

## UNION OF INDIA

v.

## J. K. GAS PLANT

April 29, 1980

[S. MURTAZA FAZAL ALI AND A. D. KOSHAL, JJ.]

*Contract Act, Section 70, Scope of—Conditions to be applied—Government of India Act, 1935, Section 175(3), applicability of—Defence of India Act, Section 17(2), scope of.*

The appellant had supplied some steel to the respondent plaintiff Company for manufacturing gas plants at Rampur. Only a part of the steel so supplied was utilised for the intended purpose and with regard to the rest, the Regional Deputy Iron & Steel Controller, U.P. Circle, Kanpur directed the respondents through a letter dated 8th/10th of November, 1944 to deliver the same to the U.P. Registered Stock Holders Associations and to send to the Kanpur office, the bill of costs of the material, handling charges etc. made in the name of Iron & Steel Controller, Calcutta. Since the order contained in that letter could not be implemented on account of lack of transport facilities, the Kanpur Controller, directed the respondent company to deliver the surplus steel to M/s G. Brothers Ltd., Rampur and to this extent the order dated 8th/10th November 1944 stood modified.

Though the surplus material was delivered to Govan Brothers between 11th April 1945 and 30th of April, 1945, the price therefor to the tune of Rs. 43,728-6-6 remained unpaid inspite of repeated demands made by the respondent. Ultimately, the Iron & Steel Controller informed the respondent to take up the matter with Govan Brothers.

As the price of the steel remained unpaid by the Union of India as well as G. Brothers the plaintiff company filed its suit for Rs. 46,652-14-6 which was inclusive of interest on the principal price calculated at the rate of 6 per cent per annum from April, 1945, upto the date of the institution of the suit, after serving the defendant with the requisite notice under section 80 of the Code of Civil Procedure.

The trial Court decreed the claim of the plaintiff company in full and also directed that it would be entitled to the costs of the suit as also interest at the rate of 3 per cent per annum from the date of the institution of the suit to the date of payment. The trial Court held that the Kanpur Controller had undertaken the liability to pay the price of the goods to the plaintiff company even in respect of the delivery to G. Brothers and that the defendant could not escape liability by reason of the contents of section 65 of the Indian Contract Act even though the provisions of section 175(3) of the Government of India Act, 1935, had not been complied with. The contention raised by the defendant to the effect that section 17(2) of the Defence of India Act was a bar to the suit was negatived.

In appeal, the High Court agreed that Section 17(2) of the Defence of India Act would be a complete bar to the suit if it was one for damages or

**A** compensation but held that the suit was not of that nature and, on the other hand, it was for recovery of the price of the goods supplied to G. Brothers as was also found by the trial Court. It further held that even though the provisions of section 175(3) of the Government of India Act were not complied with the agreement resulting from the correspondence which took place between the plaintiff company and the officers of the defendant was good. Relying on Section 70 of the Indian Contract Act and on the basis thereof, it held the plaintiff company to be entitled to recover the price of the goods from the defendant even if it was assumed that the provisions of section 175(3) were a bar to the recognition of the contract envisaged by the correspondence between the parties. The High Court dismissed the appeal, but granted a certificate under Article 133(1)(a) of the Constitution to the appellant.

Dismissing the appeal, the Court

**C** HELD : 1. The suit is not one for compensation or damages etc. as contemplated by Section 17(2) of the Defence of India Act and hence is not barred by that section [898 A].

**D** 2. The legality of the matter under which the respondent company transferred its stock to G. Brothers cannot be allowed to be questioned at the appellate stage. The question whether the requirements of clause (5) of the Indian Iron and Steel Control Order, 1941 which postulates only a *written direction* for disposal of surplus stocks were satisfied or not is a mixed question of fact and law which was never raised in the Courts below. Further the plea taken in paragraph (4) of the written statements filed by the appellant was categorically to the effect that "the fresh instructions issued to the plaintiff are contained in the letter in the possession of the plaintiff" runs counter to the factual part of the argument. Besides another question would arise whether the word "written" in clause (5) aforesaid is directory or mandatory. [898 C-D]

**E** 3. Three conditions must be satisfied before Section 70 of the Indian Contract Act can be invoked : first, a person should lawfully do something for another person or deliver something to him; second, in doing the said thing or delivering the said thing he must not intend to act gratuitously; and third, the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. [898 H, 899 A]

**F** In the instant case, the appellant had enjoyed the full benefit of the delivery of the goods to G. Bros. and not merely an indirect benefit thereof. [901 B]

*State of West Bengal v. M/s. B. K. Mondal* [1962] 2 Suppl. S.C.R. 876; reiterated.

**G** *S. I. Indian Rly. Co. v. Madura Municipality*, A.I.R. 1964 Madras 427; distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1273/70.

**H** Appeal by Special leave from the Judgment and Decree dated 28-1-1966 of the Allahabad High Court in First Appeal No. 431 of 1957.

*P. P. Rao, Subodh Markendeya, R. Venkataramani and Miss A. Subhashini* for the Appellant. **A**

*Soli. J. Sorabjee and Rameshwar Nath* for the Respondent.

The Judgment of the Court was delivered by

KOSHAL, J. This appeal by certificate granted under article 133(1)(a) of the Constitution of India by the Allahabad High Court is directed against its judgment dated the 28th of January, 1966, confirming on appeal a decree passed by the Civil Judge, Kanpur, for the recovery of Rs. 46,652-14-6 with interest at the rate of 3 per cent per annum from the date of the institution of the suit till payment in favour of M/s. J.K. Gas Plant Manufacturing Company Limited against the sole defendant, namely, the Union of India. **B**

2. The case of the plaintiff company may be briefly stated thus. The Government of India had supplied some steel to the plaintiff company for manufacturing gas plants at Rampur. Only a part of the steel so supplied was utilized for the intended purpose and with regard to the rest the Regional Deputy Iron and Steel Controller, U.P. Circle, Kanpur (hereinafter referred to as the Kanpur Controller) directed the plaintiff company through a letter dated the 8th/10th of November, 1944 (exhibit 16) to deliver the same to the U.P. Registered Stock Holders Association Kanpur (for short the Association). In relation to the recovery of price of the material the letter stated : **C**

“Your bill for cost of the material supported by original receipts from suppliers should be made out in the name of Iron and Steel Controller, Calcutta, and submitted to this office. Please make out a separate bill for handling, storage expenses, etc., and send to this office supported with original freight and payee's receipt.” **D**

The order contained in letter exhibit 16 could not be implemented on account of lack of transport facilities. The Kanpur Controller therefore directed the plaintiff company to deliver the surplus steel to M/s. Govan Brothers Ltd., Rampur (hereinafter referred to as G. Brothers) and to this extent the order contained in letter exhibit 16 stood modified. **E**

The plaintiff company delivered to G. Brothers the surplus material lying with it between the 11th April, 1945 and 30th of April, 1945. The deliveries totalled 135 tons, 6 cwt., 1 quarter and 1 pound, the price whereof amounted to Rs. 43,728-6-6 which remained unpaid in spite of repeated demands made by the plaintiff company through letters addressed to the Kanpur Controller to whom the bills had been forwarded as desired. Ultimately the plaintiff company was informed by the Accounts Officer attached to the Iron and Steel Controller, Calcutta, that it should take up the matter with G. Brothers. **F**

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**A** As the price of the steel remained unpaid by the Union of India as well as G. Brothers the plaintiff company filed its suit for Rs. 46,652-14-6 which was inclusive of interest on the principal price calculated at the rate of 6 per cent per annum from April, 1945, up to the date of the institution of the suit, after serving the defendant with the requisite notice under section 80 of the Code of Civil Procedure.

**B** 3. In its written statement the Union of India admitted the correctness of the order contained in letter exhibit 16. It pleaded however that that order was cancelled *in toto* and not merely in regard to the party to whom the plaintiff company had to make over the surplus steel. It was specifically denied that the disputed goods had been delivered to G. Brothers at the risk and responsibility of the defendant and that the defendant was liable to pay the price thereof. It was asserted that the defendant was merely controlling the supply and distribution of iron and steel and that the liability to pay the price of any goods dealt with by it in the exercise of its powers of control rested upon the party receiving the goods. Another plea taken was that the suit was not maintainable in view of the provisions of section 175(3) of the Government of India Act, 1935, which enjoins that a contract between the Government of India and a third party has to be in writing and in a particular form. It was emphasized that G. Brothers alone were liable for the payment demanded by the plaintiff company.

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**E** 4. The trial court held that the Kanpur Controller had undertaken the liability to pay the price of the goods to the plaintiff company even in respect of the delivery to G. Brothers and that the defendant could not escape liability by reason of the contents of section 65 of the Indian Contract Act even though the provisions of section 175(3) of the Government of India Act, 1935, had not been complied with. The contention raised by the defendant to the effect that section 17(2) of the Defence of India Act was a bar to the suit was negated by the trial court. Some other findings were also arrived at which are not relevant for the purposes of this appeal. The trial court therefore decreed the claim of the plaintiff company in full and also directed that it would be entitled to the costs of the suit as also interest at the rate of 3 per cent per annum from the date of the institution of the suit to the date of payment.

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**H** 5. When the first appeal came up for hearing before the High Court the contention based on the provisions of section 17(2) of the Defence of India Act was reiterated on the ground that the suit was one for damages or compensation. Section 17(2) states :

“Save as otherwise expressly provided under this Act, no suit or other legal proceeding shall lie against the Crown for

any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any rules made thereunder or any order issued under any such rule.”

The High Court agreed with the learned counsel for the defendant that this section would be a complete bar to the suit if it was one for damages or compensation but held that the suit was not of that nature and, on the other hand, it was for recovery of the price of the goods supplied to G. Brothers as was also found by the trial court. The contention was therefore rejected as untenable. The High Court then proceeded to examine the true nature of the transaction culminating in the delivery of steel to G. Brothers and held that the defendant had failed to establish that the direction regarding preparation and submission of bills contained in letter exhibit 16 had been cancelled when the plaintiff company was required to deliver the goods to G. Brothers. It was further held that even though the provisions of section 175(3) of the Government of India Act were not complied with the agreement resulting from the correspondence which took place between the plaintiff company and the officers of the defendant was good. In this connection reliance was placed on *Debi Prasad Srikrishna Prasad Ltd. v. Secretary of State*(1). The sheet anchor of the judgment of the High Court however was its reliance on section 70 of the Indian Contract Act and on the basis thereof it held the plaintiff company to be entitled to recover the price of the goods from the defendant even if it was assumed that the provisions of section 175(3) were a bar to the recognition of the contract envisaged by the correspondence between the parties. In this connection reference was made to *New Marine Coal Co. (Bengal) Private Ltd. v. Union of India*(2). It was argued before the High Court that the conditions requisite for the applicability of section 70 of the Indian Contract Act were not available in the present case in as much as the defendant had not been shown to have enjoyed the benefit of the transaction which accrued only to G. Brothers. The High Court however took a contrary view with the observation:

“The benefit or advantage that has been derived by the defendants lies in the fact that it has been able to distribute the stock to persons of its choice according to the rules and regulations framed by it.”

It was in these premises that the High Court dismissed the defendant's appeal with costs.

(1) A I. R. 1941 All. 377.

(2) A. I. R. 1964 S. C. 152.

A 6. The argument based on section 17(2) of the Defence of India Act has been reiterated before us but it has merely to be noticed to be rejected. We are clearly of the opinion that the suit is not for damages, etc., such as are contemplated by that section.

B 7. It was seriously argued on behalf of the defendant that throughout the period during which the Kanpur Controller dealt with the matter in dispute he was exercising the powers conferred on him under the Iron and Steel Control Order, 1941, that under clause 5 of that order the plaintiff company could dispose of its stock of steel only in pursuance of a *written direction* from the Kanpur Controller and that the mandate issued by the Kanpur Controller to the plaintiff company requiring the latter to deliver the goods to G. Brothers having been found to be an oral one, the whole transaction fell outside the ambit of the law so that the Union of India could not be bound by it. The argument as it stands does not lack plausibility although it would be a question whether the word 'written' occurring in clause (5) of the Indian Iron and Steel Control order is directory or mandatory. However we refuse to allow the argument to be raised and that for two reasons. Firstly, it is a mixed question of fact and law which was never raised in the courts below. Secondly, the plea taken in paragraph 4 of the written statement filed by the defendant was categorically to the effect that "the fresh instructions issued to the plaintiff are contained in the letter in the possession of the plaintiff", which plea runs counter to the factual part of the argument. In this view of the matter the legality of the order under which the plaintiff company transferred its stock to G. Brothers cannot be allowed to be questioned at this a stage.

F 8. The only other ground put forward in support of the appeal was that the provisions of section 70 of the Indian Contract Act were not applicable to the facts of the present case. That section reads:

G "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."

As pointed out in *State of West Bengal v. M/s. B.K. Mondal* (1), three conditions must be satisfied before this section can be invoked:

H "The first condition is that a person should lawfully do something for another person or deliver something to him. The second condition is that in doing the said thing or delivering, the said

(1) [1962] 1 Supp. S. C. R. 876

thing he must not intend to act gratuitously; and the third is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. When these conditions are satisfied section 70 imposes upon the latter person, the liability to make compensation to the former in respect of or to restore the thing so done or delivered."

On behalf of the defendant the objection raised to the applicability of this section to the transaction in dispute is two-fold. The first contention in this behalf is that the delivery to G. Brothers was unlawful—a contention which we have already turned down. Secondly it is said that no benefit at all was derived from the transaction by the Union of India and that its sole beneficiaries were G. Brothers. This objection has not only been overruled by the High Court but appears to us also to be without substance. In this connection reference may be made to some documentary and oral evidence. To begin with, letter exhibit 16 which directed the plaintiff company to deliver the goods to the Association specifically required that the plaintiff company would make the bills in the name of the Iron and Steel Controller, Calcutta, and send them for payment to the Kanpur Controller. The inference which may reasonably be drawn from the contents of the letter is that the Kanpur Controller was dealing with the goods as if they belonged to the Government of India whose duty it was to pay for them when they changed hands, and that the identity of the party to whom the goods were to be delivered by the plaintiff company under the orders of the Kanpur Controller was immaterial. Secondly, the Kanpur Controller (Mr. R.R. Chari) in his deposition dated the 24th of June, 1946 made before the Second Special Tribunal, Lahore (Camp Bombay) in Criminal Case No. 3 of 1946, stated thus:

"In September, 1944, J.K. Gas Plant Manufacturing Co., Rampur, Ltd., handed over 137 tons of iron and steel to Messrs. Govan Brothers, Rampur, under instructions from our Department. Messrs Govan Brothers thus held the materials on behalf of the Government."

It has been urged by learned counsel for the defendant that this statement is not admissible in evidence as it was not made at the trial of the case in hand. But it is too late in the day for such an objection to be entertained. The statement was admitted in evidence as exhibit 15 at the trial presumably without objection and cannot now be thrown out. According to it G. Brothers held the supply of steel made to them by the plaintiff company not for themselves but on behalf of the Government. Besides, a letter (exhibit 51) which was issued by the

- A Kanpur Controller to Mr. Siddiq Ali Khan of the Department of Industries and Commerce, Rampur, also states:

B "In this connection I may mention that the steel is virtually the property of the Government of India, War Transport Department and under no circumstances can the Government loose money in the bargain. I am obtaining the actual cost of the materials plus all incidental charges and I will let you know the amount to be paid by each party alongwith written orders regularising the issue of these materials to the various parties. I have to hold you and you in turn Messrs. Govan Bros. (Rampur) Ltd., responsible for the recovery of the cost of the materials when intimated to you."

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There is no reason for us to hold, in view of this statement that the steel supplied by the plaintiff company to G. Brothers was not being held by the latter on behalf of the Government of India and if that be so, the Government must be held to have reaped full benefit of the delivery to G. Brothers and it is immaterial how the steel supplied to the latter was dealt with later on.

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9. Learned counsel for the defendant cited *S. I. Railway Co. v. Madura Municipality* (1) for the proposition that the benefit to the defendant was in any case an indirect one which would not fall within the ambit of the third condition envisaged by the provisions of section 70 of the Indian Contract Act. In that case the South Indian Railway had widened a culvert in compliance with an order passed by the Provincial Government under certain provisions of the Railways Act, 1890. The work was done primarily for the benefit of the private owners of property in the neighbourhood. The Railway Company however sued the Municipal Committee within the territorial limits of whose jurisdiction the culvert lay for the cost of widening it on the ground that the Municipal Committee received a benefit because it recovered taxes from the owners or occupiers of the property. In turning down the claim of the South Indian Railway Company Leach, C. J., who delivered the judgment of the division Bench consisting of himself and Lakshmana Rao, J., stated:

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"This is a very indirect benefit, and section 70 can in our opinion only have application where there is direct benefit to the person for whom the work is done. The persons who are enjoying the benefit of this work are the owners and occupiers of the buildings in the locality. It would be doing violence to

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(1) A. I. R. 1945 Madras 427.

the section to say that in these circumstances the work was done for the benefit of the municipality.”

The judgment of the Division Bench was upheld by their Lordships of the Privy Council in *Governor-General In Council, Represented by the General Manager, South Indian Railway v. Municipal Council, Madura, Through its Commissioner* along with the reasons on which it was based. But then the case is of no help to the defendant who had enjoyed the full benefit of the delivery of goods to G. Brothers and not merely an indirect benefit thereof.

10. For the reasons stated the appeal fails and is dismissed with costs.

S. R.

*Appeal dismissed*