

Sheikh Abdul Sattar

Vs

Union of India

Civil Appeal No. 1956 of 1966

(J.M. Shelat, C.A. Vaidialingam, I.D. Dua JJ)

10.10.1969

JUDGMENT

DUA, J. -

1. The appellant in its appeal with certificate from the judgment and decree of the Allahabad High Court, had in February 1944, submitted a tender for the supply of meat to the army authorities at Allahabad and Benares. This tender was accepted in March 1944 for the supply of meat for one year from April 1, 1944 to March 31, 1945. The formal acceptance was conveyed on May 18, 1944. The controversy centers round the condition reads as under :

"51. (a) No enhancement of rates will be considered in the case of contracts concluded for periods of 3 or 6 months.

(b) In the case of annual contracts, revisions of rates, i.e., increases or decreases, will be provided for, but no revision will be considered to allowed within six months of the commencement of the contract.

(c) Rates for annual contracts will be subject to review, according to the rise or fall of market rates by referees appointed by Government, the reviewing Tribunal for contracts to consist of the Deputy Commissioner or his representative, the C.R.I. A.S.C. or this representative and the local purchase officer (Military). The three members will constitute a quorum.

The contractor will attend to present his case, but will not be a member of the Tribunal.

The final recommendation in all cases reviewed, shall rest with the officer sanctioning the contract."

2. On September 4, 1944 the appellant wrote a letter to C.R.I.A.S.C. (Commander Royal Indian Army Supply Corps) Lucknow, requesting for increase of rates. In October, 1944 he sent a reminder praying for immediate increase of the existing rates as contemplated by conditions 51(b). In December, 1944 a Tribunal was constituted at Allahabad for the purpose of reviewing the contract rates of the supply of meat at Allahabad. After considering the matter from the various aspects brought to the notice of the Tribunal, recommendation was made for enhancing the rates as contained in Ex.G. On April 24, 1945 the appellant applied for the refund of the security amount of Rs. 18,1000 paid by him along with the tender. Along with this application a 'No Demand

'Certificate' was given by the appellant. The appellant thereafter sent several reminders to C.R.T.A.S.C. regarding enhancement of the contract rates. On January 2, 1946 the appellant inquired from C.R.I.A.S.C., Lucknow as to when the question of enhancement of rate would be finally settled (Ex. 15). In reply to this inquiry on January 9, 1946 the headquarters at Lucknow informed the appellant that his case had been held up at the headquarters pending inquiry from the civil authorities about the market rates (Ex. 19). A copy of this letter was also sent to the O.C.I.S.S.D., Benares, with the following note :

"Reference your No. 0709-C of 9th December, 1945. Please obtain the civil market rates personally in consultation with the Civil Authorities and arrange to hold tribunal with reference to this office No. 8601-ST of 3rd July, 1945. The proceedings of tribunal together with the documents referred to in this office No. 8601-ST, 13th of April, 1944 should immediately be forwarded to this H.Q. for submission to higher authorities."

After some further correspondence between the appellant and the headquarters at Lucknow on March 26, 1946, the latter wrote to O.C.I.S.S.D., Allahabad that the prayer for the revision of contract rates for the supply of meat by the appellant at Allahabad had been rejected by the higher authority (Ex. 25). On April 7, 1946 the appellant wrote a letter to the headquarters at Lucknow requesting them to supply him the reasons for the rejection of his claim by the higher authorities. On April 15, 1946 the appellant was asked to attend the meeting of the Tribunal on April 29, 1946 for representing his case. This letter was received from the O.C.I.S.S.D., Benares. On April 17, 1946 the appellant was informed by the headquarters, Lucknow that he should take up the matter direct with the headquarters central Command. In the meantime on March 30, 1946 a notice was issued by the B.R.I.G. on behalf of the major General Incharge Administration Central Command, notifying, inter alia that no fresh claim for revision of R.I.A.S.C. contract rates or for the reopening of cases on which decision had already been made would be entertained after May 15, 1946 in regard to contracts of the period ending March 31, 1945 (Ex.73). On May 6, 1946 the appellant wrote to C.R.I.A.S.C. at Lucknow for the enhancement of rates. On May 10, 1946 the appellant served a notice through his lawyer on the headquarters demanding revision of the department's decisions rejecting his claim for enhancement failing which legal action was threatened. A copy of this notice was also sent to C. R.I.A.S.C. at Lucknow with reference to their letters dated March 26, 1946 and April 17, 1946 (Ex.29). On May 14, 1946 the Tribunal at Benares also recommended enhancement of rates (Ex.H). On June 10, 1946 the appellant wrote a letter to the Controller of Military Accounts, Central Command, Meerut, stating that his 'No Demand Certificate' accompanying his request for the refund of security money had been inadvertently furnished and should be treated as cancelled because the matter regarding enhancement of rates was under consideration with the authorities.

It was added that the appellant would submit a 'No Demand Certificate' for refund of the security money as soon as his claim for enhancement of rates was settled. On June 21, 1946 the appellant sent an express telegram to B.R.I.A.S.C. Command, Agra requesting for expeditious payment of his dues without resorting to litigations. On June 22, 1946, B.R.I.A.S.C., Central Command wrote to the appellant's lawyer in answer to the letter dated May 10, 1946 and telegram June 21, 1946, stating that the claim was being investigated and the decision arrived at would be communicated to him in due course (Ex. 32). Thereafter repeated inquiries were made by the appellant about the probable date of the settlement of his claim but every time it was said that the matter was still under consideration and that the decision would be communicated in due course. It is unnecessary to refer to the correspondence in detail. The last reply on these lines was sent to the appellant on December 13, 1947 (Ex.50). After serving another reminder on March 15, 1948 the appellant sent a statutory notice under Section 80, Civil P.C. on May 3, 1948 and instituted the present suit in November,

1948, claiming a decree for Rs. 1,15,735/6/8 with further interest. This amount included enhanced rates for the supply of meat and interest. This amount included enhanced rates for the supply of meat and security deposit and interest thereon. The claim in regard to enhanced rates was resisted by the respondent. It was pleaded in the written statement, inter alia, that the final recommendation in regard to enhanced rates rested with the officer sanctioning the contract, who was stated in the addition pleadings to be the Commander, Lucknow District, and that the said officer had declined to sanction enhanced rates. The appellant's right to the refund of the security money was conceded but it was pleaded that he could receive that money only on furnishing a 'No Demand Certificate' as required by the agreement.

3. The following issues were settled at the trial :

- (1) Whether there was a rise in the market rates of goods supplied by the plaintiff as alleged by him ?
- (2) If so, was plaintiff entitled to enhancement in the contractual rates in terms of the tender and agreement ?
- (3) What is the effect of the reference to the Tribunal ?
- (4) Were the old rates mentioned in the tender abandoned ?
- (5) Is the suit not maintainable as pleaded in Paragraph 24 of the written statement ?
- (6) What is the effect of the revocation by the plaintiff of the 'No Demand Certificate' ?
- (7) (a) Is the claim excessive as pleaded. ? (b) Is the plaintiff not entitled to any interest ?
- (8) To what relief if any is the plaintiff entitled ?
- (9) Is the plaintiff's suit barred by time ?

4. On issues Nos. 1 and 2 the Trial Court came to the conclusion that there was an appreciable rise in the market rates of meat, bead, mutton and live animals and the appellant was entitled to enhanced rates from October 1, 1944 in accordance with the terms of the contract. In arriving at this conclusion the Court placed reliance, inter alia, on the proceedings of the Tribunals (Exs. G and H) and on letter written by B.R.I.A.S.C. (whom the Court considered to be the final authority on the subject) to the Controller of Military Accounts which contained a proposal to increase the rates (Ex. 57). The appellant's plea that the 'No Demand Certificate' held been sent by him under mis-apprehension was also accepted. Issue Nos. 3 and 4 were considered unnecessary. Under issue No. 7 it was observed that there was no dispute between the parties in regard to the difference kinds of meat supplied by the appellant during the second half of the year of supply and the recommendations of the B.R.I.A.S.C. were considered to be fair and proper for calculating the enhanced rates. The appellant was thus held entitled to Rs. 64,353/10/- on account of the supplies at Allahabad and to Rs. 9,858/10/2 in respect of the supplies at Benares. Adding to this amount the security money and interest at 3% per annum the suit was decreed for Rs. 88,214/6/3.

5. On appeal the High Court agreed with the Trial Court that the market rates of meat during the year of supply were higher than the contract rates. It also accepted the appellant's case that the two tribunals has recommended payment at enhanced rates but it disagreed with the Trial Court on the

question of approval by the sanctioning authority. This is how the High Court expressed itself on this point :

"According to Ex. 'C' the plaintiff's tender was accepted by Major-General Hammond, who was Commander, Lucknow District. According to Ex. 57, some officer of the rank of a Brigadier or a Lieutenant Colonel was inclined to sanction enhanced rates. It is not clear whether in terms of Paragraph 51 of Exhibit 'D' Major-General Hammond or some other officer of Eastern Command was entitled to sanction enhanced rates. But from an examination of the various documents produced by the parties it appears that the officer sanctioning the contract did not definitely approve of the recommendations by the two tribunals."

6. The decision on the plea of limitation and on the appellant's rights to the security deposit was upheld. The appeal was accordingly allowed in part and the appellant's suit in regard to enhanced rates dismissed.

7. In this Court the sole controversy round the appellant's claim to the enhanced rates. The question which therefore requires determination by this Court is whether the special condition No. 51 (c), reproduced earlier in this judgment, has been fulfilled. In order to properly appreciate and appraise the material on the record we may first turn to the pleadings. According to Para 1 of the plaint the service corp described as (B.R.I.A. S.C.), Eastern Command, Ranchi had on behalf of the defendant entered into the contract in question with the appellant. This para was admitted in the written statement. Para 13 of the plaint contained the following averment :

"That in spite of the finding of the aforesaid Tribunal nothing has so far been done by the authorities concerned even though the plaintiff has been sending representations after representations to them. Neither on the occasion of the first Tribunal findings not on the occasion of the second Tribunal's findings was and final recommendation made by the officer sanctioning the contract in accordance with the last para of clause 51 of the special conditions attached to the tender form as quoted in Para S. C., Eastern Command, Ranchi."

8. In reply in Para 13 of the written statement it was pleaded as under :

"That Para 13 of the plaint as it stands is not admitted."

9. Now according to the law of pleadings the defendant was bound to deal specifically with each allegation of fact, the truth of which was to admitted. The allegation that B.R.I.A. S.C., Eastern Command, Ranci was the officer sanctioning the contract was not specifically dealt with an was therefore not specifically denied. If its truth was to admitted then it should also have been stated in this para as to who, according to the defendant, was the officer sanctioning the contract. Had the matter rested here the question of taking the appellant's allegation that B.R.I.A.S.C., Eastern Command was the sanctioning officer to have been admitted, would have required consideration. But we find that in Para 26 of the additional Pleadings in the written statement it was pleaded that the Commander, Lucknow District was the officer sanctioning the contract and in Para 27 it was added that the said officer had not sanctioned enhancement of contract rates. The appellant's plea in question would therefore have to be considered to have been traversed though we cannot complement the respondent or its officer entrusted with the task of drafting the written statement for the manner in which it was drafted.

10. We now turn to the evidence on this point. From the printed document described as acceptance of tender (Ex.C) it is not possible for us to know with certainty as to who was the officer sanctioning the contract. The original is available on the record in this Court, with the result that we do not have the advantage of having a look at it. The appellant's counsel suggested that it was B.R.I.A.S.C., whereas, according to the respondent's counsel it was Major General A. V. Hammond, D.S.O.I.A.

11. Let us see whether oral evidence throws any light on it. Moti Ram Dingra, Subedar in the army appeared as witness for the defendant. He was Superintendent, Contract Section in the office of C.A.S.C., U.P. Area, Lucknow. In cross-examination he stated as follows :

"A Tribunal is only a recommending authority and not a sanctioning authority. Lucknow is the headquarters of the U.P. Area. The Area Commander used to be called District Commander previously. The C.R.I.A.S.C. is the administration office of the Royal Indian Army Service Corps. The area officer at Lucknow is the Commander, U.P. Area. Ranchi is the headquarters of Eastern Command. The Commander, Eastern Command is called the Army Commander. The B.R.I.A.S.C. is under the Army commander and deals with R.I.A.S.C. matters. The final recommending authority for the enhancement of rates is the Area Commander, Lucknow. He is the sanctioning authority for the enhancement of rates and also of the contract itself up to the amount of rupees three lakhs. For contracts of over three lakhs he recommends the enhancement to the B.R.I.A.S.C. and it is he who sanctions the contract. Before sanctioning enhancement of rates in respect of contracts valued at over three lakhs he takes the advice of the Controller Military Accounts. I cannot say if the contract of Abdul Sattar was over three lakhs., but as it was sanctioned by the Commander of Lucknow District it should be within the value of Rs. 3,00,000. The matter of enhancement of rates of Abdul Sattar was referred to the B.R.I.A.S.C."

12. The witness thereafter expressed ignorance as to whether in the instant case the B.R.I.A.S.C. took advice of the C.M.A. or sought the opinion of the Legal Remembrancer. He also admitted in his cross-examination that his statement that the appellant's claim had been rejected was based only on a letter produced in this case and that he had no other source of information. According to his testimony the matter of enhancement of rates was referred to the B.R.I.A.S.C. who was the higher authority than the Area Commander, Lucknow. Our attention was not drawn on behalf of the respondent to any other evidence on the record which would indicate that the B.R.I.A.S.C. was not the authority sanctioning the contract. We, therefore, hold in disagreement with the High Court that B.R.I.A.S.C. is the authority sanctioning the contract.

13. Now on the present record there can be little doubt that the B.R.I.A.S.C. had recommended the enhancement of rates in respect of the appellant's contract. If, therefore, he is the sanctioning authority, then the appellant can safely be held entitled to the enhanced rates. Turning to the plain language of the special condition 51 we find that in case of annual contracts, after six months from their commencement there has to be a provision for revision, which means increase or decrease, according to the rise or fall in the market rates. It is not disputed and it was also found by the High Court that in the present case the market rates did rise and were indeed so found by the reviewing Tribunal as well. The reviewing Tribunal entrusted with the duty of inquiring into the question of rise or falls of market rates having found the rates to have risen, it would be for the respondent to show by convincing evidence as to who was the officer sanctioning the contract and for what

reasons he had disagreed with the conclusions of the reviewing Tribunal. The appellant could not be deprived of his right to claim the enhanced rates merely because the respondent chose to consult the Controller to Military Accounts who does not figure in special condition No. 51 : nor can the appellant be made to suffer by reason of the respondent's omission to enlighten the Court by precise evidence clearly showing as to which Officer other than B.R.I.A.S.C. is the sanctioning authority and for what reasons that officer declined to accept the recommendation of the reviewing Tribunal. Our attention was not drawn to any material on the record not was any principle of law cited on the basis of which the appellant could justifiably be deprived of is rights. The High Court was thus in error in allowing the appeal of the Union of India in respect of the appellant's claim to enhanced rates.

14. Considerable arguments were addressed at the bar of this Court on the question whether the sanctioning authority was a referee or an umpire and whether his decision was subject to review by the Court in the present proceeding. On the view that we have taken that question does not arise for decision as there is not dispute in regard to actual amounts, if the appellant is held entitled to claim enhanced rates. We accordingly allow the appeal with costs and setting aside the judgment and decree of the High Court restore the decree of the Trial Court. The respondent is allowed three months' time to pay the decretal amount.

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