SUPREME COURT OF INDIA

Food Corporation of India

Vs.

Vikas Majdoor Kamdar Sahkari Mandli Ltd

C.A.No.7440 of 2000

(Dr. Arijit Pasayat and Lokeshwar Singh Panta JJ.)

12.11.2007

JUDGMENT:

Dr. ARIJIT PASAYAT, J.

1. These two appeals have a common matrix. The Food Corporation of India and Others are the appellants in Civil Appeal No. 7440 of 2000 while the respondent in the said appeal is the appellant in the other appeal i.e. Civil appeal No. 2540 of 2002. Parties in this judgment are described as per Civil Appeal No.7440 of 2000.

2. Challenge in these appeals is to the judgment of a Division Bench of the Gujarat High Court holding that the suit filed by plaintiff (respondent) was to be partly decreed for recovery of Rs.68,02,973/- from the defendants i.e. present appellants together with pendente lite and future interest at the rate of 6% per annum with appropriate cost throughout. It is to be noted that the respondent had filed a suit (Civil Suit No. 6040 of 1994) before learned City Civil Judge Ahmedabad for injunction restraining the appellant No.1- Corporation and its functionaries from recovering and/or withholding any amount from the bills of the respondent herein and also for a declaration that action of appellant No.1- Corporation in recovering various amounts without deciding the rates for extra work was bad in law and for directing the appellant-Corporation to make payment for the extra work at the rates demanded by the respondent. It was averred that as per the tender notice the respondent herein was required to handle 750 MT per day as per the charter party and for handling for which rate was fixed at Rs.108 per MT. It was further stated that the appellant-Corporation by the letters dated 30.9.1994, 14.10.1994 directed the respondent herein to handle more cargo than what was prescribed above and consequently the respondent herein started handling cargo to the tune of 1200 to 1300 MT per day against the contracted rate of 750 M.T. In view of the accelerated discharge, the respondent had to incur additional expenses towards enhanced rate of wages, payment to the workers and demurrage to wagons. The respondent claimed that its entitlement for enhanced transportation charges was Rs.45 per MT in place of Rs.15 per MT which was stipulated in the contract. The appellant No.1-Corporation in its written statement took the stand that it had no intention of withholding any payment demand as per the terms of the contract and that whatever bill was raised as per the terms of the contract had been paid and the final bill had not been settled as yet. On the claim towards additional expenses due to the accelerated discharge, the Corporation contented that as per the terms of the contract the respondent herein was bound to carry

out discharge so as to avoid any demurrage being incurred and it was bound to follow the rules and regulations of the Port authorities under which it had to discharge at a faster rate. The Corporation also denied that the respondent had incurred any extra expenses because of the accelerated discharge. The appellant-Corporation also denied the claim towards enhanced rate for transportation charges. Subsequently the respondent herein amended the claim to an amount of Rs.68,07,113.20 with interest at the rate of 18% per annum from the due date. Towards stevedoring charges the respondents herein claimed Rs.215/- per MT instead of agreed rate of Rs.108/- per MT. A sum of Rs.51,20,263.70 was claimed as the difference. The respondent further claimed the enhanced transportation charges and on that account claimed an additional sum of Rs.12,84,847.50. The appellant-Corporation filed its additional written statement denying the claim for enhanced compensation.

3. Learned Civil Judge (Court No.14), Ahmedabad framed the following issues for determination.

(i) Whether the Court has jurisdiction to entertain the suit?

(ii) Whether the Plaintiff proves that the Plaintiff appointed as contractor for stevedoring, clearance for transportation at Kandla Port pursuant to the tender?

(iii) Whether the Plaintiff proves that the plaintiff was carrying out a work of transport and handling the cargo as per the terms and conditions of the tender?

(iv) Whether the plaintiff is entitled to the enhancement rate from Rs.108/- per M.T. to Rs.215/- per M.T. as alleged?

(v) Whether the plaintiff proves that the plaintiff was unloading the quantity of the goods more than stipulated in the tender?

(vi) Whether the plaintiff is entitled to recover the amount from the defendant as prayed in para 12(A) and (B) of the plaint?

(vii) What order and decree?

4. The learned trial Judge decided issues (i), (ii), (iii) and and (v) in favour of the Respondent/Plaintiff. However, the learned Judge dismissed the suit on the basis of findings in issue Nos. (iv) and (vi).

5. The following findings inter alia were recorded by learned trial judge.

(i) Clause XX (1)(i) of the contract provided for a minimum discharge rate of 750 M.T. per day as provided in the Charter Party, so that the vessel would not suffer any demurrage. Thus, the Respondent herein (Plaintiff) had carried out the work of handling cargo as per the terms of the contract.

(ii) The Appellant Corporation (Defendant) had insisted for discharge of cargo at higher rate with a view to comply with the direction of the port authorities. The Respondent Plaintiff had discharged additional quantities. Clause 41 of the contract provides that the contractor shall comply with the rules and regulation of the Port Authorities, and since the Port Authorities had demanded discharge

at faster rate the Respondent herein (Plaintiff) was under obligation to discharge at faster rate.

(iii) In any event, the Respondent (plaintiff) had not established by evidence any additional cost incrred by him for such additional discharge. (iv) The Respondent (Plaintiff) was entitled to only contractual rate of Rs.108/- per M.T. and not at higher rate of Rs.215/ per M.T.

(v) The claim for enhanced rate for additional quantity discharged under S.70 of the

Contract Act on the principle of quantum meruit would not be applicable since there was a stipulation under the contract for payment at the rate of Rs.108/- M.T only.

6. On the basis of the aforesaid findings the suit was dismissed. Aggrieved by the above judgment respondent herein filed First Appeal No. 2678 of 1999 before the Gujarat High Court. A Division Bench of the Gujarat High Court reversed the judgment of the trial court and decreed the suit for a sum of Rs.68,02,973/- with interest at the rate of 6% from the date of suit.

7. Following findings were recorded by the High Court:

(i) A combined reading of Clause XX Part I (i) along with Clause 19 of the Charter Party would show that the Respondent herein (Plaintiff) was bound to handle only an average quantity of 750/- per M.T. per day, but not at the minimum quantity of 750/- per M.T. per day. (ii) The Respondent/Plaintiff had done extra-work than what was agreed to in the contract. The extra-work was not done gratuitously.

(iii) Since it was an extra-work as stated in clause XVI of the contract, but no negotiation took place as required under this clause, despite written request of the Respondent (Plaintiff) and no mutual settlement was arrived at despite the request of the Respondent in various letters, there was no rejection of the Plaintiffs request for higher remuneration.

(iv) The Plaintiff is entitled to extra remuneration for extra work.

(v) Since no negotiation took place in spite of written request by the Plaintiff, the principle of quantum meruit applied for awarding compensation.

(vi) Since no reply was sent by the Appellant Corporation to the letter of Respondent dated 9.11.1994, refusing the demand the Respondent (Plaintiff) had proved his claim for compensation at Rs.215/M.T. (vii) Even though the trial Court did not frame any issue on the claim of transportation charges at the rate of Rs.45/- per tonne instead of Rs.15/- per tonne, the High Court decided the issue holding that the respondent herein had substantiated the said claim by the letter dated 9.11.1994.

(vii) In letter dated 14.11.1994 sent by the Assistant Manager of the appellant-Corporation he had recommended for the enhanced rate of payment that would constitute an admission of the enhanced rate as claimed by the respondent.

8. In support of Civil Appeal No.7440 of 2000, learned counsel for the appellants submitted that the contracts stipulated remuneration at the rate of Rs.100/- per MT for discharge at the charter party rate for a period from 16.8.1994 to 15.8.1995. It does not preclude any higher discharge rate since

its discharge rate is not pre-determined and it varies from ship to ship. The stipulation of the charter party rate is only for the purpose of ensuring that the appellant- Corporation does not suffer any demurrage on account of slow discharge. Since the rate of discharge is a variable factor from ship to ship, the remuneration in the present contract is not dependant on the daily discharge rate. Actual figures also show that the discharge rate has been varying daily. Therefore, the request of the appellant Corporation for a faster discharge was as per the terms of the contract and in view of the specific order from the port authorities in terms of Clause 41 of the contract. It was, therefore submitted that the respondent is not entitled to claim remuneration at a higher rate but only the contractual rate.

9. Secondly, it was submitted that in the absence of any specific contract between the parties or the acceptance of the appellant of the demand of the respondent for higher rate of remuneration, the respondent is entitled to claim remuneration only as per the terms of the contract. Finally, it is submitted that principles of quantum meruit under Section 70 of the Indian Contract Act, 1872 (in short the 'Contract Act') has no application in view of the specific contractual provisions. Alternatively, it was pleaded that the claim for enhanced rate is highly exorbitant and not substantial by any evidence of actual expenses. Though the High Court had relied on the letter dated 9.11.1994 (Ext.67), the same has no relevance because the respondent had claimed Rs.215/- per MT for a minimum discharge of 1200 MT per day. This was even much higher than the actual discharge rate achieved by the respondent. Therefore, the decree at the rate of Rs.215 per MT is unsustainable. The letter dated 15.11.1994 (Exh. 90) written by the Assistant Manager of the appellant-Corporation has also no relevance because he was not competent to decide the issue and the same could not have been the basis of a decree when he was not examined as a witness. Even otherwise, it was only a unilateral recommendation to higher authorities. The letter does not in any way substantiate the claim of the respondent and the same was not accepted by the appellant. The decree for enhanced transportation charges at the rate of Rs.45/- per MT for transporting the cargo from the wharf to the appellant godown is unsustainable since the contractual rate has no connection with the discharge rate. Therefore the principle of quantum meruit does not apply and the respondent is entitled to claim at the contractual rate only.

10. Respondent supported judgment and its appeal prayed for enhanced rate of interest.

11. With reference to Clause XX of tender notice, it is submitted that the contractor was only obliged to ensure discharge the cargo at the rate provided for in the Charter Party agreement. Clauses 22 and 23 are relevant. It is pointed out that the contractor was bound to discharge the articles at an average rate of 750/- per MT. In the event of failure to do so, the corporation was liable to pay demurrage at the rate of US$ 4000 per day. In case the rate was achieved, the Corporation was entitled to receive discharge money for working time saved at the rate of US$2000 per day. In the present appeal, the Corporation has withheld the information from the trial court as well as the High Court. Since the respondent-Society had started the execution of the work it had received a letter dated 30th September, 1994 from the Corporation "to rise to the occasion and to come forward with all the machinery geared up to ensure maintaining four gangs/cranes in each shift to achieve the target of not less than 2000 M.Ts. per day without fail". Another letter dated 14th October, 1994 was to similar effect. It is unconceivable as contended by the appellant-Corporation that no extra expenditure would be involved in getting a higher rate of discharge. The Customs authorities were delaying the clearance. There was delay even at the time of unloading. At the depot of the Corporation, the arrangements were very poor. Therefore, the Corporation was requested to provide extra money. A fax was sent in this regard. When the respondent-Society did

not get any response, it sent another letter dated 9.11.1994 reiterating its demand for payment of a higher rate. A copy of the letter was endorsed to Senior Regional Manager, FCI, Ahmedabad, the basis on which the extra remuneration was demanded was indicated. It appears that the matter was examined in the office of the Corporation and therefore the letter dated 14th November, 1994 was issued, giving details and pointing out that the respondent-Society was incurring extra expenditure and was paying excess money for speedy work to each and every DLB gangs, shore cranes, Trucks, Short labourers, and other organizations. Various difficulties faced by the respondent Society were also listed. It was found that the worksheet is in order. He recommended that the request of the respondent society was to be accepted and accordingly recommended that the request may be forwarded to the concerned authority. Despite these specific recommendations, there was no response. The respondent completed the work. Not only the appellant-Corporation saved demurrage at the rate of US$ 4000 per day, it also earned discharge money for speedy work done. The demand for the higher remuneration was in accordance with the terms of Clause XVI. There is no dispute that there was a request made by the appellant-Corporation to discharge more than what was stipulated in terms of the Charter party agreement. The Corporation was insisting that the respondent-Society should increase the discharge. That being so Clause XVI(b) is clearly attracted. The respondent Society was entitled to extra remuneration. Since the appellant-Corporation had failed to respond to the request, the High Court had rightly invoked the principle of quantum meruit and accepted the claim. Reasons for extra expenditure have been clearly stated in the statement of Sh. Jayantibhai.

12. The principle of quantum meruit is often applied where for some technical reason a contract is held to be invalid. Under such circumstances an implied contract is assumed, by which the person for whom the work is to be done contracts to pay reasonably for the work done, to the person who does the work. The provisions of this section are based on the doctrine of quantum meruit, but the provisions of the Contract Act admit of a more liberal interpretation; the principle of the section being wider than the principle of quantum meruit.' The principle has no application where there is a specific agreement in operation. A person who does work or who supplies goods under a contract, if no price is fixed, is entitled to be paid a reasonable sum for his labour and the goods supplied. If the work is outside the contract, the terms of the contract can have no application; and the contractor is entitled to be paid a reasonable price for such work as was done by him.

13. If a party to a contract has done additional construction for another not intending to do it gratuitously and such other has obtained benefit, the former is entitled to compensation for the additional work not covered by the contract. If an oral agreement is pleaded, which is not proved, he will be entitled to compensation under Section 70. Payment under this section can also be claimed for work done beyond the terms of the contract, when the benefit of the work has been availed of by the defendant.

14. The term 'extra' is generally used in relation to the works, which are not expressly or impliedly included in the original contract price, provided the work is within the framework of the original contract. The question whether a particular work is extra will depend upon the terms and conditions of the contract, and other documents connected therewith.

15. The relevant clauses of the contract read as follows :

"XVI- REMUNERATION :

(a) The Contractors shall be paid the remuneration in respect of the services described in para XX and performed by them at the contracted rates.

(b) If the Contractors are required to perform any services in addition to those specifically provided for in the Contract and the annexed schedule, the Contractors remuneration for the same will be paid at the rate as negotiated and fixed by mutual agreement.

(c) The question whether a particular service is or is not covered by any of the services described and provided for in the contract, or is not auxiliary or incidental to any of such services, shall be decided by the Sr. Regional Manager whose decision shall be final and binding on the Contractor.

(d) The Contractor will have the right to represent in writing to the Sr. Regional manager that a particular service which he is being called upon to perform is not covered by any of the services specifically provided for in the contract or as the case may be, is not auxillary or incidental to such services, provided that such representation in writing must be made within 15 days of the commencement of actual performance of such services. If no such representation in writing is received within the said time, the Contractor's right in this regard will be deemed to have been waived." XX - Services to be Performed by the Contractors: Part I For Stevedoring

"The contractor shall render all the services, which are usually performed by the stevedors. These will generally include services given below:

"(i) The Contractors shall discharge the Sugar in bags (including sweeping and spilling) from the ship to the wharf/roof of the transit shed carefully and expeditiously and arrange to complete discharge in the minimum period possible and shall take all necessary steps to avoid ships going under demurrage and to earn maximum amount of dispatch money. No additional remuneration will be paid for discharging on roof of transit shed.

The contractors shall ensure the discharge of cargo in a vessel handled by him at the rate not less than what is provided for in the charter party of the concerned vessel and ultimately if there has been any short fall in discharge of the vessel at the stipulated rate and consequential demurrage charges, the contractor will be responsible for the same and will make good whatever losses and expenses incurred by the Corporation, the Corporation shall have the right to deduct these losses from the admitted bills of the contractors".

" Clause XXII - Ship to discharge at the average rate of 750 M.T. calculated on gross weight provided vessel can deliver at this rate per working day of 24 consecutive hours time from noon Saturday to 8 a.m. Monday (for local equivalent) and from 5 p.m. day preceding holiday until 8 a.m, next working day excepted, even used, time employed in shifting anchorages or discharging places within the same port or its jurisdiction not to count as laytime, and shifting expenses to be for owners account".

Clause XXIII of the charter party agreement provided as under:

"If longer detained in loading and/or discharging ports, demurrage to be paid at the rate of $4000.00 per day, or in proportion for any part of 1 day. Ship to pay $2000.00 per day or in proportion, dispatch money for all working time saved at both ends. Such time lost is to be calculated in accordance with the custom of port. Lay time to be non- reversible between loading and discharging

ports, but may be reversible between the ports of loading at the ports of discharging.

Demurrage or dispatch to be settled directly between owners and Charters at discharging port(s):"

16. From various documents exhibited more particularly the letters dated 30.9.1994 to 14.10.1994 it is clear that the functionaries of the appellant-Corporation recommended higher payment rate for higher discharge. The letters written by the respondent society also clearly indicate that the demand was for higher charges in respect of the extra work. Though a stand has been taken that the signatories of the letters by the Corporation were not authorized, it is not disputed that on the basis of these letters extra work was undertaken. There is also material on record to show that extra expenditure had to be incurred for doing the extra work. The quoted rates in terms of the contract was Rs.108 per M.T. For claiming Rs.215 per M.T. the following details were given:

SR. NAME OF OPERATION PMT NO. PREVAILING RATE (RS.)

1. Stevedoring Charges 75-00

2. 'Tally clerks, Gears, foreman private Labourers inside 10-00 hatches

3. Loading of trucks 10-00

4. Shifting T. Sheds by trucks at Kandla 17.00

5. Wagon loading from T. Sheds by trucks at Kandla 40.00

6. Wharf clearing, Wagon cleaning security and for Casual Labourers in T. Sheds. 8.00

7. Custom clearance Documentation 10.00

8. Administration charges, warehousing. 10.00

9. Various liabilities like Wagon Demurrage, shed Demurrage etc. 15.00

1.0 Contingency over and above costing 20.00 Grand Total 215. 00

17. As has been rightly contented by learned counsel for the appellant, sufficient evidence has not been placed on record to justify the claim at the rate of Rs.215; for example, the serial No.10 i.e. "contingency over and above costing", and for custom clearance, documentation or administration charges and warehousing. It is, however, clear that no issue was framed relating to the claim of enhanced rate for transportation at the rate of Rs.45/- per M.T. and even no ground was urged accordingly.

18. In view of the above, we direct that the respondent- society shall be paid at the rate of Rs.108 per M.T. in terms of the contract up to 750 M.T. and at the rate of Rs.215 per MT for quantum beyond that. The interest rate shall be 6% as fixed by the High Court. The respondent-Society shall not be entitled to any amount beyond the agreed amount of Rs.15 per M.T. for transportation. Civil Appeal No.7440 of 2000 is allowed to the aforesaid extent.

19. The Society's appeal (Civil Appeal No.2540 of 2002) is sans merit and deserves dismissal, which we direct.

20. There shall be no order as to costs in both the appeals.