Koteswar Vittal Kamath

Vs

K. Rangappa Baliga & Co.

Civil Appeal No. 693 of 1965

(J. M. Shelat, V. Bhargava, C. A. Vaidialingam JJ)

09.12.1968

JUDGMENT

BHARGAVA, J. -

1. This appeal by certificate has been filed by Koteshwar Vittal Kamath who was defendant in Original Suit No. 12 of 1958, instituted in the Court of the Subordinate Judge, Cochin, by the respondent plaintiff, K. Rangappa Baliga and Co., for recovery of damages for breach of contracts in respect of goods, purchased by the respondent on behalf of the appellant, of which the appellant refused to take delivery on the due dates. There is no dispute that the respondent was carrying on business as commission agents and was governed by the trade usage known as Pakka Aadat System, and the appellant under the same system was placing orders with the respondent for purchase of goods. In the course of these dealings, the appellant placed three orders for purchase of 100 candies of cocoanut oil for one month's 'vaida' and, in accordance with those three orders, the respondent purchased 100 candies of cocoanut oil on three different dates, 14th February, 1952, @ Rs. 455/- per candy, 16th February, 1952 @ Rs. 447/8/- per candy, and 18th February, 1952 @ Rs. 432/8/- per candy. The period fixed for delivery under these contracts was one month, so that the due dates for performance of the contracts were 15th, 17th and 19th March, 1952, respectively. The appellant refused to take delivery of the goods on the due dates. It appears that the closing market rates on those due dates were Rs. 330/-, Rs. 335/- and Rs. 352/8/- respectively, which were much lower than the prices at which these contracts had been entered into a month earlier. The respondent, therefore, instituted the suit claiming the difference in the two sets of prices by way of damages together with the usual commission and brokerage.

2. The suit was resisted on various grounds, but we are concerned with one of those grounds which has been canvassed before us in this appeal. This plea taken on behalf of the appellant was that all these three contracts were Forward Contracts and were void and unenforceable, because they were made in contravention of the prohibition contained in the Travancore-Cochin Vegetable Oils and Oilcakes (Forward Contracts Prohibition) Order, 1950 (hereinafter referred to as "the Prohibition Order of 1950"). To meet this plea raised on behalf of the appellant, it was urged on behalf of the respondent that this Prohibition Order of 1950, was void in view of the fact that the law, under which that Order was passed, was repealed in March, 1950, and its continuance by the repealing law did not save its validity, because the provision of that law, under which it was deemed to continue in force was itself void. We shall presently explain in detail the situation as to the laws relating to this subject which prevailed in Travancore-Cochin from time to time; but it may here he mentioned that this plea of the respondent was accepted by the Trial Court as well as the High Court of Kerala. As a result of this view taken by those courts, the suit for damages was held to be maintainable, so that the Trial Court decreed the suit for a sum of Rs. 18,750/- with interest thereon at 6 per cent. per

annum and that decree was upheld by the High Court. It is against this decision of the High Court that the present appeal has been brought to this court; and the only question argued before us has been confined to the validity, of the contracts, the breach of which was the cause of action for the claim of damages by the respondent.

3. The contracts, which were the subject-matter of the dispute, were entered into between the parties at Mattancherry which was situated in the territory of Cochin State before India achieved Independence. On the 18th February, 1940, the Maharaja of Cochin, who was exercising sovereign powers in the State, made a Proclamation No. 8 of 1115, applying the provisions of the defence of India Act No. 35 of 1939, together with the rules and all amendments to the Act and the rules mutatis mutandis in Cochin State. Another provision in the Proclamation also brought into force all the rules and notification issued under the Defence of India Act. There was also a provision that even the rules or notifications issued in future would automatically apply in the State. Under the Defence of India Act and the rules framed thereunder, Vegetable Oils and Oilcakes (Forward Contracts Prohibition) Order, 1944, was passed for the territory of British India and, consequently, as a result of Proclamation 8 of 1115, it came into force in the State of Cochin. Subsequently, however, the Maharaja, under that Proclamation 8 of 1115, passed the Vegetable Oils and Oilcakes (Forward Contracts Prohibition), Order, 1119 (hereinafter referred to as "the Prohibition Order of 1119) on the 14th April, 1944. This order, thus superseded the earlier Order which had been passed for British India and which had become applicable in Cochin State as a result of Proclamation 8 of 1115. The Prohibition Order of 1119, in Clause 3, laid down that "no person shall, after the specified date for any article to which this Order applies, enter into any Forward Contract in that article". The Order applied, inter alia, to cocoanut oil, which was the subject-matter of the three contracts, the breach of which was the cause of action in the suit. Thereafter, on the 27th September, 1946, the Maharaja promulgated the Cochin Essential Articles Control and Requisitioning Powers Proclamation 3 of 1112, and, under Clause 9 of this Proclamation, the orders already made by the Cochin Government under the Defence of India Act and Rules, as applied by Proclamation 8 of 1115, were continued in force, so that the Prohibition Order of 1119, continued to remain in force. On the same date, the Maharaja also promulgated the Temporary Emergency (Powers) Proclamation 5 of 1122, and, under Clause 2 of this Proclamation, the Defence of India Act and the Rules were continued in force in the State of Cochin together with all orders and notifications issued under the provisions of that Act and the Rules. This was followed by the Cochin Essential Articles Control and Requisitioning Powers Act 8 of 1122, promulgated on the 4th January, 1947. Under Section 9 of this Act, again, all the rules and orders made under the Defence of India Act or under the Rules were continued in force in the State of Cochin. This was the position of the law in the State of Cochin before India achieved Independence.

4. Subsequently, the State of Cochin acceded to India and a combined State of Travancore-Cochin came into existence. Thereafter, the Travancore-Cochin Administration and Application of Laws Act 6 of 1125, was passed and came into force in the State of Travancore-Cochin with effect from 28th December, 1949. This Act defined "Existing law of Travancore" and "Existing law of Cochin". The latter expression included "any Proclamation, Act, Law, Order, bye-law, rule, regulation or notification in force on the appointed day (which was 1st July, 1949), in any portion of the territories of the State of Travancore-Cochin which immediately before the appointed day formed the territory of the State of Cochin. By Section 4 (1) of this Act, the existing laws of Cochin were continued in force until altered, amended, or repealed by the Legislature of the State of Travancore-Cochin or other competent authority in that portion of the territories of the State of Travancore-Cochin which previously formed the territory of the State of Cochin. Thus, under this Act, the Temporary Emergency (Powers) Proclamation 5 of 1122, and the Cochin Essential Articles Control

and Requisitioning Powers Act 8 of 1122, were continued in force. At the same time, the Public Safety Measures Ordinance 5 of 1125, was also promulgated. It was in exercise of the powers conferred by these laws that the Travancore-Cochin Government promulgated the Prohibition Order of 1950, on the 8th March, 1950. Lastly, the Travancore-Cochin Public Safety Measures Act 5 of 1950 (hereinafter referred to as "Act 5 of 1950"), came into force on the 30th March, 1950. This Act, by Section 73(1), repealed a number of enactments, including the Cochin Temporary (Emergency Powers) Proclamation 5 of 1122, and the Essential Articles Control and Requisitioning Powers Act 8 of 1122. However, the orders passed under those Acts or continued by those Acts were by Section 73(2) of Act 5 of 1950, further continued in force and were to be deemed to have been made and were to have effect as if they had been made under this Act 5 of 1950. The provision, under which they were to be deemed to have been made and to have effect, was Section 3 of this Act. It was in these circumstances that the validity of Section 3 of Act 5 of 1950, was challenged in the Trial Court and in the High Court. The High Court has declared Section 3 to be void, while holding that Section 73 is valid. The High Court concluded as a result that the various orders and notifications, including the Prohibition Orders of 1119 and 1950, ceased to be in force, so that there was no Prohibition at all invalidating Forward Contracts after the 30th March, 1950. It was on this view that the contracts, which were the basis of the claim of the respondent, were held to be valid justifying the passing of the decree for damages for breach of those contracts. The question, in these circumstances, which falls for determination in this appeal is whether the High Court was right in holding that Section 3 of Act 5 of 1950, is void.

5. In this connection, our attention was also drawn by learned counsel for the appellant to the Essential Supplies (Temporary Powers) Act 24 of 1946, to which reference was not made by the High Court. This Act was amended by the Essential Supplies (Temporary Powers) Amendment Act 52 of 1950 and a new sub-section (4) was introduced in Section 17 to the following effect :

> "(4) If immediately before the day on which this Act comes into force in a Part B State, there is in force in that State any law which corresponds to this Act, such corresponding law shall on that day stand repealed in so far as it relates to any of the essential commodities governed by this Act : Provided that any order made and in force immediately before that day in the said State shall continue in force and be deemed to be an order made, under this Act, and all appointments made, licences or permits granted, and directions issued, under any such order and in force immediately before that day shall likewise continue in force, and be deemed to be made, granted or issued in pursuance of this Act."

6. The Essential Supplies (Temporary Powers) Act 24 of 1946, by same Amending Act 52 of 1950, was extended to the whole of India except the State of Jammu and Kashmir, but with a direction that it shall come into force in a Part B State to which the Act extends only on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, and different dates may be appointed for different Part B States. In exercise of this power conferred on the Central Government, a notification was issued on 17th August, 1950, S.R.O. 391, appointing 17th day of August, 1950, as the date on which that Act was directed to come into force in all Part B States to which it extended. This notification was published in the Gazette of India, Extraordinary Part II, Section 3. The result was that, under the principal clause of Section 17(4) of this Act 24 of 1946, Act 5 of 1950, which was in force in Travancore-Cochin on the 17th August, 1950, stood repealed; but rules, orders and notifications under that Act, or which continued in force under that Act, were to further continue in force under the Proviso to Section 17(4) notwithstanding the repeal of Act 5 of 1950. Thus, in the year 1952, when the contracts in suit were entered into, the Essential Supplies

(Temporary Powers) Act 24 of 1946, was in force in Travancore-Cochin, and only those orders made earlier could be held to be effective which had been continued by this Act and the previous Acts applicable in that State.

7. The question of validity of the contracts, in these circumstances, will clearly depend on whether future contracts in cocoanut oil were prohibited by any law or orders or notifications which continued in force in 1952, after the Essential Supplies (Temporary Powers) Act 24 of 1946 had come into force in the State of Travancore-Cochin on 17th August, 1950. This opens the question whether any prohibitory order was validly in force on the 17th August, 1950. In turn, the answer to this question will depend on whether a valid prohibitory order was in force on 30th March, 1950, which could continue in force under Section 73(2) of Act 5 of 1950. The only two earlier prohibitory orders were the Prohibition Order of 1119 and the Prohibition Order of 1950. On this aspect, reliance was placed on behalf of the respondent on the circumstance that, under Entry 48 of List I of the Seventh Schedule to the Constitution, the Parliament had the exclusive power to legislate on the subject of stock exchanges and future markets, and this court has already held in Waverly Jute Mills Co. Ltd. v. Raymon & Co. (India) Private Ltd. ((1963) 3 SCR 209) that a legislation on Forward Contracts would be a legislation on future markets, so that a State Legislature is not competent to legislate in respect of Forward Contracts under its power of legislation conferred by Entry 26 of List II, which relates to trade and commence within the State. On this basis, it was argued that the State Government, on 8th March, 1950, was not competent to issue the Prohibition Order of 1950, as that Order was very clearly a piece of legislation on Forward Contracts. It appears to us that, in the present case, we need not express any final opinion on this question. If it is held that the Government of Travancore-Cochin was competent to pass this Prohibition Order of 1950, because the power was derived under Act 8 of 1122, which was validly in force in the State on 8th March, 1950, then that would be the Order which would continue in force under Section 73(2) of Act 5 of 1950. On the other hand, if it be held that the State Government could not competently pass the Prohibition Order of 1950, because it was a piece of legislation on Forward Contracts, that Order would have to be treated as void and nonest. Thereupon, the earlier Prohibition Order of 1119, would continue in force right up to 30th March, 1950. Act 8 of 1122, had continued in force the Prohibition Order of 1119, with the qualification that it was to remain in force until it was superseded or modified by the competent authority under the provisions of this Act 8 of 1122. When the Prohibition Order of 1950, was purported to be issued on 8th March, 1950, it was not laid down that it was being issued so as to supersede the earlier Prohibition Order of 1119. It if had been a valid Order it would have covered the same field as the Prohibition Order of 1119, and, consequently, would have been the effective Order under which the rights and obligations of parties had to be governed. On the other hand, if it be held to be void, this Order will not have the effect of superseding the earlier Order of 1119. Learned counsel for the respondent, however, urged that the Prohibition Order of 1119, cannot, in any case, be held to have continued after 8th March, 1950, if the principle laid down by this court in Firm A. T. B. Mehtab Majid & Co. v. State of Madras and Another ((1963) Supp. 2 SCR 435) is applied. In that case, Rule 16 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, was impugned. A new Rule 16 was substituted for the old Rule 16 by publication on September 7, 1955 and this new rule was to be effective from 1st April, 1955. The court held that the new Rule 16(2) was invalid, because the provisions of that rule contravened the provisions of Article 304(a) of the Constitution. Thereupon, it was urged before the court that, if the impugned rule be held to be invalid, the old Rule 16 gets revived, so that the tax assessed on the basis of that rule will be good. The court rejected this submission by holding that :-

> "Once the old rule has been substituted by the new rule, it cease to exist and it does

> not automatically get revived when the new rule is held to be invalid."

8. On that analogy, it was argued that, if we hold that the Prohibition Order of 1950, was invalid, the previous Prohibition Order of 1119, cannot be held to be revived. This argument ignores the distinction between supersession of a rule, and substitution of a rule. In the case of Firm A. T. B. Mehtab Majid & Co. (supra), the new Rule 16 was substituted for the old Rule 16. The process of substitution consists of two steps. First, the old rule it made to cease to exist and, next, the new rule is brought into existence in its place. Even if the new rule be invalid, the first step of the old rule ceasing to exist comes into effect, and it was for this reason the court held that, on declaration of the new rule as invalid, the old rule could not be held to be revived. In the case before us, there was no substitution of the Prohibition Order of 1950, for the Prohibition Order of 1119. The Prohibition Order of 1950, was promulgated independently of the Prohibition Order of 1119 and because of the provisions of law it would have had the effect of making the Prohibition Order of 1119 inoperative if it had been a valid Order. If the Prohibition Order of 1950 is found to be void ab initio, it could never make the Prohibition Order of 1119 inoperative. Consequently, on the 30th March, 1950, either the Prohibition Order of 1119 or the Prohibition Order of 1950 must be held to have been in force in Travancore-Cochin, so that the provisions of Section 73(2) of Act 5 of 1950 would apply to that Order and would continue it in force. This further continuance after Act 5 of 1950, of course, depends on the validity of Section 3 of Act 5 of 1950, because Section 73(2) purported to continue the Order in force under that section, so that we proceed to examine the argument relating to the validity of Section 3 of Act 5 of 1950.

9. The validity of this section is challenged on the ground that it is hit by the prohibition laid down in clause (b) of Article 304 of the Constitution and is not protected by the proviso to that article. The relevant provisions of that article are as follows :-

> "304. Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law -
>
> #(a) X X X X; and##
>
> (b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest :
>
> Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President."

10. The first point that was urged by learned counsel for the appellant was that Section 3 of Act 5 of 1950, did not require compliance with the proviso, because it was not a piece of legislation for purposes of clause (b) of Article 304; but we are unable to see any force in this submission. It is enough to refer to clause (f) of Section 3(2) which is the provision under which a Prohibition Order relating to Forward Contracts could have been passed, and the Prohibition Order of 1119 or the Prohibition Order of 1950, can be held to be continued in force. Under Section 3(2)(f) power is conferred on the State Government to make an order which may provide for regulating or prohibiting any class of commercial or financial transactions relating to any essential article which, in the opinion of the Government are, or if unregulated are likely to be, detrimental to public interest. An order prohibiting Forward Contracts would clearly to be an order prohibiting a class of commercial transactions relating to an essential article which, in this case, was cocoanut oil. The

conferment of power on a State Government to prohibit such transactions clearly permits imposition of restrictions on the freedom of trade or commerce and, therefore, falls within the scope of clause (b) of Article 304 of the Constitution. This argument advanced on behalf of the appellant must, consequently, be rejected. However, the question that has to be further examined is whether this Act 5 of 1950 was void, because the provisions of the proviso to Article 304 were attracted and the Act was passed without complying with the requirements of the proviso.

11. It appears that the Bill, which emerged ultimately as Act 5 of 1950, was first introduced in the Legislative Assembly of the State on 13th December, 1949, and was referred to a Select Committee on 14th December, 1949. That was at a time when the Constitution had not come into force and there was no requirement under the Government of India act, 1935, which was applicable, similar to that laid down by the proviso to Article 304. The Bill was subsequently modified and re-drafted by the Select Committee and was presented before the Assembly on 23rd March, 1950, after the Constitution had come into force. The Minister-in-charge moved that the Bill be taken into consideration, whereupon discussion on the Bill proceeded and it was finally passed by the Assembly on 29th March, 1950. The Bill received the assent of the Raj Pramukh of the State and was brought into force, having been published by notification, dated 30th March, 1950. The point urged on behalf of the appellant was that the Bill was introduced in the State Legislature on a date prior to the date of the Constitution when Article 304 and the proviso to it had not come into force, so that no prior sanction of the President was required for introduction of the Bill. The Bill having been validly introduced remained pending in the State Legislature under Article 389 and the proceedings taken in the Legislature before the Constitution came into force were to be deemed to have been taken in the Legislature of the State which became seized of the Bill after the enforcement of the Constitution. It was further urged that no amendment was moved in the State Legislature after the Constitution came into force which could be hit by the restriction laid down in Article 304(b) of the Constitution. The material provisions, including Section 3 were enacted in the original form in which the Bill had already been introduced in December, 1949. In these circumstances, it was submitted that no occasion arose for complying with the requirements of the proviso. The Bill was validly introduced without the previous sanction of the President and no amendment was moved subsequently to that Bill requiring the President's sanction after the Constitution came into force, so that Act 5 of 1950, as passed by the Legislature on 29th March, 1950, and brought into force on 30th March, 1950, cannot be held to be void for non-compliance with the requirements of the proviso to Article 304.

12. On behalf of the respondent, however, reliance was placed on the view expressed by the High Court in the judgment under appeal that the mere fact that the Bill was originally introduced on a date prior to the date of the Constitution will not save Section 3 from the operation of the proviso to clause (b) of Article 304. The High Court relied on the fact that it was only subsequent to the coming into force of the Constitution that the Bill in its final form as re-drafted by the Select Committee was introduced and moved in the State Legislature. We are unable to accept the view taken by the High Court. Once the Bill was validly introduced in December, 1949, it remained pending in the Legislature even when it was referred to the Select Committee. There was, therefore, no question of the Bill being introduced again after the Select Committee had submitted its report. Even if the was Bill modified and re-drafted by the Select Committee, that will make no difference. That would be a modification and re-drafting of the Bill at a stage when the Bill was still pending in the Legislature, so that there would be no fresh introduction of the modified or re-drafted Bill.

13. The High Court, in this connection, relied on two earlier decisions of the same court in George v. State of Travancore-Cochin, (AIR 1954 Tra-Co 34) and State v. Philipose Philip. (AIR 1954 Tra-

Co 257) In fact, the High Court, in the present case, expressed its decision in almost the same language as was contained in the case of George v. State (supra). In the second case of State v. Philipose Philip (supra), this aspect was not clearly discussed. The point however, was considered in detail by a Full Bench of that High Court in Ulahannan Mathai v. State. (AIR 1955 Tra-Co 82) The High Court interpreted the expression "No Bill or amendment shall be introduced or moved" in the proviso as requiring that the Bill should neither be introduced nor moved without the prior sanction of the President, and, since in the case of Act 5 of 1950, the Bill was moved for consideration, without the prior sanction of the President, on 23rd March, 1950, after the Constitution had come into force, there had been non-compliance with the proviso. The court rejected the contention put forward before it that what the proviso really stipulates is that no Bill "shall be introduced" or "amendment moved" in the Legislature of a State without the previous sanction of the President. That argument was advanced on the basis of the maxim 'reddendo singula singulis' which, according to Black's Interpretation of Laws, means :

> "Where a sentence in a statute contains several antecedents and several consequences, they are to be read distributively, that is to say, each phrase or expression is to be referred to its appropriate object."

14. The court based its decision on the view that, if the interpretation urged before it was accepted, it would be possible to introduce a Bill which required no Presidential sanction, get it amended by a Select Committee in such a way as to make it require the Presidential sanction in case it was originally introduced in the amended form and then pass it into law, and thus escape the necessity for the prior Presidential sanction provided by Article 304 of the Constitution. It was held that there can be no doubt that such a result could never have been intended by the makers of the Constitution. In our opinion, the High Court did not correctly appreciate the position. The language of the proviso cannot be interpreted in the manner accepted by the High Court without doing violence to the rules of construction. If both the words "introduced" or "moved" are held to refer to the Bill, it must necessarily be held that both those words will also refer to the word "amendment". On the face of it, there can be no question of introducing an amendment. Amendments are moved and then, if accepted by the House, incorporated in the Bill before it is passed. There is further an indication in the Constitution itself that wherever a reference is made to a Bill, the only step envisaged is introduction of the Bill. There is no reference to such a step as a Bill being moved. The articles, of which notice may be taken in this connection, are Articles 109, 114, 198 and 207. In all these Articles, whatever, prohibition is laid down relates to the introduction of a Bill in the Legislature. There is no reference at any stage to a Bill being moved in a House. The language thus used in the Constitution clearly points to the interpretation that, even in the proviso to Article 304, the word "introduced" refers to the Bill, while the word "moved" refers to the amendment.

15. So far as the danger of evasion of this proviso envisaged by the High Court is concerned, it appears that the High Court ignored the circumstance that, even when the Bill is before a Select Committee, it continues to be pending in the House, so that, if it is modified or re-drafted, there is amendment of the Bill at that stage. If an amendment is introduced at that stage while it is under consideration of the Select Committee, the proviso may become applicable and, for a valid proposal to introduce such an amendment in the Select Committee, prior sanction of the President will be necessary.

16. In this connection, we may take notice of the Rules of Procedure and Conduct of Business in Lok Sabha, because we have been assured by learned counsel for parties that the Rules of Procedure for the State Legislature in Travancore-Cochin were similar. The Rules of Procedure we are

referring to are those which were adopted by the Lok Sabha on 28th March, 1957. Rules 64 to 73 deal with the introduction and publication on Bills, and Rules 74 to 78 with motions after introduction of Bills. Rules relating to amendments to clauses, etc. and consideration of Bills are Nos. 79 to 92. Rules 65(2) ensures compliance with the proviso of Article 304 of the Constitution where it is applicable by laying down that :-

> "If the Bill is a Bill which under the Constitution cannot be introduced without the previous sanction or recommendation of the President, the member shall annex to the notice such sanction or recommendation conveyed through a Minister, and the notice shall not be valid until this requirement is complied with."

Similarly, Rule 81, deals with the procedure when an amendment is moved by laying down that :-

> "If any member desires to move an amendment which under the Constitution cannot be moved without the previous sanction or recommendation of the President, he shall annex to the notice required by these rules such sanction or recommendation conveyed through a Minister and the notice shall not be valid until this requirement is complied with."

Thus, the requirement of previous sanction of the President under the proviso to Article 304 has to be satisfied by producing the sanction either before introducing the Bill or before moving the amendment, as the case may be.

17. Rules relating to Select Committees on Bills are Nos. 298 to 305, amongst which Rule 300 is of importance and may be reproduced :

> "300. (1) If notice of a proposed amendment has not been given before the day on which the Bill is taken up by the Select Committee, any member may object to the moving of the amending and such objection shall prevail unless the Chairman allows the amendment to be moved.
>
> (2) In other respects, the procedure in a Select Committee shall, as far as practicable, be the same as is followed in the House during the consideration stage of a Bill, with such adaptations, whether by way of modification, addition or omission, as the Speaker may consider necessary or convenient."

The Rule makes it clear that, before a Bill can be modified or re-drafted by the Select Committee amendments have to be moved by the members of the Committee and, when any amendment is moved, the procedure in the Select Committee is to be the same as is followed in the House during the consideration stage of a Bill as far as practicable, though subject to such adaptations as the Speaker may consider necessary or convenient. This rule, thus envisages that the requirement of Rule 81 in respect of an amendment moved in the House will have to be complied with when a similar amendment is moved in the Select Committee. Learned counsel appearing for the respondent urged that, in interpreting Rule 300, we should not enlarge its scope so as to include in it the applicability of such rules as Rule 81 which, according to him, can only be attracted when an amendment is moved in the House of the Legislature itself. Even if this submission were to be accepted by us, it appears that it will not be possible to evade the applicability of the proviso to Article 304, because, when the Bill as reported by the Select Committee comes before the House again, the Minister-in-charge or the member moving the Bill will have to move the Bill for

consideration in the House. At that stage, when he moves the Bill for consideration of the House in the modified or re-drafted form, the move made by him will amount to moving the original Bill with the amendments reported by the Select Committee. In such a case, obviously Rule 81 would apply at that stage, so that, before the modified or amended Bill is moved in the House for consideration, the sanction of the President will have to be produced if the modification or re-draft has the result of incorporating an amendment covered by the proviso to Article 304. In these circumstances, we do not think that the language of the proviso requires to be interpreted in the manner accepted by the Full Bench of High Court of Travancore-Cochin in the case of Ulahannan Mathai v. State (supra). The proviso will have to be complied with at the initial stage of the introduction of the Bill if it is applicable at the stage, whereas compliance will be required either at the stage when amendments are moved in the Select Committee, or when the Bill as reported by the Select Committee is moved in the House for consideration, because of the requirement that no amendment can be moved without the previous sanction of the President. In the present case, the original introduction of the Bill was valid, because, at that stage, the proviso to Article 304 was not in force at all as the Constitution had not yet come into force, while, subsequently, when the Bill was pending in the State Legislature, no amendment was moved in respect of which sanction of the President was required under the proviso. Section 3 of Act 5 of 1950, was passed by the House as it was contained originally in the validly introduced Bill and cannot, therefore, be held to be void for non-compliance with the proviso to Article 304. This section being valid, either the Prohibition Order of 1119 or the Prohibition Order of 1950, must be held to have been validly continued in force by this Act 5 of 1950 and to have continued to remain in force thereafter under the proviso to Section 17(4) of the Essential Supplies (Temporary Powers) Act 24 of 1946. Under either of those orders, the transactions entered into between the appellant and the respondent were prohibited and, having been entered into against the provisions of law, no party can claim any rights in respects of the three contracts in suit. The claim for damages for breach of those contracts by the respondent against the appellant was, therefore, not maintainable.

18. The appeal succeeds and is allowed with costs throughout. The decree passed by the High Court is set aside and the suit is dismissed.

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