Supreme Court of India
Food Corporation Of India vs Joginderpal Mohinderpal on 3 March, 1989
Equivalent citations: 1989 AIR 1263, 1989 SCR (1) 880
Author: S Mukharji
Bench: Mukharji, Sabyasachi (J)

PETITIONER:
FOOD CORPORATION OF INDIA

Vs.

RESPONDENT:
JOGINDERPAL MOHINDERPAL

DATE OF JUDGMENT03/03/1989

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
RANGNATHAN, S.

CITATION:
1989 AIR 1263 1989 SCR (1) 880
1989 SCC (2) 347 JT 1989 (2) 89
1989 SCALE (1)664

ACT:
Arbitration Act , 1940-- Sections 14 17, 30 and 33--Arbitrator making a speaking award--Unless the reasons are erroneous as propositions of law or view of the arbitrator cannot be substantiated--Award not liable to be set aside by Court.

HEADNOTE:
The Respondent entered into a contract with the appellant Food Corporation of India on or about May 1979 whereunder the appellantCorporation was to give to the Respondent Paddy for being shelled/ converted into rice at the rate of 70% of the Paddy. The Paddy was to be lifted from the godowns of the appellant. The shelling charge was fixed at Rs.2/20 p. per quintal. Some dispute having arisen between the parties, the Respondent moved an application before the Subordinate Judge for appointment of an arbitrator and the Sub-Judge appointed the arbitrator who gave his award on 22nd January 1982. In the award the arbitrator did not allow some of the claims made by the appellant, in particular, a claim of Rs.55,060/29 p which was claimed as a penalty
Rs.2 per quintal for not lifting the balance of Paddy. The arbitrator in disallowing the claim on that count, took

the view that the appellant has to prove the actual losses suffered by it which the appellant failed to prove. Another claim not allowed by the arbitrator related to Rs.3,23,856/08. p. in respect of the cost of non-delivery of 137-39548 tonnes of rice @ Rs. 165 per quintal.

The Respondent made an application u/s. 14 of the Arbitration Act, 1940 to make the award a rule of the Court. The appellant filed the objections u/s 30 and 33 of the Act. The Subordinate Judge, First Class, on 2nd December, 1982, found that the award was liable to be set aside and accordingly modified the award and passed a decree in favour of the appellant for the amount. On 2nd March, 1984, the Addl. Distt. Judge, on appeal by the Respondent, reversed the order passed by the Subordinate Judge. He held that the award was not liable to be corrected/interfered with in the manner done by the Sub-Judge. Aggrieved by the said order the appellant went in revision to the High Court. The High Court on 11.12.84 dismissed the revision petition. Hence this appeal by the appellant-Corporation.

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Dismissing the appeal, this Court,

HELD: That the arbitrator has chosen to make a speaking award in the instant case, that is he has given reasons for his conclusions. Since the arbitrator has chosen to give reasons, unless it is demonstrated to this Court that such reasons are erroneous as such as propositions of law or a view which the arbitrator has taken is a view which it could not possibly be sustained in any view of the matter, then the challenge to the award of the arbitrator cannot be sustained. [886H; 887A-B]

Even assuming that there was some mistake, such a mistake is not amenable to be corrected in respect of the award by the Court. This was a fair order passed after considering all the records. The conclusion arrived at by the arbitrator is a plausible conclusion. The Court has no jurisdiction to interfere or modify the award in the manner sought for by the appellant. [887G-H]

The Addl. Distt. Judge was justified in correcting the order of the Subordinate Judge and the High Court was also justified in not interfering with the order of the Addl. Distt. Judge. [887H; 888A]

Mukkudduns of Kimkunwady v. Inamdar Brahmins of Soorpai, 3 MIA 380; M/s. Sudarsan Trading Co. v. The Government of Kerala & Anr., [1989] 1 Jt. Today SC 339; Champsey Bhara & Co. v. Jivraj Balloo Spinning & Weaving Co. Ltd., L 1922 IA 324, followed.

Puri Construction Pvt. Ltd. v. Union of India, [1989] 1 SCC 411, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1945 and 1946 of 1989.

From the Judgment and Order dated 11.12.1984 of the Punjab and Haryana High Court in C.R. No. 1794 and 1795 of 1985.

Dr. L.M. Singhvi and Y.P. Rao for the Appellant.

G.L. Sanghi, J.P. Gupta and S.K. Agarwal for the Respondent. The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. Special leave granted.

This appeal arises from the decision of the High Court of Punjab & Haryana, dated 11th December, 1984 dismissing the Civil Revision filed by the appellant. It appears that there was a contract entered into by the parties on or about 15th May, 1979 which provided that the appellant would give to the respondent paddy to convert these into rice after lifting paddy from the godown of the appellant. There was an agreement between' the parties for shelling of paddy into rice, after lifting the paddy from the godown of the appel- lant, at the rate of 70% of the paddy. The shelling charge was Rs.2.20 per quintal. The learned Subordinate Judge, First Class, directed on or about 17th March, 1980 appoint- ment of an arbitrator on an application by the respondent. On 22nd January, 1982, the arbitrator gave his award. The arbitrator did not allow the claims of the appellant as claimed as per the terms of the agreement. The arbitrator allowed certain claims. It is necessary, in view of the contentions that have been raised, to refer to the award of the arbitrator. After setting out the history the arbitrator dealt with the various contentions. It is not necessary to refer to all the contentions and points urged before the arbitrator and upon which he has made his award. It is sufficient if the relevant portions are dealt with. The arbitrator, inter alia, dealt with a claim of Rs. 55,060.29 which had claimed as penalty at Rs.2 per qtl. for not lift- ing the balance of the paddy weighing 2765-3093 mts. The arbitrator noted that he had held that there was justifica- tion for the millers, millers being respondent herein, not to lift the paddy. Assuming, however, the arbitrator noted, that if it was decided that the millers were at fault in not lifting this paddy, the arbitrator expressed the opinion that the appellant could not recover the amount claimed by way of penalty. He expressed the view that in order to enable the appellant to claim the amount, it had to be shown that the actual losses were suffered by the Corporation. Otherwise, it could not be claimed as pre-estimated damages. Otherwise, it would only be penalty which could not be recovered. No evidence had been led for how many days the bags of the paddy remained in the godowns of the Corpora- tion, the arbitrator noted, and what losses were incurred for getting it shelled from other quarters. The arbitrator referred to the affidavit of one Mr. M.S. Rawat, Asstt. Manager, that the Corporation had to get the unlifted paddy shelled by transporting to other centre as well as getting the same shelled at heavy additional expenditure. The arbi- trator noted that there was not an iota of evidence on that point. So no actual losses stated to have been suffered by the Corporation and no proof thereof was there. The arbitra- tor further noted that an amount by way of penalty could be permitted if some losses were proved. He, accordingly, dismissed the claim of the appellant for Rs. 55,090.19.

The next claim dealt with by the arbitrator was the claim of Rs.3,23,856.08 claimed by the Corporation as the cost of non-delivery of 137-39549 tonnes of rice at the rate of Rs. 165 per qtl. of

paddy. The claim of the appellant was based on the basis that the appellant had converted the undelivered rice into paddy by multiplying it with 100/70 and it came to 123,87.11 tonnes. The arbitrator dealt with this question as follows:

> "At the rate of Rs. 165 per qtl. its price works at Rs.3,23,856.08. According to provisions of clause g(i) of the Contract, in the event of failure to supply rice within prescribed specification, the millers are liable to pay to the Corporation for the quantities of rice short supplied at the penal rate of 11/2 times the economic cost of the concerned variety of the paddy equivalent to the short- ages. In the contract no definition of 'Eco- nomic Cost' is furnished nor is the expression any where defined in any law. However, Shri Pritam Singh in the statement attached to the affidavit work it out at Rs. 110 per qtl. The procurement price of paddy is Rs.85 per qtl. as shown therein. He has added to it market fee and other charges including cost of gunny Rs.2 and interest charges at Re. 1. Under the above clause of the contract, the Corporation has added 50% penalty and thus has claimed the price at Rs. 165 per qtl.
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> I do not think that the Corporation is enti- tled to such a fantastic rate particularly when the expression 'economic rate' has not been defined. Even if the statement of Shri Pritam Singh is accepted the maximum price of the rice at that time should be Rs. 100 per qtl. exclusive of gunny bag and interest charges to which in my opinion the Corporation is not entitled. The market rate did not exceed that amount at that time. So the calcu- lated at this rate the price of the undeliv- ered rice will come to Rs.1,96,277.00. to which the Corporation is entitled. I may add here that the above amount has been allowed to the Corporation besides from the evidence on the record I believe that the rice was short delivered. When the paddy had been accepted by the millers unconditionally and without any reservation, they were bound to give to the Corporation 70% of the yield. As they did not do it, so they are liable to pay the price of the undelivered rice.
>
> I have already stated above that the rice after shelling to be , delivered to the Corporation under clause g(i)of the contract had to conform to the specification laid down by the Punjab Government under the Punjab Rice Pro- curement Price Control Order, 1968 issued on the 22nd October, 1968, as amended from time to time. The Corporation states that the rice accepted by them was done subject to the quality rice which was permissible under clause g(ii) of the contract. This has been duly proved from the evidence placed on the record by the Corporation. Even Shri Anil Kumar, a partner of the millers firm admitted that they received an analysis report in respect of the rice which was accepted by the Corporation to continue that the Corporation was mentioned and that they did not appeal against the cut, though there was a provision in the said order to do so. It, therefore, means that the quality cut was admitted to have been correctly assessed under the said Punjab Rice Order and to that the millers submitted. This item is, therefore, allowed."

The respondent filed an application under section 14 of the Arbitration Act, 1948 (hereinafter referred to as 'the Act') for filing of the award and prayed for making the award the rule of the court. The appellant on 25th May, 1982 filed objections under sections 30 and 33 of the Act. The learned Subordinate Judge, First ClasS, on 2nd December, 1982 found that the award was liable to be set aside and modified the award and passed a decree in favour of the appellant for the amount. On 2nd March, 1984, the Additional District Judge allowed the appeal by respondent and reversed the Subordinate Judge's order.

Aggrieved thereby, the appellant went in revision before the High Court. The High Court on 11th December, 1984 dis- missed the revision petition. Aggrieved thereby, the appel- lant has come up before this Court. It is, therefore, neces- sary to decide whether the High Court was right. As mentioned hereinbefore, the learned Subordinate Judge had modified the award and passed a decree in favour of the appellant for the amount. The learned Additional District Judge, however, allowed the appeal of the respondent and reversed the decision of the learned Subordinate Judge. The High Court did not interfere with that decision because the High Court did not find any ground to interfere. The question therefore is, whether the learned Additional Dis- trict Judge in the first appeal was right in holding that the award was not liable to be corrected in the manner done by the learned Subordinate Judge. The jurisdiction to inter- fere by the Court of law of an award made by the arbitrator chosen by the parties is circumscribed. In India, there is a long history of arbitration. Arbitration is a mode of set- tlement of disputes evolved by the society for adjudication and settlement of the disputes and the differences between the parties apart from the courts of law. Arbitration has a tradition; it has a purpose. Arbitration, that is a refer- ence of any particular dispute by consent of the parties to one or more persons chosen by the parties with or without an umpire and an award enforceable by the sovereign power were generally unknown to ancient India. Hindus recognised deci- sions of Panchayats or bodies consisting of wealthy, influ- ential and elderly men of the Community and entrusted them with the power of management of their religions and social functions. The sanction against disobedience to their deci- sion was excommunication, or ostracism and exclusion from all religions and social functions of the community. An agreement to abide by the decision of a Panchayat and its decision with regard to the line of boundary was held not to be conclusive, since a reference to arbitration and award properly so called did not exist. See the observations in Mukkudduns of Kimkunwady v. Inamdar Brahmins of Soorpai, 3 MIA 380. See also Bachawat's Law of Arbitration at page 1. When power came to the East India Company, they framed Regulations in exercise of the power vested in them by the British Government- Some of these Regulations were touching arbitration. Bachawat gives description of the evolution of the Arbitration Act, 1940. Therefore, arbitration as a mode for settlement of disputes between the parties, has a tradi- tion in India. It has a social purpose to fulfil today. It has great urgency today when there has been an explosion of litigations in the courts of law established by the sover- eign power. New rights created, or awareness of these rights, the erosion of faith in the intrinsic sense of fairness of men, intolerant and uncompromising attitudes are all the factors which block our courts. The courts are full of litigations, which are pending for long time. Therefore, it should be the endeavour of those who are interested in the administration of justice to help settlement by arbitra- tion, if possible. It has also a social efficacy being the decision by the consent of the parties. It has greater scope of acceptance today when there is a certain erosion of faith in view of the failure to appreciating the functions of the courts of law. It has also the advantage of not only quick- ness of

decision but of simplicity of procedure. But in proceedings of arbitra-

lion there must be adherence to justice, equity, law and fair play in actions. However, the proceedings of arbitra- tion must adhere to the principles of natural justice and must be in consonance with such practice and procedure which will lead to a proper resolution of the dispute and create confidence of the people for whose benefit these processes are resorted to. It is, therefore, the function of courts of law to oversee that the arbitrators act within the norms of justice. Once they do so and the award is clear, just and fair, the courts should, as far as possible, give effect to the award of the parties and make the parties compel to adhere to and obey the decision of their chosen adjudicator. It is in this perspective that one should view the scope and limit of correction by the court of an award made by the arbitrator. We should make the law of arbitration simple, less technical and more responsible to the actual realities of the situation, but must be responsive to the cannons of justice and fair play and make the arbitrator adhere to such process and norms which will create confidence, not only by doing justice between the parties, but by creating a sense that justice appears to have been done. Sections 30 and 33 of the Act provide for the grounds on which an award of the arbitrator can be set aside. These were mainly, until recent changes made by statutory laws in England, in consonance with the English principles of Common Law as adopted in India. So far as the material of the present purpose is concerned, an award of the arbitrator can only be interfered with or set aside or modified within the four corners of the procedure provided by the Act. It is necessary to find whether the arbitrator has misconducted himself or the proceedings legally in the sense whether the arbitrator has gone contrary to the terms of reference between the parties or whether the arbitrator has committed any error of law apparent on the face of the award. It is necessary to empha- sise that these are grounds for setting aside the award but these are separate and distinct grounds. Halsbury's Laws of England, Vol. 2 4th Edn., para 623 reiterates that an arbi- trator's award may be set aside for error of law appearing on the face of it. Though this jurisdiction is not to be lightly exercised. The award can also be set aside if, inter alia, the arbitrator has misconducted himself or the pro- ceedings. It is difficult to give an exhaustive definition what may amount to a misconduct on the part of the arbitra- tor. This is discussed in Halsbury's Laws of England (supra). It is not misconduct on the part of an arbitrator to come to an erroneous decision, whether his error is one of fact or law, and whether or not his findings of fact are supported by evidence. See the observations of Russell on Arbitration, 20th Edn., page 422.

In the instant case, the arbitrator has chosen to make a speaking award, that is to say, he has given reasons for his conclu- sion. Whether he is obliged to give such reasons or not is another matter but since the arbitrator has chosen to give the reasons, unless it is demonstrated to this Court that such reasons are erroneous as such as propositions of law or a view which the arbitrator has taken is a view which it could not possibly be sustained on any view of the matter, then the challenge to the award of the arbitrator cannot be sustained. As has been emphasised in M/s Sudarsan Trading Co. v. The Government of Kerala & Anr., [1989] 1 Jt. Today SC 339 that an award could be set aside if the arbitrator has misconducted himself or the proceedings or has proceeded beyond jurisdiction. It could also be set aside where there are errors apparent on the face of the award. But these are separate and distinct grounds. In case of errors apparent on the face of the award, it can only be set aside if in the award there is any proposition of law which is apparent on the face of the award, namely, in the award itself or any document incorporated in the award. See the observations of the

Judicial Committee in Champsey Bhara & Co. v. Jivraj Balloo Spinning & Weaving Co. Ltd., L 1922 IA 324. Dr. L.M. Singhvi, learned counsel for the appellant, urged before us that the arbitrator was wrong in not award- ing 50% of the added penalty as claimed by the appellant, as mentioned hereinabove. The appellant had claimed the price of Rs. 165 per qtl. The arbitrator was of the view that the expression 'Economic Rate' had not been defined. It is true that the expression 'Economic Rate' has not been used, but the expression 'Economic Cost' has been used. The arbitrator has noted that the market rate did not exceed that amount at the time. The amount of Rs. 100 per qtl. is mentioned of such a rate as the arbitrator had noted, could only be pre- estimated damages but this was not so according to the arbitrator. The arbitrator had construed the effect of clause g(i) of the contract as mentioned hereinbefore. It cannot be said that such a construction is a construction which is not conceivable or possible.

If that is the position assuming even for the argument that there was some mistake in the construction, such a mistake is not amenable to be connected in respect of the award by the court. This was a fair order after considering all the records. The conclusion arrived at by the arbitrator is a plausible conclusion. The court has, in our opinion, no jurisdiction to interfere or modify the award in the manner sought for by the appellant and in the manner done by the learned Subordinate Judge in the first instance in this case. In that view of the matter, the learned Additional District Judge was justified in correcting the order of the learned Subordinate Judge and the High Court was also justified in not interfering with the order of the Additional District Judge. The award on the aspects can- vassed before us by Dr. L.M. Singhvi is a plausible con- struction of clause g(i) of the contract. It cannot, in our opinion, be interfered with either on the ground that there was error apparent on the face of the award or on the ground that the arbitrator has misconducted himself in not giving the effect to the penal rate as contemplated under clause g(i) of the contract referred to hereinbefore in the award. Dr. Singhvi sought to urge that as per the terms of the contract the arbitrator was obliged to award penal rate in terms of clause g(i) of the contract. The arbitrator has apparently not done so. He has given reason why he has not done so. It was submitted that he was wrong in not doing so. We do not agree. The arbitrator has discussed the effect of clause g(i). He has noted that unless there was evidence about which incidentally there was none, this amount could not be treated as a pre-estimate of damage. If that be so then it was penalty. It was not recoverable. Reasons may not be apparent, latent was there. Dr. Singhvi's objection therefore cannot be accepted.

Dr. Singhvi drew our attention to the observations of this Court in M/s Sudersan Trading Co., (supra) at page 352 of the report where it was stated that if it was apparent from the award that a legal proposition which formed its basis was erroneous, the award was liable to be set aside. Dr. Singhvi sought to urge that when the arbitrator observed that "Corporation is not entitled to recover such a claim particularly when the 'Economic Rate' has not been defined", this, according to the statement of Dr. Singhvi, the arbi- trator was mistaking the law, such a mistake of law is apparent on the face if it. It has to be borne in mind, however, that wrong statement or conclusion of law, assuming even that it was a wrong statement of law, was not wrong statement of the proposition of law which was the basis for decision in this award. Error of law as such is not to be presumed, if there is legal proposition which is the basis of the award and which is erroneous as observed in Champsey Bhara & Co, (supra), then only the award can be set aside. There was no proposition of law; there was a legal deduction of law arrived at to say that the provisions of clause g(i) of the

contract would be penal rate and such penal rate cannot be sustainable without evidence of the damages suf- fered to that extent. We are of the opinion that the arbi- trator had taken a view which is plausible view. Beyond this, the court has nothing to examine. It is not necessary for a court to examine the merits of the award with refer- ence to the materials produced before the arbitrator. The Court cannot sit in appeal over the views of the arbitrator by re-examining and re-assessing the materials. See the observations of this Court in Puri Con- struction Pvt. Ltd. v. Union of India, [1989] 1 SCC 411. In the aforesaid view of the-matter, it appears to us that the learned Additional District Judge was right in the view it took and the High Court, therefore, was justified in dismissing the revision. The appeal, therefore, fails and is accordingly dismissed. No order as to costs. Special leave granted.

In view of the fact that the facts of this appeal are more or less identical to the Appeal arising out of S.L.P. (C) No. 3392 of 1985, this appeal is also dismissed. No order as to costs.

Y.L. Appeals dis-
missed.