-098.

Sir,

Sub: Wholesale Prices of Cowpea (Karamani Thattai -payaru) - 15-8-89 to 15-9-89 - furnishing of - Regarding.

Ref: Your letter No.3(6)/89-90

Production NDS/NSC/5955 dated 28.11.89.

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With reference to your letter cited, I enclose a statement showing the weekly wholesale prices of "Karamani" and Thattai Payaru" as prevailed at Dindigul, Virudhunagar and Madurai Centres during the week ended 11-8-89 to 15-9-89.

Yours faithfully,

Sd/-

13. If, according to the NSC the market rate at Virudhunagar could not be arrived at as per exh. B-3 dated 4.11.1989 and Ex.B-4 dated 6.11.1989 it has not been explained as to how could the Director of Statistics, Madras could give the figure. The document ex. B-5 has not at all been proved. It has to be proved that the Director of Statistics had calculated the material from reliable sources and had arrived at the figures on the basis of the consideration of the material placed before him. None, from the office of the Director of Statistics who could prove the contents of Ex. B-5 had been examined. Even in arbitration proceedings it is well settled that documents could be looked into only if they have probative value and it has been laid down by the Supreme court that the arbitrators have to act in accordance with the law of the land. The two important

documents namely, MA-3 and B-12 should be accepted. Document MA-3 is the letter dated 26.2.1990 by the Assistant Director, Agricultural (Seed Centre) Unsilampatti to the Area Manager of the Respondent. The document is in Tamil but English translation is given in the letter which reads as under:

Sir,

Sub: Pulse Seed Procurement - rate regarding.

Ref: Your letter No. 1(s)89-90

Madurai 1438 date not mentioned.

During the year 1989-90 in February KM 2 Green gram foundation and certified seed procured and the rate of Rs. 8.94 (Rupees Eight and paise ninety four only) per kgs and black gram T9 procured at the rate of Rs.7.98 (Rupees seven and paise ninety eight only) per kgs. Along with total procurement price a premium of 20% for certified and a premium of 30% for foundation seed is paid.

Sd/-

14. Ex. B-12 is the letter dated 8.9.1989 by the Assistant Director Statistics Virudhunagar to the Area Manager to the respondent. This was in reply to Ex. B-13 dated 1.9.1989 from the Area Manager to the Assistant Director of Statistics Virudhunagar. Ex. B-12, reads as under:

From To Thiru V.Alaguaingam, The Area Manager, Asstt. Director of No.30, Sarojini Statistics, Kamarajar Street, District, Chokkilailam Virudhunagar, Madurai-625002

Letter No.5370/B1/89, dt. 8.9.1989.

Sir,

Sub: prices -cowpea C-152 - the period between 15.8.89 and 30.8.89 - send reg:

Ref: Your letter No.5(21) 89-90/NSC -

MDU/774 dated Nil.

With reference to your letter cited, I send herewith the Market rate for Cowpea C-152 during the period from 15.8.89 to 30.8.89 prevailed at Virudhunagar Market

Centre:

Commodity period Prices Coupea 152 15.8.89 to 18.8.89 Rs.780/- " 19.8.89 to 25.8.89 Rs.790/- " 26.8.89 to 30.8.89 Rs.780/-

Sd/-

15. The Arbitrator had ignored Exh. B-7 a very important document which gives the basis on which the average highest market price has to be fixed in the light

of the clause in the agreement. Document B-7 reads as under:

NATIONAL SEEDS CORPORATION LIMITED

BEEJ BHAWAN PUSA COMPLEX

NEW DELHI - 12

NO.Prodn/CO/6/89-90/NSC DATED:18th Dec. 89 CIRCULAR NO. 867

Chairman-cum-Managing Director in consultation with General Manager(F) is pleased to revise and fix the premium rate minimum price for foundation & certified seed of pulses crop and fodder crop produced by NSC growers during kh''89 & R-89-90 in different regions as per details below:-

OAHMP-Over the average

highest market price

A. PULSES CROPS:

S. Crop/Variety Region Premium Rate Minimum Advance No. Rs/qtls. Price Rate 1. Mong All All Region 20% 25% 500 90% of vars. Except the except PS-16. Hyderabad QAHM minimum price for the total qty. delivered 2. Moong -do- Rs.25/- per PS-16 qtl more than the procurement price of other Moong Vars (for F/S & C/s Moong All Hyderabad 20% 25% 500 -do- Vars. 3. Urid & All region 20% 25% 500 -do- Cowpea (P) QAHMP Price 4. Redgram -do- 25% 30% 500 -do-

5. The average highest market price will be collected from the designated mandies of the producing area for the period between 1 to 6 weeks after the harvest of the crop i.e. 15 days market price after 4 weeks of harvest.

B. Folder Crop. The certified or TL seed procurement price of Maize AT will be Rs. 290/- + Rs.25/- (as bonus) and foundation or stock seed procurement price as Rs. 315/-+ Rs.25/- (as bonus) per qtl. for kharif''89 & Rabi'' 89-90. Above procurement/premium rate are applicable for the graded/colonel seed meeting all the certification standard of its respective class. The cost of processing, troating, picking etc., will be born by NSC.

Sd/-

16. It is not the case of the respondent that it arrived at the average market price on the basis of the formula mentioned in Exh. B-7. The arbitrator in his award dealing with Rs. 7,37,280/- and RS.1,76,550/-, the claims had referred to Ex. B-3, Ex. B-4, Ex-B-5, Ex.B-11, Ex.B-14, Ex.B-15, Ex. B-16 and Ex. B-17 has being conclusive on the question. As I have referred to above, the arbitrator had not noticed the Ex. B-11 and B-16 are the same. Ex. B-5, which is not at all relevant has been relied on by the arbitrator.

17. Now I shall refer to the evidence adduced by the respondent and shall

proceed to deal with the claim.

18. DW-1 Shri Shivshankar had stated in his evidence:

Q. The Claimant says that he had incurred huge expenses on production, inspection, transport etc. referring to page 3 of the agreement, whether you are agreeing or denying? A. I am agreeing because every grower programme allotted by NSC, this expenditure has to be necessarily incurred by all the growers.

19. Relating to the average market rate Shri S.Shivshankar would state:

Q. What is the average market rate?

The average market rate is the rate obtained from the Regulated Market Committee or the Produce Market Committee of the designated mandies. In case there is no transaction, then the authentic rate either from the District Statistical officer or the Director of Statistics of Madras obtained.

20. In the Chief examination, Shri Shivshankar has not given any definite data on the basis of which the price was fixed at Rs. 6.24 per kg. A perusal of the cross-examination would clearly indicate that while calculating the average market price, the NSC had deliberately acted contrary to the terms of the agreement. He admitted "there are numerous varieties of Cowpea such as local as well as improved varieties". About the varieties he would admit "as already told, there are number of improved varieties such as C-152, Russian variety EC 4216 and many more." He would admit about the calculating data "we generally collect the market price from the Agricultural Produce Market Committee/ Regulated Market Committee." About the quality of C-152 he would state "we call for the comparable quality of premium quality cowpea that arrives in the designated market." He would further state:

Q.6 So I could see you do not call for the rate of Cowpea C-152?

A. We do not specifically call for C-152 because we only call for comparable quality rate for Cowpea which may or may not be C-152.

7. What are the comparable grade of Cowpea?

A. That is the premium quality produce having maximum price.

8. In this case did you produce any documents calling for the price either from Market Committee or Regulated Market Committee for the best quality of Cowpea?

A. I have not produced any document regarding the above that we call for the rates of best quality of Cowpea.

10. So you have also not called for rates of improved variety of Cowpea?

A. We need not call for it.

14 Have you produced any documents before the Hon''ble Arbitrator to show that

you have called for comparable seed quality of Cowpea?

No.

15. So in the absence of calling for comparable seed variety, you resorted in getting the rates for popularly known as Thattapairu i.e. Cowpea or only traded variety as Cowpea?

A. In our procedure, actually the Cowpea in the market having maximum price registered qualify for the comparable quality for cowpea seeds for our procurement price.

21. When a question was put to the witness about the procedure adopted by the NSC is "it you want to fix a price for C-152, at least you should have taken the rates for C-152 Cowpea, if not for seeds". The witness avoided the answer by saying "I have no comments at all."

22. When the NSC Madurai asked for the rates from the Director, Statistics he did not ask for the rate for C-152. The following questions and answers would indicate how NSC had not acted in a manner expected of it. The questions and answers are as under:

Q.21 In your letter dated 28.11.89, you have called for the rates from the Director of Statistics, Madras for the Cowpea variety (B-11). So under B-5, the Director of Statistics has furnished you the whole-sale rate of Thattapairu (Cowpea). If you would have asked for the rate of Cowpea C-152, he would have also furnished the rate. Did you ask for the rate of C-152 Cowpea from the Director of Statistics?

A. What we have asked for also includes C-152.

Q.22 This letter does not contain about C-152 (EB-11) but only Cowpea. whether there is any mention about C-152 cowpea in EB-11 letter?

A. There is no mention.

23. When the question was put to the witness about the basis of fixing of the rate the witness would admit what was suggested to him. The answer to question No. 23 which makes it clear that the NSC had not adopted the correct method in fixing the rates he would also admit that the letter mentioned in the earlier question did not mention about the comparable variety of the best quality of the cowpea. The witness would admit for the year 1988 the rates given by the Assistant Director Statistics, Virudhunagar were accepted. The witness would admit that crucial documents have not been produced by the NSC. He would state:

Q.11. Have you produced any document before Hon''ble Arbitrator to prove that the Corporation has asked for the rates of commercial grains for fixing the rates of certified seeds in the earlier years ''88-89 and the subsequent year ''89-90 and ''90-91?

A. Not produced precise document. He would also admit:

Q.15. The rates quoted by the Director of Statistics under Exhibit B5 is also not for the comparable quality of Cowpea or Cowpea C1-152?

A. It does not pertain.

24. The witness would admit that the average market rates mentioned in the agreement would relate to C-152 cowpea are first grade quality. The witness was further asked about the procedure:

18. For fixing the procurement rate of Cowpea C-152 under Exhibit No: B-1 you have to adopt the average rate of Cowpea C-152.A. That is not our procedure. Our procedure is collection of Cowpea produce. it may or may not be same.

19. This agreement does not provide what is the procedure to be adopted for fixing the rate.

A. It does provide. As per Clause 3A(i) the designated procedure is to take the average market rates and afford premium of 50% over it. This is our precious procedure for arriving the procurement price fixation.

20. Is the Clause 3A(i) refers only to average price of seeds of Cowpea C-152 or comparable quality of first grade?

A. It can be either way.

21. You adopted a wrong procedure and you are liable for the claim preferred by the Claimant?

A. I deny it.

25. Exhibit A-10 is the comparative chart given by the claimant relating to the rates. That was not seriously challenged by the NSC, though Shri Shivshankar attempted to get over the difficulty in his evidence. The details given in Ex. A-10. The Director of Statistics wrote to the Manager, NSC Madurai in the following terms which is marked as MA-3:

Sir,

Sub: pulse seed procurement - rate re:

Ref: Your letter no.1(s) 89-90

Madurai 1438

During the year 1989-90 in February KM 2 Green gram foundation and certified seed procured at the rate of Rs. 8.94 (Rupees eight and paise ninety four only) per kgs and black gram T9 procured at the rate of Rs.7.98 (rupees seven and paise ninety eight only) per kgs. Along with total procurement price a premium of 20% for certified and a premium of 30% for foundation seed is paid.

26. In the light the documents produced by the parties, the conclusion is

irresistible that the claim made by the Claimant for the rates mentioned in the petition is fully justified.

27. The arbitrator in the first award dealing with the claims for Rs.7,36,820/- towards the cowpea C-152 and Rs. 1,76,550/- towards the moong PS-16 and K-851 varieties had observed that the Claimant did not produce any material to show that the respondent had not fixed the average market price in terms of the agreement. This is contrary to the materials placed on record. The arbitrator had completely ignored the evidence on record.

28. The arbitrator would observe that "the agreement is silent on what is average market price and how it is to be arrived at for fixing the procurement price of Cowpea C-152 and PS-16 and K-851 varieties of Moong." The Arbitrator while dealing with the points would observe:

The Complainant admits the necessity of obtaining market price but insist on market price of variety under production. But respondent is of opinion that market rate need not be necessarily the same variety under production i.e. C-152 of Cowpea or PS-16 and K-851 varieties of Moong, since the market may or may not receive these varieties during a particular period for which market rates are considered and this condition is not stipulated in the Agreement. I am of opinion that quality of a variety is always compared to the local varieties of same crop grown in an area and its market value is also compared to the local varieties freely traded in the local market.

29. It is submitted by the learned counsel for the claimant that the Arbitrator had assumed without any basis that the NSC can adopt any method and had accepted the case of the NSC. The Arbitrator had referred to exhibits B3, B4, B5, B11, B14, B15, B16 and B17 as if they are relevant for the purpose of considering the rate of first grade quality of cowpea C-152. I have perused this document and they do not render any assistance in fixing up the rate of first grade quality of C-152. The arbitrator had not referred to that part of evidence that is extracted from the evidence of Sh. Shivshankar. The error committed by the arbitrator is quite apparent on the face of the record. When once the arbitrator ignored the crucial part of the evidence, the reasoning given by the arbitrator cannot be sustained.

30. It is laid down by the Supreme Court in K.P. Poulose Vs. State of Kerala and Another, , if the Arbitrator ignores the crucial document and evidence on record the award is vitiated. The scope of the jurisdiction of the court to interfere the award of this nature is well settled. In Associated Engineering Co. Vs. Government of Andhra Pradesh and another, the Supreme Court had laid down that if the arbitrator ignores the terms of agreement the award has to be set aside. In the instant case it is the duty of the NSC as per the terms of the agreement to fix the average market rate as per the mode adopted in the trade, keeping in view the clause 3(a)(1) of the agreement, once that has not been done and when the Claimant had produced the material showing the rate that

has to be accepted. I have no hesitation in coming to the conclusion that the claimant has established his claim for Rs.7,36,280/- towards cowpea C-152 and Rs.1,76,550/- towards moong PS-16 and K-851 varieties. The rate fixed by the NSC up to Rs.624/- per quintal was much below the average market price and is not in accordance with the relevant clause in the agreement and the Ex. B-7 which is extracted above.

31. The claimant had prayed for interest 18% per annum. Having regard to the facts and circumstances, I am of the view that the rate of interest 10% per would reasonable. The award is modified and there shall be an award directing the NSC to pay Rs. 7,36,280/- to the claimant towards Cowpea C-152 and Rs. 1,76,550/- towards moong PS-16 and K-851 varieties with interest Rs.10% per annum.

32. The claimant A. Kannaiah shall be entitled to a sum of Rs. 7,36,280/- with interest 10% per annum from 1.8.1989 till the date of payment.

33. The claimant shall be entitled to Rs. 1,76,550/- with interest 10% per annum from 1.1.1990 till the date of payment.

34. Regarding the second award dealing with the claim of Shri N. Alagarisamy for Black gram T-9 variety the arbitrator had posed the question in the same manner as he has done in the earlier case. The arbitrator had completely ignored the evidence and had not referred to A-10 marked in the case of comparative chart filed by the Claimant on the basis of the details furnished by the Assistant Director of Statistics. The Arbitrator had adopted the same reasoning has done in the earlier case and it cannot be sustained at all. The arbitrator had observed:

The Complainant cited Exhibit BGA-1- a voucher dated 6.7.1990 of Assistant Director of Agriculture, Thirumangalam where in it is indicated that 1300 kgs. of Black gram T-9 is received from Mr. G. Radhakrishnan valued at Rs. 7.98 per kg. Exhibit A.A.3 is also cited by the Complainant wherein a letter dated 26.2.1990 of Assistant Director of Agriculture (Seeds), Usilampatti indicated procurement price of Black gram T-9 as Rs. 7.98 per kg. plus 20%. Two more exhibits i.e. BGA-1 and BGA-5 is also cited wherein M/s T.Stanes & Co. issued a directive dated 30.1.1990 to supply 25 Metric tons of Black gram T-9 but no rates mentioned, while BGA-5 is a certificate issued by M/s T. Stanes & Co. dated 28.2.1992 wherein procurement price of Black gram T-9 is indicated as Rs.8/- per kg. against purchase order dated 8.3.1990. None of these documents can be considered as market fate for Black gram as Assistant Director of Agriculture and M/o T. Stanes & Co. are not approved market agencies and their purchase is to be treated as purchasers of Black gram seeds like Respondent. The rate quoted by them could be a fixed rate without linking to market rate. These rates cannot be considered for procurement of Black gram T-9 seeds covered under the sold Agreement as only market rates are to be considered.

35. The arbitrator had referred to the case of the NSC based upon the documents which are absolutely no relevant at all for fixing the average market price as per

the terms of the agreement. The arbitrator simply observed:

At the same time Respondent stated that they have collected market rate of Black gram from an authentic source that is Director of Statistics and Exhibit BGR-2 and BGR-8 are cited as documents. BGA-3 is the wholesale price of Black gram during the period 15.12.1989 to 3.1.1990 obtained from that Director of Statics, Madras wherein rates of Madurai and virudhunagar markets are provided. Average market price is arrived at from this source and procurement price of Rs.7.94. per kg. for Black gram T-9 is fixed as per agreement. This method for fixation of procurement price by the Respondent is accepted.

36. The arbitrator had acted contrary to the terms of the agreement as I have noticed above. Therefore, the award passed by the arbitrator cannot be sustained. The claimant has proved his claim by producing the relevant materials and from the evidence of RW-1 given by Shri Shivshankar wherein he admitted that the NSC had not produced any documents to show the average market rate of first grade quality of the seeds supplied by the Claimant. Consequently, on the materials placed on record the claim for Rs. 4,32,130/- stands proved. The claimant shall be entitled to the same. Here also I am of the view that the rate of interest could be fixed 10% per annum. Thus the claimant shall be entitled to interest on the sum of Rs. 4,32,130/- 10% per annum from 1.1.1990 till the date of payment.

37. Accordingly there shall be a decree directing the respondent (National Seeds Corporation Ltd.):

A) to pay to the Claimant Shri A. Kannaiah a sum of Rs. 7,36,280/- with interest 10% per annum from 1.8.1989 till the date of realisation.

B) to Pay to the Claimant A. Kannaiah a sum of Rs. 1,76,550/- with interest 10% per annum from 1.1.190 till the date of realisation.

C) to pay to the Claimant Mr. N. Alagirisamy a sum of Rs.4,32,150/- with interest 10% per annum from 1.1.1990 till the date of realisation.

D) directing the parties to bear their own costs.

The Suit No 1036/97 and 423/92 and the objections are disposed of.

