

(1956) 02 AHC CK 0009
In the Allahabad High Court
Case No : Special Appeal No. 158 of 1954

Seth Banarsi Dass

APPELLANT

Vs

Cane Commissioner, U.P. and Another

RESPONDENT

Date of Decision : 02-02-1956

Acts Referred:

Constitution of India, 1950 — Article 14

Contract Act, 1872 — Section 10

Uttar Pradesh Sugar Factories Control Act, 1938 — Section 18, 18(2), 30, 30(1), 30(2)

Uttar Pradesh Sugar Factories Control Rules, 1938 — Rule 23, 23(6)

Citation : AIR 1956 All 725 : (1956) 26 AWR 847

Hon'ble Judges : Mootham, C.J; Agarwala, J

Bench : Division Bench

Advocate : G.S. Pathak and R.S. Pathak, for the Appellant; Gopi Nath Kunzroo and N.D. Pant, for the Respondent

Final Decision : Dismissed

Judgement

Agarwala, J.—The appellant Seth Banarsi Dass was the lessee of a sugar mill at Bijnor known as "Shiva Prasad Banarsi Das Sugar Mills". The Cane Marketing Society Limited, Bijnor, (hereinafter called the Society) supplied to the appellant sugar cane for the years 1949-50 and 1950-51. The price of the cane was duly paid but there was a dispute between the appellant and the Society with regard to the commission payable to the latter.

2. The supply of sugarcane to the mills is controlled by the U.P. Sugar Factories Control Act (Act I of 1938) and the Rules made thereunder. u/s 14 of the Act and the order of the State Government made thereunder an occupier of a sugarcane crushing factory is required to submit to the Cane Commissioner, on or before the prescribed date, an estimate, in the prescribed form and manner, of the quantity of "cane which will be required in the factory during a particular crushing season.

The Cane Commissioner thereupon examines the estimate and publishes the same with such modifications, if any as he thinks fit to be made therein after consultation with an advisory committee. Thereafter he declares a certain area to be a reserved area for the purpose of the supply of cane to that factory. Then u/s 18(1) a cane-grower or a Cane-growers" Co-operative Society in such reserved area has to offer, in the form and by the date prescribed, to supply to the occupier of the factory for which the area is reserved cane grown in that area not exceeding the quantity prescribed by the Cane Commissioner.

The occupier or manager of the factory is then required u/s 18(2) of the Act to enter into an agreement "in such form, by such date and on such terms and conditions as may be prescribed" to purchase the cane so offered. The Rules framed under the Act prescribe a form for the offer of a supply Of cane by a cane grower or a Cane-Growers" Cooperative Society u/s 18(1). This is Form No. 10.

The Rules also prescribe another form, Form No. 12, for an agreement for the purchase of cane as required by Section 18(2). The important point to note here is that the agreement form shows that the signatures of both the parties, the seller's and the buyer's, are to be appended to the agreement. Section 27 of the Act prescribes the penalty for certain acts done in contravention of the provisions of the Act. Sub-section (3) of that section provides that if the occupier or manager of a factory

""intentionally fails to maintain correctly the register mentioned in Sub-section (1) of Section 17, or intentionally fails to enter into an agreement as required by Sub-section (2) of Section 18..... he shall be punishable with fine which may extend to two thousand rupees."

Section 30 empowers the State Government to frame rules to carry out the provisions of the Act. Rule 23 of these rules provides for arbitration in case of a dispute arising touching an agreement entered into u/s 18(2) of the Act.

3. In accordance with the provisions of Section 18 (1) of the Act, the Society offered to the appellant the supply of cane in the area reserved for the aforesaid mills in Form No. 10 for the years 1949-50 and 1950-51. For the year 1949-50, the Society offered to sell 36.25 lakh maunds of cane and for the year 1950-51 it offered 32 lakh maunds. According to the appellant the Society should have offered 39 lakh maunds of cane for the year 1949-50 and 46.92 lakhs for the year 1950-51.

Agreements in Form No. 12, signed by the Society, were also sent by the Society for the signature of the appellant, but the appellant failed to sign them. In spite of his failure to sign them, the cane was supplied by the Society to the appellant in both the years according to the offers made by the Society in Form No. 10.

4. The appellant's case was that the Society failed to supply a certain quantity which ought to have been supplied over and above what was offered by it. The appellant's case further was that he did not enter into any agreements for the

purchase of cane because of the default of the Society in supplying to him the full quantity of cane to which he claimed he was entitled. He preferred a claim before the Cane Commissioner by means of a letter dated 31-10-1950, claiming compensation for the Society's omission to supply the requisite quantity of cane to him. He however paid to the Society the price of the cane actually supplied to him, and in the accounts sent by him to the Society he also allowed the Society the amount of commission which the Society was entitled for the cane already supplied by it, but he debited the Society with the loss suffered by him on account of the alleged short supply of cane.

5. The Society's case was that the appellant was not entitled to any compensation for short supply of cane because what was offered was the only quantity which the Society was bound to supply, and that it was entitled to the commission claimed by it. The Society also filed a claim against the appellant before the Cane Commissioner under the provisions of Rule 23 for the recovery of the commission amounting to Rs. 2,63,624/2/6 along With interest on this amount.

6. Before however the Cane Commissioner could decide the matter the appellant came to this Court with a petition under Article 226 of the Constitution alleging that as there was no completed agreement between the parties as required by Form No. 12 of the Rules, the Cane Commissioner had no jurisdiction to decide the dispute between the parties, and praying for an order quashing the proceedings pending before the Cane Commissioner and prohibiting him from proceeding further with the arbitration.

The appellant made the application on two grounds: firstly, that there was no agreement, between the parties as the agreement form was not signed by him and, secondly, that Rule 23 was ultra vires as it contravened Article 14 of the Constitution as it created an unreasonable discrimination inasmuch as discretion was reserved to the Cane Commissioner to try one particular case himself (his decision not being appealable and to send another case to an arbitrator or arbitrators from whose award an appeal lay.

7. Rule 23 may be quoted here:

"23. (1) Any dispute touching an agreement referred to in Section 18(2) or Section 19(2) of the Act shall be referred to the Cane Commissioner for decision or, if he so directs, to arbitration. No suit shall lie in a civil or revenue Court in respect of any such dispute.

(2) If the Cane Commissioner directs the reference of a suit to arbitration, it shall be referred to a sole arbitrator acceptable to the parties concerned. In case no sole arbitrator is acceptable to both parties the dispute in question shall be referred to a Board of Arbitration, consisting of one representative of each party and an umpire acceptable to both representatives. If the representatives of the parties are unable to elect such an umpire, within a fortnight, the Cane Commissioner shall either himself act as umpire, or nominate one. The umpire

shall be the President of the Board of Arbitration and shall have a vote in case of disagreement between the representatives.

(3) The sole arbitrator or the President of Board of Arbitration shall have the full power of a Court in respect of summoning the parties, witnesses and records.

(4) The award of the sole arbitrator or Board of Arbitration shall be binding on both parties and shall not be called in question in any civil or revenue Court.

(5) The sole arbitrator or the Board of Arbitration shall give an award within the time fixed by the Cane Commissioner, failing which the Cane Commissioner may decide the dispute himself or appoint another arbitrator or arbitrators for the purpose.

(6) Any party considering himself aggrieved by an award may appeal to the Commissioner of the Division in which the factory is situated within one month of the date of the communication of the award and the Commissioner shall pass such order as he deems fit.

(7) The Commissioner's order in appeal shall be final.

(8) On application to the Civil Court having jurisdiction over the subject matter of the decision or award, the decision of the Cane Commissioner or the award of the arbitrator or arbitrators, or the Commissioner's order in appeal against an award, shall be enforced by the Court as if such decision, award, or order in appeal were a decree of that Court."

8. The Society's contention was that in this case there was an agreement between the parties, the terms of which were recorded in a document in Form No. 12, that the parties acted upon it, that Cane was supplied and accepted in accordance with its terms and that the price of the cane was also paid accordingly. The mere fact that the appellant failed to sign the form cannot, it was said, entitle him to take advantage of his own default, and in any case the failure of one or both the parties to append their signatures on the form, the terms of which were accepted by the parties in their dealings, is immaterial and does not render the agreement ineffective.

It was further the Society's case that Rule 23 was not ultra vires as, firstly, the rule does not provide for any discrimination, because Sub-rule (6) of Rule 23 applies both to the decision of the Cane Commissioner and to the so-called award of the sole arbitrator or a board of arbitrators, the word "award" used in that "clause having been used in a general sense including the decision of the Cane Commissioner, and, secondly, as the so-called discrimination as based on reasonable grounds.

9. The learned single Judge held that, although the agreement in Form No. 12 was not signed by the parties it was nevertheless an agreement upon the terms mentioned in the said Form, and that the provisions of Rule 23 applied to such an agreement and were not rendered void by reason of Article 14 of the Constitution.

10. The first point to be considered is whether the Cane Commissioner had jurisdiction to entertain the dispute between the parties under Rule 23 of the Rules. Rule 23 (1) speaks of any dispute touching an agreement referred to in Section 18(2) of the Act. In order that the Cane Commissioner may have jurisdiction to decide, the dispute, it must first be found that there was an agreement such as is referred to u/s 18(2) of the Act. The existence of the agreement is the sine qua non of the jurisdiction of the Cane Commissioner.

11. The finding of the learned single Judge is to the effect that the parties by their conduct agreed to supply and receive the cane on the terms mentioned in the written document in Form No. 12. With respect, we agree with that finding. It is true that the appellant claimed that the Society was liable to deliver more cane than was offered by it, but the appellant did desire the Society to supply the whole of the cane which was offered by it and which was mentioned in the document. The appellant sent daily requisitions for the purchase of cane during the seasons 1949-50 and 1950-51 and the cane was supplied to the appellant as mentioned in the document.

The appellant paid the price according to the terms mentioned therein and also credited the Society with the commission earned by it on the amount of the cane supplied by it. The mere fact that the appellant wanted the Society to supply more cane and debited the Society for not sending that quantity of cane does not detract from the fact that the appellant obtained and the Society supplied the quantity of the cane which was actually supplied according to the terms agreed upon between the parties. It cannot, therefore, be said that there was no agreement for the supply of that cane which was mentioned in the written agreement.

12. It is to be noticed that it is not necessary for the existence of a written agreement that the parties should have put their signatures to the document embodying the terms of the agreement, for as was said by this Court in Chandi Prasad Misir Vs. Balaji Misir and Others, "The plain acceptance of a document containing all the terms is sufficient"; see also Firm Mangal Chand v. Firm Pyare Lal AIR 1949 EP 199 (B) where the latter authorities considered.

13. It was however urged that as the appellant did not sign the agreement in form No. 12 it was not such an agreement as is referred to in Section 18(2). The argument is that that section prescribes an agreement exactly in the same form as is given in the Rules, and the Rules make provision for the signatures of both the parties. It is urged that in the absence of the appellant's signature it could not be said that the agreement was one which was required by the said clause. The section prescribes an agreement "in such form, by such date and on such terms and conditions as may be prescribed".

The obvious intention is that the agreement should be in writing and in the form prescribed. The section does not specifically require that the agreement shall be signed by the parties, and though the form makes provision for the signatures of

the parties the omission of the signatures does not in our opinion vitiate the written agreement; we do not think that the signatures are an essential part of the form. If the agreement is substantially in the form prescribed by the rules and the variation is in respect of a matter which is immaterial, the provisions of the rules cannot in our view be said to have been violated or not complied with.

In one case a distinction was drawn between the expressions "in the form" and "in accordance with the form". In *Thomas v. Kelly* (1888) 13 AC 506 (C) Lord Macnaghten seems to have been of the opinion that where a statute requires certain things to be done "in the form" it must be done strictly in accordance with the form, whereas if the statute required a thing to be done "in accordance with the form" it might be done substantially in accordance with the form.

The House of Lords had in this case to consider a Section of the Bills of Sale Act which placed a restriction on the form of a bill, and it has not been brought to our notice that this distinction between the two phrases has been made in any other case.

14. On the other hand in *Ex parte Parsons, In re Townsend* (1886) 16 QBD 532 (D) the expression used by the statute was "in accordance with the form", and Lord Esher described the requirement of the statute as being "in the form" (see p. 545 lines 7 to 9). We do not consider that there is any material difference between the two expressions. Where a statute requires an agreement to be "in the form" or "in accordance with the form" prescribed by it, then unless the contrary is clearly expressed, "it is a sufficient compliance with the statute if the agreement is substantially in the form; any inconsequential variation is immaterial.

15. The next point for consideration is whether Rule 23 is ultra vires on the ground that it gives an unfettered discretion to the Cane Commissioner to try the case himself or to send it to arbitration. The argument is that while the decision of an arbitrator can be appealed against under Clause (6) of Rule 23 no appeal lies from the decision of the Cane Commissioner, and this is a very material difference between the two procedures.

It is urged that the discretion of the Cane Commissioner is absolute and unrestricted as he can retain any case on his file or send it to an arbitrator or a Board of Arbitration according to his sweet will and that this amounts to an unreasonable discrimination which is void under Article 14 of the Constitution.

16. It is urged that the word "award" in Clause (6) of Rule 23 refers to the award of the sole arbitrator or the Board of Arbitration and does not refer to the verdict of the Cane Commissioner which is described as a "decision". No doubt the verdict of the Cane Commissioner is referred to as a "decision" in Sub-rule (1) and Sub-rule (8) of Rule 23, and the decision of the sole arbitrator or the Board of Arbitration is referred to as an "award"; but an award means a decision, and in this sense the decision of the Cane Commissioner is also an award, and in our opinion the word "award" in Sub-rule (6) and in Sub-rule (8) includes both the

"award" of the sole arbitrator or Board of Arbitration and the "decision of the Cane Commissioner. The reason is that the Cane Commissioner under Rule 23 acts as an arbitrator and not as a Court and his decision is also an "award".

It will be observed that Rule 23 is headed as "Arbitration", and the procedure for arbitration is that the dispute shall be referred either to the Cane Commissioner or the arbitrator or the Board of Arbitration. Further, Clause 10 of Forms No Section 12 and 13 require a dispute between the parties regarding the quality and condition of the cane, the place of delivery, the instalments and other matters pertaining to the agreement to be referred to "arbitration" in the manner provided for in the Rules. This would certainly include a reference to the Cane Commissioner.

The word "suit" in Sub-rule (2) of Rule 23 is we think obviously a mistake for the word "dispute", because the Cane Commissioner does not entertain a suit. Sub-rule (1) expressly says that no suit shall lie in a civil or revenue Court in respect of any dispute touching an agreement referred to in Section 18(2) or Section 19(2) of the Act.

The "decision" or the "award" of an arbitrator is one and the same thing : the words are interchangeable. It is we think unlikely that it was the intention of the rule making authority that an appeal should lie against the decision of a sole arbitrator or of a Board of Arbitration (in which the umpire may be the Cane Commissioner himself), & that no appeal should be allowed against the decision of a Cane Commissioner when he acted singly.

17. It is true that in various sub-rules of Rule 23 the decision of a sole arbitrator or a Board of Arbitration is referred to as an "award" while the word "decision" is used for the verdict of the Cane Commissioner, but it is not unknown that the same word may be used in one part of a section in a wider sense, while it may be used in a limited or special sense in another part of the same section, vide *Doe d. Angell v. Angell* (1946) 9 QB 328 (356) : 115 ER 1299 (1310) (E). Illustrations of the same word being used in different senses in the same Act and in even the same sections are collected in *Maxwell on Interpretation of Statutes*, Edn 10, at pp. 323 to 325.

18. I am therefore of opinion that the contention that Rule 23, U. P. Sugar Factories Control Act enacts an unreasonable discrimination and is therefore void as being contrary to Article 14 of the Constitution is without force.

19. In the result, therefore, this appeal fails, and it is dismissed with costs.

Mootham, C.J.

20. I am in agreement with the judgment of my brother save as regards the validity of Sub-rule (6) of Rule 23 of the Rules.

21. In my opinion Rule 23 has been so framed as to make a clear distinction between the decision of the Cane Commissioner and the award of an arbitrator or

arbitrators, and to provide only for an appeal from the latter. That distinction is to be found in the Act itself. Section 30(1) of the Act empowered the Provincial Government to make rules to carry out the provisions of the Act, and Sub-section (2) of that section enacts that without prejudice to the generality of the power conferred upon the Provincial Government by Sub-section (1) the rules may provide for

"(u) the reference to the Cane Commissioner of disputes relating to the supply of cane for decision or if he so directs to arbitration, the mode of appointing an arbitrator or arbitrators, the procedure to be followed in proceedings before the Cane Commissioner or such arbitrator or arbitrators and the enforcement of the decisions of the Cane Commissioner or the awards of arbitrators;"

22. Throughout Rule 23 a distinction is made between the finding of the Cane Commissioner and that of the arbitrator or arbitrators; the former is invariably referred to as a decision and the latter as an award; and in Sub-rule (8) where both terms are employed care is, it appears to me taken to retain this distinction, for what the sub-rule says is--

"(8) On application to the Civil Court having jurisdiction over the subject matter of the decision or award, the decision of the Cane Commissioner or the award of the arbitrator or arbitrators, or the Commissioner's order in appeal against an award shall be enforced by the Court as if such decision, award or an order in appeal were a decree of that Court."

Had it not been that my brother takes a contrary view I should have thought the conclusion to be inescapable that the word "award" is used in this rule to distinguish the finding of an arbitrator or arbitrators from that of the Cane Commissioner; and that accordingly Sub-rule (6) provides only for an appeal from the former.

23. It is no doubt true that the Cane Commissioner may under Sub-rule (2) act as an umpire & the President of the Board of Arbitrators and that his finding, if he is called upon to vote, may be subject to appeal. This may be illogical, but it is not in my judgment enough to show that it was the intention of the Provincial Government that an appeal should lie from the decision of the Cane Commissioner as an award within the meaning of Sub-rule (6).

24. It is also the case that Clause (10) of the agreement forms No Section 12 and 13 provides that certain disputes between the parties to the agreement shall be referred to arbitration in the manner provided for in the rules, and that this is doubtless a reference to the procedure to which reference is made in Rule 23; but it seems to me less illogical to hold that the word "arbitration" in Clause (10) of these forms of agreement and as the heading of Rule 23 is to be construed as referring to the methods of settlement referred to in that rule than to hold that throughout the rule award and decision are interchangeable terms.

25. I think, therefore, that to hold that it was the intention of the legislature that

the word "award" in Sub-rule (6) includes a decision of the Cane Commissioner would involve an unjustifiable straining of language. As Lord Denham C. J., said in *The Queen v. The Poor Law Commissioners* (1838) 6 A&E 56 at p. 68 (F) we must give "a fair and reasonable construction to the language used by the legislature; but we are not to assume the unwarrantable liberty of varying that construction for the purpose of making the act consistent with any views of our own."

26. I am, however, further of opinion that Sub-rule (6) is invalid as being ultra vires of the U. P. Sugar Factories Control Act. Section 30 of that Act empowers the Provincial Government to make rules to carry out the provisions of the Act; but no preceding section of the Act contains any provision with regard to arbitration or the settlement of disputes which may arise out of the application of the Act. The only provision to this effect is to be found in Clause (u) of Sub-section (2) of Section 30 which I have already quoted, and accordingly, in my judgment, the ambit of the power of the Provincial Government to make rules with regard to the settlement of disputes is to be found in and restricted to the provisions of that clause; the Provincial Government cannot as regards this matter seek refuge in the generality of the power conferred by Sub-section (1) of Section 30.

27. Now Clause (u) provides that the Provincial Government may make rules to provide for

(i) the reference to the Cane Commissioner of disputes relating to the supply of cane for decision or, if the so directs, to arbitration,

(ii) the mode of appointing an arbitrator or arbitrators,

(iii) the procedure to be followed in proceedings before the Cane Commissioner or such arbitrator or arbitrators and

(iv) the enforcement of the decisions of the Cane Commissioner or of the awards of the arbitrators.

This clause does not in terms give power to the Provincial Government to provide by rule for any appeal from a decision of the Cane Commissioner or from an award of an arbitrator, and in the absence of such a provision it has in my opinion no such power. I am compelled therefore to conclude that in making Sub-rule (6) of Rule 23 the Provincial Government exceeded its powers and that that sub-rule is therefore invalid.

28. Mr. Pathak has contended that this sub-rule is so inextricably bound up with the rest of the rules that it is not severable and the whole rule is a dead letter. I am not able to accept this contention. The criterion to be applied in such cases was stated by Viscount Simon in AIR 1948 194 (Privy Council) .

"The real question is whether what remains is so inextricably bound up with the part declared invalid that what remains cannot independently survive or, as it has

sometimes been put, whether on a fair review of the whole matter it can be assumed that the legislature would have enacted what survives without enacting the part that is ultra vires at all."

29. There can I think be no doubt that even without Sub-rule (6) Rule 23 is a perfectly workable rule and can survive independently, but Mr. Pathak contends that if the Provincial Government had been aware that it could not provide for an appeal from an award it would not have made the rule at all. I am unable to agree with this submission for it seems to me that, had the Provincial Government been advised that it could not by rule provide for an appeal from awards, it is reasonable to assume that it would still have done what it could, namely provide for a final settlement of a dispute either by the Cane Commissioner or by an arbitrator or arbitrators.

30. In my opinion, therefore, the Cane Commissioner has jurisdiction to decide the dispute in the present case. I accordingly agree, though for somewhat different reasons, that this appeal fails and must be dismissed.

BY THE COURT

31. The appeal is dismissed with costs which we assess at Rs. 400/- of which Rs. 200/- will be payable to respondent 1 and Rs. 200/- will be payable to respondent 2.