
(1979) 03 CAL CK 0016
In the Calcutta High Court

Sitaram Saraogi

APPELLANT

Vs

Kanchan Oil Industries Pvt. Ltd.

RESPONDENT

Date of Decision : 23-03-1979

Acts Referred:

Arbitration Act, 1940 — Section 30, 33

Citation : 83 CWN 628

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Advocate : S. Gupta and B.K. Chatterjee, for the Appellant; Aninda Mitra and Hirak Mitter, for the Respondent

Judgement

Sabyasachi Mukharji, J.—In this application under sections 30 and 33 of the Arbitration Act, 1940 the petitioner seeks an order that the Award No. 85 of 1977 dated 19th of May, 1977, made by the Tribunal of to Arbitration. Bengal Chamber of Commerce & Industries in Case No. 229 of 1976 be declared null and void, illegal and/or set aside. At the outset I must record that when the matter had came up for hearing originally, the matter had been set down to be tried on evidence. It would, therefore, be necessary at the relevant stage to discuss the evidence, both documentary and oral, adduced in this case to resolve the controversy. But before I do so in order to appreciate the contentions urged it would be relevant to refer to certain facts. The petitioner is one Sitaram Saraogi who claims to be carrying on business under the name and style of Messrs. Benhour Radiant Company as sole proprietor thereof, inter-alia, at No. 23 A, Netaji Subhas Road, Calcutta. It is the case of the petitioner that by exchange of a Sale Note and a corresponding Bought Note both bearing No. 726 and dated the 2nd April, 1976 entered through the brokers, Gopal Company, the petitioner had purported to sell to the Respondent Kanchan Oil Industries Private Limited and the Respondent had purported and agree to buy from the petitioner 1000 Metric tones (plus/minus 50%) Pure Sal-seeds Kernels Decorticated-collection of year 1976-Bengal origin, 8% moisture guarantee at the rate of Rs. 811.00 metric tonne gross, including sound secondhand gunnies, tax extra, S.T.D. form extra as

applicable to be delivered at the respondent's factory at Jhargram and to be commenced from 1st June, 1976 onwards payment within a week from date of delivery of the goods by bank draft. As this is the most important document in resolving the controversy it would, in my opinion, be relevant to refer to a copy of the said document the Seller's Note containing the terms which has been annexed as Annexure A to the said petition.

The said document is as follows :-

Gopal Company Oil & Produce Brokers 29/1 Armenian Street, Calcutta-1

Seller's Note.

Confirmation of Bargain closed No. 726

Date. 2.4.1976.

Dear sirs,

We have closed to day the following bargain as per your order on your account :-

BUYER :

M/s Kanchan Oil Industries (P) Limited, 9, Crooked Lane, Calcutta-1.

SELLER :

M/s. Benhoor Radiant Company, 23/A, Netaji Subhas Road, 5th Floor, R. No. 13, Calcutta-1

ARTICLE :

Pure Sale-seeds Kernels Decorticated-Collection of year 1976.

QUALITY :

Bengal Origin-8% Moisture Guarantee.

QUANTITY:

1000 (one thousand) Metric Tonnes = +/- 50%

RATE :

Rs. 811/- (Rupees eight hundred eleven) only, per metric tonne gross including sound second-hand gunnies, tax extra, S.T.D. From Extra as applicable.

DELIVERY :

To be delivered at buyer's factory at Jhargram and to be commenced from 1st June onwards.

WEIGHMENT & SAMPLING :

To be done in presence of Seller's and Buyer's representatives at buyer's factory.

PAYMENT :

Within a week from date of delivery of the goods by bank draft.

REMARKS :

All other terms as usual.

BROKERAGE :

All other terms as usual.

ANALYSIS :

In case of disputes on Buyer's analysis results, the sample sealed by the Seller to be referred through buyer to M/s. R. V. Briggs & Co. (Private) Ltd. Calcutta or Italab Private Ltd. Calcutta for final analysis whose decision shall be binding on both the parties of this confirmation.

ARBITRATION :

In the event of dispute arising out of this confirmation, the same shall be referred for settlement in Calcutta to the Tribunal of Arbitration of the Bengal Chamber of Commerce & Industries, Calcutta, whose decision it is expressly agreed, shall be binding on both the parties of this Confirmation.

NON TRANSFERABLE :

This confirmation and/or any document of title of the goods of any of them herein referred to and delivery orders R/Receipts and/or B/Lading, retaining to or against this confirmation shall not be transferable, assignable by the Seller or by the Buyer to any.

Yours faithfully. For GOPAL COMPANY

SD/- N. D. Bajoria.

N. B.

Brokerage due is without any abatement confirmation cancelled or not cancelled, goods delivered or not delivered no deduction will be allowed. Broker is not responsible for any loss and/or damage sustained by parties in case any dispute arising out of this confirmation. In case of dispute, this confirmation is subject to Calcutta Jurisdiction.

2. It is the case of the petitioner that the subject matter of the said contract was "Sal-seeds" which are sold and purchased in the trade and/or market as Pure Sal seeds Kernels Decorticated. The petitioner further states that the petitioner was the lessee under the Government of West Bengal at the relevant time in respect of certain forest areas in Bankura Division. Therefore, the produce which were the subject matter of the said contract were dependant on whether condition and the weather condition, according to the allegations of the petitioner at the

relevant time became such that the contract could not be performed and stood terminated and this position was accepted. This contention, however, I am merely referring in passing because this contention was not pressed before me and no evidence or arguments were advanced on this basis. The main contention upon which the petitioner relied upon was that the purported contract in question was covered by the Forward Contracts (Regulation) Act, 1952 and as according to the petitioner the contract in question was not a "ready delivery contract" nor a "specific delivery contract" nor a "non-transferable specific delivery contract" within the said Act, the contract come within the said Act, the contract come within the mischief of the said Act and as no permission was obtained from the Government the contract was void. I will presently refer to the relevant provisions of the Act. But before I do so in order to complete the narration of events leading to the making of this application it would not be inappropriate to refer to the fact that as there was non-delivery of the goods in question the Respondent preferred a claim for Rs. 7,33, 500/- being the alleged difference between the contract price and the market price of 1500 tonnes to the Tribunal of Arbitration, Bengal Chamber of Commerce and Industry where the same was registered and marked as Case No. 229 of 1976. The petitioner challenged the jurisdiction of the Tribunal. But in spite of the same the Tribunal made an award being Award No. 85 of 1977 whereby the petitioner has been directed to pay to the Respondent a sum of Rs. 2,08,000/- together with costs at Rs. 660/-. The petitioner, therefore in this application under the Arbitration Act, challenges the said award as void and illegal on the ground that the said contract contravened the provisions of the Forward Contract (Regulation) Act, 1952 and as such was illegal and void and therefore are unenforceable.

3. Before I deal with the case of the Respondent and the other contentions it may be necessary to refer to certain provisions of the Forward Contract (Regulation) Act, 1952. The Act in question was an Act to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and of matters connected therewith. The forward contract is defined u/s 2 (c) as follows :-

(c)"forward contract" means a contract for the delivery of goods at a future date which is not a ready delivery contract;

ready delivery contract is defined as follows u/s 2(i) :-

ready delivery contract" means a contract which provides for the delivery of goods and the payment of a price therefore, either immediately or within such period not exceeding eleven days after the date of the contract and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in respect of any goods, the period under such contract being capable of extension by the mutual consent of the parties thereto or otherwise ;

non-transferable specific delivery contract" is defined u/s 2(f) as follows : -

(f) "non-transferable specific delivery contract" means a specific delivery contract,

the rights or liabilities under which or under any delivery order, railway receipt, bill of lading warehouse receipt or any other document of title relating thereto are not transferable;

specific delivery contract" has been defined u/s 2(m) as follows :-

(m) "specific delivery contract" means a forward contract which provides for the actual delivery or specific qualities or types of goods during a specified future period at a price fixed thereby or to be fixed in the manner thereby agreed and in which the names of both the buyer and the seller are mentioned;

and "transferable specific delivery contract" has been defined u/s 2(m) as follows :-

(n) "transferable specific delivery contract" means a specific delivery contract which is not a non-transferable specific delivery contract (and which is subject to such conditions relating to its transferability as the Central Government may, by notification in the Official Gazette, specify in this behalf).

Section 17 of the Act is as follows :-

17. (1) The Central Government may, by notification in the Official Gazette, declare that no person, shall, save with the permission of the Central Government, enter into any forward contract for the sale or purchase of any goods or class of goods specified in the notification and to which the provisions of section 15 have not been made applicable, except to the extent and in the manner if any, as may be specified in the notification.

(2) All forward contracts in contravention of the provisions of sub-section (1) entered into after the date of publication of the notification thereunder shall be illegal.

(3) Where a notification has been issued under sub-section (1), in the absence of anything to the contrary in the notification, apply to all forward contracts for the sale or purchase of any goods specified in the notification (entered into on or before the date of the notification) and remaining to be performed after the said date as they apply to all forward contracts for the sale or purchase of any goods specified in the notification u/s 15.

4. It may be mentioned in this connection that by a notification bearing No. S. O. 63(E) dated 1st of February, 1975 duly published in the Gazette of India, the Central Government declared that no person shall save with the permission of the Central Government enter into any forward contract for the sale, purchase of, inter-alia, "Sale-seed." This position is not disputed by the respondent. It is also not disputed that no permission of the Central Government was obtained for entering into the said contract either by the petitioner or by the respondent.

It is now necessary to consider the stand point of the respondent. The Respondent in its affidavit-in-oppositions through one Sanjeev Gupta affirmed on the 30th of November, 1977 has affirmed that Pure Sal-seeds Kernels

Decorticated is not the same as Sal-seeds. He has also denied that Sal-seeds are sold on purchased or marketed as Pure Sal-seeds Kernels Decorticated. The Respondent has asserted that the contract in question expressly stated the same to be non-transferable specific contract to be performed wholly by actual tendering of the goods and the payment of full price thereof. The Respondent has also denied that the contract was given a go-by and the same was agreed to be the Respondent as alleged by the petitioner. I need not as I have mentioned before, deal with this question in any detail because this point was not stressed before me in this application. Furthermore, this point had been specifically taken before the arbitrators and the arbitrators had specifically negated this contention which they were competent to do. According to the Respondent Pure Sal-seeds Kernels Decorticated are required as raw materials for the oil extraction plant of the respondent. The said contract was to be performed wholly by actual delivery of the goods mentioned therein to the factory of the respondent. The Respondent has further reiterated that it was not the business of the Respondent to buy Pure-Sal-seeds Kernels Decorticated Oil as a commodity. The Respondent buys the said goods only for the purpose of actual consumption as raw material for running oil extraction plant of the respondent. In the premises, according to the Respondent the contract was not in contravention of any of the provisions of the Forward Contract (Regulation) Act, 1952, and as such the notification dated 1st of February, 1975, had no application to the contract which is the subject-matter of his application, because according to the respondent, the said contract was non-transferable specific delivery contract and secondly, the said contract was to be performed wholly by actual tendering of goods and payment thereof and thirdly, the subject matter of the said contract was Pure Sal-seeds Kernels Decorticated. The Respondent has also taken the plea that after participation in the arbitration and after having failed to perform its contract the petitioner has taken this plea of the contract being void being in violation of law as an after thought and as such should not be allowed to agitate this ground. These in essence are the points upon which Respondent has based its opposition to this application.

5. I have set out the provisions of the Forward Contracts (Regulation) Act, 1952 and I have also referred to the relevant notification which brought forward contract for the sale and purchase of Sal-seeds within the mischief of the said Act. It is therefore, now necessary to consider whether the contract in view of the evidence adduced, both oral and documentary and in the light of the legal principles applicable can be said to be void. To my mind two cardinal questions require consideration amongst others in disposing of this application namely, whether the Sal-seeds which come within the mischief of the Act was the same thing as Pure Kernels Sal-seeds Decorticated. Secondly, it is necessary to consider whether the contract came within the mischief of the Act. As I have indicated before it cannot be disputed that the contract in question was a forward contract because it was the contract for delivery of goods at a future date and it was not the ready delivery contract in view of section 2(c) and section 2(i) of the

said Act. The next material question is whether the contract could be said to be a specific delivery contract in terms of section 2(m) of the Act. In my opinion, it cannot also be disputed that actual delivery was intended, but the only question that is relevant for the present purpose is whether actual delivery during a specified future period had been fixed, in the other words, whether the period of delivery of the goods had been specified in the contract.

6. Before I consider the evidence and the material on this aspect it may be appropriate to refer to the relevant principles of law to which my attention was drawn from the bar on behalf of both the parties in this context. In this connection, firstly, it is material to refer to section 36 of the Indian Sale of Goods Act, 1930. Sub-section (2) of Section 36 stipulates that where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed the seller is bound to send them within a reasonable time. Reliance was placed on behalf of the Respondent on this provision of the Indian Sale of Goods Act, to 1930, emphasise the point that in this case reasonable time within which the goods had to be delivered must be inferred in view of the other terms of the contract and, therefore, the specification of the time for delivery as required by the Forward Contracts (Regulation) Act, 1952, has been complied with. Counsel emphasised that the specification may be either by express words or by necessary implication of law. My attention was also drawn to provisions of Section 63 of the said Indian Sale of Goods Act which provides that where in that Act any reference is made to reasonable time the question what is a reasonable time is a question of fact. It was submitted on behalf of the Respondent that it was easy to determine in view of the other terms of the contract to which I shall presently refer what is a reasonable time of delivery. Therefore, Section 63 read with sub-section (2) of section 36 makes the time for delivery certain in this case. In this connection my attention was drawn to a Division Bench decision of the Bombay High Court in the case of Dinkerrai Lalit Kumar Vs. Sukhdayal Rambilas, where the Division Bench emphasized that once the parties reduced the terms of their contract into writing the Court could only look at the writing alone in order to construe what the terms of the contract were. The terms of the contract could not be ascertained by allowing parole evidence as to what transpired antecedent to the contract or what the parties did subsequent to the contract. The Division Bench also emphasized that section 35 of the Sale of Goods Act, 1930 which imposed an obligation on the buyer to ask for delivery of the goods made no distinction between the sale of ready goods and future goods and the buyer could only be relieved of its statutory obligation to apply for deliver by express stipulation in the contract. Speaking about subsection (2) of section 36 the Division bench observed that the law implied a reasonable time within which the contract was to be performed when the contract itself was silent as to the time of performance. Once a reasonable time was implied within the meaning of sub-section (2) of section 36 the contract become a contract to be performed at a fixed time as much as if the parties themselves had fixed a specific time. In the one case it was the act of the parties

which determined the time when the contract was to be performed and in the other case it was by implication of law that the time was determined. But in either case time could not be extended by the unilateral act of a party. In the first case, when the fixed time had expired there would be a breach. In the latter case, when the reasonable time implied by the law has expired equally so there would be breach unless either in any one or the other case there was an agreement between the parties to extend the time for performance of the contract. Reasonable time must in each case depend upon the particular circumstances, the nature of the commodity, the question of transport, the time during which the contract was entered into and so on. Where the contract or sale was of ready goods and the parties contemplated that these should be dispatched as early as possible a fortnight's time from the date of the contract was held to be reasonable time. Deliveries made after the fortnight's time were not referable to the contract in suit but to a different transaction. Now, in this connection it has to be borne in mind that though Indian Sale of Goods Act, 1930 had been in existence even then by the express provision of the Forward Contract Regulation Act, 1952, it was specified that specific delivery contract meant a forward contract which would provide for, inter-alia, delivery during a specified future period. It is true that normally the specification may be by the act of the parties or by implication of law as emphasized by the Division Bench of the Bombay High Court. But in view of the peculiar mischief that the legislature wanted to avoid by enacting the Forward Contracts (Regulation) Act, 1952, it is doubtful whether specification by implication of law would suffice the requirements of the Act in question. The next decision to which reference must be made is the decision of the Division Bench of the Calcutta High Court in the case of Suwalal Jain v. Clive Mills Co. AIR 1960 Cal 91. There the Division Bench was dealing with the Forward Contract (Regulation) Act, 1952, and observed that it was well settled that "or" in section 2(f) was to be used conjunctively and not distributively and the contract could be said to be non-transferable only if the rights as also the liabilities under the contract as also under the documents of title relating thereto are not transferable. In order to come within the definition of section 2(f), therefore, the contract by its own terms must indicate that the rights and liabilities under the contract were not transferable. Thus, where under the terms of the contract at least the rights of the seller under the contract to obtain payment of the price of the goods could be transferred, it could not be said that the contract was non-transferable specific delivery contract within section 2(f) and as such the contract was a forward contract for the purchase and sale of raw jute which is prohibited by Section 17 of the Act. The division Bench, further, observed that if the contract itself was forbidden by law, as such illegal the arbitration by law, as such illegal the arbitration clause which formed part of the contract was also illegal and void. The taint of illegality attached to every part of the contract, including the arbitration clause. It was impossible to say that the arbitration clause was legal contract although the rest of the contract was illegal and that the arbitration clause did not save it from illegality. If the arbitration agreement was illegal and therefore legally non-existent the fountain head of the Arbitrator's

jurisdiction disappeared and any award which the arbitrator might have purporting to act under the legally non-existent arbitration clause was also invalid. Reliance was also placed on the decision of the Supreme Court in the case of Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, . The said decision is not very relevant except for the purpose that in deciding whether a particular item did come within the provision of a particular Act unless otherwise provided the popular meaning should be adopted. There the supreme Court was dealing with the meaning of the expression "Charcoal" under the M. P. Sales Tax Act, 1959. I suppose this decision was relied upon in aid of the proposition that in determining whether the expression sail-seed also including the goods as described in the contract the popular meaning should be adhered to. Reliance was also placed on the decision of the Supreme Court in the case of Modi and Co. Vs. Union of India (UOI), where the Supreme Court was dealing with the present Act and the Supreme Court emphasized that intention of the parties has to be gathered from the contract as a whole and the surrounding circumstances are also decisive. Counsel for the Respondent also drew my attention to the decision in the case of Niranjn Lal Ratan Kumar v. Kaluram Mahadeo Prasad 1974 ILR (2) Cal 194 there the learned single Judge of this Court was dealing with Forward Contract (Regulation) Act, 1952 and he come to the conclusion that the contract and as such was not hit by the Forward Contract (Regulation) Act, 1952 and the notification thereunder. The learned Judge then went to the question now far it was open to a party to question now far it was open to a party to question the arbitration award after taking part in the proceeding. In this connection also counsel relied on the decision of the Supreme Court in the case of Juggilal Kamlapat Vs. Pratapmal Rameshwar, where the Supreme Court was dealing with the pucca delivery order and whether it transferred title to the goods and the question was about an estoppel and proving by custom. The Supreme Court held that pucca delivery orders were not documents of title under the formity with what the party had contracted for, that a custom proved in one case should not be utilized to found facts on another and further than any custom could not modify the requirement of law and custom could into also be pleaded as an answer to the provisions of Section 92 of the Evidence Act. My attention was also drawn to the decision of the Supreme Court in the case of Banarsi Dass Chadha and Brothers Vs. Lt. Governor, Delhi Administration and Others, where the Supreme Court also reiterated that in construing expression used in a statute the ordinary and popular meaning should be preferred. The Supreme Court made the said observation in connection with the expression "Mineral" under the Mines and Minerals (Regulation and Development) Act, 1957.

7. Keeping in view the aforesaid legal principles I have now to examine the facts of the present case. In my opinion, the contract which I have set out hereinbefore stipulates that collection is of the year 1976. It further provides that moisture should be 8%, quantity is indicated and about delivery it is stipulated to be delivered at the buyers factory at Jhargram and to be commenced from 1st of

June, 1976 onwards. The description of goods as mentioned hereinbefore are "Pure Sal-seeds Kernels Decorticated". Now, as I have mentioned before the first question that requires consideration, is, whether the expression Pure Sal-seeds Kernels Decorticated meant the same thing as Sal-seeds. Now on this aspect there was both oral and documentary evidence; on behalf of the petitioner, one Sitaram Saraogi gave evidence before me. Now, there is a contract date 20th of May, 1975 which was entered into prior to this contract. The said contract appears in Part I of the brief of Document being Ext. A. Now, the said contract was for 200 Metric Tons of Pure Sal-seeds Kernels Decorticated. Now in respect of the same the documents in Ext. A being certificates challans duly appeared at pages 5, 6, 7, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22 and other documents up to page 50 establish beyond doubt that these goods when delivered or ordered for or received though in the contract described as Pure Sal-seeds Kernels Decorticated were accepted and paid for as Sal seeds. This corroborates the oral testimony of Saraogi and reference may be made to questions 9, 20, 21, 22, 34, 37 and 40. In questions 40 and 41 dealt with documents at page 51 which also was a contract for sale and purchase of Pure Sal-seeds Kernels Decorticated. It has been established by those documents that it had been treated by the parties as Sal-seeds. In view of this evidence which I find not to have been very much shaken in cross-examination, though he was asked in detail on behalf of the Respondent about dewinging and also about the process of decortication is done and he was also shown the material exhibits being Exts. 3, 4, 2 and I and was invited to agree to the difference between these and thereby accept the position that Pure Sal-seed Kernels Decorticated were different from Sal-seed simpleton, I am unable to accept this position in view of the evidence adduced both oral and documentary as indicated before. The testimony of the witness for the defendant namely Narayandas Bajoria who was a broker in the transaction does not in spite much confidence on this aspect of the matter. He has not been able to satisfactorily explain how Sal-seeds Kernels Decorticated are different from Sal-seeds though he was asked about these from question 109 onwards. He could not explain why in respect of the previous transaction the goods though described a pure Sal-seed Decorticated had been accepted and payment made as Sal-seeds. On the evidence as adduced, therefore, I am satisfied that the goods contracted for were Sal-seeds and come within the mischief of the notification referred to hereinbefore under the Act.

8. The next material question that requires to be considered is, whether there was any specified time fixed for delivery of the goods which were intended to be delivered in future. Now, on behalf of the petitioner my attention was drawn to the delivery clause which stipulated that delivery was to commence from the 1st of June, onwards. Emphasis was also laid on the fact that collection was for the year 1976 and it was also emphasized that after the collection was for the year 1976 and it was also emphasized that after the collections started in order to maintain moisture of 8% which was the quoted guarantee the transaction had to

be completed within reasonable time namely delivery had to be made within 2/3 months from 1st of June, 1976 of that particular year. As I have mentioned before it was emphasized that specification and time of delivery could be by implication of law and that could be done in this case. But it is also on evidence that the collection being dependent on seasonal vagaries there was no certainty as to within what time the collection would be completed. That is an uncertain element as to the period of delivery in view of the nature of the goods. Therefore, the ordinary principle of law enumerated under sub-section (2) of section 36 perhaps would not be applicable fully in a contract of this nature. Apart from that there is good deal of substance that where in spite of the requirement of sub-section (2) of section 36 read with section 63 of the Indian Sale of Goods Act, 1930 the legislature in order to take particular transaction out of the mischief of the Act stipulated that the period of delivery should be specified in my opinion the theory of specification by implication of law would not be applicable in a transaction of this nature specially having regard to the type of the goods contracted to be sold. It is true that perhaps in order to maintain 8% moisture goods could not lie after being collected for a very long period. But the collection though commencing from a particular date could not in view of the nature of the goods be completed within any specified time and naturally the delivery could not be also within a certain time. Therefore, the reasonable time could not be demarcated for this contract of future delivery of goods with any amount of certainty. It is for this purpose, in my opinion, in respect of other transactions which have been proved namely the transaction referred to at page 51 in Ext. A which is a transaction entered through broker G.C. Sharma & Co. it was stipulated that dispatch was to be made "within March, 1976." That was also a contract entered into between K. N. Oil Industries v. the petitioner and contract was for Sal-seed. Similarly, in respect of the other contract where the present broker acted namely, contract dated 20th of May, 1976 which appears at pages 1 and 2 Ext. A of the Brief of Document the delivery was fixed "between 16th and 30th of June, 1976". The same was also a contract for Pure Sal-seeds Kernels Decorticated. These documentary evidence indicate that in respect of other contracts for the same type of goods nor only commencing the period of delivery had been stipulated by the time during which delivery had to be completed was also indicated. In my opinion these corroborate the oral testimony of the plaintiff Sitaram Sraogi that in this case time had not been fixed. Reference may be made to questions 136 to 145, questions 150, 151, 152; 142 to 152, 139 to 141, 118 and 119 and other relevant questions. It may also be mentioned that the Respondent did not choose to come and give evidence though after the evidence of the broker had been closed leave was sought to tender the evidence of the respondent, but as no sufficient ground was indicated as to why he could not be called before I declined to give permission for him to be examined. In the aforesaid view of the matter I am, therefore, having regard to the nature of the goods, having regard to the transactions, in respect of these types of goods in other contracts must be held that the time for delivery was not fixed. If, that is so then in my opinion the contract in question comes within the mischief of the

Forward contracts (Regulation) Act, 1952, if that the petitioner did not take the plea before or did not raise these defences earlier may throw some doubt in judging credibility his testimony but do not, in my opinion, affect the legal consequences that is to affect the legal consequences that is to say if the contract is void the arbitration clause fails with it and if the arbitration clause fails the award is also bad and without jurisdiction. Participation before the arbitrators under a void contract under a void clause does not give any sanctity to the award.

9. In the aforesaid view of the matter I must declare the Award No. 85 of 1977 dated 19th of May, 1977 made by the Tribunal of Arbitration, Bengal Chamber of Commerce & Industry in Case No. 229 is null and void, illegal and is set aside. In the facts and circumstances of the case parties will pay and bear their own costs.