

**(2009) 03 DEL CK 0305**

**Delhi High Court**

**Case No:** FAO (OS) 41 of 2000

Union of India (UOI)

APPELLANT

Vs

Mahavir Woollen Mills

RESPONDENT

**Date of Decision:** March 25, 2009

**Hon'ble Judges:** Vipin Sanghi, J; Mukul Mudgal, J

**Bench:** Division Bench

**Advocate:** Shiv Khorana and Ashish Khorana, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

Mukul Mudgal, J.

This appeal is directed against the order dated 13.10.1998 passed by the learned Single Judge where the Hon"ble Judge whilst dismissing I.A. No. 4646/96, containing objections against the award dated 8.12.1994 filed by the appellant, in default, made the award dated 8.12.1994 rule of the Court. Once again, none has appeared for the appellant.

2. The facts of the case are as follows:

A. Objector/Appellant/Union of India entered into a contract with petitioner/respondent and vide A/T (Acceptance of Tender) No. WL-2/682 dated October 15, 1984 for supply by the petitioner of 57,500 kgs of Yarn Woolen 450 Tex natural grey shade type for issue in manufacture of blankets barrack as per specification No. I.D./TC/4050(c), which was to be supplied to the consignee, General Manager, Ordnance Clothing Factory, at Shajahanpur OFC siding, on FOR Panipat basis, and was to be dispatched by Goods Train as per terms and conditions applicable to the said Acceptance of Tender.

B. Appellant stated that as per the agreed terms and conditions of the contract, respondent was obliged to supply the stores @ Rs. 22.38 per unit and sale tax @ 2%, at a total cost of Rs. 12,86,850.00 and the supply was to be made and completed by April 30, 1985 or earlier. The date of delivery however, was changed to 31.5.1985 or

earlier vide amendment letter dated December 3, 1984 read with letter dated January 22, 1985. The said amendment was necessitated as there was a typographical error in the Acceptance of Tender. As the said amendment was made at the earliest possible time and in view of the nature of amendment, there was no effect thereof on the performance of the contract by respondent.

C. The respondent supplied 34,531.2 kg. of stores within the delivery period, and further requested for extension of the delivery period vide letter dated 31.5.1985. Taking into consideration, the request of the respondent for extension of delivery period, the appellant issued an extension notice dated July 26, 1985 extended the time for delivery of stores from 31.5.1985 to 30.9.85 with a condition that the respondent should intimate its unconditional acceptance within ten days of the receipt of the said amendment letter. The respondent did not either acknowledge the receipt of the same or communicate its acceptance, leave aside unconditional, of the extension of the delivery period. As such, the subject contract was cancelled for the balance un supplied quantity of 22,968.8 kgs. vide letter dated November 4, 1985.

D. That in the arbitration proceedings Objector/Appellant claimed damages from respondent in respect of the non-supplied quantity of 22,968.8 kg. The damages were claimed on the basis of the difference in rates between the contract dated 15.10.84 and a contract A/T dated 2.8.85. It may be mentioned that the contract A/T dated 2.8.85 was also with respondent for the supply of Yarn Woollen 450 Tex based on an advance A/T dated 28.6.85, which was proximate to be date of breach of the contract by respondent. Respondent on its part too made a Counter Claim, that too feeble and unsubstantiated, in the amount of Rs. 2 Lakhs.

3. The award was rendered on 8.12.1994.

4. This award dated 8.12.1994 led to the filing of the objections before the learned Single Judge by the appellant Union of India. The dismissal of the said objections on default by the learned single Judge has led to the filing of present appeal.

5. We have gone through the award ourselves to examine its legality. The Arbitrator had disallowed Claim No. 1 for Rs. 2,99,972.53/- made by the claimant Union of India towards general damages, inter alia, on the ground that the contractor had made the part supplies under protest. The Arbitrator relied on a photocopy of letter dated 19.03.85 sent by the contractor to arrive at his said finding. He also observed that the Union of India had cancelled the contract vide letter dated 4.11.85, treating the date of breach as 30.9.85 and contractor has by conduct accepted the price. No document of market rate of 30.9.85 was filed by Union of India to prove general damages. It, therefore, appears that due to absence of any proof, the award of damages claimed by the appellant was declined. Claim No. 2 towards cost of the arbitration proceedings was also disallowed as the main claim of the claimant was disallowed. The counter claim was also disallowed as no proof of damages and

details was filed by the respondents.

6. Having perused the award we are satisfied that the award is founded upon factual findings and did not call for interference by either this Court or the learned Single Judge. There is no merit in this appeal. Accordingly, it is dismissed.