

(2000) 05 GAU CK 0008

Gauhati High Court

Case No: M.A. (F) No. 180 of 1996

Bhagwati Prasad Pawan Kumar

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: May 19, 2000

Acts Referred:

- Contract Act, 1872 - Section 63, 7, 8, 9

Citation: (2000) 3 GLT 66

Hon'ble Judges: Brijesh Kumar, C.J; D.N. Chowdhury, J

Bench: Division Bench

Advocate: H.P. Barman, for the Appellant; B.K. Sarma, for the Respondent

Final Decision: Dismissed

Judgement

Brijesh Kumar, C.J.

This appeal has come up for consideration before the Division Bench in pursuance of the order dated 22.2.2000 passed by the learned Single Judge. The learned Single Judge held that there is some amount of conflict between the view taken by a learned Single Judge in a case reported in AIR 1973 GAU 111 (The Union of India v. M/s Rameshwarlal Bhagchand) and the view taken in an unreported judgment of this Court, namely, Second Appeal No. 77 of 1982 decided on 11.3.91 (M/s Assam Bengal Cereals Ltd. v. Union of India). The learned Single Judge observed that the matter requires a decision by a Division Bench. Hence, this matter before us.

2. The dispute relates to settlement of claim between the parties, namely, the Appellant and the railways. It appears, two consignments were booked in favour of the Appellant. One consignment consisted of 767 bags of Iodised salt and the other consignment consisted of 744 bags. On non-delivery of the consignments, the Appellant seems to have claimed a sum of Rs. 53,284/- and Rs. 51,686/- each respectively for the two consignments. The Railway authorities remitted two cheques of Rs. 9,111/- and Rs. 9,032/- respectively for two claims in full and final

settlement of the claims. It further transpires that the cheques were sent with a letter containing the following conditions:

In case the above offer is not acceptable to you the cheque should be returned forthwith to this office; failing which it will be deemed that you have accepted the offer in full and final satisfaction of your claim.

The Appellant appears to have written back to the Railway administration that the claim as settled for the lesser amounts are not acceptable and they are placed under protest. It was further written that balance amount may be remitted within 15 days from the date of receipt of the letter, failing which they would be compelled to file a suit for recovery of the balance amount. The cheques issued in favour of the Appellant were, however, encashed. Since balance amount was not remitted as desired by the Appellant, the Appellant filed an application before the Railway Claims Tribunal, Guwahati. The Railway administration pleaded full and final settlement of the claim in view of encashment of the cheques by the Appellant. The Railway Claims Tribunal rejected the application holding that the claim stood fully and finally settled between the parties. The Appellant preferred the appeal in this Court. It appears that the Respondent Railway administration heavily relied upon a decision of this Court in case of Union of India v. M/s Ramseshwrlal Bhagchand (supra); whereas the judgment of the learned Single Judge dated 11.3.91 in Second Appeal No. 77/82 (Messrs. Assam Bengal Cereals Limited v. Union of India) is the sheet anchor of the Appellant.

3. Before entering into the merits of the matter, we may like to observe that in the unreported decision in Second Appeal No. 77/82 (Messrs. Assam Bengal Cereals Limited v. Union of India), the learned Single Judge distinguished the judgment in the case of Bhagchand (supra) on facts on the ground that in the unreported judgment the cheque was encashed with protest, whereas there was no such protest in the other case. The learned Single Judge while referring the matter expressed the opinion that the law laid down in the case of Bhagchand (supra) seems to be correct law. It also seems to be the view of the learned Single Judge that despite the distinction drawn, on the facts involved in the case of M/s. Assam Bengal Cereals Limited, the law as laid down in the case of Bhagchand would be applicable. It would, therefore, be necessary to consider the facts of two cases as well as some other cases on the point as referred to by the parties.

4. In the case of Bhagchand (supra) the lesser amount was offered by the Railway administration on the condition that it would be in full and final settlement of the claim. The cheque was encashed. Thereafter balance was claimed disputing the final settlement of the claim. It was observed that before encashing the cheque the party should have informed the General Manager that they did not agree to the proposal for full and final settlement of the claim on a lesser amount, but since that was not done and the cheque was encashed, it amounted to acceptance of the condition of full and final settlement of the claim. It was found that in such matters, Section 8 of

the Contract Act is attracted which provides for acceptance of proposal by conduct as against other modes of acceptance, for example, verbal or written as contemplated under Sections 7 and 9 of the Contract Act. It was emphasised that the offerer prescribed a particular mode of acceptance. It was found that if that offer was not acceptable, the cheque should have been sent back in case the General Manager had not agreed for its encashment in partial satisfaction of the claim. The court also drew distinction between Section 63 of the Contract Act and Section 8 of the said Act. In so far the decision in the case reported in [Union of India \(UOI\) Vs. Jethabhai Jesinbhai Patel and Co.](#), is concerned, the learned Court held that the case was decided in reference to Section 63 of the Contract Act without referring to Section 8 at all. It is observed and in our view rightly, that the two provisions operate in different fields. The cases reported in [Kapur Chand Godha Vs. Mir Nawab Himayatalikhan Azamjah](#), [Shyamnagar Tin Factory Private Ltd. Vs. Snow White Food Product Co. Ltd.](#), [Dipchand Golencha Vs. M. Abhechand and Co.](#), (Dipchand v. M. Abhechand and Co.) were also considered and held to be of no help as these cases were also decided on the basis of Section 63 of the Contract Act, whereas [Amrit Banspati Co. Ltd. Vs. Union of India \(UOI\)](#), was followed.

5. In the case of Messers Assam Bengal Cereals Limited (supra), the claimant-Plaintiff retained the cheque and wrote a protest letter that the Plaintiff wanted to know the reason as to why the entire claim was not admitted and in case within 15 days reasons were not assigned, the cheque would not be accepted in full and final settlement of the claim and in case of non-receipt of any reply within 15 days appropriate steps would be taken for recovery of the amount by filing a suit. The Railways had obviously taken the same plea of full and final settlement of the claim by the Plaintiff. It will be appropriate to mention here the conditions subject to which the Railways had sent the cheque with an offer of full and final settlement saying that in case offer was not accepted, the cheque should be returned forthwith to the office failing which it would be taken that the offer has been accepted in full and final satisfaction of the claim. Even though the cheque was not returned, but encashed, the court held that it was not in full and final settlement since it was accepted after notice to the Railway administration that it must indicate the reason for not accepting the full claim within time specified.

6. In Amrit Banaspati's case (supra), it was observed that if offer is made subject to a condition, the offeree cannot accept the offer without accepting the condition. The principle, it is observed, is based on Section 8 of the Contract Act. In that case also cheque was offered by the Railways in full and final settlement of the claim. The cheque was encashed, but the suit was filed for the balance amount. The Court held that it would be deemed that the Plaintiff had accepted the condition of full and final settlement of the claim.

7. In the case of Rameshwarlal Bhagchand (supra) this Court took the view that Section 8 of the Contract Act is attracted. Section 8 of the Contract Act reads as

under:

8. Acceptance by performing conditions, or receiving consideration.- Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

It is evident that it pertains to performance of the condition as put forth by the offerer. In our view, the learned Single Judge in the case of Bhagchand (supra) rightly explained the position in regard to Section 8 of the Contract Act. Performance or non-performance of a condition totally depends upon the conduct of the offeree. If the condition is to be performed in a particular way, the other party has to conduct itself in accordance with that condition. In the present case the course of action in the event of acceptance of the cheque as well as in the event of non-acceptance of the cheque both were indicated in the offer. It will be better to see the conditions as offered as well as the reply sent by the Appellant.

Your claim for compensation on the above subject for Rs...has been admitted...in full and final settlement of the claim....

In case the above offer is not acceptable to you, the cheque/money order should be returned forthwith to this office, failing which it will be deemed that you have accepted the offer in full and final satisfaction of your claim.

The retention of this cheque and/or encashment thereof/acceptance of this Money Order will automatically amount to acceptance in full and final satisfaction of your above claim without reason and you will be stopped from claiming any further relief on the subject.

The above communication was sent by the Railways by letter dated 7.4.1993. A reply was sent by the Appellant by letter dated August 20,1993 as follows:

We regret to inform you that our above noted claim has been settled for Rs...instead of Rs...The same is therefore placed under: PROTEST: and cannot be accepted. Please therefore remit the balance amount to us within a period of 15 days from the date of receipt of this letter, failing which, we shall be Ecompelled to lodge a Civil Suit against the Rly. for recovery of the balance amount. Please treat this as most urgent.

Similar communication was exchanged between the parties in respect of both the claims.

8. A close reading of the letter containing the offer by the Railways indicates that the offer was complete in itself. It was either to be accepted or not accepted. In case of acceptance, the cheque would be retained and encashed. In case of non-acceptance, the cheque was to be returned forthwith to the Railway office. In either case, the course of conduct was indicated in the offer. Non- acceptance of the offer could only be expressed by returning the cheque. Encashment of the cheque would be a

conduct on the part of the claimant in performing the condition as offered leading to the inference that encashment of the cheque was in full and final settlement of the claim. The acceptance of consideration, viz. encashment of cheque would only be for reciprocal promise which is offered with the proposal. It satisfies the ingredients of Section 8 of the Contract Act. There was no third course open, protest or no protest.

9. One thing which is remarkably noticeable in the reply of the claimant-Appellant to the offer of the Railways is that it only lodges a protest about settlement of the matter on a smaller amount and gives 15 days' notice to remit the balance amount failing which the claimant would be compelled to file a suit against the Railway for recovery of the amount. To us, it appears that such a letter leads nowhere. The reply does not say that in case the Railway does not give any reply within 15 days the claimant would take it as if the Railway agreed that the claimant can encash the cheque in part settlement of the claim. It gives no opportunity to the Railways to reply to the protest, but the 15 days notice which has been given is only for payment of the balance amount. In our opinion it was not open to the claimant-Appellant to issue any such letter indicating protest and requiring the Railways to pay the balance amount while encashing the cheque also. If a particular offer is made to be accepted or rejected in a particular course of conduct, it will only be the conduct of the party which will be decisive for coming to a conclusion as to whether the offer has been accepted or not. In terms of the offer it was not open to the claimant to usurp the amount of the cheque offered by a party against the conditions set forth in the offer. There was no compulsion for the offeree to succumb to the terms of the offerer in any case. It was quite open not to accept the offer, but Non-acceptance had to be indicated by conduct in returning the cheque, whereas acceptance of the offer was to be indicated by conduct of encashing the cheque. We feel that the learned Single Judge in the case of Bhagchand (supra) has rightly held that such offers would be governed by Section 8 of the Contract Act as also held in the case of Amrit Banaspati (supra). The other cases which have been referred by the parties have been appropriately dealt with by the learned Single Judge in the case of Bhagchand. Those cases have been decided in the context of Section 63 of the Contract Act. Section 63 of the Contract Act reads as follows:

63. Promisee may dispense with or remit performance of promise. - Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

10. Section 63 of the Contract Act also deals with acceptance of some lesser amount but in lieu of a larger amount promised and the promisee may dispense with the rest of the claim or may extend the time of performance of the promise. The acceptance may be in full satisfaction for any amount or condition. It covers different kinds of cases which will be evident from various illustrations of Section 63.

The difference is evident in transactions u/s 63 of the Contract Act. The promise is there but it is relaxable by the promisee, whereas in the case of Section 8 of the Contract Act there is no relaxation on the part of the promisee regarding the promise made. To further explain it may be observed that as for example, in the case in hand the offer or the promise is only in respect of lesser amount as compared to the amount claimed. There is no promise on the part of the promisor to pay the higher amount or the amount claimed. If the higher amount is promised to be paid, the promisee may accord its satisfaction for a lesser amount or may extend the period of performance of the promise. It is accepting something to the full satisfaction which may be less than the promise made. In the present case in hand, there was no promise made for payment of the amount claimed. As a matter of fact, liability of higher amount was never accepted or admitted. The claim was settled on lesser amounts which alone was a promise for that amount to be paid, namely, Rs. 9000/- and odd on certain condition. Such a case would fall within the forecorner of Section 8 of the Contract Act. The promise was an offer for a sum of Rs. 9000/- and odd and it was open for the promisee to accord its satisfaction on still lower amount for payment in such cases Section 63 would apply. The distinction between the two provisions is clear and unambiguous. In cases covered u/s 63 of the Contract Act, once the promisee in full satisfaction of a larger amount promised to be paid, accepts lesser amount, he cannot subsequently resile and claim the higher amount as was promised. That is not the case in hand. It was only the claim which was for a higher amount and that was not an amount promised to be paid. The Respondent had made the offer to the Appellant for payment of amounts to which extent the liability can be said to have been admitted and the rest of the claim was not admitted. Therefore, the cases as decided in context with or by application of Section 63 of the Contract Act would be inapplicable to the cases in which Section 8 of the Contract Act would be applicable, as in the present case. The view taken by the learned Single Judge in the case of Bhagchand (supra) is the correct view. The case of Amrit Banaspati (supra) has been rightly followed and other cases have been rightly distinguished. It is not open to take an attitude "I shall accept the benefit, but reject the condition." Offer is either to be accepted or rejected in terms of the conditions of the offer. Where acceptance or rejection of the condition is dependent upon conduct of the party which is decisive of exercising acceptance or rejection, Section 8 of the Contract Act would come into play. Cheque having not been returned, rather encashed, would lead to the only conclusion that the offer made was accepted. The conduct of the Appellant demonstrated the same. Merely writing that the cheque was placed under protest is inconsequential. The notice which was given by the claimant-Appellant, as indicated earlier, was only in respect of the balance amount. In our view, the distinction which has been drawn in the unreported decision in Second Appeal No. 77/82 (Messrs Assam Bengal Cereals Limited v. Union of India) with the decision in the case of Bhagchand (supra) on the ground that there was a protest before encashment of the cheque is not a feature which may make any real distinction in the legal position.

11. For the reasons indicated above, in our view, the law laid down in the case of Bhagchand (supra) is the correct law. In the result the appeal is dismissed.