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## PILOO DHUNJISHAW SIDHWA

v.

## MUNICIPAL CORPORATION OF THE CITY OF POONA

January 15, 1970

[J. C. SHAH AND K. S. HEGDE, JJ.]

B

*Contract—Formalities—Bombay Provincial Municipal Corporation Act (59 of 1949), s. 74(2)—Contract requiring seal, and affixture of seal to be attested by two members of Transport Committee—Members of Transport Committee not elected—Contract entered into without seal—Enforceability.*

C *Indian Contract Act (9 of 1872), s. 70—Invoice value as compensation—When allowed.*

The appellant was the sole selling agent of motor spare parts for the manufacturers in the State of Bombay. The respondent-Corporation was constituted under the Bombay Provincial Municipal Corporations Act, 1949. Under s. 74 of Act and the Rules relating to contracts made under the Act, a contract relating to the purchase of goods exceeding Rupees five hundred is to be made in the name of the Corporation by the Transport Manager, and, the contract has to be in writing and sealed in the presence of two members of the Transport Committee who should sign in token of the seal being affixed in their presence. Under s. 74(2), a contract not made in accordance with the provisions of the Act and the rules is not binding on the Corporation. The Transport Manager of the respondent-Corporation called upon the appellant to supply certain spare parts worth more than Rupees two lakhs. A formal contract incorporating the agreed terms was not and could not be executed and sealed as required by the Act, because, at the time when the contract was entered into election of councillors to the Corporation had not been held and no Transport Committee was constituted and the powers of the Corporation and the Transport Committee were being exercised by the Commissioner pursuant to the transitory provisions of the Act. The appellant supplied goods from time to time and the Corporation made payments according to the invoices. One of the invoices was for about Rs. 49,000-00. The invoice price consisted of an additional 12½% on the listed price by reason of the increase in the price made by the manufacturers. With respect to that invoice, the Transport Manager was satisfied that the rates quoted were 'proper rates' and he accepted the goods delivered on behalf of the respondent, and appropriated them. But the respondent failed to pay the amount and terminated the contract.

G The appellant filed a suit for a decree for the invoice amount and for damages. The respondent contended that the contract was not enforceable, because, it was not executed in the manner prescribed by the Act.

On the question of the amount to which the appellant was entitled,

H HELD : (1) The contract was not made in accordance with the provisions of the Act, for, it was not sealed, and therefore, under s. 74(2) of the Act, the contract was not binding upon the Corporation. There is nothing in the transitory provisions which excludes the operation of s. 74(2). Hence, even if it was not possible to comply with the rules until the elections were held there was no warrant for holding that the

sub-section did not apply and that the Commissioner or the Transport Manager could enter into contracts without the seal of the Corporation. The appellant was accordingly not entitled to maintain a suit for the price of the goods relying upon any contractual obligation, nor maintain the claim for damages on the footing that the respondent committed a breach of contract. [420 E, 421 B-D]

(2) But the appellant was entitled to maintain his claim for compensation under s. 70 of the Contract Act. Under the section compensation would normally be the market price of the goods.

In the circumstances of the present case, the invoice value was the prevailing market value of the goods and the appellant was entitled to it. The appellant was also entitled to interest at 6% till date of payment. [422 E, F]

*Secretary of State v. G. T. Sarin and Co.* I.L.R. 11 Lah. 375, approved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 19 of 1967.

Appeal from the judgment and decree dated July 23, 24, and September 26, 1963 of the Bombay High Court in Appeal No. 801 of 1957 from Original Decree.

*J. C. Bhatt, R. A. Gagrat and B. R. Agarwala*, for the appellant.

*R. B. Kotwal and Naunit Lal*, for the respondent.

The Judgment of the Court was delivered by

**Shah, J.** Piloo Dhunjishaw Sidhwa—hereinafter called 'the plaintiff'—carries on business in the name and style of Hind Motor Corporation at Bombay. By a letter dated February 1, 1952 the Transport Manager of the Municipal Corporation of Poona called upon the plaintiff to supply "motor spare parts" described therein of the total value of Rs. 2,71,808-12-3. The plaintiff by letter dated February 22, 1952 agreed to supply the goods. The plaintiff supplied the goods from time to time and the Corporation made payments according to the invoices. On July 3, 1953 the plaintiff delivered certain goods required by the Corporation and submitted an invoice for Rs. 49,743-6-2. The Municipal Corporation failed to pay the amount of the invoice and terminated the contract.

The plaintiff then instituted an action in the Court of the Civil Judge, Senior Division, Poona for a decree for Rs. 49,743-6-2 being the value of "motor spare parts" supplied, and for Rs. 39,755-2-4 being damages for breach of contract. The suit was resisted by the Corporation principally on the ground that the contract on which the plaintiff relied was not executed in the manner prescribed by the Bombay Provincial Municipal Corporations Act 59 of 1949 and on that ground the contract was not

**A** enforceable. The Trial Court decreed the plaintiff's suit for Rs. 49,743-6-2 being the invoice value of the goods supplied with interest at 4% from the date of the suit and dismissed the claim for damages.

**B** The Municipal Corporation appealed to the High Court of Bombay against the decree of the Civil Judge, Senior Division. The plaintiff filed cross objections to the decree appealed from. The High Court rejected the plaintiff's claim for damages for breach of contract and held that the plaintiff was entitled only to the "fair price" of the goods supplied to the Corporation. In the view of the High Court the fair price of the goods was the "landed cost and 40% thereon" beside freight, insurance, packing and forwarding charges from Bombay to Poona. To determine the amount due to the plaintiff the Court appointed a Commissioner. The Commissioner reported that an amount of Rs. 38,010-59 was due to the plaintiff. The High Court disallowed Rs. 2,407-83 and Rs. 6,058/- being items respectively of commission paid to the financier of the plaintiff and the customs duty for determining the landed cost. The High Court accordingly decreed in favour of the plaintiff Rs. 32,121-11 nP with interest, "at the rate of 6% from one month after the furnishing of the bill by the plaintiff to the Corporation after the date of the notice", at the rate of 9% from the date of the notice upto the date of the suit, and at the rate of 7½% from the date of the suit till the date of realization.

**E** The plaintiff has appealed to this Court with certificate granted by the High Court.

**F** The Municipal Corporation of Poona was constituted on February 15, 1950 under the Bombay Provincial Municipal Corporations Act 59 of 1949. The provisions of the Act relating to the making of contracts are contained in ss. 73, 74 & 75 in Ch. VII of the Act insofar as they are relevant they provide :

**G** s. 73—"With respect to the making of contracts under or for any purpose of this Act, including contracts relating to the acquisition and disposal of immovable property or any interest therein, the following provisions shall have effect, namely :—

(a) every such contract shall be made on behalf of the corporation by the Commissioner;

(b) no such contract for any purpose which, in accordance with any provision of this Act, the Commissioner may not carry out without the approval or sanction of some other municipal authority, shall be made by him until or unless such approval or sanction has first been duly given;

**H**

(c) no contract which will involve an expenditure exceeding five thousand rupees or such higher amount as the Corporation may, with the approval of the Provincial Government, from time to time prescribe, shall be made by the Commissioner unless the same is previously approved by the Standing Committee.

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(d)

(e) the foregoing provisions of this section shall, as far as may be, apply to every contract which the Commissioner shall have occasion to make in the execution of this Act;

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s. 74—"1) The mode of executing contracts under this Act shall be as prescribed by rules.

C

(2) No contract which is not made in accordance with the provisions of this Act and the rules shall be binding on the Corporation."

D

s. 75—"For the purpose of contracts relating exclusively to the Transport Undertaking the provisions of section 73 and those of Chapter V of the Schedule shall apply as if for the word 'Commissioner' wherever it occurs the words 'Transport Manager' and for the words 'Standing Committee' wherever they occur the words 'Transport Committee' had been substituted."

E

By the terms of s. 74(1) contracts with the Corporation had to be in the manner prescribed by rules. By Ch. V of the Schedule rules relating to contracts are prescribed. By r. 1, it is provided, insofar as it is relevant :

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"(1) Every contract entered into by the Commissioner on behalf of the Corporation shall be entered into in such manner and form as would bind the Commissioner if such contract were on his own behalf, and may in the like manner and form be varied or discharged :

Provided that—

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(a) any such contract which would require to be under seal if it were entered into by the Commissioner shall be sealed with the common seal of the Corporation; and

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(b) every contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding five hundred rupees or such higher amount . . . shall be in writing and be sealed with the common seal of the Corporation in the manner prescribed in sub-rule (2) . . . . .

**A** (2) The common seal of the Corporation . . . . shall be affixed in the presence of two members of the Standing Committee to every contract or other instrument required to be under seal and such contract or instrument shall be signed by the said two members of the Standing Committee in token that the same was sealed in their presence. . . . .

Rule 4 of Ch. V, insofar as it is relevant, provides :

"The provisions of this Chapter shall, so far as may be, apply to contracts relating to the Transport Undertaking :

**C** Provided that the functions to be performed thereunder by the Standing Committee or the members thereof and the Commissioner shall be performed by the Transport Committee or the members thereof and the Transport Manager, as the case may be."

**D** Transitory provisions were made in the Act for the administration of the affairs of the Corporation, till elections of the Councillors were held. By s. 15 of Appendix IV to the Act, it was provided :

**E** "Notwithstanding anything contained in this Act, the Commissioner shall exercise the powers and perform the duties of the Corporation and the Standing Committee under this Act and under any other law for the time being in force until general ward elections shall have been held in accordance with the provisions of this Act and the first meeting of the Corporation shall have been held."

**F** By s. 23 Appendix IV the State Government was given the power to make orders for removing difficulties. It provided :

**G** "If any difficulty arises in giving effect to the provisions of this Act or, by reason of anything contained in this Act, to any other enactment for the time being in force, the State Government may, as occasion requires, by order do anything which appears to it necessary for the purpose of removing the difficulty : . . . . ."

**H** In exercise of this power the State Government issued an order on May 6, 1950, authorising the Municipal Commissioner of the City of Poona—(1) to exercise all the powers and perform all the duties, which are exercisable and to be performed by the Transport Committee under the said Act, until the first meeting of the Transport Committee as constituted under the Act shall have been held; and (2) to exercise all the powers and perform all the duties,

which are exercisable or to be performed by the Corporation in respect of a Transport Committee under the said Act, until the general ward elections shall have been held in accordance with the provisions of the Act and the first meeting of the Corporation shall have been held.

¶¶¶ A contract relating to the purchase of "goods" exceeding rupees five hundred in value is to be made in the name of the Corporation by the Transport Manager. It has to be in writing and has to be sealed in the presence of two members of the Transport Committee who sign in token of the seal being affixed in their presence.

A formal contract incorporating the agreed terms between the plaintiff and the Corporation was not and could not be executed and sealed as required by the Act, for, at the relevant time elections of councillors to the Corporation had not been held, and no Transport Committee was constituted as required by s. 25 of the Act and the powers of the Corporation were being exercised by the Commissioner pursuant to the transitory provisions. The Commissioner was, it is true, competent to exercise all the powers and perform all the duties of the Transport Committee. But under the rules in Ch. V the seal of the Corporation must be affixed in the presence of two members of the Transport Committee who signed in token of the seal having been affixed to the contract. The Act clearly provided by s. 74(2) that the contract which was not made in accordance with the provisions of the Act and the rules shall not be binding on the Corporation. The contract was not made in accordance with the provisions of the Act, for, it was not sealed, and was by virtue of s. 74(2) of the Act not binding upon the Corporation.

Mr. Bhatt urged that the formalities relating to execution of the contract with the Corporation could not be complied with until a Transport Committee was constituted after election of Councillors of the Corporation and on that account the provisions relating to the form and manner of execution of the contract had no application to the contract in dispute. Any other view, counsel contended, rendered the Corporation incompetent to make contracts essential for the administration of the Corporation. Counsel also contended that the Corporation had not even a seal which could be affixed, because the form of the seal had not been approved by the Councillors. Counsel again said that even if the functions of the Transport Committee could be exercised by the Commissioner, a seal affixed in the presence of the Commissioner and attested by him would not amount to compliance with the rules. In view of these provisions it was contended that the provisions of the Act relating to the form and manner of execution of contracts could only apply after the elections are held and the Corporation could comply with the provisions.

- A** By s. 5 of the Act the Corporation is a body corporate having a perpetual succession and a common seal. Our attention has not been invited to any provision which even by implication suggests that the Corporation may have a seal only after elections are held and the form of the seal is approved by the members of the Corporation. But the argument whether the Corporation had at the date of the contract a seal is not relevant. We are unable to hold that the provisions of ss. 73 and 74 and the relevant rules in Ch. V did not apply before the elections were held and the statutory Committees were constituted. There is nothing in the transitory provisions which excludes the operation of s. 74(2) of the Act. Granting that it is not possible to comply with the rules, until the elections are held, there is no warrant for holding that the provisions of s. 74(2) will not apply and the Commissioner or the Transport Manager may enter into contracts without seal which are enforceable at law, notwithstanding the absolute terms of the Act. In our judgment there was no enforceable contract between the plaintiff and the Corporation. The claim for damages on the footing that the Corporation committed a breach of contract was, therefore, rightly rejected by the Trial Court and the High Court.

The plaintiff is not entitled to maintain a suit for price of the goods relying upon any contractual obligation of the Corporation. But the plaintiff may still maintain his claim for compensation under s. 70 of the Contract Act which provides :

- E** "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 so done or delivered."
- F** That is not disputed by the Corporation. The Trial Court awarded to the plaintiff the invoice value of the goods delivered by him. The learned Judge was of the view that the plaintiff as the sole selling agent of "motor spare parts" for the manufacturers in the Bombay State, was entitled to the listed price with 12½% thereon because of the increase notified by the manufacturer. In the view of the learned Judge the price for which the plaintiff made out an invoice was "reasonable and proper". The High Court held that the plaintiff may recover compensation equal to the "fair price" of the goods.
- H** In our view the High Court was in error in holding that the plaintiff is entitled not to the invoice value of the goods, but only to "the fair price" of the goods. Under s. 70 of the Contract Act, a person lawfully delivering goods to another, and not intending to do so gratuitously, is entitled to demand that the goods delivered

shall be returned, or that compensation for the goods shall be made. Compensation would normally be the market price of the goods. By refusing to return the goods, the person to whom the goods have been delivered cannot improve his position and seek to pay less than the market value of the goods. The High Court of Lahore in *Secretary of State and Another v. G. T. Sarin & Company*<sup>(1)</sup> held that a person without an enforceable contract in his favour supplying goods to a Government Department is entitled to a money equivalent of the goods delivered assessed at the market rate prevailing on the date on which the supplies were made.

The plaintiff had made out an invoice in respect of the goods delivered. The Transport Manager accepted the goods on behalf of the Corporation and appropriated them. He had satisfied himself that the rates quoted were "proper rates". The plaintiff was paid in respect of other goods supplied at the rates quoted in the price-list together with incidental charges. The plaintiff was the sole selling agent in the Bombay State and the additional 12½% which the plaintiff claimed on the listed price was by reason of the increase in the price made by the manufacturers. There is no reason to hold that the invoice price was more than the market value of the goods. If it was the contention of the Corporation that the market rate was less than the invoice price it was open to the Corporation to lead evidence about the ruling rates at which the spare parts were sold in India by other agents of the manufacturers. But no such attempt was made. The plaintiff, in our judgment, was entitled to the market value of the goods at the date of supply, and, in our judgment, the invoice value was the prevailing market value of the goods.

The plaintiff is also entitled to interest at the rate of 6% per annum from "the date one month after the date of supply" till the date of institution of the suit, and at 6% on judgment from the date of the suit till payment.

We accordingly set aside the decree passed by the High Court and restore the decree passed by the Trial Court with the modification in the rate of interest set out earlier. In view of the partial success of the parties, there will be no order as to costs in this Court and in the High Court. In the Trial Court the plaintiff will be entitled to proportionate costs for the amount decreed and the Corporation will bear its own costs.

R.K.P.S.

*Appeal dismissed.*

(1) I.L.R. 11 Lah. 375.