

(1956) 04 AHC CK 0032
In the Allahabad High Court
Case No : Special Appeal No. 160 of 1955

The Co-operative Development and Marketing Union Ltd.,
Pharenda

APPELLANT

Vs

The Ganesh Sugar Mill Ltd. and Others

RESPONDENT

Date of Decision : 02-04-1956

Acts Referred:

Arbitration Act, 1940 — Section 2

Citation : AIR 1956 All 601 : (1956) 26 AWR 477

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

Bench : Division Bench

Advocate : J. Swarup, for the Appellant; Ambika Prasad, C.J. Saran and Raja Ram Agarwala, for the Respondent

Final Decision : Dismissed

Judgement

Mootham, C.J.—This is an appeal from an order of Mehrotra J. dated 19-4-1955, dismissing a petition under Article 226 of the Constitution.

2. The appellant, herein referred to as the Society, is a cane-growers' co-operative society; the first respondent, herein called the Company, is a limited company carrying on the business of manufacturing sugar out of sugarcane, and the second and third respondents are respectively the Commissioner of the Gorakhpur Division and the Cane Commissioner.

3. Individual cane-growers within the area which had been reserved for the supply of cane to the Company under the provisions of the United Provinces Sugar Factories (Control) Act, 1938, supplied their cane to the Company through the Society, and the Company, with the previous permission of the Cane Commissioner, had prior to 1-4-1952, advanced loans to the individual cane-growers to enable them to improve the quality and "quantity of the cane which they supplied. The Company also from time to time advanced loans to the Society, such loans being repayable either in cash or by adjustment of the

accounts between the Company and the Society.

4. On -3-4-1952, the Company entered into an agreement with the Society (herein called the first agreement) whereunder the latter made provision for repayment of moneys advanced to it by the Company, and agreed also to be responsible to the Company for the repayment to the latter of such of the outstanding loans made by the Company to the individual cultivators as the Society was able to verify.

Thereafter on 30-12-1952, the Company entered into another agreement with the Society (herein called the second agreement) in the form prescribed by the Rules made under the Sugar Factories (Control) Act for the supply of cane to the Company for the season 1952-53. The price of the cane supplied under this agreement was Rs. 15,92,000, and this amount the Company has paid to the Society after deducting therefrom the sum of Rs. 2,39,666/6/3 which it claimed to be due to it by the Society under the first agreement; and on 11-10-1953, it obtained from the Society a receipt in full and final settlement of the price of cane and commission payable to the Society in respect of the cane supplied during the 1952-53 season.

In the following month however the Society demanded from the Company payment of the balance of the price of the cane supplied, namely, Rs. 2,39,666/6/3 and upon the Company declining to pay, the Society on 30-12-1953, purporting to act under clause (10) of the second agreement referred the matter to the Cane Commissioner for arbitration.

The Company contended that the Cane Commissioner had no jurisdiction to entertain the claim made by the Society and, alternatively, that if he had jurisdiction he had jurisdiction also to consider the claim by the Company to deduct from the price of the cane payable by it to the Society the amount due by the Society to the Company.

It is stated in the affidavit filed in support of the petition, and not denied by the respondents, that on the matter coming before the Cane Commissioner on 17-4-1954, the latter heard argument only on the question of jurisdiction, reserving argument on the merits to a later date. Nevertheless the Cane Commissioner by his order dated 23-4-1954, made an award in favour of the Society for the full amount claimed by it with costs and interest. An appeal by the Company to the second respondent was rejected on the round that no appeal lay.

5. The Company thereupon filed the petition out of which this appeal arises. The learned Judge came to the conclusion that the question whether the Company could deduct the sum of Rs. 2,39,666/6/3 from the price of the cane supplied to it by the Society was not a question touching the second agreement and did not therefore constitute a dispute between the parties in respect of which a reference could be made to the arbitration of the Cane Commissioner. He therefore quashed the order of the second respondent dated 23-6-1954, and also the order

of the second respondent dated 23-6-1954 (sic). The Society now appeals.

6. Now clause (10) of the second agreement is in these terms:

"Any dispute between the parties regarding the quality and condition of the cane, the place of delivery, the instalments and other matters pertaining to this agreement, shall be referred to arbitration in the manner provided for in the rules. No suit shall lie in a civil or revenue court in respect of any such dispute;"

and Rule 23(1) of the Rules made under the Act reads thus:

"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",

and the argument in this Court on behalf of the Society is that the Cane Commissioner had under clause (10) of the second agreement and under Rule 23(1) jurisdiction to determine whether the Company had paid the price of the cane supplied out that he had no jurisdiction to consider whether the Company was entitled to set off against that amount the whole or any part of the sum which it claimed to be due to it under the first agreement; alternatively it was argued that if the Cane Commissioner ought to have considered the latter question, then the dispute should be referred back to him for decision.

7. Now it is of cardinal importance to observe that it was not disputed in this Court that the Company had always admitted that it is liable under the second agreement to pay the price of the cane supplied to it, amounting to Rs. 15,92,000. Out of this amount it has however refused to pay Rs. 2,39,666/6/3 on the ground that that is the amount due to it under the first agreement; or stated somewhat differently, the Company refuses to pay the total amount due by it under the second agreement unless it is paid the amount due to it under the first agreement.

8. The first question which then arises is whether there existed any dispute touching the second agreement which it was possible to refer to arbitration. In my opinion on the admitted facts there was none. A dispute touching -- or to use the expression used in clause (10) of the second agreement -- pertaining to the agreement means, in my judgment, a dispute as to the terms of that agreement, that is to say as to what the agreement means.

There is no such dispute in the present case, for the parties are at one as to the meaning and effect of the second agreement. There was therefore in my opinion nothing which could be referred to the arbitration of the Cane Commissioner. Authority for this view is, I think, to be found in *London and North Western Rly. v. Jones*, (1915) 2 KB 35 (A) and *Bede Steam Shipping Co. Ltd. v. Bunge Y. Born, Ltd.* ILR (1927) 374 (B).

In the former of these cases action was brought to recover demurrage charges in

respect of the detention of certain trucks at a station on the plaintiff's railway. Section 5(4) of the relevant Railway Act empowered the Railway Company to charge traders a reasonable sum by way of addition to the tonnage rate for, inter alia, the detention of trucks and provided that "Any difference arising under this section shall be determined by an arbitrator." After considering the authorities Rowlatt, J. said at page 40:

"It seems to me that we are bound to hold, firstly, that the only case in which the Court can be appealed to before arbitration is where the defendant has agreed the demand and merely refuses to pay; secondly, that wherever this cannot be shown and he has not paid, the case must be treated as one in which a difference has arisen;"

In the *Bede Steam Shipping Co.*'s case (B) the plaintiffs chartered their ship to the defendants to carry grain, the charter party providing that all disputes should be referred to arbitration. On the final discharge of cargo the plaintiffs claimed that ₹568 was owing for freight. The defendants admitted that ₹416 was still owing for freight, but they set up a counter-claim for ₹581 for short delivery and refused to pay the ₹416 until their counter-claim was met. Neither party referred the matter to arbitration and after the expiry of the period of three months the plaintiffs brought an action.

In the course of his judgment Mackinnon, J., said "Mr. Le Quesne contended broadly that whenever a creditor was claiming money which was due and the debtor would not pay, there was a "dispute" between them. That was a proposition with which he could not possibly agree. A mere failure or refusal to pay money which was admittedly due was not a dispute within the meaning of the clause." A similar view appears to have been taken in *Dawoodbhai v. Abdulkader Ismailji* AIR 1931 Bom 154 (C). I think therefore that the learned Judge was right in his conclusion, and that his order should be affirmed.

9. I would add that I entertain great doubt whether if the view which I have expressed is wrong, the Cane Commissioner had jurisdiction to consider whether the Company was entitled to set off the sum of Rs. 2,39,666/6/3 for the liability of the Society to pay to the Company this amount is not admitted; it is in dispute. The question of set off involves therefore not merely the question of the right, but the ascertainment of the extent of the Society's liability, and there is no provision in the first agreement for such dispute being referred to arbitration. In the view that I take however it is not necessary for me to express a final opinion on this point. In my opinion this appeal should be dismissed with costs. I would assess the costs at Rs. 200/-.

Agarwala, J.

10. I agree that the appeal be dismissed with costs. In my opinion there was no dispute touching the second agreement which could be referred to the Cane Commissioner. There was no dispute as to the meaning of the agreement and there was no dispute as to the amount due to the Society under that agreement.

The company paid the whole amount due for the price of the sugarcane supplied and the commission due to the Society after deducting a certain amount claimed to be due to it under the first agreement and the Society gave the company a clear receipt in full and final satisfaction of its claim under the second agreement.

The dispute that the Society is now raising is that the amount deducted by the company as due to it under the first agreement was not due to it & therefore the amount was not liable to be deducted. This was a dispute which did not arise under the second agreement but arose under the first agreement. This dispute could not therefore be referred to the Cane Commissioner. It is true that the dispute put before the Cane Commissioner took the form of a dispute under the second agreement inasmuch as it was said by the Society that the amount due to it under the second agreement was paid by the Company.

But in such cases the substance of the dispute has to be seen & not its form, and when we look at the substance the dispute between the parties is touching the first agreement & not the second. The Cane Commissioner had therefore no jurisdiction to entertain the dispute, and the learned single Judge was right in quashing the Cane Commissioner's order.

BY THE COURT

11. The appeal is dismissed with costs which we assess at Rs. 200.