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(2007) 09 SC CK 0065

Supreme Court of India

Case No: Civil Appel No. 2668 of 2007

Markfed Vanaspati and Allied Industries		APPELLANT
	Vs	
Union of India (UOI)		RESPONDENT

Date of Decision: Sept. 14, 2007

Citation: (2007) 6 ALLMR 469 : (2007) 3 ARBLR 437 : (2007) 4 AWC 4046 Supp : (2007) 11 JT 141 : (2007) 11 SCALE 138 : (2007) 7 SCC 679 : (2007) 9 SCR 957

Hon'ble Judges: Tarun Chatterjee, J; Dalveer Bhandari, J

Bench: Division Bench

Advocate: L. Nageshwar Rao, K.G. Bhagat, Vineet Bhagat, Hari Kumar G. and Neha Jain, for Debasis Misra, for the Appellant; Vikas Singh, ASG, Shilpa Singh, Shiva Lakshmi and R.C. Kathia for D.S. Mahra, for the Respondent

Final Decision: Disposed Of

Judgement

Dalveer Bhandari, J.
This appeal is directed against the judgment of the Division Bench of the Delhi High Court dated 17.4.2006 passed in FAO (OS) No. 206/2006.

2. The respondent, Union of India, issued tender dated 29th June, 1989 for purchase of oil. The appellant offered to supply 1600 metric tons of different categories of oil vide quotation dated 15th July, 1989, the details of which are as under:

1. 200 MT @ 24,150/- per MT by 31.8.89 (Refined Cotton Seed Oil)

2. 500 MT @ Rs.21,500/- per MT by 31.8.1989 (Rapeseed Oil)

3. 300 MT @ Rs.24,550/- per MT by 30.9.1989 (Refined Soyabeen Oil)

4. 500 MT @ Rs.22,000/- per MT by 30.9.1989 (Rapeseed Oil).

3. The respondent-Union of India accepted the offer given by the appellant and consequently the respondent issued tender in the form of a letter dated 22nd August, 1989. The appellant failed to supply the oil as per the delivery schedule. The time for supply was extended, reserving the respondent''s right to levy liquidated damages. All the supplies could not be delivered. The contract was cancelled and the appellant resorted to force majeure clause.

4. The dispute was referred to an arbitrator. The sole arbitrator made and published his award on 20th June, 1995. The appellant prayed before the arbitrator that in view of the extension of time on various occasions, the time was not the essence of the contract. The appellant has admitted various delays including in furnishing security, but stated that the same were unintentional.

5. It may be pertinent to mention that the objections regarding limitation and jurisdiction were given up by the appellant before the Division Bench of the High Court. Before the Division Bench, the appellant sought the benefit of the force majeure clause because the government had banned the use and process of rapeseed oil by manufacturers. The Division Bench specifically noted in the impugned judgment that no other argument was advanced by the learned Counsel appearing for the appellant. Therefore, we requested the learned Counsel for the appellant to confine his submissions only with regard to force majeure clause argued before the Division Bench of the High Court in this case. On the basis of the documents referred to the court by the learned Counsel for the appellant, it is clear that the ban was imposed for the use of rapeseed oil for manufacturing Vanaspati but manufacturing of rapeseed oil was not debarred or restricted. Therefore, even the plea of force majeure clause taken by the appellant was found to be totally devoid of any merit.

6. The arbitrator in the instant case gave a non- speaking award, which was made rule of the court by the order of the learned Single Judge on 21st February, 2006. The appellant preferred FAO (O.S.) No. 206/2006, before the Division Bench of the High Court, which was also dismissed on 17th April, 2006. The appellant has preferred SLP against the said impugned judgment of the Division Bench. This Court granted leave on 14th May, 2007.

7. The Division Bench, in the impugned judgment, while affirming the judgment of the learned Single Judge has correctly observed that the ban was on the use of rapeseed oil for manufacturing Vanaspati but manufacture of rapeseed oil was not debarred or restricted.

8. We have heard Mr. L. Nageshwar Rao, the learned senior counsel for the appellant, and Mr. Vikas Singh, the learned Addl. Solicitor General for the respondent, Union of India. In this case, the award has been made rule of the court by the learned Single Judge of the High Court and the findings of learned Single Judge have been affirmed by the Division Bench. The Court in the impugned judgment held that the force majeure clause could not be attracted in the facts and circumstances of this case. This was so

because the ban covered the use of rapeseed oil for manufacturing Vanaspati, yet manufacturing rapeseed oil was not debarred or restricted. We concur with the learned Single Judge''s findings, which were affirmed by the Division Bench.

9. The consistent and settled legal position is that the scope of interference is extremely limited in a non- speaking award. The legal position has been consistently followed in number of judicial decisions. The findings of some of those judgments are recapitulated as under.

10. In 279724 in para 29 at page 53, Sabyasachi Mukharji, J. speaking for the Court observed that the court in a non-speaking award cannot probe into the reasoning of the award. The Court further observed that only in a speaking award the court may look into the reasoning of the award, and it is not open to the court to probe the mental process of the arbitrator and speculate, where no reasons are given by the arbitrator as to what impelled him to arrive at his conclusion. Furthermore, the reasonableness of the arbitrator''s reasons cannot be challenged. The arbitrator''s appraisement of the evidence is never a matter for the court to entertain.

11. This Court in 272532 , dealt with a non- speaking award. The court observed that it is not open to the court to probe the mental process of the arbitrator where he has not provided the reasoning for his decision.

12. This Court, in 270019 in para 20 at page 133 and para 31 at page 138, observed that the arbitrator is under no obligation to give reasons in support of the decision reached by him, unless the arbitration agreement or deed of settlement so required. If the arbitrator or umpire chooses to give reasons in support of his decision, then it would be open to the court to set aside the award upon finding an error of law. The reasonableness of the reasons given by the arbitrator cannot, however, be challenged. It is not open to the court to look for the reasons and proceed to examine whether they were right or erroneous. The arbitrator is the sole judge of the quality as well as the quantity of the evidence. It will not be for the court to take upon itself the task of being a judge of the evidence before the arbitrator. The Court should approach an award with a desire to support it, if that is reasonably possible, rather than to destroy it by calling it illegal.

13. In 272942 in para 7 at page 78, the Court observed while dealing with a non-speaking award that the attempt of the court should always be to support the award within the letter of law.

14. In 269282 in para 44 at page 309, the Court observed that in a non-speaking award the jurisdiction of the court is limited. It is not open to the court to speculate where no reasons are given by the arbitrator as to what impelled the arbitrator to arrive at his conclusion. It is also not possible to admit to probe the mental process by which the arbitrator has reached his conclusion where it is not disclosed by the terms of the award. Similar view has been taken in the following cases, namely, 300656 , 263010 , 279154

and 291898 .

15. The decided cases of this Court demonstrate that this Court has consistently taken the view that scope of interference in a non-speaking award is extremely limited. The Court cannot probe into the mental process of the arbitrator. The court should endeavour to support a non-speaking arbitration award provided it adhered to the parties agreement and was not invalidated due to arbitrator''s misconduct.

16. Russell on Arbitration 19th Edition at Pages 110-111 described the entire genesis of arbitration as under:

An arbitrator is neither more or less than a private judge of a private court (called an arbitral tribunal) who gives a private judgment (called an award). He is a judge in that a dispute is submitted to him: he is not a mere investigator but a person before whom material is placed by the parties, being either or both of evidence and submissions: he gives a decision in accordance with his duty to hold the scales fairly between the disputants in accordance with some recognized system of law and rules of natural justice. He is private in so far as (1) he is chosen and paid by the disputants (2) he does not sit in public (3) he acts in accordance with privately chosen procedure so far as that is not repugnant to public policy (4) so far as the law allows he is set up to the exclusion of the State Courts (5) his authority and powers are only whatsoever he is given by the disputants agreement (6) the effectiveness of his powers derives wholly from the private law of contract and accordingly the nature and exercise of those powers must not be contrary to the proper law of the contract or the public policy of England bearing in mind that the paramount public policy is that freedom of contract is not lightly to be inferred with.

17. Whatever has been mentioned by Russell in this paragraph is equally true for Indian Arbitrators.

18. Arbitration is a mechanism or a method of resolution of disputes that unlike court takes place in private, pursuant to agreement between the parties. The parties agree to be bound by the decision rendered by a chosen arbitrator after giving hearing. The endeavour of the court should be to honour and support the award as far as possible.

19. We have perused the award and the judgment of the learned Single Judge by which the award has been made the rule of the Court and the impugned judgment of the Division Bench of the High Court. In our considered view, no interference is called for. The appeal being devoid of any merit is accordingly dismissed. In the facts and circumstances of the case, we direct the parties to bear their own costs.