
(1994) 06 BOM CK 0082

In the Bombay High Court

Case No : Arbitration Petition No. 208 of 1991 in Award No. 98 of 1991

Food Corporation of India

APPELLANT

Vs

Great Eastern Shipping Co. Ltd

RESPONDENT

Date of Decision : 14-06-1994

Acts Referred:

Arbitration Act, 1940 — Section 30, 35

Citation : (1995) 2 BomCR 3 : (1995) 2 MhLj 587

Hon'ble Judges : S.M. Jhunjhunwala, J

Bench : Single Bench

Advocate : Mr. R.V. Govilkar, for the Appellant; Mr. S. Sen., instructed by M/s. Bhatt and Saldanna, for the Respondent

Judgement

S.M. Jhunjhunwala, J.—By this petition, the petitioners seek to have the Award dated 21st June, 1991 filed in this court and numbered as "Award No. 98 of 1991" (for short "the said Award") set aside.

2. The petitioners are a Corporation established under The Food Corporation Act, 1964 and are a Government of India undertaking having an office at Bombay. The petitioners are engaged in activities, inter alia, like movement, storage and trading in foodgrains and other foodstuffs including edible oils. The respondents are a Company duly incorporated and registered under the provisions of the Companies Act, 1956 and are engaged in the shipped business. The respondents have their registered office situate at Bombay.

3. By a Charter Party dated Bombay, 7th October, 1983 made between the respondents as owners of the Motor Vessel "Jag Rakshak" and the President of India of behalf and for the benefit of the petitioners, the said vessel "Jag Rakshak" was lot out to the petitioners through the Union of India for loading, carriage and delivery of a cargo of 12,000 Metric Tons, 5% more or less at respondent's option, rice in bags about 50 kgs. net each from two parts namely Bassein and Rangoon at Burma to any port either on the East Coast or the West of Coast of India at the Charterer's option on the terms and conditions

mentioned therein. Pursuant to the said Charter Party, the said vessel loaded 4999.986 M/Tons net at Bassein and thereafter 6333.706 M/Tons net at Rangoon rice in bags and carried it for discharge at Cochin Port nominated by the petitioners. The said vessel arrived at Pilot Station, Dalhousie Point/Diamond Island, Bassein at 1602 Hrs. on 23rd October, 1983 and Bassein harbour at 1423 Hrs, on 24th October, 1983. Notice of Roadlines was tendered at 1602 Hrs, on 23rd October, 1983 and Lay time commenced at 1602 Hrs. on 24th October, 1983 in accordance with clauses 36(vi) of the Charter Party. According to the respondents, on the basis of cargo quantity loaded, the petitioners had available to them 16th Days, 17 Hours, 16 Minutes as laydays. The said laydays as per the respondents laydays statement expired on 23rd November, 1983 at 1938 Hrs, and the said vessel was thereafter on demurrage until completion of loading at Rangoon on 5th December, 1983 at 1130 Hrs. According to the respondents, the said vessel remained on demurrage for 12 Days, 15 Hours, 52 Minutes and the rate of Rs. 30,000 per day or pro-rata for part of a day as per Clause 7 of the Chapter Party, a sum of Rs. 3,79,833.33 became due from the petitioners to the respondents as demurrage.

4. The said vessel earned the cargo for discharge at Cochin Port nominated by the petitioners. The said vessel arrived at Cochin Port, Pilot Station at 1256 hrs. on 13th December, 1983. Notice of Roadlines was tendered which according to the respondents was accepted at 1000 Hrs. on 14th December, 1983. Laytime Commenced at 1000 Hrs. on 15th December, 1983 in accordance with the said Clauses 37 of the Charter Party. On the basis of cargo quantity as per Bill of Lading the petitioners had available to them 14 Days. 14 Hours, 36 Minutes as the laydays. The said laydays as per respondent's laydays statement expired on 0312 Hrs on 5th January, 1984 and the said vessel was thereafter on demurrage. According to the respondents, the said vessel remained on demurrage for 7 Days, 9 Hours, 29 Minutes and at the rate of Rs. 15,000/- per day, the sum of Rs. 1,10,937.50 become due from the petitioners to the respondents as demurrage at the discharging port.

5. The petitioners, while settling balance freight, had deducted Rs. 9,968.75 and Rs. 95,031.25 being despatch earned by them according to their calculations for the period 15 Hours, 57 Minutes and 6 Days, 08 Hours, 03 Minutes at loading and discharging ports respectively according to the respondents, the petitioners were liable to pay to the respondents. According to the respondents, the petitioners became liable to pay to the respondents the sums of Rs. 3,83,802.08 (Rs. 3,79,833.33) for demurrage according to respondents calculations plus Rs. 9,968,75/- being despatch deducted by the petitioners for the loading port) and Rs. 2,05,968.75 (Rs. 1,10,937.50 for demurrage according to respondents calculations plus Rs. 95,031.35 being despatch deducted by the petitioners for the discharge port) as also sums of Rs. 1.531.42 and Rs. 34.735.96 which amounts, according to the respondents, were wrongly deducted by the petitioners, all aggregating to Rs. 6,32,028.21. The respondents demanded the said amount from the petitioners and also served notices dated

27th December, 1984 under the Interest Act demanding payment of interest on the said sum of Rs. 6,32,038.21 at the rate of 20% per annum from 27th December, 1984. The claim made by the respondents was disputed by the petitioners. The said Charter Party provided for disputes to be referred to arbitration, each party appointing an arbitrator and the two arbitrators in the event of disagreement appointing an umpire. Since the disputes arose, reference to arbitration was made. The petitioners appointed one Dr. O. P. Motiwal and the respondents appointed one V. K. Bhandari as their arbitrators. The respondent filed their claim for the sum of Rs. 6,32,029.21 together with interest at the rate of 20% per annum from 27th December, 1984. The petitioners filed their Counter-statement to the statement of claims of the respondents before the said arbitrators. The respondents filed their rejoinder to the Counter-statement. Subsequently, the respondents amended their statement of claims claiming Rs. 7,42,965.71 from the petitioners with interest at the rate of 20% per annum from 27th December, 1984 till date of award. On 21st June, 1991 the said Arbitrators made their award awarding the sum of Rs. 4,98,501/- towards the claims of the respondents and further sum of Rs. 58,590.94 for interest calculated at the rate of 6% per annum on the said sum of Rs. 4,98,501/- for the period from 9th April, 1987 (being the date of the Statement of Claim) to 24th March, 1989 (being the date immediately proceeding the date of first hearing) to the respondents. The said award has been filed in this court and numbered as Award No. 98 of 1991. The petitioners have filed this petitions to have the said Award set aside.

6. Mr. Govilkar, learned advocate for the petitioners, has submitted that the said arbitrators grossly misconducted themselves and the proceedings before by neglecting and overlooking the factual, basic and fundamental aspects viz., that the notices of readiness which were given on 23rd October, 1983 and 16th November, 1983 respectively were given at the Pilot's Stations at Bassein and Rangoon which were 60 and 40 miles respectively away from the berth where the loading operations were to take place and that the loading was to take place only at berth and not Pilot Station at the respective ports. In the submission of Mr. Govilkar, the said notices of roadlines given being invalid, the said award is bad in the law and liable to be set aside by this court, Mr. Govilkar has further submitted that awarding even a single rupee by the said arbitrators in favour of the respondents, in the facts of the case, indicate total non-application of mind on the part of the said arbitrators and the said award being vitiated, is liable to be set aside.

7. The said award is not a speaking award. All award is conclusive as a judgment between the parties and the court is entitled to set aside the same if the arbitrator has misconducted himself in the proceedings or when the award has been made after the issue of an order by the court superseding the arbitration or after arbitration proceedings have become invalid u/s 35 of the Arbitration Act, 1940 or where an award has been improperly procured or is otherwise invalid u/s 30 of the said Act. All award may be set aside by the court on the ground of error

on the face thereof but an award is not invalid merely because by a process of inference and argument it may be demonstrated that the arbitrator has committed some mistake in arriving at his conclusion. It is not open to the court to speculate, where no reasons are given the arbitrator, as to what impelled him to arrive at his conclusion. In the instant case, the said arbitrators have not spoken their mind indicating why they have done what they have done. In the absence of any reason for making the said award, it is not open to this court to interfere with the said award. Appraisal of evidence by the said arbitrators cannot be a matter which this court questions and considers. The petitioners and the respondents having selected their own forum, the said arbitrators were conceded the power of appraisal of evidence. The said arbitrators were the sole judges of the quality as well as the quantity of evidence and it is not for this court to take upon itself the task of being judge on the evidence before the said arbitrators. This court is not sitting in appeal over the said award of the said arbitrators. The said arbitrators having been made the final arbiter of the disputes between the petitioners and the respondents referred to them, the said award is not open to challenge on the ground that the said arbitrators have reached a wrong conclusion or have failed to appreciate facts.

8. The merits and demerits of the respective claims of the parties were fully not out in the pleadings before the said arbitrators and argued at length at the hearings before them who have made and published the said award. In this petition, the factual matrix of the disputes which have been considered and decided by the said arbitrators cannot be gone into by this court. The said Clause 37 (vi) of the Charter Party was very much before the said arbitrators. The question of interpretation of the said Clause of the Charter Party by the said arbitrators was a question of law referred to them or in any event a question of law involved in the arbitration proceedings before the said arbitrators. The said arbitrators having interpreted the same in a particular manner and taken a decision which is a possible view, it is not permissible for this court in these proceedings to substitute its own decision as this court has not jurisdiction to substitute its own evaluation of the conclusion of law or fact to come to the conclusion that the said arbitrations had acted contrary to the bargain between the petitioners and the respondents. There is no breach or violation of the said clause of the Charter Party in the said arbitrators allowing the claim of the respondents to the extent of Rs. 4,98,501/- and interest.

9. Legality of the said notices of readings was a question of law specifically referred to the said arbitrators or in any event a question of law involved in the arbitration proceedings before the said arbitrators. The said arbitrators having decided the legality of the said notices of readiness, which was a possible view, it is not permissible to this court in these proceedings to substitute its own decision even on the assumption that such a view is not right as there is no proposition of law which could be said to be the basis of the said award, and which is erroneous. In the instant case, it is pertinent to note that the Charter Party was "Port Charter Party" and not "Berth Charter Party". For the notices of readiness

being valid, what was required have by supporting documentary evidence duly proved before the said arbitrators that the Pilot Stations both the Ports of Bassein and Rangoon are within the Port limits. The said arbitrators on facts and evidence before them and an interpretation of said Clause 37(vi) having held or concluded that the said notices of readiness were valid and legal, it cannot be said that they overlooked factual basic or fundamental aspects or that they misconducted themselves or the proceedings before them. The fact that act against the aggregate claim of Rs. 7,42,965.71 and interest at the rate of 20% per annum from 27th December, 1984 of the respondents against the petitioners, the said arbitrators have allowed the claim of Rs. 4,98,501/- and interest at Rs. 58,590.94 calculated at the rate of 6% per annum from 9th April, 1987 to 24th March, 1989 shows that the said arbitrators did apply mind while deciding the disputes referred to them and the allegation of the petitioners that the aid award is vitiated by reason or alleged non-application of mind by the said arbitrators is unwarranted, baseless and devoid of any merit.

10. No other contention on behalf of the petitioners was pressed before me. No ground to set aside the said award having been made out, the petition, being devoid of any merits, is liable to be dismissed. Hence, the petition is dismissed with costs.

11. Petition dismissed