Madhya Pradesh High Court
Vishal Export Overseas Ltd. vs Ind Agro Synergy Ltd. And Ors. on 3 May, 2007
Equivalent citations: 2007 (3) ARBLR 502 MP
Author: S Kulshrestha
Bench: S Kulshrestha, S Seth
JUDGMENT S.K. Kulshrestha, J.

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") has been filed against the order dated 30.09.1995 of the learned Additional District Judge, Indore in Arbitration Case No. 6/2002.

2. It is not disputed between the parties that as per indent of the appellant, the respondent No. 1 supplied De-Oiled Cake (DOC) in 30,000 bags. It is also not disputed now that the quantity of goods supplied was sold by the appellant. According to the impugned order, the appellant had placed indent for the supply of DOC produced from Indian Toasted Soyabean Extraction of yellow colour at the price of Rs. 8,750 per metric tonne. As against the quantity intended to be purchased, 95% payment was made to the respondent No. 1 on an understanding that the remaining 5% shall be paid later on. It is not disputed that as per the order, 30,000 bags of DOC were supplied to the appellant, but the appellant disputing the quality of the DOC on the ground that the quality did not conform to the prescribed standard as per the sample, withheld payment of balance 5%. It was in this context that a dispute arose between the parties and the matter was referred to Soyabean Oil Processors Association Arbitration Tribunal for adjudication.

3. Learned counsel for the appellant has submitted that the court while considering the objection raised under Section 34 of the Act did not pay any heed to the fact that an objection can also be raised with regard to arbitral award being in conflict with the public policy. To buttress this argument, learned Counsel for appellant invited attention to the decision of the Supreme Court in Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd. 2003 AIR SCW 3041 : 2003 (2) Arb. LR 5 (SC), in which, after considering the scope of the expression, public policy as occurring in Section 34(2)(b)(ii) it was held that it would also encompass a situation in which the tribunal has committed a patent error of law. Learned counsel for the appellant further submitted that immediately on receipt of the goods, appellant had informed the seller about the defect and directed the seller to take back the goods, but nothing was done by the seller and with a view to minimize the loss, the soyabean was sold for Rs. 76,47,178. Thus, on account of the defect in the goods and its inferior quality, the appellant sustained severe loss.

4. Learned counsel for the appellant has referred to Sub-section (2)(b)(ii) of Section 34 of the Act and submitted that the arbitration award can be assailed if it is in conflict with the public policy. Even on going through the decision relied upon by the learned Counsel for appellant, it does not appear that the transaction between the parties militated against any public policy formulated or against any provision of law.

5. Learned counsel for the respondent No. 1 has invited attention to paras 13 and 14 of the impugned order, in which, learned Additional District Judge has considered the objection of the appellant with

regard to the goods being not in conformity with the prescribed standard or not corresponding to the sample. Learned Additional District Judge has observed that the facts and circumstances placed before the arbitrator clearly indicate that the goods were of the quality for which indent was placed. Under Section 17 of the Sale of Goods Act, if the goods are supplied on the basis of sample, the buyer has a right to compare the goods with the sample, and to elicit whether the bulk corresponds with the sample of goods. According to learned Counsel for respondent No. 1, no such material was placed before the arbitrator and since, on the basis of discussion of the facts placed on record, learned Additional District Judge has found that the goods sold by respondent No. 1 to the appellant were of the prescribed standard, the case of the appellant fails in regard to the said objection. It has further been held that insofar as 6,961 bags from which samples were drawn are concerned, they were in old bags and on that basis, the sample has been treated of brown shade. The respondent's counsel has also strenuously urged that the fact that the goods had been sold by the appellant was not disclosed before the arbitrator nor before the Court of Additional District Judge and also not before this court in the appeal memo and now, an attempt is being made to bring the said fact on record by means of amendment.

6. We have heard learned Counsel for the parties and perused the record. Insofar as objections under Section 34 of the Act are concerned, reliance has been placed by learned Counsel for the appellant on Section 34(2)(b)(ii) of the Act to contend that the arbitral award is in conflict with the Public Policy of India. As stated above, in case of Oil & Natural Gas Corporation Ltd., the facts were different. It was relating to the supply of equipment for offshore oil exploration and maintenance in which letter was followed by a detailed order accepting the offer of the Saw Pipes Ltd. with the terms and conditions that the goods were to be supplied before 14.11.1996. There was a delay in the supply on the ground that there was strike in the country of the supplier. The Oil and Natural Gas Corporation Ltd., therefore, deducted the amount of damages in accordance with the terms and conditions of the contract and it was this act of the Oil and Natural Gas Corporation which was challenged before the arbitrator. The arbitrator, the court and the High Court, all decided the case in favour of Saw Pipes Ltd. and it was in this context that the matter travelled to the Supreme Court, where the Supreme Court approved the action of the buyer in retaining the money as per the contract. The facts of the present case are entirely different. Even though it is accepted, as contended by learned Counsel for the appellant, that the public policy would also include breach or violation of law, since it is a contractual matter and it has not been demonstrated as to which legal provision has been breached, we find no substance in the contention of learned Counsel for the appellant much less in a case where the arbitral award has been challenged. We may also refer to Section 42 of the Sale of Goods Act which reads as under:

42. Acceptance--The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

In the present case, learned Counsel for the appellant does not dispute that the goods were sold though for a price much less than the price for which they were purchased. The fact that the goods were sold was inconsistent with the ownership of the seller and, therefore, it tantamount to

acceptance on the part of the buyer. Under these circumstances, the case of the appellant that he had intimated the seller to take back the consignment does not appear to be correct. Even the fact that the goods had been sold by the appellant was not disclosed either before the arbitrator or before the court and even in the appeal memo filed in this case. We are, therefore, in agreement with the contention of learned Counsel for respondent No. 1 that the contention having not been raised, the award cannot be challenged on these grounds.

7. Learned counsel for the appellant further contended that the intimation was sent to the seller to take back the goods, but this fact has not been mentioned in the objection under Section 34 of the Act or before the arbitrator. On this basis also, the challenge to the award of the arbitral tribunal is misconceived.

8. From the record, we find that although the award was challenged under Section 34 of the Act on the ground that it was against the public policy, there is nothing on record to even remotely suggest that there was breach of any public policy or there was any patent illegality. The objection about the inferior quality of the goods also did not have any substance as discussed in paragraphs 13 and 14 of the impugned order. The buyer did not apprise the authorities concerned that the goods had been sold by the buyer and it was also not mentioned that the seller was ever intimated to take back the goods. Under these circumstances, the contentions urged are baseless and misconceived and we do not find any infirmity in the impugned order. Consequently, this appeal fails and is dismissed, but with no order as to costs.

9. In view of the observations made hereinabove, we find no substance in the application of the appellant under Order VI Rule 17 of the Civil Procedure Code (IA No. 4479/2007) for permitting the amendment in the appeal memo.