Jute & Gunny Brokers Ltd.

Vs

M/S. New Central Jute Mills Co. Ltd.

Civil Appeal No. 92 of 1954

(CJI S. R. Dass, S. K. Das, P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah JJ)

20.01.1959

JUDGMENT

DAS, C.J. -

This is an appeal filed upon a certificate of fitness granted by the High Court of Calcutta impugning the judgment pronounced by the said High Court on January 23, 1953, declaring null and void an award (No. 209 of 1952) made by the Bengal Chamber of Commerce in case No. 855 of 1951, whereby they ordered the respondent company to pay to the appellant company a sum of Rs. 1,95,000 besides interest and costs.

The facts giving rise to the present appeal are simple and may briefly be summarised as follows : On April 6, 1951, the appellant company entered into a contract with the respondent company for the supply of 5,000 maunds of Nikhli and/or Ashuganj Jute on certain prices according to quality, "shipment during July and/or August, 1951, guaranteed". That contract, which was entered into by bought and sold notes exchanged between the parties through brokers, contained a very wide arbitration clause. When shipping documents were presented to the respondent company by the bankers of the appellant company, they were not honoured on the plea that the same were not in order and the respondent company failed to take delivery of the goods. The last date on which the documents were so presented was September 17, 1951. On September 26, 1951, the appellant company, through their solicitors, wrote to the respondent company intimating that they had exercised their option of cancelling the contract and demanding the payment of the sum of Rs. 1,95,000 as damages on the basis of the difference between the contract price and the market price of the goods as on September 17, 1951. The respondent company having by their letter dated October 25, 1951, denied their liability to pay any amount, the appellant company on November 2, 1951, referred the dispute to the arbitration of the Bengal Chamber of Commerce in terms of the arbitration clause contained in that contract. The respondent company submitted to the jurisdiction of the Tribunal of arbitration by appearing and adducing evidence before it. On February 29, 1952, the arbitrators made their award by which they allowed the claim of the appellant company in full with interest and costs. The award having been filed in the Calcutta High Court on April 23, 1952, the respondent company on June 9, 1952, filed an application in that Court praying, inter alia, that the award be declared null and void and be set aside. The main ground urged in that application was that the award was a nullity in that the contract containing the arbitration clause was void under the provisions of the Raw Jute (Central Jute Board and Miscellaneous Provisions) Act, 1951, (W. Ben. VII of 1951) which was then in force. In order to appreciate the points raised before the High Court and before us it is necessary at this stage to refer to some of the statutory provisions bearing on the question.

To regulate the prices of jute and to empower the Government to fix its maximum prices, the West Bengal Legislature passed an Act called the West Bengal Jute (Control of Prices) Act, 1950, (W. Ben. VI of 1950) which came into force on March 15, 1950. On December 14, 1950, the Government of West Bengal promulgated an Ordinance called the Raw Jute (Central Jute Board and Miscellaneous Provisions) Ordinance, 1950 (XVII of 1950) for the better regulation of the jute trade. The preamble to that Ordinance recited that, as the owners of jute mills were not being able to secure adequate supplies of jute on the maximum prices fixed under the West Bengal Jute (Control of Prices) Act, 1950, it had become expedient to set up a Central Jute Board in West Bengal for ensuring an equitable supply of raw jute to the owners of the jute mills. That Ordinance consisted of only 15 sections. Section 4 of that Ordinance provided for the constitution of the Central Jute Board. Section 5 was expressed in the following terms :-

> "5. (1) No person shall sell or agree to sell raw jute to the owner of a jute-mill and no owner of a jute mill shall buy or agree to buy raw jute save and except in pursuance of a contract for the sale or the supply of raw jute entered into in the manner provided in section 6.
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> (2) Any contract entered into for the sale or the supply of raw jute with the owner of a jute-mill save and except in the manner provided in section 6 shall be void and of no effect.
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> (3) Any person contravening the provisions of sub-section (1) shall be guilty of an offence under this Ordinance and shall be punishable with imprisonment which may extent to six months or with fine or with both."

Section 6 laid down the manner in which all contracts for the sale or supply of raw jute with the owners of jute mills were to be entered into. Section 7 ran as follows :-

> "7. (1) No person shall deliver or cause to be delivered to the owner of a jute-mill and no owner of a jute-mill shall accept or cause to be accepted any raw jute save and except in pursuance of a contract for the sale or the supply of raw jute entered into in the manner provided in section 6.
>
> (2) Any person contravening the provisions of sub-section (1) shall be guilty of an offence under this Ordinance and shall be punishable with imprisonment which may extend to six months or with fine or with both.
>
> (3) The provisions of section 5, section 6 and this section shall have effect on and from the appointed day."

The expression "appointed day" occurring in s. 7(3) quoted above was thus defined in s. 2(1) of that Ordinance :-

> "2 (1) 'appointed day' means the date specified by the State Government by notification in the Official Gazette as the appointed day for the purpose of this Ordinance;"

By a notification dated December 29, 1950, published in an extraordinary issue of the Calcutta Gazette of the same date, December 30, 1950, was specified as "the appointed day for the purposes of ss. 5, 6 and 7 of the said Ordinance."

The said Ordinance was subsequently replaced by an Act called the Raw Jute (Central Jute Board and Miscellaneous Provisions) Act (W. Ben. Act VI of 1951), hereinafter referred to as "the Act", which came into force on March 21, 1951. The first fifteen sections of the Act were almost verbatim reproductions of the fifteen sections of the Ordinance and only one new section was added as the sixteenth section reading as follows :-

> "16. The Central Jute Board constituted, any rule made, any notification or licence issued, any direction given, any contract entered into, any minimum price fixed, anything done or any action whatsoever taken under the Raw Jute (Central Jute Board and Miscellaneous Provisions) Ordinance, 1950, shall, on the said Ordinance ceasing to operate, be deemed to have been Constituted, made, issued, given, entered into, fixed, done or taken under this Act as if this Act had commenced on the 14th day of December, 1950." The Act was in force at all times material to these proceedings though the same was subsequently repealed on August 5, 1952.

It may be mentioned here that both when the Ordinance was in force and after the Act had come into operation, the Central Jute Board issued a series of circulars by which it authorised the owners of jute mills to purchase raw jute up to the extent of quotas respectively allotted to them through "normal trade channels" subject to their furnishing particulars of the contracts and of deliveries under them to the Board. The contract in question was entered into through "normal trade channels" and not in the manner specified in the said Act or the rules framed thereunder. Indeed, it is conceded that no application had been made by the appellant company to the Board under s. 6(1) of the Act, that the Board did not, under s. 6(2) of the Act select any jute mills as buyers to these goods, that the respondent company had not signified in writing to the Board its intention to buy the raw jute in question, that the Board did not specify a date within which the contract was to be entered into and that, finally, the delivery period fixed in the contract was in contravention of the provisions of the Act and the rules and, therefore, the contract was void under s. 5(2) of the Act, if ss. 5, 6 and 7 were in force at the date of the contract.

The respondent company's aforesaid application for setting aside the award having come on for having, the learned Single Judge sitting on the Original Side reported the matter, under r. 2 of ch. V of the Original Side Rules, to the Chief Justice for forming a larger Bench for hearing of the said application. A Special Bench was accordingly constituted by the Chief Justice and the application came up for hearing before that Bench. Three points were urged before the High Court, namely, (1) that the Act was ultra vires the Bengal Legislature; (2) that even if the Act were intra vires ss. 5, 6 and 7 of the Act were never brought into force and (3) that there was a subsequent independent agreement to refer the disputes to the arbitration of the Bengal Chamber of Commerce. The High Court negatived all the contentions raised by the appellant company and by its judgment dated January 23, 1953, allowed the application and declared the award to be null and void, but directed the parties to bear their own costs. This appeal, as already stated, has been filed against the judgment of the High Court upon a certificate of fitness granted by the High Court.

The learned Attorney-General appearing in support of this appeal has urged before us only the second point urged before the High Court, namely, that even if the Act were intra vires ss. 5, 6 and 7 had never been brought into force and, therefore, the contract in question containing the arbitration clause was valid and consequently the award was binding and enforceable. He does not dispute that, by virtue of s. 16 of the Act, the notification issued on December 19, 1950, under s. 2(1) of the Ordinance has to be deemed to have been issued under the Act, but he contends that even so the notification dated December 29, 1950, cannot be read as having brought ss. 5, 6 and 7 of the Act

into force, for it, in terms, specified December 30, 1950, as the appointed day "for the purposes of ss. 5, 6 and 7 of the Ordinance". He urges that this Court has to take the notification made under the Ordinance as it finds it and then, under s. 16 of the Act, to deem it to have been made under the Act. According to him the fiction created by s. 16 ends as soon as the notification is deemed to have been made under the Act and goes no further. He concludes, on the authority of the decisions in Hamilton and Co., v. Mackie and Sons ([1889] 5 T.L.R. 677.) and T. W. Thomas and Co. Limited v. Portsea Steamship Company Limited (L.R. [1912] A.C. 1.), that, on a plain reading of it, the notification, when it is deemed to have been made under the Act, makes no sense, for it does not purport to bring any of the sections of the Act into force but expressly brings ss. 5, 6 and 7 of the Ordinance into force. He submits that it is not for the court to alter the terms of the notification so as to make it possible to read it as a notification made under the Act. We are unable to accept this line of argument. The decisions relied on by the learned Attorney General can have no application to the present case. In those cases there was no statutory provision for deeming the provision of the charter party referring all disputes under the charter party to arbitration as an integral part of the provisions of the bill of lading and, therefore, the only thing to be done in those cases was to lift bodily the relevant provision of the charter party and to insert it in and to read it as a part of the bill of lading. It was held that so read it became insensible, for an arbitration clause referring all disputes arising out of the charter party was wholly out of place and meaningless as a term of the bill of lading. A cursory perusal of s. 16 will, however, show that there are two fictions created by that section : One is that the Act shall be deemed to have commenced on December 14, 1950, and the other is that the notification issued under the Ordinance shall be deemed to have been issued under the Act. If the Act fictionally commenced on December 14, 1950, then the Ordinance would have to be treated as not promulgated at all, for the two could not have co-existed and when the Act provided that the notification, which, for identification, is described as having been issued under the Ordinance, should be deemed to have been made under the Act, then, unless we read the word "Ordinance" as "Act", we do not give full effect to the twin fictions created by the Act. In other words the creation of the statutory fictions compels us to adopt the principle of mutatis mutandis and to substitute the word "Act" for the word "Ordinance" used in the notification, so as to give full effect to the fictions created by the statute. We see no reason in support of the contentions of the Attorney General that the fiction raised by s. 16 stops short at mere issuing of the notification. The ambit of the fiction appears to us to cover not only the issuance of the notification but to extend to our reading it as having been one issued under the Act. We cannot read it as having been issued under the Act unless we read the word "Ordinance" used in the notification as "Act".

No other point has been urged before us and for reasons stated above this appeal must be dismissed. In view of the circumstances referred to in the judgment of the High Court and appearing in the record we make no order for costs of this appeal.

Appeal dismissed.

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