

CALCUTTA HIGH COURT

Province of West Bengal

Vs

Mohan Lal Jain

(P.N. Mookerjee and P Sarkar, JJ.)

01.07.1957

JUDGMENT

P.N. Mookerjee, J.

1. This appeal arises out of a suit, being Money Suit No. 20 of 1947, instituted by the plaintiff respondent Mohan Lal Jain on August 13, 1947, against the then Province of Bengal for recovery of certain sums as commission, godown rent and interest. The plaintiff is a merchant of Berhampore in the district of Murshidabad. His case is that, in November 1943, he was requested by the then District Magistrate of Murshidabad to receive certain quantities of food grains, consigned by the Directorate of Civil Supplies, Bengal, and store the same for a short period after redeeming the bills and paying the Railway freight and all other charges and that, accordingly, he received and stocked a large quantity of wheat and bajra in his godown after incurring the above expenses. The stocks were not, however, cleared out quickly and the plaintiff, thereupon, asked for godown rent and some commission and, in March, 1944, the then District Magistrate of Murshidabad agreed that the plaintiff would get godown rent, calculated at 6 pies per maund per month and commission, calculated at 1 anna per maund per month on the balance of the stock, held on the first day of every month from December 1, 1943. The clearance of stock was made slowly and, as a result, a large consignment of wheat which was in a damaged condition was destroyed and its also contaminated other stocks, and, when in August 1944, the stock was fully cleared, it was discovered that the stock was short by 882 mds. 10 srs. of wheat and 46 mds. 25 srs. of bajra. The plaintiff has been repaid the sums which he advanced for redeeming the bills and paying the railway freight etc., and he has also received commission at the rate, mentioned above, up to June 1944. But he has not received any godown rent, although he submitted a bill therefor, and, on the other hand, the Government called upon him to deposit a sum of Rs. 5,015/- and odd as the value of 489 mds, of the stock, found short, after writing off the balance. The plaintiff denied any obligation to re-imburse any portion of the loss in stock and claimed in the suit a sum of Rs. 4,352-7-0 for godown rent from December, 1943, to August, 1944, and a sum of Rs. 514-9-0 as commission for July and August, 1944, together with interest, the total claim being laid at Rs. 5,567/-.

2. The Province of West Bengal filed two written statements, one on April 12, 1948, and another on June 15, 1949. In the first written statement the defence taken was that there was no record of the agreement, pleaded by the plaintiff, and he was put to proof thereof. The further defence

taken was that, in any event, the plaintiff was liable for the loss of stock to the extent of 489 maunds and the amount, if any, which might be found due to the plaintiff on his claim, should be set off against the sum of Rs. 5,015-9-3 which was the value of the above loss. This defence was in the nature of an alternative defence and the above sum was claimed by way of equitable set off. In the written statement, filed on June 15; 1949, four further objections were taken, of which only one is now material, namely, that, under the provisions of Section 175(3) of the Government of India Act, 1935, the District Magistrate of Murshidabad had no authority to enter into any contract on behalf of the defendant Province and that the contract, alleged by the plaintiff, was not binding on the said defendant.

3. The learned Subordinate Judge, by his order, dated June 18, 1949, held that this last objection was inconsistent with the case, set out in the original written statement, and could not be allowed to be taken. But when the case came up for trial, he allowed the Government Pleader to argue the point. Eventually, the objection was overruled as, in the opinion of the learned Subordinate Judge, Section 175(3) of the Government of India Act, 1935, was not applicable to the agreement, pleaded by the plaintiff. The learned Judge found that the District Magistrate had agreed to pay godown rent and commission to the plaintiff as claimed and that, by the said agreement, the defendant was bound, as the District Magistrate had authority to enter into such an agreement under Section 81 of the Defence of India Rules. He also found that the plaintiff was not liable for the loss of stock and that the defendant was not entitled to claim any set-off on account thereof. On the other issues also he found for the plaintiff and eventually decreed the suit in part for Rs. 4,811-5-6 with proportionate costs.

4. The Province of West Bengal appealed to this Court and when this Court was found inclined to entertain the objection under sec. 175(3) to the effect that, for non-compliance with that section, the agreement, pleaded by the plaintiff, was invalid in law and could not bind the Government, the plaintiff took up the position that, even if the bar under Section 175(3) of the Government of India Act, 1935, applied, he was entitled to show that there had been ratification of the agreement by the Government or that the District Magistrate had authority to enter into the disputed transaction or the impugned agreement under the Defence of India Rules. The appeal was, accordingly, kept pending here and an additional issue, which was framed in these terms:

"Whether under the provisions of Section 175(3) of the Government of India, Act, 1935, the District Magistrate of Murshidabad had any authority to enter into the contract, as alleged by the plaintiff? If not, whether he had any authority under the Defence of India Act and the Rules framed thereunder or any other provision of law? Whether the contract, if any, was ratified by or on behalf of the then Government of Bengal?"

was sent down for trial with a specific direction that the parties should be allowed opportunity to adduce additional evidence, limited to the said additional issue, and that the trial court's findings on the said issue should be sent to this Court, after which the entire appeal would be set down for hearing.

5. The parties, however, did not adduce any further evidence, regarding this new issue, and the issue was tried on the evidence, already on record, by another Subordinate Judge. He has sent his findings on the additional issue and the entire appeal has now been heard.

6. The learned Subordinate Judge has found that the agreement in question was unauthorised and did not bind the defendant as it was not in accord with the statutory requirements, laid down in Section 175(3) of the Government of India Act, 1935, and further that the District Magistrate had no authority to enter into any such agreement under the Defence of India Act and the Rules, framed thereunder, or any other provision of law. He has also found that the agreement was not ratified at any stage by or on behalf of the Government concerned.

7. As in view of the above findings (which, according to him, were correct), the suit was liable to be dismissed, the learned Government Pleader did not argue on any of the other findings, arrived at by the learned Subordinate Judge who originally tried the suit. On behalf of the plaintiff respondent, Mr. Banerjee did not challenge the finding on the additional issue that the agreement, relied upon by the plaintiff, had not been "concluded according to the provisions of Section 175(3) of the Government of India Act, 1935, but he challenged the other finding, namely, that the agreement had not been subsequently ratified by the Government. He did not, however, contend that the agreement was within the authority of the District Magistrate under the Defence of India Rules Or under any other provision of law.

8. Section 175(3) of the Government of India Act, 1935, is in these terms:

"Subject to the provisions of this Act with respect to the Federal Railway Authority all contracts made in the exercise of the executive authority of the Federation or of a Province shall be expressed to be made by the Governor-General or by the Governor of the Province, as the case may be, and all such contracts and all assurances of property made in the exercise of that authority shall be executed, on behalf of the Governor-General or Governor by such person and in such manner as he may direct or authorise."

9. So, under the terms of the above sub-section, any contract, to be made in the exercise of the executive authority of a Province, should be expressed to be made by the Governor of the Province and should be executed on behalf of the Governor by such person and in such manner as might be directed or authorised by him. Admittedly, in regard to the disputed contract, the terms of the above sub-section have not been complied with, but it has been argued by Mr. Banerjee that, in spite of such non-compliance, the contract is binding on the Government by reason of subsequent ratification. For this he relies upon the decision of the Supreme Court, reported in Charturbhuj Vithaldas v. Moreshwar Parashram, . He further argues that, in any event, the plaintiff is entitled to compensation under Sections 65 and 70 of the Indian Contract Act. How far these contentions can be accepted requires consideration in this case.

10. It has been held in a series of decisions that Section 30(2) of the Government of India Act, 1915, and Section 175(3) of the Government of India Act, 1935, are mandatory (Vide Kessoram Poddar and Co. v. Secretary of State ; Province of Bengal v. S. L. Puri¹, , and Union of India v. Ram Nagina Singh², But, as the Supreme Court has pointed out in the case, above cited, contracts not strictly in accord with Section 175(3), may be ratified by a proper authority, become binding upon the Government. Where, however, it is claimed that a contract, not in accord with the above statutory requirement, has been subsequently ratified by the Government or by an appropriate authority on its behalf, strict evidence of such ratification would be necessary to make the contract binding on the Government. Bearing this in mind, let us examine the facts of the present case.

11. The first circumstance which is said to constitute ratification, according to Mr. Banerjee, is that part payment had been made to the plaintiff by the Government in pursuance of the agreement. As has already been stated, the alleged agreement provided for payment to the plaintiff of godown rent, calculated at 6 pies per maund per month and of commission, calculated at one anna per maund per month, on the balance of the stock, held on the first day of every month from December 1, 1943, till such time as the said stock would finally be cleared from the plaintiff's go-down. There was no written record of this agreement, but the plaintiff examined one Ashit Kumar Biswas, who was the District Supply Officer at Berhampore at the relevant time and he gave evidence that, at his intervention, there was a settlement between the plaintiff and Mr. U. C. Dutt, the then District Magistrate of Murshidabad, that the plaintiff would be paid godown rent and commission at the rates, mentioned above. But he also stated that no sanction of the Government was obtained regarding this agreement and that Mr. U. C. Dutt did not ask for any sanction. Our attention was, however, drawn to certain interrogatories, served on the defendant by the plaintiff and the defendant's answers thereto through the Head Clerk of the office of the District Controller of Civil Supplies Murshidabad. One of the interrogatories (No. 8) (which alone we find to be of some relevance on the question of ratification) was in this form:

"Did not the Government pay the plaintiff commission @-1/- anna per maund Per month on the stock of cereals held till June 1944? If so, when and how was this rate fixed and settled and by whom?"

The answer to this interrogatory was as follows;

"There is no clear order on record about fixation of the rate of commission at -1/- anna per maund per month, but from the bill register of that period it is found that the plaintiff was paid a sum of Rs. 8,245-8-0 on 22-11-44 for storage commission for the period from December, 1943, to June, 1944. On calculation, the rate is found to be -1/- anna per md. per month. No definite order is available to show as to when and by whom this rate was fixed, but it appears from a letter, addressed to the Dy. Controller of Distribution by District Magistrate in January, 1945, that he had asked for sanction to the payment of commission at -1/- anna per md."

12. It is not stated in this reply that the payment of commission, for the sanction of which the District Magistrate had written in January, 1945, had actually been sanctioned by the Government, but it has been contended that payment on this basis to the plaintiff from December, 1943, to June, 1944, having been admitted, it amounted to ratification of the entire agreement for payment of commission and godown rent. We are unable to accept this argument. The payment, even if admitted, cannot be said to have been made with the sanction of the Government, in view of the answer to the interrogatory, as discussed above, and the evidence of the District Supply Officer, already referred to, and, therefore, such payment cannot be considered to be evidence of ratification. The payment might have been made from the local treasury, but that would not improve matters, unless the payment is shown,--and that has not been shown,--to have been made under the sanction or authority of the Government.

13. The next circumstance, upon which reliance has been placed, is that the Government had

sanctioned the writing off of the loss in respect of the wheat stock upto a limit of 2 per cent of the total receipt. In this connection a letter, dated the 19th November, 1945, from the Director of Storage Department of Civil Supplies, to the District Controller of Civil Supplies, Murshidabad (Ext. 2f) has been referred to. This letter states that "a case has been put up before the Government to accord sanction to the writing off of loss in shorts-age of whole wheat which was with the plaintiff up to a limit of 2 per cent of the total receipts" and it directs that "the value of the balance of loss, namely, 489 mds, 13 srs. should be recovered from the plaintiff and that, after making sure the recovery" his commission bill should be paid. The sanction to the writing off of the loss was finally conveyed by a letter from the Assistant Secretary to the Government of Bengal, Department of Civil Supplies, to the Accountant General, Bengal on the 22nd February 1946 (vide Ext. A). This letter, however, contains no reference to payment of the commission bill, submitted by the plaintiff, which is mentioned in the letter, Ext. 2 (f). If this letter had authorised payment of commission to the plaintiff after making sure the recovery as in the letter, Ext. 2(f), then it might have been contended that the Government had actually accorded sanction to the payment of commission to the plaintiff, according to the agreement with Mr. U. C, Dutt. But there being no reference to his bill in this letter and nothing to show that it sanctioned the payment of commission) to him, no such contention is open to the plaintiff.

14. Finally, it has been contended that, since the defendant had asked for a set-off in the original written statement in respect of the sum, claimed for loss of stock, amounting to Rs. 5,015-9-3, it should be presumed that the agreement had been ratified, as a set-off could only have been claimed on the footing that there was an agreement. The set-off was claimed in paragraph 13 of the written statement and, in the same paragraph, the claim of the plaintiff was denied and he was put to proof of the same. The set-off was claimed on the footing that, if the plaintiff was found entitled to re-cover any amount from the defendant, the sum of Rs. 5,015-9-3 should be set-off against that amount. It was not claimed on the basis of the agreement, alleged by the plaintiff, or on or in acknowledgment thereof. It was merely in the nature of an alternative defence. Hence we cannot find that the defendant is estopped from denying the agreement or challenging its validity because of the above claim for set-off.

15. From what we have stated above it is perfectly clear that the circumstances, relied upon by the plaintiff, do not amount to proof, - far less, strict proof,--of any ratification by the Government. It is significant to note in this connection that, in spite of express direction having been given to the parties to adduce additional evidence On the point of ratification, when the case was remitted to the trial court, the plaintiff took no steps whatsoever to produce any additional evidence on the point. In the circumstances, we must hold that the alleged agreement has not been ratified by the Government concerned. It was not, therefore, binding on the defendant. It may also be noted that no godown rent, as claimed, has ever been paid to the plaintiff and there is nothing also on the record to show that any sanction was asked for for payment of godown rent, or that any such sanction was ever given. The plaintiff's plea of ratification must, therefore, fail.

16. Finally, it was contended on behalf of the plaintiff that, even if the contract failed, the plaintiff was entitled to reasonable compensation under Section 65 or Section 70 of the Indian Contract Act.

17. In the plaint, neither of the above sections has been pleaded and the facts, necessary to make out a case under either of them, have not been stated therein. The claim of the plaintiff, as set out

in the plaint, is based solely on the disputed agreement. It was only in the course of argument at the time of the re-hearing of the suit after remand that a case under Section 65 of the Indian Contract Act was sought to be made out and it was only in this Court at the present hearing that a claim was put forward under Section 70 of the said Act. The above facts, however, may not, by themselves, be sufficient to throw out the plaintiffs claim under the two sections and we would not put him out of the court on the technical ground that this claim was not made earlier or in the pleading, notwithstanding some decisions to the contrary, in view of the decision of the Judicial Committee in the case of Mohan "Manucha v. Manzoor Ahmad Khan .

18. In support of his above contention under Sections 65 and 70 of the Indian Contract Act, the plaintiff respondent relied upon two judicial decisions, namely, *Secretary of State v. G. T. Sarin*,¹ " Those decisions, however, are of no avail to the plaintiff as, apart from anything else, his above contention must fail on the simple ground that he has received sufficient compensation for the benefit or advantage, if any, received by the defendant under the disputed contract. Admittedly, the plaintiff has received the commission up to June, 1944, amounting to Rs. 8,245/8/- (Vide Ext. 4) and, in the background of the loss, suffered by the defendant by the destruction of about 930 mds. of wheat and bajra, that amount appears to us to be sufficient compensation for the benefit or advantage, if any, received by the defendant under the disputed contract. In this view, irrespective of any other consideration, the plaintiff's claim under Ss. 65 and 70 of the Indian Contract Act must fail (vidio in this connection *Govindram Seksaria, a Firm v. Edward Radbone* . We accordingly, reject the plaintiff's contention on the point.

19. In the result, this appeal should be allowed and the plaintiff's suit would fail.

20. We, accordingly, allow this appeal, set aside the decree of the learned Subordinate Judge and dismiss the plaintiff's suit. In the circumstances of this case, however, we would direct the parties to bear their own costs throughout.

Cases Referred.

11. L. R. 11 Lah 375 : (AIR 1930 Lah 364) and 89 Cal LJ 342