LAHORE HIGH COURT

Secy. of State

Vs

G.T. Sarin and Co

(Tek Chand, J.)

09.07.1929

JUDGMENT

Tek Chand, J.

1. In order to properly -appreciate the points in dispute in this appeal it is necessary to state a few preliminary facts which are admitted by counsel for both parties. In 1920 the Cavalry Regiment, then known as the 11 (K.E.O.) Lancers, was serving in Mesopotamia but a depot of this Regiment was stationed at the Jullundur Cantonment. The depot remained at Jullundur till 1st March 1921 when on the return of the full Unit it was absorbed in it. Subsequently in consequence of the post-war reorganization of the Indian Army, the XI (K.E.O.) Lancers was amalgamated with another Unit, the XII Lancers, and the newly constituted Regiment is now known as the V (K.E.O.) Probyn's Horse.

2. On 20th May 1920, an agreement (Ex, P-1) was entered into between Messrs. G.T. Sarin and Company, plaintiffs, and Major, J., May Somerville, Officer Commanding the depot of the XI (K.E.O.) Lancers, Jullundur, whereby the former undertook to supply grain for the horses of the depot from 1st June 1920, to 31st May 1921 or any previous date on which the depot might leave Jullundur permanently. The quantity to be supplied daily was one seer of crushed gram, two seers of ardawa (barley) and one seer of bran per horse for which the contractors were to be paid at ₹ 12-4-0 per horse per month of 30 days. The Officer Commanding the depot was to furnish the contractors with the approximate initial requirements for a fortnight and payments were to be made monthly on the first day of each succeeding month. There was a further stipulation that:

> if the authorities concerned allow, passes for octroi and letters to the railway authorities for the supply of waggons will be granted to the contractors and in the absence thereof supply will be paid at the local current rates.

3. The plaintiffs stated in the plaint that they had been paid for the supplies made during the first three months, (June, July and August 1920) and that the accounts for this period had been finally settled. They alleged that for the grain supplied from 1st September 1920 to 31st March 1921 they were due ₹ 18,048-3-6. Adding to this sum ₹ 137-4-0 as the price of 366 empty bags not

returned by the depot, and ₹ 573-12-5 interest at 12 per cent per annum, and giving credit for ₹ 11,089-15-6 received from the Officer Commanding in this account, they claimed a decree for ₹ 7,669-4-5.

4. The suit was originally instituted against the Secretary of State for India in Council, alone, but subsequently on a preliminary objection raised on his behalf the Court ordered that the Officer Commanding V (K.E.O.) Piobyn's Horse be added as a party, and accordingly that officer was impleaded as defendant 2.

5. The Secretary of State pleaded that the Officer Commanding the depot had had no authority to enter into a binding contract on his behalf. On the merits the quantity of grain alleged by the plaintiffs to have been supplied was not denied but the reasons given by the plaintiffs for claiming the price at the market rates were not admitted, and, in particular, it was urged that under the agreement there was no obligation on the part of the military authorities to procure "priority certificates" from the railway administrations for the supply of waggons to the contractors. It was finally urged that the plaintiffs had been paid for the quantity of grain supplied and that nothing was due to then.

6. Defendant 2, Lt. Col. R. Anderson, Commanding the V (K.E.O.) Probyn's Horse denied all personal knowledge of the agreement, and further pleaded that as on the date on which it was entered into, his regiment was not in existence, he was not liable in any way on this account.

7. The learned Subordinate Judge, has decreed the claim against both defendants for ₹ 6,792-14-5 and they have preferred a first appeal to this Court. The plaintiffs-respondents have also filed cross-objections praying that the decretal amount be enhance by ₹ 876-6-0, which had been disallowed by the lower Court.

8. Before us the learned Government advocate has not disputed the finding that the plaintiffs did actually supply to the depot, and, later on (on its return to Jullundur), to the regiment the quantity of grain as per details given in the judgment of the Court below, nor has he challenged the accuracy of the calculations of the price payable there for. He has, however, raised certain legal points on which, he contends, the plaintiff's claim must fail against both defendants. So far as the appeal on behalf of the Secretary of State for India in Council is concerned, he has argued substantially four points before us:

(A) Whether Government had undertaken to maintain the horses for which the grain was supplied.
(B) Whether Major Somerville had legal authority on behalf of the Secretary of State to enter into the contract in question;
(C) It (A) is found against the Secretary of State and (B) in his favour, whether he is equitably bound to pay compensation to the plaintiff's for the grain actually delivered to the Officer Commanding and consumed by the horses and
(D) Whether the accounts for the supplies made in June, July and August 1920 for which payments in full had already been made can be reopened in view of certain admissions

made by the plaintiff in the course of a criminal case instituted by the Officer Commanding the XI Lancers against Tara Singh and Ganga Ram of the plaintiff's firm, under Section 420, I.P.C.

9. It is common ground between the parties that the XI (K.E.O.) Lancers was one of the regiments which were originally organized on what is known as the silladar system. An account of the origin and growth of that system and the modifications made therein from time to time, will be found at p. 91, et seq of the official publication called "Army in India and its Evolution" issued under the authority of the Government of India in 1924. This book was referred to and relied upon largely by both counsel, who admitted that it contained a correct and authoritative description of the system at various stages of its development. From the account given therein it appeal's that in its origin this was a yeomanry system under which the individual soldier called the silladar supplied and maintained his own horse, clothing, equipment and arms (other than his rifle), in lieu of a higher rate of pay than the non-silladar soldier, whose needs were furnished by Government. In course of time, it was found, however, that the increasing standard of efficiency demanded of the Indian Cavalry necessitated a horse and equipment of better quality than that usually obtainable by the silladar. It thus came about that the original system was modified in so far that while the silladar remained the owner of his horse and equipment, the recruit, instead of bringing when necessary, his horse and equipment, was required to-pay to the regiment on enlistment a, sum of money, known as his assami, wherewith the horse and equipment were purchased under regimental arrangements. A monthly sum was also taken from the pay of each man to provide for the replacement of the horse and equipment whenever they became unserviceable.

10. At the end of his service the silladar was repaid the value of his assami in cash, and his horse and equipment were taken over by the regiment for issue to the recruit entertained in the place of the man discharged. It was, however, discovered after a time that the majority of recruits were unable to produce in cash the full amount of their assami at the time of the enlistment. The system was accordingly modified so as to insist on the production of a part only of the assami in cash, the balance being advanced from regimental funds which were frequently assisted by Government Loans, at a low rate of interest and recovered by monthly deductions from pay. The system, so modified continued for a number of years, but it became clear that even in its modified form it was essentially a, system suitable to peace conditions. In times of war, therefore, a further modification became necessary as it was felt that "the additional," casualties among horses and wear and tear of equipment, which are inevitable concomitants of war, must obviously be made good at the expense of the country. This was adjusted by payment to Government the monthly cuttings normally paid in peace to the regiment. In return Government accepted the entire responsibility for maintenance during war, and of returning the regiment with its full complement of serviceable horses and equipment on the termination of the campaign.

11. (Army in India and its Evolution, pp. 92-93). Accordingly "with the outbreak of the Great War the maintenance of the silladar regiments was transferred to the State", so as be avoid difficulties in the general maintenance of the regiments in the field "and the administration of their depot in India". The system having completely thus broken down during the War and undergone such radical changes, Government decided early in 1920 to formally abolish it and reorganize the regiments on a different basis altogether.

12. In the earlier part of his arguments before us, the learned Government Advocate urged that the liability of the men of the depot of the XI Lancers to maintain their horses, during the period with which we are concerned in this case, must be judged in reference to the essential features of the silladar system, under which each sowar was bound to bring and maintain his own horse. But after discussing the evidence and the record and referring to the "Army in India and its Evolution", already cited, he frankly conceded that this position was indefensible. It is abundently clear from the materials which have been placed on the record that the men of the depot neither brought their own horses at the time of enlistment nor had they any hand in feeding and maintaining them. The evidence of Major Somerville given in Court and on interrogatories discloses that when the so called silladar recruit joined the depot he was supplied by the Officer Commanding with a properly equipped horse, for which he was to pay the "horse price", commonly known as the chanda. This chanda was recovered by deductions from his salary and credited to the "horse" account. The witness admitted that so long as the full chanda was not paid, the horse was considered "regimental property". Fodder and grain for maintaining these horses were purchased by the Officer Commanding and proper quantities were doled out daily to each animal under official supervision. Regular account of each sowar was kept and the amounts spent on maintaining his horse deducted at the end of the month from the salary payable to the sowar. The purchases were made by the Officer Commanding and paid for out of the moneys kept in his name in the Bank. This account was checked and audited periodically by Government auditors. It was out of this bank account that payments were admittedly made by Major Somerville and his successor to the plaintiffs towards the price of the grain supplied under the contract in dispute. In face of these facts, it is idle to contend that every man in the depot was responsible to feed his animal. At one stage of his examination Major Somerville had, no doubt stated that he had entered into the contract on behalf of the men and signed the contract as "representing the sowars of my Depot" and not as representing the Government. But he has failed to give us any information as to when and by whom he had been authorized to act on behalf of the sowars; whether the alleged authority had been given him in writing, or verablly, whether it was general or restricted in its terms; and whether it empowered him alone to act or was to hold good in favour of his successor-in-office also. In the absence of any data on the point, it is not possible for the Courts to accept the bare ipse dixit of the witness, that he was acting as the agent of the sowars. Indeed, he himself admitted that he signed the contract in his "official capacity as Officer Commanding the depot" and that his successor would be bound by the contract so long as the depot was supplied by the contractors.

13. The learned Government Advocate eventually took up the position that the horses appear to have been purchased and fed out of "Regimental Funds", that they were not Government property and, therefore, the Secretary of State in Council, was not liable to maintain them. It is, however, most unfortunate that proper materials, which might have thrown light on this matter, have not been placed on the record by his clients, who had or must have had full knowledge of the real facts. The books kept in the depot, if produced would have made it clear by whom and at whose expense the horses in question had been purchased, who was liable, under the rules then in-force to maintain them, wherefrom the funds for their maintenance came and what control the Secretary of State exercised over them. These books were admittedly in existence at the time when the present dispute arose, but in spite of their having been called for, they were not produced at the trial. The explanation put forward was that they had been destroyed, when the XL (K.E.O.) Lancers was amalgamated with the XII Lancers or reconstituted into the V

(Probyn's) Horse. Whether the books were being deliberately suppressed as alleged by the plaintiffs, or whether they had been destroyed by inadvertance as explained by Major Somerville it is not necessary for oar present purposes to investigate. It is sufficient to say, that even if the books hive been destroyed, the matters dealt with by them, could have been easily proved by secondary evidence which was evidently within the possession or power of the appellants, but which they have not attempted to place on the record. This being so, the plaintiffs-respondents are, in my opinion, entitled to the presumption that these books, if produced, would have gone against the contention of the appellants. Support is lent to this conclusion by the admitted fact that, under orders of Government, all moneys standing at the credit of the old regiment have been transferred to the V Probyn's. Horse and, in any event, it would not have been difficult to prove from the books of this regiment, what was the nature of these funds, what obligations (if any) had already been incurred against them, what arrangements hid been made to discharge these obligations and in whose custody and under whose control these funds are now. Again we have the important admission by Major Bacon (who had succeeded Major Somerville in the Command of the depot) made in the criminal case, which had instituted against the plaintiffs in respect of the contract now in dispute, that the horses for which the grain had been agreed to be supplied, were Government Horses' and that by certain acts of theirs the plaintiffs had "caused Government the loss about ₹ 1000" (Ex. D.C. printed at p. 63 of the paper book).

14. Having regard to the aforesaid facts and considering them in the light of the modification in the original silladar system, as made before, during and after the War I have no hesitation in holding that at the time when the contract in question was executed, the responsibility for the maintenance of the horses of the so called silladars lay with Government and that Major Somerville purported to act as in his official capacity as Officer Commanding the depot, and not on behalf of the sowars.

15. But this finding does not dispose of the case against appellant 1. The first question to be decided is whether Major Somerville as the Officer Commanding the depot was legally authorized to enter into a binding contract on behalf of the Secretary of Skate. Section 2, East India, Contracts Act (33 and 34 Vice-cap. 59), which has since been re-enacted as Sub-section (2) Section 30, Government of India Act, of 1919, provides in clear terms that every contract made in India on behalf of and in the name of the Secretary of State in Council shall be executed by such person and in such manner as the-Governor General in Council by resolution directs or authorises, and if so executed, may be enforced by or against the Secretary of State in Council for the time being. There can be no manner of doubt that this provision of the law is mandatory and not merely directory and must be strictly complied with in order to constitute a valid contract with defendant 1. Now by virtue of the power vested in the Governor-General-in-Council under the aforesaid statute, a resolution of the Government of India (Home Department) Judicial No. 713/734 dated 2nd June 1913 has been issued, which gives a long list of the officers of the Indian Army who are authorized to enter into contracts for the requirements of that department. A reference to the resolution shows that the Officer Commanding a depot or a regiment is not one of the officers so authorized to enter into contracts of this kind. The resolution also prescribes the forms in which the contract must be executed. It is conceded that the contract in question is not in the prescribed form. This being so, it must be held that the act of Major Somerville in entering into the contract on behalf of the Secretary of State in Council was ultra vires and there was no valid contract between the plaintiff and defendant 1 which could be legally enforced against the

latter.

16. The question now arises whether the Secretary of State having received from the plaintiff grain for the purpose of feeding the horses, which he had undertaken to maintain, is equitably bound to pay compensation to the plaintiff for the quantity so delivered and consumed by the horses. For the plaintiff reliance is place upon Section 70, Contract Act which enacts that where a person lawfully does anything for another person or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing aa done or delivered.

17. It was conceded by the learned Government Advocate that this section prima facie covers the present case, as the plaintiff-respondent lawfully supplied the grain for the horses of appellant 1, not intending to do so gratuitously and that the appellant did enjoy the benefit thereof. It was, however, contended that this section must be construed in the light of certain principles of the common law, as interpreted by the Courts in England; see inter alia, *Young v. Mayor of Leamington Corporation*[1] where no compensation was allowed under somewhat similar circumstances. I do not think it necessary to examine the English cases on the point, as I am of opinion that Section 70, Contract Act must be interpreted according to its clear and explicit terms and not in reference to the provisions of the English Law relating to this matter. It is well known that this section is much wider than the English Law and goes far beyond it, see *Damodara Muduliar v. Secy. of State*[2] and *Jarao Kumari v. Basanta Jumar Roy*[3] This and many other provisions of the Contract Act are, no doubt, founded on English Law but as has been pointed out by Lord Sinha while delivering the judgment of their Lordships of the Privy Council in *Mt. Ramanandikuar v. Mt. Kalawati Kuer*[4] in interpreting the statutory provisions of an Act of the Indian Legislature the Courts should examine the language of the Indian Statute uninfluenced by any consideration derived from the English Law upon which it may be founded.

18. Similarly Lord Atkinson observed in *Chunna Mal Ram Nath v. Mool Chand Ram Bhagat*[5] that the language of a section of the Contract Act "ought not to be enlarged by any implications of English doctrines." Numerous instances of the application of Section 70 to circumstances similar to those of the case

[1][1883] 8 A.C.517 [3][1905] 32 Cal. 374 [5] A.I.R.1928 P.C.99
[2][1895] 18 Mad. 88 [4] A.I.R.1928 P.C.2

before us will be found in Indian Reports. In *Mathura Mohan Saha v. Ram Kumar Saha*[6] a certain contract with District Board of Chittagong was held to be invalid as not having been made in accordance with the prescriptions of the statute for such contracts, but the Board was held liable to compensate the opposite party for the benefit derived under the invalid contract. The question is discussed at length by Mookerji; J. at p. 827 et seq. and the law is thus summed up by him in the following passage, which in my opinion completely disposes of the contentions of the learned Government Advocate:

> It cannot be disputed that where a corporation receives money for property under an agreement, which turns out to be ultra vires or illegal, it is not entitled to retain the money. The obligation to do justice rests upon all persons, natural and artificial, if one obtains the money or property of others without authority, the law, independently of express contract, will compel restitution or compensation: *Rankin v. Emigh*[7] This is good sense and based

on sound principle. The relief is granted, not upon the illegal contract, nor according to its terms on an implied contract of the Corporation to return or failing to do that, to make compensation for property or money, which it has no right to retain to maintain such an action is not to affirm, but to disaffirm the illegal contract: *Central Transport Co. v. Phullman Palace Car Co.*[8] As Baggallay, L.J., said in *Chapleo v. Brunswick Building Society*[9] if the company has received the benefit of the payment, if, for instance, that amount has found its way to the credit of its banking account, the plaintiff might have been enabled to establish a claim against the company to the extent of the benefit derived by it from the transaction: *Lawford v. Billericay Rural Council*[10] and *Douglas v. Rhul Urban District Council*[11] In the case before us, the plaintiff is clearly entitled to a return of ₹ 957-11-1 together with the interest thereon from the data of deposit to the date of realization.

19. Reference may also be made to the recent case of *Mohamed Ebrahim Molia v. Commissioners for the Port of Chittagong*[12], where also, while holding the contract sued upon to be invalid and unenforcible, the learned Judges passed a decree in favour of the plaintiff for the service rendered by them to the defendant, and assesed the compensation on the principle of quantum meruit. See also the remarks of Jenkins, C.J., in *Suchand Ghosal v. Balaram Nardana*[13] and *Damodara Mudaliar v. Secy. of State*[14] where under converse circumstances the Secretary of State recovered from a private individual compensation under Section 70.

20. As to the amount of compensation, it is obvious that it must be assessed at the market rate3 prevailing on the dates on which the supplies were made. It was conceded that, taken a3 a whole, the sum so due would be larger than the amount claimed by the plaintiff according to the price fixed in the agreement. I would therefore hold that though the plaintiffs could not recover the price of the grain supplied on the contract, as such, they were certainly entitled to the return of the grain

[6][1916] 43 Cal.790 [8][1890] 139 U.S. 24 [10][1903] 1 K.B. 772
[7][1910] 218 U.S 27 [9][1881] 6 Q.B.D. 696 [11][1913] 2 Ch. 407
[12] AIR 1927 Cal 465 : (1927) ILR 54 Cal 189 : 103 Ind. Cas. 2 14 [13][1911] 38 Cal. 1
[14][1895] 18 Mad. 88

in question, but as it could not be restored having bean consumed long ago, they must get its money equivalent as compensation under Section 70.

21. It now remains to consider the last point raised by the Government Advocate that his client was entitled to reopen the accounts for the supplies made in June, July and August 1920, for which payment in full had been made before the suit and which the plaintiff had not included in the claim. This contention is based upon certain admissions made by Tara Singh and Ganga Ram in the course of the prosecution launched against them under Section 420, I.P.C., by Capt. Bacon, Officer Commanding the XI Lancers. The circumstances in which the criminal case was brought are given at length in the judgment of the trial Court and in the deposition of Ghulam Dastgir (D.W. 1) who had acted in that case as counsel for the complainant. After examining the evidence and giving due wieght to the arguments of counsel for both sides, I regretfully come to the conclusion that the alleged charge was wholly baseless and that the prosecution seems to have been started simply with a view to harass the plaintiffs and coerce them to refund a part of

the amount already received by them. It is obvious that admissions made under such circumstances cannot possibly be regarded as having been voluntarily and freely made and are not binding on the plaintiffs. Moreover, in view of the finding that the terms of the contract, as such, cannot be enforced but that the plaintiffs must be equitably compensated for the articles supplied by them, and that compensation is to be assessed at the market rates which were admittedly higher than the rates at which the plaintiffs had been paid, this point is no longer of any importance.

22. Nor is it necessary, for the same reason, to discuss at any length, the question relating to the failure of the military authorities to supply the plaintiffs with "priority certificates", for the import by railway of Ardawa (barley) from Hoti Mardan and other markets. The plaintiffs contended that the so-called "priority certificates" given to them by the Officer Commanding had not been sanctioned by the proper authorities and were not recognized by railway administrations. Consequently they, could not import to Jullundur the barley which they had arranged to buy and were thus forced to make purchases at Jullundur at the market rates. They therefore, claimed to be paid at market rates under para. 10 of the agreement, (extracts wherefrom have been given already in an earlier part of the judgment) and not at the reduced rate fixed in para. 1. The defendants replied that all that they had undertaken to give was "letters to the railway authorities for the supply of waggons" and not to see that waggons were actually supplied. After hearing the learned Government Advocate I find myself wholly unable to accept this contention. It is absurd to suppose that it could have been intended that reduced rate would be charged simply because the Officer Commanding had given ineffective letters of request to the railway authorities which the latter could not comply with. The intention clearly was that reduced rates would be charged if the military authorities arranged for the supply of waggons to the plaintiffs for the import of grain from out-station markets where it could be purchased at cheaper rates; otherwise the plaintiffs would purchase locally and be paid at the market rate prevailing there. The lower Court has, in my opinion come to a correct conclusion on this point and I would uphold its finding.

23. For the foregoing, reasons, I am of opinion that the decree passed against the Secretary of State must be affirmed and his appeal dismissed.

24. The learned Judge of the Court below has passed a decree against the Officer Commanding the V (K.E.O.) Probyn's Horse, appellant 2, but, on the findings given above, I do not see how that officer can be made liable. Mr. Jagan Nath for the respondents drew our attention prominently to the fact that his client had originally sued only the Secretary of State in Council and that it was at the instance of the latter that appellant 2 was made a party. He stated, therefore, that in case we were going to uphold the decree against the Secretary of State in Council, he would not oppose the appeal of appellant 2.

25. In cross-objection two points were raised, but Mr. Jagan Nath seriously pressed only the one relating to the claim of ₹ 573-12-5 as interest on the sum due. In view of the fact that the contract in this case cannot be enforced as such and the plaintiff is being allowed compensation on equitable grounds, I do not think that he was entitled to interest.

26. I would, therefore, affirm the decree of the lower Court against appellant 1 and dismiss his appeal with costs. I would, however accept the appeal of of appellant 2 and dismiss the suit against him but would leave this appellant to bear his own costs in both Courts.

27. I would also dismiss the cross-objections, leaving either party to bear its own costs so far as the cross-objections are concerned.

Agha Haider, J. - 28. I agree.
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