

Shri Nand Kishore Prasad

Vs

State of Bihar and Others

Civil Appeal No. 1712 of 1967

(A.N. Ray, D.G. Palekar JJ)

10.04.1973

JUDGMENT

RAY, J. -

1. This is an appeal by certificate against the judgment, dated December 1, 1965 of the High Court of Patna setting aside the judgment and decree passed by the Additional Subordinate Judge on February 10, 1960 and decreeing the claim of the plaintiff-respondent State of Bihar with certain modifications.

2. The State of Bihar filed the suit against Purneshwari Rice Mills, respondent No. 2, Nand Gopal Prasad respondent No. 3 and Nand Kishore Prasad the appellant claiming a sum of Rs. 65,863-10-0. The State alleged that defendants Nos. 2 and 3 Nand Gopal Prasad and Nand Kishore Prasad respondent No. 3 and the appellant respectively were lessees of Purneshwari Rice Mills and worked as purchasing and milling agents of the State of Bihar during the years 1947-48 and 1948-49 under the grain supply scheme. The defendants were to supply rice extracted from the paddy supplied to them on behalf of the State at such rates of extraction as might be fixed by the prescribed authority. An agreement, dated March 3, 1948, was entered into between the appellant Nand Kishore Prasad and the respondent Nand Gopal Prasad on the one hand and the State on the other.

3. The State also alleged that the defendants were supplied with 85,114 maunds 36 seers and 8 chittacks of paddy between the month of January, 1948 and the month of January, 1949. The defendants, according to the State, should have supplied to the plaintiff 53,477 maunds 7 seers of rice but the defendants supplied only 48,167 maunds and 20 seers of rice to the plaintiff. Therefore, the appellant and the respondent Nand Gopal Prasad were liable to pay the price of the balance 5,399 maunds and 20 seers of rice.

4. The State further alleged that the bills for milling and other charges submitted by the defendants were finalised in October, 1953 and on accounting a sum of Rs. 35,526-6-0 was found to be due. The State alleged in the plaint that a sum of Rs. 5,389-14-0 was payable to the defendants on various accounts and after giving credit to the defendants for the said sum the balance sum was Rs. 30,136-8-0.

5. The further claim in the plaint was on account of gunny bags supplied to the defendants. It was alleged that 9,39,989 new bags and 21,514 "once used" (sic) bags were supplied to the defendants during the period 1947-48 and 1948-49. The defendants were found to have 21,335 new bags, 5,504 "once used" (sic) bags and 6,832 rotten bags. The value of the bags lying with the defendants was alleged by the plaintiff State to be Rs. 23,405/-. The State claimed the said sum and interest thereon.

6. The appellant filed a written statement contesting the claim of the State. The other defendants did not appear.

7. The appellant denied the quantity of paddy alleged to have been supplied by the State to the defendants. In particular, the appellant denied that 2,669 maunds and 19 seers of paddy were supplied between May-June 1948 and January, 1949 or that there was any balance of old paddy of 1947 comprised in that figure. The appellant denied that any rice extracted from the milling of the paddy supplied to the defendants remained with them. The appellant also denied that the average extraction from paddy was not above 60 per cent. The appellant alleged that the State did not give any deduction for transit shortage, driage, shrinkage, cartage, ferry charges, godown charges etcetera. The appellant also filed an additional written statement. The appellant denied the claim of the State for gunny bags. The appellant denied the claim of the plaintiff to interest. The appellant claimed sums of money to be due from the State.

8. The Additional Subordinate Judge dismissed the suit of the plaintiff State and awarded a decree for Rs. 24,079-15-0 in favour of the appellant and the respondent Nand Gopal Prasad. The Additional Subordinate Judge held that 82,493 maunds 17 1/2 seers of paddy were supplied by the State to the appellant and the respondent Nand Gopal Prasad during the relevant time. The trial Court held that the basis of extraction was 62 per cent. and on that footing the total quantity of rice retained by the defendants would be 3,699 maunds and 16 seers only and not 5,309 maunds and 27 seers. The trial Court further gave the defendants transit shortage, shrinkage, cartage, difference in milling charges, charges for sending gunny bags according to the directions of the State, stacking charges, commission, quarry charges.

9. The Subordinate Judge gave the defendants viz., the appellant and the respondent No. 3 Rs. 18,099-10-0 under various heads and a sum of Rs. 5,389-14-0 which was admitted by the State to be due to the defendants. A decree for Rs. 24,079-15-0 was awarded in favour of the defendants.

10. The High Court set aside the order and decree of the Subordinate Judge. The High Court held that on the basis of figures given in the additional written statement showing the gunny bags account it must be held that the quantity of paddy supplied to the defendants was as stated in the plaint and on the basis of the current rate of extraction alleged in the plaint the defendants retained 5,309 maunds and 27 seers of rice. The High Court held that the trial Court was not right in allowing various sums under different heads except the amount of 412 maunds of paddy on account of transit shortage.

11. The High Court held that the State was entitled to claim on account of shortage in supply of rice at Rs. 30,136-8-0 and a further sum of Rs. 5,595/- on account of price of bags undelivered and gave the defendants credit for Rs. 399-5-6 on account of items No. 4 and 5 in the additional written statement representing two contingent bills for Rs. 324-15-6 and Rs. 74-6-0. The High Court also upheld the transit shortage allowed by the trial Court in favour of the defendants in respect of 412 maunds of paddy. The corresponding rice at an average extraction of 63 per cent. as taken by the trial Court came to 259 maunds 22 seers 6 chittaks. The value thereof at the rate of Rs. 16 per maund came to Rs. 4,153/-. A sum of Rs. 4,153/- was deducted from the claim of the State with the result that the decree granted by the High Court in favour of the State was for Rs. 31,179/-.

12. Counsel on behalf of the appellant contended that any claim prior to the period alleged in the suit, viz., January, 1948 to January, 1949 should not have been taken into consideration in dealing with the claim of the State and in the alternative if the claim of the State for 1946-47 were to be

considered the deductions for that period should have been considered.

13. The High Court said that the claims of either side prior to January 1948 had to be left out of the purview of the suit on the pleadings of the parties. Yet the High Court allowed the defendant's claim for the balance of old paddy of 1946-47. The appellant challenged this finding of the High Court on two grounds. First, it was said that any claim prior to the period alleged in the suit should not have been taken into consideration in dealing with the claim of the State. Second, if the claim of the State for 1946-47 were to be considered the deductions for that period in favour of the appellant should have been considered and allowed.

14. The appellant in the written statement stated that the defendants received from the State 84,174 maunds 16 seers 8 chittaks of paddy in 1948 and 940 maunds 20 seers in 1949. The total was 85,114 maunds 36 seers 8 chittaks. The plaintiff's witness Nagendra Narain Singh said that the defendants were supplied in all a total of 85,114 maunds 36 seers 8 chittaks of paddy for milling purpose. The plaintiff's witness further stated that the defendants supplied 48,167 maunds 20 seers of rice. According to the plaintiff State the defendants should have supplied 53,477 maunds 7 seers. The plaintiff's witness also stated that the rice and paddy account in the suit related to the period 1947-48 and 1948-49 though some paddy admittedly received by the defendants in the earlier year was carried forward to the account of the year 1947-48. The amount so carried forward was 429 maunds 19 seers of paddy as balance from the previous year. By the period 1947-48 is meant the calendar year 1948 and by the period 1948-49 is meant the calendar year 1949. Therefore on the evidence of the plaintiff's witness 429 maunds 19 seers of paddy were carried forward from a period prior to the year 1948. This quantity of 429 maunds 19 seers should therefore be deducted from 85.114 maunds 36 seers 8 chittaks. The figure will be 84,685 maunds 17 seers 8 chittaks.

15. Leaving aside 17 seers, 8 chittaks the round figure of 84,685 maunds would be the amount of paddy delivered by the State. The rate of extraction of rice was alleged in the plaint to be 60 to 65 per cent. The trial Court on the evidence found that the rate of extraction of rice from paddy according to Exhibit 2 was 62 per cent. On that extraction rate of 62 per cent. 84,685 maunds would yield 52,452 maunds of rice. The defendants delivered 48,167 maunds. The balance quantity of 4,285 maunds will be due by the defendants to the State. The High Court allowed the State value for 5,309 maunds 27 seers of rice not delivered by the defendants to the State. That claim is set aside. Instead the State will be entitled to the value of 4,285 maunds of rice not delivered by the appellant to the defendant No. 3 and the State.

16. The High Court was wrong in disallowing wholly the amounts which had been given to the defendants by the trial Court. Exhibit A-11 shows the various charges to which defendant No. 3 was entitled. Exhibit E is the agreement between various milling agents and the State showing the various charges of the milling agents to which they were entitled to. The trial Court gave the defendants these charges. The High Court was wrong in disallowing the claims on account of cartage, shrinkage, difference in milling charges, stacking charges, commission charges, ferry charges. Whatever charges were payable to the defendants in that respect between January 1948 and January 1949 to which period the plaintiff's claim is limited should go to the credit of the defendants.

17. The decree of the High Court is set aside. The matter is remanded to the High Court to be dealt with in the light of the observations indicated hereinbefore. The High Court will determine the amounts payable by the plaintiff State to the appellant and also by the appellant and defendant No. 3 to the State.

18. The High Court gave a decree in favour of the State and also against Purneshwari Rice Mill. Purneshwari Rice Mill is the lessor of the rice mill. The defendants, viz., the appellant and respondent No. 3 were lessees from Purneshwari Rice Mill. The lessors were not a party to the agreement with the State upon which the State filed the suit. The lessors were not the purchasing and milling agents. There is no pleading making Purneshwari Rice Mill liable in respect of supply of rice. It would be strange to hold that the lessors were liable for the business of the lessors. The lease between the Purneshwari Rice Mill and the defendants shows that the business to be carried on by the lessees is that of the lessees and the lessor is not engaged in that business. Therefore, the decree against Purneshwari Rice Mill is unjustified and is set aside.

19. For these reasons the judgment of the High Court is set aside. The appeal is remanded to the High Court for decision as indicated above. The appellant will be entitled to costs in this appeal.

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