
(1984) 01 KL CK 0008
In the High Court Of Kerala
Case No : A.S. No. 43 of 1978

A.Z. Mohammed Farooq

APPELLANT

Vs

The State Government

RESPONDENT

Date of Decision : 24-01-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 6A
Essential Commodities Act, 1955 — Section 3

Citation : AIR 1984 Ker 126 : (1984) 1 ILR (Ker) 405

Hon'ble Judges : Bhaskaran, Acting C.J.; Sukumaran, J; Bhaskaran Nambiar, J

Bench : Full Bench

Advocate : T.S. Venkiteswara Iyer and P.K. Balasubramanyan, for the Appellant;
Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Sukumaran, J.—Whenever scarcity in food is felt, the State steps in with remedial measures, to ensure the availability and an equitable distribution of the food-stuffs. Special Legislation -- some ephemeral and some almost having a "quasi permanency" -- is also resorted to, to meet such emergent situations. Control Orders of various types, to cover procurement, movement, processing, price fixation and distribution, are issued on those occasions. There has been a spate of litigation in the State arising out of the implementation and the working of these Control Orders. This appeal arises from one among them.

2. Palghat District which enjoys the reputation as the granary of the State, has numerous rice mills with their sprawling yards humming with activities. The procurement of paddy, and conversion of it into rice, are transacted on an extensive scale in that area. The suit out of which this appeal arises was instituted in one such area in that District Perintalmanna.

3. Clause 3 of the Rice and Paddy (Procurement by Levy) Order casts an obligation on every cultivator to sell to the Government or an agent of the Government or other authorised person, paddy derived from the cultivated lands

subject to the various conditions referred to in the Order. Under Clause 7, the payment of price is to be effected by the Government or agent or the authorised person purchasing the Paddy. Under the Paddy and Rice (Declaration and Requisitioning of Stocks) Order, any stockholder can be directed by the specified authorities to convert into rice, the paddy in the possession or control of such stockholder. Every stockholder is obliged to sell to the Government or the agent or other persons named in that behalf at the controlled price such quantity of paddy or rice in his possession as specified in the Order.

4. The plaintiff was appointed by the State Government the defendant in the suit, as one such agent in Perintalmanna. He had to mill the paddy procured during the various crops. The terms and conditions regarding his appointment are contained in the agreements produced in this case as Exts. B1 to 3. They follow the same pattern, though the crops to which they relate, differ. There is no controversy that the plaintiff, by virtue of his position under the agreement, hulled the paddy allotted to him by the Taluk Supply Officer transporting the same from the godowns and other places under the control of the various officers. Rice so obtained had been supplied by him in accordance with the orders and directions of the supply officials.

5. According to the plaintiff, hulling and transporting charges were due from the defendant. They remained unpaid, despite his demand. The suit was instituted for recovery of the dues and the return of the security amount with interest and costs.

6. According to the defendant-Government, the plaintiff, had unjustly retained with his a large sum, which under the agreement and under law, really belonged to the Government. An adjustment had to be effected of the amounts due to the plaintiff from out of such retained amount and the balance was to be paid over to the Government. The contentions of the Government were amplified by an additional written statement. The details of the transaction which would cogently explain the accrual of such large amounts in the hands of the plaintiff had been given therein. On a proper settlement of accounts, a sum of Rs. 21,890.27 was due to the Government after effecting a set-off of the plaintiff's dues. The defendant, therefore, prayed for a decree for recovery of that sum. Court-fee was also paid in respect of the relief so sought for.

7. The plaintiff repudiated the liability for the refund of the amount as claimed in the additional written statement of the Government. The status of an "agent" attributed to the plaintiff under the additional written statement of the Government was disputed.

8. There is no longer any controversy on the actual amount that would be due to the Government in the event of its contentions being accepted. The court below has found that the defendant is entitled to a decree for realisation of a sum of Rs. 16,404.79.

9. The circumstances under which a large amount comes to the hands of the

plaintiffs under the operations in question, have been discussed by the court below in paragraph 7 of its judgment. Basically, it arises out of the adoption of an ad hoc formula for the calculation of the outturn of rice from the processing of paddy hulled. Under the proceedings of the District Collector evidenced by Exts. B-7 to B-9. the outturn was tentatively fixed as 66.2/3% The price of rice was calculated on the assumption that 150 kilogrammes of paddy will give one quintal of rice. The plaintiff has received from the consumers to whom he supplied the rice, the price as fixed by the Government. According to the defendant the test hulling was subsequently conducted. The outturn of paddy for the three crops in question was respectively 69%. 67% and 69%. That would in turn mean that 150 kilogrammes of paddy would not be necessary for obtaining one quintal of rice. It will be somewhat less: to be exact, for the three crops, the corresponding figures will be 144.928. 149.254 and 144.928 kilogrammes. The resultant position was that the plaintiff came by the price of such difference in the paddy actually required for the conversion of rice. The quantification of the total paddy and its price has been computed. The decree amount represents the price difference.

10. According to the defendant, this was an unintended profit with the plaintiff, and the plaintiff should disgorge the same. He, after all, is only an agent and cannot therefore, regain with him any such unintended profits, according to the Government.

11. The plea of the Government appealed to the court, which, as stated earlier, has given a decree in its favour. The correctness of that decree comes up for determination in this appeal,

12. Shri. P. Krishna Moorthy, learned Government Pleader, appearing for the respondent-Government, raised and tenaciously pursued a preliminary point challenging the very maintainability of the appeal before this court. The omission to raise such a point earlier notwithstanding, we have heard arguments on that question. It was contended that the forum of appeal is to be determined with reference to the subject-matter of the plaintiff's claim. That legal proposition, according to the Government Pleader, had been specifically laid down in the decision of this court in Valsalan v. Kaumudi. 1982 Ker LT 525 : (AIR 1982 Kcr 3041. A large number of earlier cases which mainly dealt with the question as to what exactly is the "subject-matter." in a suit for partition were also referred to in that connection namely Ponnada Mallayya and Another Vs. Ponnada Jagannadhamma and Others, ; AIR 1944 65 (Privy Council) . Murkothkandiyil Muyyarikkandi Kalander and Others Vs. Thattantavita Vatakkayil Muyyanikandi Kunhipakki, ; K. Natesa Ayyar Vs. Kothandarama Ayyar and Another,) Ayish Bi Bi v. Mohd. Suda-ktahulla. AIR 1947 Mad 407. The "subject-matter" in suits for partition has been held to be the share of the plaintiff in the suit; plaintiff's valuation of share determines the forum of original and appellate jurisdiction; the valuation of the property involved in the suit made by the Commissioner is irrelevant; so too is the defendant's share. The value of the share of the plaintiff

is distinct from the value of the joint family property. So proceed the propositions.

13. It is unnecessary for the purposes of our case to pursue the line of reasoning adopted in those cases, or in cases relating to suits for accounts, such as : P. Kannayya Chetti v. R. Venkata Narasawa. AIR 1918 Mad 998 Ahad Mir v. Mahda Bhat. AIR 1960 J&K 89 State of Kerala v. Nesan 1974 KLT 10.

The general observations of the Supreme Court in T.D. Gopalan Vs. Commissioner of Hindu Religious and Charitable Endowments, Madras, . while interpreting the terms "subject-matter" occurring in Article 133 of the Constitution, as it stood before the amendment of 1972. also have no direct application to the case.

14. This court had indicated the difference between a counter-claim and a set off in the decision reported in Govindji Jevat and Co. and Others Vs. Cannanore Spinning and Weaving Mills Ltd., That has been followed by the Punjab High Court in Munshi Ram and Others Vs. Radha Kishan (decd.) and Others, The Privy Council and the Supreme Court have explained the concept of "counter-claim" in the decisions reported in AIR 1934 235 (Privy Council) and Laxmidas v. Nanabhai. AIR 1964 SC 11. Laxmidas" case dealt with the principle, in paragraph 11 as follows :--

"The question has therefore to be considered on principle as to whether there is anything in law -- statutory or otherwise -- which precludes a Court from treating a counter-claim as a plaint in a cross-suit. We are unable to see any. No doubt. the CPC Proscribes the contents of a plaint and it might very well be that a counter-claim which is to be treated as a cross-suit might not conform to all these requirements but this by itself is not sufficient to deny to the Court the power and the jurisdiction to read and construe the pleadings in a reasonable manner. If for instance, what is really a plaint in a cross-suit is made part of a written statement either by being made on annexure to it or as part and parcel thereof, though described as counterclaim, there could be no legal objection to the Court treating the same as a plaint and granting such relief to the defendant as would have been open if the pleading had taken the form of a Plaint."

A similar approach was made by the Supreme Court in a later decision in Mohinder Singh Jaggi Vs. Data Ram Jagannath, though without any discussion on the principle or earlier precedents. Paragraph 24 of the judgment reads :--"The learned counsel for the plaintiff raised a number of other points before us. He first said that the nature of the claim of the defendant being quite different from the claim of the plaintiffs, courts below erred in accepting the written statement as a plaint in a cross-suit. It seems to us that the additional written-statement was rightly treated as a cross-claim by the courts below. It arose out of the transactions between the plaintiff and the defendant."

15. The amendment which the Civil P. C. underwent in 1976 has made matters easier and clearer. It was agreed that the amended provisions are applicable to the case, as the written statement of the Government was filed in the present

case after the amendment of the C. P. C. by the Amendment Act 104 of 1976.

16. Rules 6-A to 6-G of Order VIII C.P.C. exhaustively . dealt with counter-claim by defendant. Rule 6-A expressly enables a defendant in a suit to set up a counter-claim of the nature indicated therein. The only limiting factor is that the counter-claim shall not exceed the pecuniary limits of the jurisdiction of the court. The suit was instituted in the present case in the Sub Court which has unlimited jurisdiction. The proviso is, therefore, inoperative as regards the counter-claim in the present case.

17. Under Clause (3) of Rule 6-A the plaintiff is given the liberty to file a written statement in answer to the counter-claim of the defendant. And Clause (4) thereof expressly provides that the counter-claim should be treated as a plaint and governed by the rules applicable to plaints. Under Rule 6-C the plaintiff is enabled to move the court for an order that such a counter-claim may be excluded and that the defendant should be directed to an independent suit. Such a motion, must, however, be made before the court before the setting of issues in relation to the counter-claim. It is for the court to make appropriate orders on that contention. Under Rule 6-D when a counter-claim is so set up by the defendant, he is permitted to proceed with the same notwithstanding the fact that the suit of the plaintiff is stayed, discontinued or dismissed. In other words, once the counter-claim crosses the barrier of Rule 6-D, it is secured of an independent existence and a smooth progress towards a trial and a decree. If there is default on the part of the plaintiff to reply to the counter-claim, the court is within its right to pronounce the judgment against the plaintiff in the counter-claim or make other appropriate order in relation thereto. When a counter-claim is established and a balance is found due to the defendant, the court can give judgment to the defendant who is entitled to such a balance (vide Rule 6-F).

18. Having regard to the aforesaid, provisions, it is possible to hold that the "subject-matter" of the suit would be the aggregate of the amounts claimed on the plaint and in the written statement by way of counter-claim. Issues are, to use the language of Denning. LJ in Chell Engineering v. Unit Tool & Eng. Co., (1950) 1 All ER 378 very much interlocked and the subject-matter of the suit itself becomes rolled up and inflated as the aggregate of the claims put forward in the suit and in the counterclaim. It is, however, not necessary for the purpose of the present case to express a definite view on that larger aspect. The suit of the plaintiff stands, decreed. There is no appeal. The appeal is only against the decree in so far as the court below has allowed the counter-claim of the defendant. That counter-claim itself exceeds Rs. 10,000. Even if the counter-claim is viewed as an independent and separate suit, the subject-matter thereof exceeds the pecuniary limits of the appellate jurisdiction of the District Court. The appeal has therefore, necessarily to be filed before the High Court. The preliminary objection that the appeal lies only to the District Court, and not to this court, therefore fails.

19. We shall now proceed to consider the merits of the appeal. Whether on a

true interpretation of the agreements the plaintiff would be justified in retaining the amount which accrued to him out of these transactions, is the question for consideration in the appeal. It can be viewed from two angles : (a) Is the relationship between the parties to the agreement one of principal and agent ? and (b) Even if there be no principal-agent relationship, is the plaintiff obliged under the terms of the agreement to pay over to the Government the amounts which had accrued to him in the manner referred to above.

20. Ordinarily, it would have been a simple case of construing the terms of the agreements. The complication has, however, arisen as a result of very many judicial decisions which have interpreted agreements seemingly similar. The conflict of judicial opinion, perhaps, demonstrates the danger in attempting to construe one agreement with reference to the general observations in a decision which has interpreted a different, though in some ways similar, agreement. An attempt at distinguishing the earlier decision, sometimes, becomes wearisome. The distinguishing process attempted in many cases may rather cloud the issue than clarify it. So felt Lord Diplock in a recent case before the House of Lords. The situation appears to be the same in this area as far as this court is concerned. The decisions on some of the Control Orders which had been subjected to judicial interpretation span a period of about two decades. One decision of the Supreme Court, which rightly came to be discussed at length in the later decisions in an endeavour to find out the real rationale thereof, is the decision in *A. Venkata Subba Rao Vs. State of Andhra Pradesh*, . The decision in *Govindan & Co. v. Sales-tax Appellate Tribunal* 1978 KLT 136. dealt with a similar question, though in an entirely different context of the Sales-tax Law. Discussion on cognate questions had been made by this court in various cases; *Sec A. S. No. 539 of 1972* decided by Bhaskaran, J., as he then was, and Chandrasekhara Menon. J., O. P. No. 1987 and 1988 of 1972. a case under the Kerala Rationing Order, decided by a Division Bench; O. P. No. 4990 of 1972 and connected cases (of which O. P. No. 3205 of 1974 was one> decided by Chandrasekhara Menon. J. on 3-6-1976. *The Palghat Cooperative Marketing Society Ltd. v. State of Kerala*. ILR (1977) Ker 326. decided by Govindan Nair, C. J. and Janaki Amma. J. on 30-12-1976 (which differed from the view expressed by Justice Chandrasekhara Menon in the decision above referred to) *A.P. Velayudhan Nair Vs. State of Kerala and Others*,). a Full Bench decision rendered on 6-4-1977. with Gopalan Nambiar Ag. C. J. George Vadakkal and Chandrasekhara Menon, JJ.: and a later Full Bench, consisting of Subramonian Poti, Ag. C. J. Bhas-karan and Janaki Amma. JJ., a decision rendered on 5-5-1981 in W. A. No. 389 of 1976 and connected cases (which considered the appeals from the judgment of Chandrasekhara Menon, J. in O. P. No. 3105 of 1974 and connected cases.) The order of reference made by Chandrasekhara Menon and Balagangadharan Nair. JJ. itself takes note of these divergent views of judicial opinion when it states :--

"In the light of the contentions raised by the appellant and the decisions of this court reported in 1970 KLT 136: ILR (1977) Ker 326 and in W. A. Nos. 389 to. 397 and 423 of 1976 and of the Supreme Court in *A. Venkata Subba Rao Vs.*

State of Andhra Pradesh, we think the questions raised here should be considered by a Full Bench of the Court."

21. Stripped of the legal trappings in which the present transaction has been dressed, and seen in its native simplicity (to borrow the language of Lord Denning in *Bridge v. Campbell Discount Co., Ltd.* (1962) 1 All ER 385 at p. 398) the salient features of the agreement which we have to construe appear to be the following :--The plaintiff was selected as one of the agents for hulling paddy procured under the Kerala Rice and Paddy (Procurement by Levy) Order, 1966. The allotment of paddy which is to be transported to the mill of the plaintiff at Perintelmanna for hulling, will be made by the Taluk Supply Officer; the movement of the paddy is to be done under the movement permits issued by the Taluk Supply Officials. The plaintiff is to give proper receipts for the paddy delivered for milling: he has to remit the cost of paddy, sales-tax, administrative surcharge and P & F charges when demanded. The chalan evidencing remittance of such amounts are to be produced before the Taluk Supply Officer who will issue the authority for movement of paddy. Clause 4 provides that the various officers mentioned therein are competent to direct the plaintiff to mill the paddy and deliver the milled rice. The following sentence therein are particularly important:--

"The out-turn of rice from the paddy will be fixed after test hulling. The milling charge will be Re. 1/- per quintal of paddy."

Clause 5 ensures the quality of the rice delivered by the plaintiff. Under Clause 6 the plaintiff is obliged to deliver the Processed rice to the Government or a person directed by the official named in that clause. The plaintiff is obliged to render proper and correct account of the paddy received and the rice produced. Clause 8 empowers the Government and the District Collector to terminate the agency at any time without payment of compensation except for the charges of milling. Clauses 9 and 10 provide safeguards for keeping up the progress of the work and for prevention of mixing up of paddy or grain of other persons during the time the milling process of the procured paddy is on. The accounts and registers of the mill will be open to inspection by the officials named in Clause 11. Provision is made in Clause 12 for providing security for the fulfilment of the agreement. The Collector is empowered to cancel the agreement and to forfeit the security in case of breach of the agreement by the Plaintiff. The machinery under the Revenue Recovery Act is made available for recovery of the sums due to the Government under the agreement.

22. Having regard to the provisions of the agreement, as also the statutory scheme under which the agreement is executed, could it be said that the agreements do not envisage an agency arrangement? We are of the view that the agreements, in truth and in substance, evidence a relationship of principal and agent between the Government and the plaintiff. In holding so, we are not carried away by the nomenclature given to the transaction. We bear in mind the caution indicated in the decisions of the Supreme Court in *A. Venkata Subba Rao*

Vs. State of Andhra Pradesh, , that the "description is not decisive" and that one has "to gather the relationship by reference to the entire facts and circumstances." It must, however be noted that the description is not altogether without any relevance or significance. The Supreme Court itself hinted that, when it said that the description in the statutory Order and the agreement "as agent" is of some bearing. This is particularly so when we note that in the agreements in question, the feature of agency is seen not only in the preamble but also in Clause 8. The consideration for the agreement is provided under Clause 4 and that :onsists of a milling charge of Re. 1 per quintal of paddy. An accountability, from the moment the stock of paddy is allotted to the miller up to the point of the delivery of the last grain out of the paddy so hulled and milled is discernible in the various provisions of the agreements. The out-turn of rice from paddy is not rested on any ad hoc formula. It is to be "fixed after test hulling". The processed rice has to be delivered to the Government or as directed by it and rendition of proper and correct account for the paddy received and the rice produced is insisted upon. The pace at which the work is to be done, and the quality of the work, and even the inspection of the promises and the books and registers kept therein. are all subject-matter of supervision and control by the Government and the officials.

23. Govindan Nair. C. J. observed in The palghat Co-operative Marketing Society Ltd. v. State of Kerala, ILR (1977) 1 Ker 326 as follows :--

"The special provision regarding the milling of paddy the direction that paddy and rice procured should be delivered to persons directed by the officers of the Government and at rates fixed by them, the stipulation regarding maintenance of accounts, and the right to terminate the agreement are all factors which go to show that the paddy and rice belonged to Government and Government had control over it."

These observations are fully apposite to the provisions of this agreement also.

24. Equally applicable is the consideration which weighed with the Full Bench (W. A. Nos. 389 of 1976 and connected cases) to determine the relation-ship between the parties therein. The Full Bench observed :--

"The several clauses in Ext. P-1 and Ext. P-2 make it clear that the purchase of the paddy by the societies was on behalf of the Government. Thus, specific mention is made in Clauses 6 and 7 of Ext, p-2 that the purchase of paddy was on behalf of the Government. Provision relating to expenses of transport, cost of gunny and hulling charges, the clauses relating to rendition of accounts, the stipulation relating to leasing of mills for hulling and those relating to accounting are not inconsistent with the case that the societies were agents of the Government. Evidently the societies were not to deal with the paddy or rice procured otherwise than as per the directions of the Government. The so-creties were not to retain the paddy or rice on the termination of the agree- ment: they were to get only the amount spent by them towards the purchase of the goods,

at the rate determined by the Government. This indicates that the societies had no proprietary right in the paddy or rice procured and the same belonged to Government."

25. Various provisions in the agreements indicate that the purchase of paddy was on behalf of the Government. The miller had no proprietary right in the paddy or the rice procured. At all times, the property in the Roods vested in the Government. The right of the miller is only for reimbursement of the charges already defrayed by him in having the stock of paddy or rice, as the case may be, at any given point of time.

26. The interpretation we have given to the agreements is in full accord with the approach and conclusion contained in the judgment in A. S. No. 539 of 1972 to which one of us (Bhaskaran, Ag. C. J.) was party.

27. As noted earlier Chandrasekhara Menon, J. found that there was no agency in a similar agreement in the case which came up before him on 3-6-1976 (vide O. P. No. 3205 of 1974). the correctness of the view was doubted in the Division Bench decision in ILR (1977) 1 Ker 326 (supra). The decision itself has been overruled by the Full Bench in W. A. Nos. 389 to 397 and 423 of 1976.

28. The decision of the Supreme Court has been discussed at some length, virtually in all the decisions of this court. It is therefore, unnecessary to add to the discussion on that decision, or to deal with the actual point which arose for consideration and the rationale of the majority view. It is too trite a proposition that the interpretation of one agreement is no authority for construing a different one even when strikingly similar provisions may be found in the two. However, it may be noted that in the Supreme Court case, the agreement specifically referred to the District Supply Officer agreeing to buy and the supplier agreeing to sell paddy/ rice. The procuring agents were at liberty to effect a sale of the grains with them, though such sale was subject to conditions. There was no provision regarding the accountability to the Government, of the rise with such agents. Very significantly, there was no dispute in that case that the property in the stock vested in the procuring agents. The observations in paragraph 27 are particularly significant :--

"In other words there was no dispute that the property in the Roods purchased by the procuring agents vested in them. if there was any depreciation in the Quality or if there was any short-fall owing to drought, action of rodents, insects. moisture, theft etc. the loss would be theirs. In order to raise the necessary funds and to finance themselves for the purchase the procuring agents pledged their Roods including the foodgrains purchased by them and obtained loans from banks and other financing institutions. They could effect a sale of the grain with them subject, however, to two conditions" .

That decision therefore ruled out the existence of an agency when it was found that there was no dispute on the Question of ownership of the goods in question in a party. The situation in the present case is however, totally different.

29. When an agency is, therefore, postulated, as we have found in the present case, the obligation of the agent to account for all profits made out of such agency would arise in circumstances like those present in the instant case. The theoretical basis of such an obligation has been discussed by Govindan Nair. C. J. in ILR (1977) 1 Ker 326 (supra). The observation of Lord Denning in Phipps v. Boardman (1965) 1 All ER 849 furnishing the logic of the proposition has been already referred to in that decision. That need not therefore, be repeated here. The case-law on that aspect would indicate the emergence of the theory even from the time of Lvell v. Kennady. (1889) AC 437 Pearson. L.J. pointed to the "disciplinary theory" behind the proposition. He observed at page 864 of the aforesaid decision :

"The rule of equity is rigid. The agent who has made a profit from his agency, without having obtained formal consent from his principal, has to account for the whole of the profit. In an ordinary case, where an agent has simply made a secret profit, the rule is, to speak, good for discipline : there is a penal element calculated to deter agents from behaving in that way."

It is only sufficient to note that the decision of the court of appeal had the approval of a majority in the House of Lords in Boardman v. Phipps. 1966 13 All ER 721.

30. We do not find any application of the principle stated in Broome v. Pardoll Co-operative Society. (1940) 1 All ER 603 at p. 610 to the facts of this case, in particular it may be pointed out that none of the contingencies discussed at page 612 of the aforesaid decision exist in the present case.

31. We are in agreement with the views expressed in ILR (1977) 1 KIT 326 (supra) and the Full Bench Judgment in Writ Appeal No. 389 of 1976 and connected cases. With utmost respect, we hold that the judgment of Chandra-sekhara Menon, J. in O. P. No. 3205 of 1974 does not lay down the correct law.

32. Viewing the facts of the present case, reckoning the position of the plaintiff as an agent of the defendant-State Government, an obligation to account for the profit is clearly cast on the Plaintiff.

33. Even on a proper interpretation of the agreement, the same result would follow. A cumulative effect of the obligations arising under Clauses 4 and 7 of the agreement is to make the miller liable and accountable for the entire out-turn of rice derived on conversion of paddy supplied to him. It is not enough that the entire rice so converted is distributed among persons to whom the miller is authorised to deliver the rice. The stipulation regarding the delivery of the processed rice to the Government or to other notified persons is contained in Clause 6. There are other obligations independent of and in addition to the one provided under Clause 6. The obligation to account for the entire quantity of rice clearly arises out of the provision relating to the fixation of out-turn of rice after test hulling and the rendition of proper and correct account for the rice produced by milling. Furnishing particulars about the destination of the processed rice will

not amount to a discharge of the obligation to account for the entire quantity of milled rice. After the supply of the rice is effected, the obligation for rendition of accounts gets transmuted into one concerning the monetary equivalent of the price of that quantity of rice, Concededly, the plaintiff, had not accounted for the entire receipt of the price of rice which he had converted out of the procured paddy. Under the terms of the agreement he is bound to account for the entire amount. When he had accounted for the amount only partially, his liability subsists as regards the balance. The balance amount has been quantified under the decree of the court below. The plaintiff cannot evade that liability. The decree of the court below is justified on a proper interpretation of the agreement also.

34. A similar conclusion was reached in ILR (1977) 1 Ker 326 (supra) on a conjoin reading of the documents relating to the transaction discussed in that case. The Division Bench observed :

"When so read. by the terms of the contracts by which the petitioners are bound, it can be seen that they are liable to account for the excess rice and that this certainly will cause an obligation to account for the price of the rice."

The view taken by Chandrasekhara Menon. J. was that the liability to account for the rice "does not mean that the price which he has obtained for the same is due to the Government". The Division Bench expressed disagreement from that view.

35. Writ Appeal No. 389 of 1976 and connected cases considered the liability of the miller in that case independent of the question whether he is an agent or not. Ultimately it held :

"Under the terms of the order of appointment and the agreement referred to, the societies irrespective of whether they were agents of the Government or independent contractors were liable to account for the balance rice".

36. Learned counsel for the appellant submitted that the obligation to account for the balance rice was discharged when the entire quantity of processed rice was shown to have been distributed to persons nominated to receive the processed rice under the agreement. We have already rejected this contention earlier. The accounting must necessarily relate to the excess amount received by the miller, in the circumstances of the present case.

37. In the light of the above discussion the decree of the court below has to be affirmed. We do so. The appeal is dismissed. However, in view of the fact that the question involved is one on which there was a conflict of views which was required to be resolved by an authoritative pronouncement of the Full Bench, we do not make any order as to costs.