

(1964) 05 P&H CK 0004

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular First Appeal No. 141-D of 1954

Union of India

APPELLANT

Vs

The Cold Storage and
Refrigeration Company Ltd.

RESPONDENT

Date of Decision: May 6, 1964

Hon'ble Judges: Dua, J; D.K. Mahajan, J

Bench: Division Bench

Advocate: Keshav Dayal, for the Appellant; S.N. Chopra, for the Respondent

Final Decision: Allowed

Judgement

Dua and Mahajan, JJ.

The Union of India has preferred this appeal from the judgment and decree of the learned Commercial Subordinate Judge 1st Class, Delhi, dated 26th July, 1954 granting to the plaintiff (respondent in this Court) a decree for Rs. 17,155/4/- with proportionate costs.

2. Facts giving rise to this controversy are very brief. The plaintiff in response to an invitation from the Headquarters Delhi area forwarded a tender for the conclusion of an informal agreement for the supply of potatoes and onion at Sirsa during the period 24th August, 1951 to 22nd November, 1951. It is not disputed that the tender duly completed in all respects was submitted as desired. The details of requirements for the supply of potatoes and onions as contained in this agreement were approximately 90,000 lbs. of fresh potatoes and 45,000 lbs. of dry onions; the quantities were to be supplied as required within the period mentioned above; see Exhibits D. 1/1 and D. 1/2. Exhibit D. 1/3 contains special conditions to which the parties agreed on acceptance of the informal agreement. The rate of potatoes was Rs. 26 and that for the onions Rs. 16/8/- per 100 lb. A security deposit of Rs. 6,170 was also made by the plaintiff for the due performance of the contract on his part. It is common ground that up to 12th November, 1951, the plaintiff supplied 1,00,652 lbs. of potatoes and 53,460 lbs. of onions. According to the plaintiff's case up to 3rd

December, 1951, the plaintiff had supplied as ordered 89,949 lbs. of potatoes and 48,268 lbs. of onions. The military authorities demanded fresh supplies of potatoes and onions on 5th November, 1951 but the plaintiff felt that he was not bound to make any supplies over and above the approximate quantity mentioned in the informal agreement. However, on account of urgent nature of the demand and the exigencies of the situation 1,734 lbs. of potatoes and 765 lbs. of onions were supplied; the plaintiff, however, wrote to the officer concerned on 3rd November, 1951 that since the price of these commodities had gone up, he would charge Rs. 35 per 100 lbs. for potatoes and Rs. 32 per 100 lbs. for onions which were the prevalent market rate at that time. The Government in spite of this intimation continued making further demands for the supplies of these commodities which induced the plaintiff to believe that the Government had agreed to the increased rates. The demands of the authorities were accordingly met till 12th November, 1951 when the defendants questioned the plaintiff's claim to higher rates. It is in these circumstances that the plaintiff instituted the present suit in April, 1958, for the recovery of Rs. 17,259/4/-.

3. The suit was resisted by the Union of India and it was pleaded that the quantities given in the informal agreement were only approximate, to serve as rough guide and that no claim for compensation could be made or entertained in case these quantities are considerably overdrawn or under drawn. The plaintiff, according to the defendant's plea, was bound to supply the quantity of potatoes and onions for which the demand was placed on him during the currency of the agreement; and this irrespective of the change in the market rates.

4. In the replication, the plaintiff reiterated the position denying any obligation on his part to supply any potatoes or onions in excess of the quantities mentioned in the plaint, namely 90,000 lbs. of potatoes and 45,000 lbs. of onions. In the end it was reiterated that the informal agreement was a perfectly binding contract on the parties and it attracted all the incidents of contracts contemplated by law relating to "formal contracts".

5. Several issues were settled for trial on the pleadings of the parties but the substantial question which is agitated before us relates to the interpretation and true scope and effect of the informal agreement between the parties regarding the quantities of potatoes and onions which the plaintiff was bound to supply to the defendants.

6. The contention raised on behalf of the appellants before us is that the plaintiff having agreed to supply potatoes and onions as and when demanded by the military authorities between 24th August, 1951 and 22nd November, 1951 and the figure of the quantities mentioned in the agreement being merely approximate, the plaintiff could not decline to supply the quantity demanded between this period, whereas the respondent's learned counsel has very forcefully contended that an informal agreement does not create any formal and binding contract between the

parties and that it is only when a particular demand is made and it is accepted by the supplier that a binding contract comes into existence. Having declined to make any further supplies on 3rd November, 1951, the informal agreement came to an end and the plaintiff was under no legal obligation to supply any further quantities on the agreed rates. The respondent's contention, it may be pointed out, has prevailed in the Court below. Before us the learned counsel for the plaintiff-respondent has repeated the contention raised in the Court below and has relied upon the following decisions in support of his submission. Some of these decisions were cited in the trial Court as well :

(1) Kundan Lal and others v. The Secretary of State for India in Council 72 P.R. 1904.

(2) The Bengal Coal Company, Limited v. Homeo Wadia and Co. ILR 24 Bom. 97.

(3) Secretary of State v. Madho Ram AIR 1928 Lah. 114, and

(4) The Queen v. Demers L.R. (1900) A.C. 103 (P.C).

7. Reference has also been made at the bar to certain passages from *Cheshire and Fylfot on the Law of Contract* and to *Percival Lim. v. London County Council etc* (1918) 87 L.J.R. 677. Some of the decisions and several observations in *Cheshire's Law of Contract* do seem to support the respondent's contention just as much as certain observations in the reported decisions will support appellant's contention. Luckily for us, the matter has been considered by a Bench of this Court, of which my learned brother Mahajan J. was a member, in *Messrs Naryan Cold Storage (Private) Limited v. The Union of India etc* R.F.A. No. 14 of 1958. (Regular First Appeal No. 14 of 1958) decided on 27th March, 1962, in which the validity of a similar contract was upheld and it was laid down that as a general rule variation up to 25 per cent of the approximate quantity must be held to have been agreed upon to be deliverable by the contracting parties. Both sides have made at-tempts to persuade us to reconsider this decision; the appellants have tried to get out of the limit of 25 per cent whereas the respondent has at tempted to induce us to hold that there is no valid contract between the parties. We are unable, as at present advised, to find any cogent or convincing reason to differ from the view expressed in the Bench decision. We, therefore must proceed to settle the controversy on the basis of the ratio contained therein.

8. On the basis of the legal position enunciated in the Bench decision it is quite clear that the respondent has been guilty of breach of contract. On this promise the parties have, however, gone into the accounts and it is agreed that instead of a decree for Rs. 17,155/4/- pissed in favour of the respondent he would be held entitled to a decree for a sum of Rs. 13,000/- odd only. The supplies to the extent of 25 per cent over and above the approximate quantity have to be made on the agreed rate and the excessive rate claimed by the plaintiff-respondent must be disallowed. On this basis, the amount to be decreed comes to Rs. 13,708. It has, however, been contended on behalf of the appellants that respondent has

admittedly committed breach and, therefore, some amount of damages must be allowed to the appellants on account of this breach. It has been emphasised that the Government had to make arrangements for securing the material from elsewhere. In our opinion, the breach is not very substantial, but still a sum of Rs. 708 may, broadly speaking, be held to be the damages payable by the plaintiff-respondent.

9. Deducting this amount from the sum of Rs. 13,708 we hold that the plaintiff-respondent should be granted a decree for Rs. 13,000 only.

10. In result, the appeal succeeds in part and we modify the judgment and decree of the Court below by reducing the decretal amount from Rs. 17,155/4/- to Rs. 13,000 only. The parties would, in the circumstances of the case, bear their own costs throughout.