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Court : Delhi

Decided On : Mar-22-2002

Reported in : 2002IVAD(Delhi)838

Judge : Dalveer Bhandari and; Vikramajit Sen, JJ.

Acts : [Arbitration Act, 1940](#) - Sections 20

Appeal No. : FAO(OS) No. 258 of 1995

Appellant : Rishab Agro Products Ltd.

Respondent : Union of India (Uoi) and anr.

Advocate for Def. : Jayant Bhusan, Adv.

Advocate for Pet/Ap. : Anurag Aggarwal, Adv

Disposition : Appeal dismissed

Judgement :

Dalveer Bhandari, J.

1. The Central question which arises in this appeal is regarding the effect and interpretation of 'excepted matters' clause in the agreement. The appellant aggrieved by the judgment of the learned Single Judge dated 26.7.1995 dismissing its petition under Section 20 of the Arbitration Act has preferred this

appeal.

2. Brief facts relevant to dispose of the appeal are mentioned in the flowing paragraphs.

3. The respondent invited tenders of for the supply of milk on annual contract basis for the period from 1.1.1994 to 31.12.1994. The appellant was awarded the contract. According to the terms of the agreement the contract period could be further extended for a period of ninety days on the same terms and conditions at the sole discretion of the General Manager of the respondent. The relevant Clause 5 of the agreement reads as under:-

(5) PERIOD OF CONTRACT : The contract shall be operative for the period from 1st January, 1994 to 31st December, 1994. You are required to commence the supply of milk w.e.f. 1st January, 1994. The contract can further be extended for a period of 90 days on the same rates, terms and conditions of the A/T at the sole discretion of General Manager, Delhi Milk Scheme, w.e.f. the date of expiry of the initial contract period.'

4. According to the appellant it could not supply milk for a period of 6 to 7 days of the contracted period because of a strike in the plant. It is also mentioned that in 1994 there was short supply of milk in Delhi. thereforee, the appellant could not supply the milk. The General Manager of the respondent vide letter dated 28.12.1994 extended the period of supply on the stipulated rates. This was stated to be oppressive and ti was claimed by the appellant that it could not be compelled to supply the milk at the same rates.

5. In the appeal it is urged that directing the appellant to supply milk during the extended period at the stipulated rates required adjudication through the process of arbitration.

6. According to the respondent there was no dispute which required adjudication. The General Manager acted strictly in accordance with the terms of the agreement between the parties. The so called disputes cannot be made the subject matter of reference to the arbitrator.

Reply to this appeal has been filed. In the reply it is mentioned that it is wrong and denied that the appellant could not supply milk due to the strike. It is also incorporated that the appellant deliberately stopped supplies of milk to the respondent and the appellant diverted milk supplies to milk products under the name of 'UDAI GHEE' and 'MILK POWDER & DAIRY WHITENER'. It is stated that these products were marketed by the appellant in Delhi and earned huge profits. According to the terms of the agreement the contract can be further extended for a period of 90 days at the sole discretion of the General Manager of Delhi Milk Scheme. His decision in the matter would be final. It is mentioned in the reply that the learned Single Judge has correctly interpreted the agreement and this appeal has no merits and deserves to be dismissed.

7. In consonance with the terms and conditions of the agreement the General Manager in his discretion has extended the contract for a period of 90 days on the same terms and conditions. The learned Single Judge has correctly interpreted Claus 5. When the clause says that the discretion to extend the contract t will be at the sole discretion of the General Manager, it implies that the same cannot be challenged by the appellant.

8. Reliance has also been placed by the respondents on the decision of the Supreme Court in Vishwanath Sud v. Union of India : [1989]1SCR288 .

9. In Food Corporation of India v. Sreekanth Transport 1999 (3) RAJ 416 (SC) in some what similar circumstances the Supreme Court observed as under :

"Excepted matters, obviously, as the parties agreed, do not require any further adjudication since the agreement itself provides a named adjudicator-concurrence to the same obviously is presumed by reason of the unequivocal acceptance of the terms of the contract by the parties and this is where the courts have been found out lacking in their jurisdiction to entertain an application for reference to arbitration as regards the disputes arising there from and it has been the consistent view that in the event of the claims arising within the ambit of excepted matters, the question of assumption of jurisdiction of any arbitrator either with or without the intervention of the court would not arise. The parties themselves have decided to have the same adjudicated by a particular officer in regard to these

matters; what these exceptions are however are questions of fact and usually mentioned in the contract documents and form part of the agreement and as such there is no ambiguity in the matter of adjudication of these specialised matters and being terms in the agreement as the excepted matters.'

10. Their Lordships of the Supreme Court in a recent case General Manager, Northern Railways and Anr. v. Sarvesh Chopra JT 2002 (2) 445 have observed that if the Arbitrator allows a claim covered by an excepted matter, the award would not be legal merely because the claim was referred by the Court to arbitration. The award would be liable to be set aside on the ground of error apparent on the face of the award, or vitiated by the legal misconduct of the Arbitrator. In this case while summing up the judgment, their Lordships observed as under :-

'(i) While deciding a petition under Section 20 of the [Arbitration Act, 1940](#), the Court is obliged to examine whether a deference which is sought to be referred to arbitration is one to which the arbitration agreement applies. If it is a matter excepted from the arbitration agreement, the Court shall be justified in withholding the reference, (ii) to be an excepted matter it is not necessary that a departmental or 'in-house' remedy for settlement of claim must be provided by the contract. Merely for the absence of provision for in-house settlement of the claim, the claim does not cease to be an excepted matter, (iii) an issue as to arbitrability of claim is available for determination at all the three stages - while making reference to arbitration, in the course of arbitral proceedings and while making the award a rule of the court.'

11. Clause 5 of the agreement in this case is absolutely clear and there is no ambiguity whatsoever. According to Clause 5, the contract could be extended for a period of 90 days on the same terms and conditions at the sole discretion of the General Manager of the Delhi Milk Scheme.

12. The judgment of the learned Single Judge is consistent with the settled position of law as crystallised by a number of authoritative pronouncements of the Supreme Court. No interference is called for.

13. This FAO is accordingly dismissed with costs.

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