

(2001) 08 DEL CK 0268
In the Delhi High Court
Case No : Suit No. 1036 of 1997

N. Alagarisamy

APPELLANT

Vs

The National Seeds Corporation and Another

RESPONDENT

Date of Decision : 27-08-2001

Acts Referred:

Arbitration Act, 1940 — Section 14, 30

Citation : (2001) 94 DLT 884

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : Mr. K.B.S. Rajan, for the Appellant;

Final Decision : Allowed

Judgement

J.D. Kapoor, J.—Brief facts leading to the remand of the case by the Division Bench need to be recapitulated.

2. The plaintiff filed claim before the arbitrator who was an officer of the defendant Corporation as a result of its disputes arising out of the contract. The learned arbitrator passed the award rejecting all the claims of the plaintiff. The plaintiff assailed the findings of the arbitrator. The learned Single Judge vide judgment dated 17.7.1998 not only set aside the award but also passed a decree against the defendants in terms of the claim of the plaintiff.

3. Feeling aggrieved the defendant challenged the judgment of the learned Single Judge by way of an appeal. The Division Bench set aside the order of the Single Judge and remanded the petition for deciding it afresh with the observations that instead of deciding the objections of the plaintiff on merit whether the award is liable to be set aside on any of the grounds as contemplated in Section 30 of the Act 1940 the learned Judge proceeded to reject the claim of the plaintiff on merits as if he was hearing the appeal against he impugned award.

4. Petitioner vide an undated agreement, agreed to sell to respondent No.1

"Certified category of seed of T-9 Black Gram" at the "average market price plus 20% and also consented that Delhi courts will have jurisdiction to decide disputes. Petitioner supplied 350 MT of said variety but was paid at lesser rate. Feeling aggrieved, petitioner approached the Arbitrator and filed his claim for adjudication.

5. The Arbitrator entered upon reference on 7.1.1991 and issued notice to the petitioner before publishing the award. According to the petitioner the notice was not as per requirements of Section 14 of the Arbitration Act, 1940. However, a copy of the award was given to the petitioner by the respondent on 22.6.1992. Arbitrator (Respondent No.2) did not file the award in the court. Instead the petitioner filed the same along with instant petition for setting aside the award rejecting his claim.

6. At the outset the learned counsel for the petitioner has contended that document Ex. P5, the inquiry report of the Director, Statistics was heavily relied upon by the Arbitrator while returning the finding in favor of the respondent. This was in spite of the fact that the said document was neither material nor was proved in accordance with the provisions of law. I am afraid, this contention does not hold water as it was not enjoined upon the arbitrator to insist for strict proof of the document which is official in nature, and has not been denied by the opposite party. Even if it is assumed that the document in question was not to the knowledge of the plaintiff still the fact remains that the Director of Statistics was well within his right to make enquiry of the regulation. On this ground also, the finding of the arbitrator or for that purpose the award cannot be interfered with.

7. Learned counsel has further contended that the arbitrator has not scanned documents Ext. B3 and B5 in proper perspective in spite of the fact that both these documents were crucial in nature and Therefore the award stands vitiated. These documents relate to the sale price of two different varieties of the seeds. In support of this contention the learned counsel has relied upon 1975 SC 1259, K.P. Poulose vs. State of Kerala and another. I have perused the said judgment. I am afraid the ratio of the said judgment is not at all applicable in the instant case. It was observed by the Supreme Court that if the arbitrator altogether ignores the documents or evidence, award stands vitiated.

8. The scope of the jurisdiction of the Court is very limited. The re-appraisal or re-evaluation of the evidence is not called for by the Court even if there is possibility of an alternative or even opposite finding. The Court is not supposed to sit in appeal and re-assess or re-scan the evidence or documents or material on record.

9. Unless and until the perversity is writ large on the face of the award and unless and until it is apparent that the arbitrator has traversed beyond the terms of the agreement or unless and until there is complete non-application of mind the courts should be reluctant to inter the award.

10. However, Ext. B7 is the most crucial document as it gives the basis on which

the average price has to be fixed in terms of the clause of the agreement. It reads as under:

NATIONAL SEEDS CORPORATIN LIMITED

BEEJ BHAWAN ... COMPLEX

NEW DELHI - 12.

No.Prodn/CO/6/89/NSC

Dated: 18th/21 December"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 ... kh"89 & R-89-90 in different regions as per details below:-

OAHMP-Over the average highest market price A: PULSES CORPS:

S.NO. Crop/Variety Region Premium Rate Minimum Price Advance Rs/Qtls Rs/Qtl. Rate Rs. Fs R/Qtl.

1. Moong All Region 20% 25% 500 90% of All Vars. Except OAHM price the minimum except PS-16 Hyderabad price for total qty delivered. 2. Moong/PS-16 - do- Rs.25/- per qtl. more than the procurement price of other Moong Vars. for F/ S & C/S Moong All Vas. Hyderabad 20% 25% 550 -do- 3. Unid&Cow...(P) All region 20% 25% 500 -do- OAHMP price 4. Redgram - do - 25% 30% 500 OAHM price "5. The average highest market price will be collected from the designated mandies of the producing area for the period between 4 to 6 weeks after the harvest of the crop i.e. 15 days market price after 4 weeks of harvest.

B. Fodder 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"

Above procurement/premium rate are applicable for the graded/cleaned seed meeting all the certification standard of its respective class. The cost of processing, treating, picking etc., will be borne by NSC."

sd/- R.B. Manwani Manager (FS&F)

DISTRIBUTION OT: All RM"s NSC S to CMD, NSC, New Delhi S to GM(P)/ GM(M)/ S to 11(F&A)/M/(O&P) D(Four Copies)/AO (Production)"

11. The arbitrator has not only failed to accord required consideration but has completely over looked and ignored it. The contention of the counsel that had this document been taken into consideration by the Arbitrator the claim of the petitioner would not have resulted in wholesale rejection, appears to have substance. On this short ground alone I accept the objections and set aside the

award with the direction to the arbitrator to consider the document Ex. B7 afresh in the right perspective and make the award. Parties are directed to appear before the arbitrator to be named by the defendant as the earlier arbitrator is stated to have expired, on 25.9.2001.