

(1945) 02 MAD CK 0011
In the Madras High Court

Tar Mahomed Janoo

APPELLANT

Vs

K.M.S. Lakshmana Aiyar and Sons

RESPONDENT

Date of Decision : 13-02-1945

Acts Referred:

Cotton Cloth and Yarn (Control) Order, 1943 — Section 12

Citation : (1945) ILR (Mad) 848 : (1945) 1 MLJ 436

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—This is an appeal from a judgment of Kunhi Raman, J., in a suit, tried on the Original Side of the Court.

The appellants, who are the plaintiffs, are a firm of merchants dealing wholesale in cotton yarn at Cocanada and other places. The defendants are a

firm also dealing in cotton yarn and have a branch at Cocanada. The defendants are the selling agents of the Madura Mills, Limited, for a certain

area in the Madras Presidency, but in the contract with which the appeal is concerned, they contracted as principals. On the 15th April, 1943, the

plaintiffs and defendants entered into a contract at Cocanada under which the defendants were to sell to the plaintiffs inter alia twenty-five half

bales of yarn, 60s second quality, at Rs. 27-8-0 per 5 lbs. The delivery was to be given in the month of August, 1943, but the contract provided

for an extension of the period by three months, should the delay be the result of a cause over which the sellers had no control. There was delay in

the fulfilment of this part of the contract, but it is common ground that the delay was excusable.

2. On the 4th September, 1943 the defendants wrote to the plaintiffs stating that these twenty five half bales of cotton yarn were ready for delivery

to them at Coca-nada. Delivery was not taken until the 29th September. On the 23rd of that month a notification was issued under the Cotton

Cloth and Yarn Control Order, 1943 (which will hereafter be referred to as "the order") by which a maximum price was fixed for cotton yarn of

this count. This was less than the contract price. When the plaintiffs took delivery, they did so under protest, as they considered that they were

entitled to a reduction in the price fixed by the contract as the result of the amendment in the Order. The defendants refused to give delivery until

the contract price was paid and consequently the plaintiffs were forced to comply with their demand. They filed the present suit to recover with

interest a sum of Rs. 5,125 which they maintain they had been unlawfully compelled to pay. The learned Judge dismissed the suit as he considered

that the Order did not apply to this contract. The plaintiffs have appealed.

3. In order to understand the position it is necessary to refer to various amendments made in the Order and to the Cotton Cloth and Yarn

(Contracts) Ordinance 1944, which will hereafter be referred to as "the Ordinance." The Order was promulgated on the 17th June, 1943. It did

not then fix maximum prices but gave the Textile Commissioner power to do so. On the 31st August, 1943, the Textile Commissioner fixed the

maximum prices, both ex-factory and retail at which yarn might be sold. The notification did not, however, fix the price of 60s. Clause 2 of the

notification said :

The ex-mill maximum prices apply in respect of all deliveries on and after the 19th August 1943, of goods originally contracted for delivery in

August, 1943 and onwards.

On the 23rd September, 1943, this notification was amended. The following clause was inserted as Clause 2:

The maximum prices, ex-mill and retail, for cloth and yarn of kinds or qualities other than those specified above shall be more or less, as the case

may be, than the prices fixed above by an amount equal to the customary difference between the prices of the nearest kinds or qualities specified

and the kinds and qualities not so specified.

Clauses 2 and 3 of the earlier notification remained, renumbered as 3 and 4 respectively. Here 60s were not referred to specifically but the

insertion of the new clause had the effect of fixing the ceiling price of 60s at Rs.

22-6-0 per 5 lbs

4. On the nth December, 1943, the Textile Commissioner issued a notification fixing the maximum prices ex-factory at which yarns could be sold.

For 60s the maximum price was Rs. 42 per 10 lbs carded and Rs. 45 per 10 lbs combed. The yarn sold by the defendants to the plaintiffs was to

be carded. Clause 8 of this notification said that the maximum retail price should be 20 per cent, above the prices set out in the notification or

above the actual ex-mill contract price stamped on the Remark label, whichever was less.

5. The Ordinance which was dated 13th January, 1944, was published in the Fort St. George Gazette on the 20th January, 1944. The notification

issued under the Order only referred to prices ex-factory and retail prices: The Ordinance dealt with contracts between one wholesale dealer and

another or ,a wholesale dealer and a retail dealer. Section 2 of the Ordinance states that where after the making¹ of a contract for the sale of

cotton cloth or cotton yarn by one wholesale dealer to another or by a wholesale dealer to a retail dealer, the maximum prices ex-factory and retail

at which cloth or yarn may be sold have been fixed under the Order then, notwithstanding anything to the contrary in the contract, when delivery

takes place in pursuance of a contract after the date of the Order, the maximum price which may be charged shall not in any case exceed the

maximum retail price fixed by the Order, nor shall it in the case of a first or subsequent sale after delivery from the manufacturer exceed by more than a

percentage to be fixed in this behalf by the Textile Commissioner the price paid on the occasion of"" the last preceding transfer "" Where the Order

has fixed a maximum price, the price charged cannot exceed the maximum. The section goes on to provide that where in pursuance of a contract

the buyer has paid a price exceeding that laid down by the section, whether voluntarily or an execution of a decree passed by a Court or

otherwise, he shall be entitled to receive from the seller any sum so paid in excess. Sub-section(2) says that the provisions of the section shall

apply to contracts whether made before or after the commencement of the Ordinance and to sales made in pursuance of a contract on or after the

15th August, 1943.

6. Therefore the Ordinance gives statutory sanction to an action like the present one. Unfortunately, in the Court below the plaintiffs did not base

any argument on the Ordinance and naturally the learned Counsel for the defendants did not refer to it.

7. On the 14th March, 1944, amendments were made in Section 12 of the Order which then provided that a dealer should not buy or sell except

to a consumer yarn at a price which exceeded by more than 3 per cent, the ex-mill maximum price or ex-null contract price, whichever was less,

when the godown or station was within 100 miles from the manufacturer's premises. If the godown or station happened to be more than 100 miles

away the percentage was to be 71

8. The claim by the plaintiffs for a refund of Rs. 5,125 does not take into account the amendment in the Order last referred to. Mr. Muthukrishna

Ayyar on their behalf very properly admits that the amendment applies to the contract in suit and that the maximum price fixed by the notification of

the 23rd September 1943 must be increased by 7 1/2 per cent, as Cocanada is more than 100 miles away from Madura where the yarn was

manufactured. On this basis the claim for refund must be reduced to Rs. 3,445-13-0.

9. For the respondents, Mr. Subbaraya Ayyar has contended that the refund must be based merely on the notification of the 11th December,

1943. He says that as a result of the Ordinance his clients are entitled to the benefit of Clause 8 of the notification of the 11th December, 1943,

because Section 2(1) of the Ordinance says that the maximum price which may be charged for yarn shall not exceed the maximum retail price fixed

by the Order. This argument ignores what follows in the sub-section. The part which Mr. Subbaraya Ayyar refers to does not apply here because

the case falls exactly within the provision next following, which says that the price shall not in the case of a first or subsequent sale after delivery

from the manufacturer exceed by more than a percentage to be fixed by the Textile Commissioner the price paid on the occasion of the last

preceding transfer The Textile Commissioner has fixed the price to be paid. It is fixed under the amendment of the 14th March 1944. The

Ordinance has retrospective effect. It applies to all contracts made before or after the commencement of the Ordinance and to sales made on or

after the 15th August, 1943, in pursuance of a contract made before or after the Ordinance.

10. Mr. Subbaraya Ayyar does not challenge the correctness of the figure of Rs.- 3,445-13-0 and for the reasons indicated we hold that the

plaintiffs are entitled to a decree for this amount with interest at six per cent, from the date of suit The plaintiffs will have costs on the decretal

amount both in this Court and in the lower Court.