

IN THE HIGH COURT OF ORISSA : CUTTACK

WA Nos. 183, 184 & 185 of 2012

From a common order dated 03.03.2012 passed by the learned Single Judge in OJC Nos.8141, 8148 and 8151 of 1997.

Food Corporation of India Appellants
(In all the three appeals)

-Versus-

M/s. Jai Maa Kali Stores
(In WA No.183/2012)

M/s Haryana Trading Co.
(In WA No.184/2012)

M/s Agrawalla Store Respondents
(In WA No.185/2012)

For the Appellants : M/s. A.C. Baral,
D. Nayak, S.K. Nayak &
S.K. Sahoo

For the Respondents : M/s. A.P. Bose, R.K.
Mohanta, N. Hota &
Mrs. V. Kar

P R E S E N T :

**THE HONOURABLE CHIEF JUSTICE MR. AMITAVA ROY
AND
THE HON'BLE DR. JUSTICE B.R. SARANGI**

Decided on : 30.09.2014

Amitava Roy, C.J.

These appeals impugn the common judgment/order dated 03.03.2012 passed in OJC Nos.8141, 8148 and 8151 of

1997 instituted by the respondent-writ petitioners herein questioning the appellant Food Corporation of India's (for short, hereinafter referred to as "the Corporation") demand for differential price in connection with sale of wheat under the Open Market Sale Scheme (for short, "OMSS") for the months of November and December, 1996 and January, 1997. The assailment of this demand having been sustained, these appeals follow and have been analogously heard.

2. The factual background being the same and the issues common, the present adjudication answers all the appeals.

Factual narration from OJC No.8141/97 would suffice with marginal supplementation wherever necessary. The respondents-writ petitioners are proprietorship firms carrying on business of General Merchants and Commission Agents dealing with essential commodities and have been granted Food Grains Licence under the provisions of the Essential Commodities Act, 1955 and the Rules framed thereunder. According to them, the Headquarters of the Food Corporation of India, New Delhi (for short hereinafter referred to as "the FCI/Corporation") by its fax/telex message dated 25.10.1996 issued a circular to the Regional Managers of different States including Orissa for sale under the OMMS (Domestic) for the month of November, 1996. The circular carried the conditions relating to the price of wheat clarifying that the same (price) prevailing on the date of issue/lifting/delivery would be collected. The circular imposed a ceiling on the quantity of wheat per buyer per month. The circular inter alia also stipulated that a three-member Committee would scrutinize the applications and finalize the list of allottees. A similar circular/fax message dated 6.12.1996 was issued for allotment of wheat for the month of December, 1996. Subsequent thereto, a notice dated 10.12.1996 was also issued in the local daily *The Samaja* fixing the price of wheat and rice. It was reiterated therein that the price applicable on the date of

issue/lifting/delivery would be payable. By a notice dated 09.1.1997 open sale of wheat and rice for the month of January, 1997 was offered. This was followed by a letter dated 18.1.1997 from the Regional Office of the FCI, Bhubaneswar, addressed to the District Manager, FCI, Sambalpur, etc. reiterating the terms and conditions for sale of wheat for the month of January, 1997.

3. According to the respondents-writ petitioners, they deposited the cost and release orders were issued to them, on the basis of which they were allotted stock and wheat was delivered to them for the months of November and December, 1996 and January 1997. The respondents-writ petitioners pleaded that the delivery of stock of wheat was effected on different dates at the rate of Rs.541.60 per quintal through Balijhari Food Storage Depot of FCI computed on the basis of price prevailing at nearby centre i.e. Raipur. It was averred that by the impugned letter dated 25.2.1997 issued by the District Manager, FCI, Sambalpur, thereafter different amounts were demanded by way of differential price at the rate of Rs.549.30 per quintal of wheat. Contending that as delivery of the stock of wheat allotted to them had been permitted by realizing the deposits made against the same without either demanding any additional amount as insisted upon by the impugned letter/notice/order or reserving any right for such realization, the impeached demand, was ex facie illegal, the respondents/writ petitioners invoked writ jurisdiction of this Court for redress.

4. The appellant-Corporation in its counter while endorsing the validity of the demand, questioned the maintainability of the writ petitions for non-impleadment of the Union of India, a necessary party, being the appropriate authority for fixing the price of wheat in respect of different states. It pleaded that the Ministry of Food, Government of India, New Delhi, is the authority in matters of fixation of price

applicable to the traders/dealers throughout the country who are operating through district offices of the FCI. It averred that the regional offices of the Corporation in the state and the district offices in the districts are the executing authorities as per the directions issued by Central Government as well as the highest authority of the FCI in this regard. While asserting that the respondents-writ petitioners had been lifting wheat under the OMSS from the Corporation on payment of total cost of wheat qua the quantity lifted, it reiterated that the price of wheat per MT is fixed by the Ministry of Food, Govt. of India, New Delhi, and communicated to the Headquarters of FCI. It underlined that the price is fixed at different rates in respect of different states at par with the respective major center thereof and Headquarters of the FCI, New Delhi, on receipt of the said rate of price intimates the same to its different zones/regions throughout the country.

5. According to it, by a circular dated 18.09.1996, the FCI (Headquarters) through the Manager (Sales) issued circular/telex disclosing the price fixed by the FCI, New Delhi, at different rates for different major centres throughout the country. It clarified that there were thus 34 nearest major centres, but, in case of OMSS, the rate at the depots other than the centers as specified therein was to be fixed at the rate applicable to the nearest major centre. According to this circular, in case of open sale of wheat at other depots, price fixed for nearest major centre within the state/region was to apply. This was also subject to the rider that in case of modification of rates, the price applicable and collectable on the date of issue/receipt/delivery of wheat would be payable. The Corporation pleaded that on the basis of the instruction of the FCI (Headquarters), as per the circular, a three-member Committee decided the price of wheat and wheat products for the dealers/traders under the Scheme. The Corporation stated that while quoting the rate, on 25.10.1996,

the Committee inadvertently overlooked the stipulation that in case of open sale of wheat at a depot the rate applicable to the nearest major centre was payable. According to it, the nearest major centre within the state/region for the district of Sambalpur was Cuttack and, thus, the rate applicable within Cuttack was payable by the respondents-writ petitioners for the stock of wheat lifted by them in the months of November, December, 1996 and January, 1997.

6. Apart from asserting that though this was known to the concerned dealers/traders/flour mill owners, the price and the rate applicable at the major center of Cuttack was not offered by them, the Corporation clarified that the demand for the differential price was thus made. It was pleaded further that many such traders/flour mill owners/dealers without reservation also deposited the differential cost being fully aware that the same was payable in terms of the Central Government circular dated 18.09.1996. The Corporation thus dismissed the challenge of the respondents-writ petitioners to be lacking in bona fide and also for securing illegal gain.

7. The learned Single Judge, by the impugned judgment and order, however, upheld the assailment on the ground that the entire amount having been paid by the respondents/writ petitioners towards the price of wheat whereafter the delivery orders were issued, the demand for differential price was not sustainable in absence of any clause in the delivery/release orders to the effect that the amount collected would be subject to revision for the reasons whatsoever. The learned Single Judge was of the view that in terms of Section 19 of the Sale of Goods Act, 1930 (hereinafter referred to as 'the Act') as pursuant to the release/delivery orders the goods were delivered to the respondents/writ petitioners, property therein stood transferred to them. Adverting to Section 23(2) of the Act, it was concluded

that the appellant/Corporation was deemed to have unconditionally appropriated the goods to the contract. It was observed that not only the appellant/Corporation had directed the respondents/writ petitioners to lift the quantity of wheat mentioned in the release orders, but also stipulated the period within which delivery of the same was to be completed failing which storage charges would be collected. It was concluded thus that as the respondents/writ petitioners had lifted the goods within the stipulated period without being subjected to any condition, the transaction stood completed before the additional demand had been raised.

8. Mr S.K. Nayak has argued with reference to the fax/telex message dated 18.09.1996, 06.12.1996, notice dated 10.12.1996 and 09.01.1997 as well as the letter dated 18.01.1997 of the Senior Regional Manager, FCI, Bhubaneswar addressed to the District Manager, FCI, Cuttack/Bhubaneswar that price at the rate of Rs.5493/- per MT being payable at the depot from which respondents-writ petitioners had lifted their quota of wheat, the inadvertent mistake in realizing price thereof at the rate of Rs.5416/- per MT, by no means in law, can act as an estoppel against the appellant-Corporation and, thus, the impugned demand is valid. Learned counsel argued further that, as the respondents-writ petitioners had subjected themselves to the norms governing the price as contained in the aforementioned contemporaneous and official documents, their challenge to the demand of differential price ought to have been summarily rejected by the learned Single Judge.

According to Mr. Nayak, respondents/writ petitioners having subjected themselves to the specific stipulation under the contract, they were estopped from questioning the same and avoid their liability in terms thereof. The learned counsel urged that it being apparent from the condition that the price prevailing on the date of physical delivery of the stock would be payable by

the buyer, the property or the goods was not intended to be passed, unless the differential amount payable was disbursed. According to Mr. Nayak, in terms of Section 19 of the Act the differential price is payable by the respondents/writ petitioners and therefore reference to Section 23(2) of the Act in the impugned judgment and order is wholly out of place. Without prejudice to the above, Mr. Nayak, insisted as well that the writ proceedings instituted to wriggle out of a contractual obligation, being impermissible in law ought to have been dismissed in limine. He placed reliance on the decision of the Hon'ble apex Court in *Kulchinder Singh & ors. Vs. Hardayal Singh Brar & Ors*, AIR 1976 SC 2216.

9. Per contra, Mr. Mohapatra, learned counsel for the respondents/writ petitioners has maintained that the appellant/Corporation having permitted them to lift their allotted quota of wheat on payment of the price payable during the relevant time without any reservation, the demand for differential price is ex-facie illegal. As the allotted quantity of wheat had been delivered to the respondents/writ petitioners only on payment of the price thereof, it was clearly intended by the appellant/Corporation that the property therein had passed to them on delivery of the goods and thus the learned Single Judge was perfectly justified in holding so with reference to Sections 19, 20 and 23 of the Act.

The learned counsel has argued that the respondents-writ petitioners being not responsible for mistake, if any, on the part of the authorities of the appellant-Corporation and as the contract stood concluded with the payment of the price realized from them before delivery of the wheat allotted to them, the additional demand was per se illegal and unauthorized. According to Mr Mohapatra, in the facts and circumstances of the case, in any view of the matter, the appellant-Corporation is estopped from raising any additional

demand, and, thus the learned Single Judge was perfectly justified in adjudging the same to be illegal.

10. We have scrutinized the pleaded facts and the documents on records and have also analyzed the rival arguments.

11. That the Ministry of Food, Government of India, New Delhi, is the appropriate authority for fixing the price of wheat (as in this case) in respect of different states at different rates and that routed through FCI (Headquarters), New Delhi, the regional office and the district offices of the Corporation are the executing authorities to realize the same is not a matter in dispute. That the price of wheat at the rate so fixed is leviable and payable is also not in doubt.

12. A bare perusal of the fax/telex message dated 18.09.1996, reveals that for Cuttack the rate fixed for wheat under the OMSS (Domestic) for the month September, 1996 had been fixed at Rs.5493/- per MT. The fax/telex message further clarified that for the depots at other centres i.e. centres other than those listed, the rate fixed for the nearest major centre would apply.

13. The parties are not at issue that vis-à-vis the district of Sambalpur, in terms of this fax/telex message, the rate fixed for the nearest major centre i.e. Cuttack would be applicable. There is no debate either that the price of the wheat allotted to the respondents-writ petitioners was realized at the rate of Rs.5416/- per MT fixed for the major centre at Raipur. In terms of the fax/telex message dated 18.09.1996, therefore, it is apparent that qua the respondents-writ petitioners, the price of wheat delivered to them under the OMSS (Domestic) was payable at the rate of Rs.5493/- per MT. The price of such wheat realized/paid had thus been wrongfully computed at the rate of Rs.5416/- per MT.

14. The circular/fax message dated 18.09.1996 contains the following clause of price.

“Prices : The prices of wheat and rice for open sale will continue to be the same as communicated vide this office Fax No. J.1.(1) /96 /PY /S.III dated 18th September, 1996 in respect of wheat and Fax No. J/1/US/Rice/96.III dated 1st July, 1996 for rice without any change till further orders. However, in case of open sale of wheat at depots at other centres, wheat price fixed for nearest major centre (s) falling within the State/Region shall apply. The prices as applicable on the date of issue/ lifting/delivery must be collected as per the procedure in vogue.”

15. It would be apparent from the above that price was payable in terms of the fax/telex message dated 18.9.1996 with the stipulation that in case open sale of wheat at depots at other centres, price fixed at the nearest major centre(s) would apply. Additionally, the price, as applicable on the date of lifting/delivery, was to be collected as per the procedure in vogue. The fax/telex message dated 6.12.1996 for the month of December, 1996 also reiterated the above. The notices dated 10.12.1996 and 9.1.1997 for sale of wheat and rice under the OMSS (Domestic) for the month of December, 1996 and January 1997 also did not depart from the above covenant.

16. The letter dated 18.1.1997 addressed by the Senior Regional Manager, FCI Bhubaneswar to the District Manager, FCI, Cuttack/Sambalpur, etc. mentioned the procedure to be followed for the purpose of scrutinizing the applications of the prospective buyers and for issuing allotted quantity of wheat subject to the terms and conditions as enumerated therein. In Clause 8 of that letter it was reiterated that the price of the wheat for the open sale would be as per the fax/telex message dated 18.9.1996 subject to the rider that the price as applicable on the date of issue/delivery would be collected. That the rate for Cuttack would be Rs.5493/- per MT was the reiterated.

17. Admittedly, the price of the allotted quantity of wheat delivered to the respondents-writ petitioners during the months of November, 1996 to January, 1997 was quantified at a rate lower than that prescribed for the major centre at Cuttack.

18. In that view of the matter, the respondents-writ petitioners at all relevant time were liable to pay the price of wheat and essential commodities at the rate fixed by the appropriate authority i.e. Ministry of Food, Government of India, New Delhi, and the FCI (Headquarters). Inadvertent omission on the part of the Committee, as in the instant case, or the subordinate authority of the Corporation to enforce the said price and realize the actual value of the essential commodities delivered/supplied would not render the fixation of the price thereof by the appropriate authority nonest in law. As a corollary, such omission cannot, in our opinion, absolve the concerned dealers/traders/mill owners of their legal liability to pay the actual price of wheat lifted by them. As neither the regional office nor the district office nor the depot of the FCI had any authority to reduce the rate at which price of wheat was payable as stipulated by the fax/telex message dated 18.9.1996, there is no manner of doubt that the plea of waiver against the appellant-Corporation is not available to the respondents-writ petitioners. Noticeably, many of such traders/mill owners/dealers have voluntarily paid the differential amount having realized that the same is payable in terms of the rates prescribed by the appropriate authority. The contention of the respondents-writ petitioners that no demand having been made or reservation having been expressed by the Corporation while delivering the quota of wheat to them or making the transaction subject to payment of any additional amount, the impugned demand is unsustainable, does not weigh with us.

19. The learned Single Judge sustained the challenge essentially being of the view that as transaction had been completed on realization of the price, as offered, the title in the goods had passed to the respondents-petitioners as contemplated under section 19 of the Sales of Goods Act, 1930 (for short, hereinafter referred to as “the Act”) and further that in terms of Sections 20, 23(2) and 24 of the Act, as the delivery had been made, without reserving any right of disposal, the appellant-Corporation was due to have unconditionally appropriated the goods to the contract.

20. In the singular facts and circumstances of the case, we find ourselves in respectful disagreement with this deduction.

In the result the appeals succeed. The impugned judgment/order so far as it relates to the challenge in OJC Nos.8141, 8148 and 8151 of 1997 is set aside.

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Chief Justice

Dr. B.R. Sarangi, J. I agree.

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Judge

Orissa High Court, Cuttack
Dated 30th September, 2014/PCP