
(1993) 01 DEL CK 0032

In the Delhi High Court

Case No : Suit No. 1968A of 1984 and Interim Application No. 4235 of 1988

Pushkar Dutt Joshi

APPELLANT

Vs

National Seeds Corporation Ltd. and Another

RESPONDENT

Date of Decision : 21-01-1993

Acts Referred:

Citation : (1993) 1 ARBLR 483 : (1993) 25 DRJ 226

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : S.K. Puri and K.C. Bajaj, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The present petition has been filed under Sections 14(2) and 17 of the Arbitration Act for directing respondent no.2 to file the Award together with proceedings of the arbitration, in this Court and for directing notice of filing of the award to the parties concerned and for proceeding in accordance with law:

(2) Notice was issued to the arbitrator and the award Along with the proceedings were filed in this Court.

(3) The petitioner had earlier moved an application u/s 20 of the Arbitration Act, being Suit No. 39-A of 1979 and vide order dated March 6, 1979, the disputes were ordered to be referred to the Arbitrator, to be appointed by respondent no.1. Respondent no.1 appointed

(3) Smt. Anna R. Malhotra, the then Chairman of the respondent No.1, as the sole Arbitrator upon reference on March 30, 1979. The said arbitrator did not complete the proceedings, whereupon the petitioner filed another Miscellaneous petition being O.M.P."No.76 of 1982 and in response to the said petition, respondent No.1 appointed Mr. K.S. Jagannathan as the sole Arbitrator.

(4) The Arbitrator, respondent no.2 herein, made his award on 26th October, 1984. The objections to the award were filed by the petitioner under Sections 30

and 33 of the Arbitration Act. Respondent no.1 filed reply to the said objections. Parties led their evidence by means of affidavits.

(5) The petitioner was appointed as Dealer with sale points mainly in the Bajra growing districts", by the respondent National Seeds Corporation Ltd. and communication dated 2nd May, 1977 in this regard was sent to him. The relevant portion of the said communication is reproduced as follows:

"1. AGRO Sales Corporation shall guarantee minimum sale of 1000 quintals of BJ-104 and BK560 during the current Kharif season. Agro Sales Corporation shall also be at liberty to increase the indent up to any quantity during the current season and they shall be entitled for commission and all other benefits. 2.You will deposit Rs.3000.00 as security for 50 sale points. In case more sale points are opened additional Rs.2000.00 up to 100 sale points shall be .deposited by you with our Regional Manager, Jaipur. . 3.You shall be entitled to reduce the-indented quantity i.e. 1000 quintals by 20%. 4.NSC agreed to accept advance of RS.10000.00 on adhoc basis for the reservation of 1000 quintals of Bajra.The supply of seed shall be effected only against advance/cash payment. 5.We have "tentatively agreed to give you dealership with 50 sale points in Rajasthan State. You may please appoint sub- dealers and give us the list of dealers before the end of this month. We hope that you would be in a position to sell at least 2000 qtls. of Bajra. The sale of NHB-5 shall get due importance as discussed with you. The final agreement can be concluded and signed on 14th May, 1977 on the basis of the revised terms and conditions and discussions held with you from time to time. You pointed out the difficulty of delay in the delivery of the seed and publicity arrangements. I may assure you that there will be full cooperation from our side and necessary instructions shall be issued to P.M., Jaipur in this regard from time to time."

(6) The parties were subsequently governed by the Terms and Conditions for Appointment of Seed Dealers from June 1, 1977, and the said terms have been incorporated in the Standard Agreement, which is part of record of this case. The disputes having arisen between the parties were referred, as required by Clause 47 of the above said Agreement and the Arbitrator has determined the said disputes , which arose, on the basis of the agreement entered into between the parties on June 1, 1977, as will be indicated from the award itself. The award was given by the arbitrator on October 26, 1984 and the petitioner has challenged the same on various grounds, as mentioned in the objections to the award.

(7) The only objection, which has been argued by learned counsel for the petitioner is that the arbitrator has misconducted the proceedings as he ought to have held that the disputes between the parties have to be governed by the provisions of the formal agreement, having been signed on June 1, 1977 and the arbitrator should not have disallowed the claim on the basis of the tentative letter of offer dated 2.5.1977 by the respondent and as the transactions between the parties were regulated by means of the above said agreement dated June

1,1977. He further argued that the arbitrator in his award has adopted different standard to assess the claim of the petitioner, as compared to the counter claim of the respondent no. 1. In this regard he has referred to the award itself. Reference may be made to paragraph 5 (A) (i):

"5. Claims of the claimant against respondent (A) Claims on account of short supply/non supply of seeds requisitioned. (i) Bajra seeds-Kharif 1977-Rs.15394.00 . The claimant was appointed as a dealer vide letter No. 15 (52)/76-77/NSC/Mktg. dated 2.5.77 on terms set out therein. A formal agreement was drawn up and executed by the parties on 1.6.1977. Though there is no documentary evidence to show acceptance of the terms set out in the letter of the respondent dated 2.5.77 by the claimant, the claimant had complied with one of the terms regarding deposit of Rs.10,000.00 as could be inferred from telegram dated 28.6.77 from the claimant to the respondent. The terms set out in the letter of 2.5.77 do not provide for liquidated damages as claimed by the claimant. Hence the claim of the claimant is hereby rejected."

The arbitrator has declined, the claim of the petitioner on the ground that the terms set out in the letter of offer dated 2nd May, 1977, do not provide for liquidated damages as claimed. Reference now may be made to item 6(iv), which reads as follows:

"6. (iv) BJ-104 - Rs.20631 As per terms and conditions for appointment of dealers forming part of the agreement, the claimant has to place firm indent along with 5% advance. There is no provision to adjust claims/dues towards advance. Moreover, the claims of the claimant against the respondent were not accepted as on the date of placing the indents. As the claimant had deposited advance of Rs.15,000.00 and sought adjustment of Rs.13,936.00 , the advance paid would cover only 52% of the indents placed with the respondent in terms of the agreement. Accordingly, the indent placed by the Claimant for Bajra BJ-104 would be 442 qtls. and falls short of 60% of the original estimate by 458 (1500x60% =900-442=458). The respondent is entitled to liquidated damage on this shortfall under clause 28 (a) which works out to Rs.8931/-. As the respondent had claimed Rs.8346 only based on the actual quantity lifted, the claim of the respondent of Rs.8346 is hereby awarded. The claim of the respondent under clause 26 is rejected as the claimant had lifted the quantity indent with advance."

(8) Counsel for the petitioner has contended that the arbitrator had no jurisdiction to reject his claims on the basis of the communication dated 2.5.1977 when the subsequent contract was drawn between the parties on 1.6.1977 and by considering the counter claim of the respondent on the basis of the contract of the later date.

(9) Counsel for the respondent has not been able to satisfy me as to why the arbitrator has adopted two different criteria for considering the claim of the petitioner, as compared to the counter claim of the respondent. The claim, as

well as, the counter claim had to be considered on the basis of the agreement, entered into between the parties on June 1, 1977, and it was not relevant to refer, to the communication of May 2, 1977, where the parties had only entered into the tentative arrangement. Moreover, the disputes between the parties have been referred on the basis of the agreement dated June 1, 1977, as would be shown from the copy of the award itself. The only contention, which is made by him is that the award made by the arbitrator, who was an Expert, should not be lightly interfered with. He has referred to the judgment of this Court in Jagdish Chander Vs. Hindustan Vegetable Oils Corporation and Another, and of the Supreme Court in Puri Construction Pvt. Ltd. Vs. Union of India (UOI), . He has also contended that the Award, which is not even supported by reasons, cannot be remitted or set aside in the absence of reasons and has sought support from the Constitution Bench Judgment of the Hon"ble Supreme Court in AIR 1990 1426 (SC) .

(10) There is no doubt about the proposition of law that the jurisdiction of the Court is limited and the Court cannot examine the correctness of award on merits at the time of deciding the objections raised by the parties. The Court has also no jurisdiction to sit in appeal and examine the correctness of the award on merits. The facts of the present case, however, are different. The Arbitrator should have considered all claims and counter claims on the basis of the agreement dated June. 1, 1977, wherever applicable and not on the basis of communication dated 2nd May, 1977. The Arbitrator had no jurisdiction to adopt a different criterion to consider the matter in this manner. He should have examined the claims, as well as, the counter claims on the basis of the formal agreement between the parties, which governed the Terms and Conditions, as formulated in the contract of June 1, 1977. The arbitrator has himself, not denied that he was adjudicating the disputes which had arisen in respect of the agreement entered into on 1st June, 1977 between the parties.

(11) The arbitrator has, Therefore, misdirected himself and the Award cannot be upheld on this short ground. The objections of the petitioner are accordingly allowed. The award is remitted back to the Arbitrator for decision on the basis of the agreement entered into on 1st June, 1977 between the parties for the claims and counter claims which have not been so considered on that basis. The Arbitrator shall give his decision within four months from the date of receipt of this order. No order as to costs.