

Mohd. Rajab Gujari

Vs

The State of Jammu and Kashmir and Another

Civil Appeal No. 1807 of 1967

(K. K. Mathew, A. Alagiriswami JJ)

27.02.1974

JUDGMENT

MATHEW, J. -

1. This is an appeal, by certificate, against the judgment and decree of the High Court of Jammu and Kashmir whereby a Division Bench of the High Court allowed an appeal filed by the State of Jammu and Kashmir from a decree for recovery of money in favour of the plaintiff-appellant.
2. The appellant submitted a tender for supply of milk to the S.M.H.S. Hospital, Srinagar, in pursuance to a tender notice issued by the Superintendent of the hospital at the rate of Rs. 15.90 per maund. This tender was accepted and a regular agreement was drawn up between the parties on May 17, 1961. One of the conditions in the agreement was that if milk became a controlled article during the period of the agreement, the contractor shall be paid at the controlled rate for the supply of the articles made by him. This is practically the same as paragraph 12 of the Tender Notice. In pursuance of the agreement, the appellant supplied milk to the hospital during the period of the agreement. The price of milk was controlled by virtue of a notification issued on May 2, 1961 and this control remained in force till the end of the contract period namely, March 31, 1962. The case of the appellant was that although he agreed to supply milk at the rate of Rs. 15.90 per maund, as the controlled price was Rs. 25 per maund, he was entitled to be paid at this rate after the date of the notification controlling the price. He, therefore, claimed price of milk at the rate of Rs. 25 per maund from May 2, 1961, to the end of March, 1962, and filed the suit.
3. The defendants contended that there was no control by Government of the price of milk in the strict sense of the term and that the appellant, having agreed to supply milk at the rate of Rs. 15.90 per maund, could not take advantage of the control of the price of milk, and therefore, he was not entitled to be paid at the rate of Rs. 25 per maund for the period in question.
4. A learned Single Judge of the High Court, who tried the case, came to the conclusion that the appellant was entitled to the price mentioned in the notification and decreed the suit on that basis. The State filed an appeal against the decree before the Division Bench. The Division Bench reversed the decision and dismissed the suit.
5. The only question for consideration is whether the appellant was entitled to get Rs. 25 per maund as the price for the milk supplied by him from the date of the notification.
6. The Division Bench was of the view that the notification did not control the price of milk but only fixed the maximum price at which milk could be bought and sold in the market and that did not

deter any person from selling milk at a price lower than that fixed by the notification and so, the appellant could have purchased milk in the market at a lower price and supplied it to the Hospital in accordance with the terms of the agreement, namely, at Rs. 15.90 per maund.

7. The notification in question runs as follows :

In exercise of the powers vested in me under Section 3 of Hoarding and Profiteering Prevention Ordinance 2000, as amended to date, I.S.A.S. Qaidri, Director, Food and Supplies, Kashmir Province, designated Controller General under Section 2(c) of the said Act vide notification dated 3-7-1959 issued under Home Secretariat No. S. 7/I-S/59 dated 8-7-1959 hereby fix maximum price of sale for the following essential commodities in the following localities as shown against each :

Milk Rs.-/10/- per seer.

There can be no doubt that when a Government regulates the price of a commodity, it begets a tendency in the market to raise the price of the commodity at least to the level of the price fixed by the Government. No person would normally agree, after the notification, to sell or supply milk at a price lower than the one fixed by the Government even though there is no bar to his selling the same at a lower price.

8. In fact, the appellant has examined 8 witnesses to show that, after the notification, the price of milk went up and they supplied milk to the appellant at Rs. 23.50 per maund. The witnesses examined on behalf of the respondents have also stated that after the control of the price of milk by the notification, the price of milk went up in the market. Thus, the evidence adduced on behalf of the respondents also shows that the price of milk went up in the market after the notification. As already stated, the positive evidence of P.Ws. 1 to 8 is to the effect that the appellant himself purchased milk from them at the rate of Rs. 23.50 per maund after the aforesaid notification.

9. The relevant clause in the agreement runs as follows :

The contractor shall be paid at the rates against each of the articles as below for the supplies to be made by him :

#Gr. No. S. No. Name of article Approved rate/quantity required II 3 Milk 4200 maunds; Rs. 15.90 (Rupees fifteen and ninety naya paise)Cost : Rs. 66780.00##

Provided if any of the articles is controlled during the period of operation of this agreement the contractor shall be paid at controlled rates for the supplies of that article made by him.

10. The mere fact that a commodity could be sold in the market below the price fixed by a notification fixing the maximum price by Government would not indicate that there was no control. Control of any of the articles contemplated by the parties under the agreement was a control of the price of the articles. We do not think that the parties could have visualized any other control in the context of "the contractor being paid at the controlled rates".

11. We think that fixation of the maximum price at which an article shall be sold is the controlled rate for the supply of that article within the meaning of the agreement. The fact that sellers are free to sell the article at a price lower than the maximum fixed by the Government would not show that

there was no control of the commodity. We do not understand how an article can be controlled under Section 3 of the Hoarding and Profiteering Prevention Ordinance, except by a notification fixing the maximum price for the sale of the article. We think that the appellant's case is covered by the express term of the agreement and he was entitled to get the amount as decreed by the trial Court.

12. We, therefore, allow the appeal and set aside the decree passed by the Division Bench and restore the decree passed by the learned Single Judge. As the respondent has not appeared in this Court, we make no order as to costs.

</html