M/S Bhagwati Prasad Pawan Kumar vs Union Of India on 25 May, 2006

Equivalent citations: AIR 2006 SUPREME COURT 2331, 2006 AIR SCW 3101, 2006 (4) AIR BOM R 656, 2006 (4) AIR KANT HCR 657, (2006) 6 MAH LJ 6, (2006) 6 SCJ 322, (2006) 3 ICC 681, (2006) 3 CIVILCOURTC 682, (2007) 1 MAD LW 12, (2006) 3 ACC 1, (2006) 3 ALL WC 3070, (2006) 4 CIVILCOURTC 228, (2006) 43 ALLINDCAS 20 (SC), MANU/SC/2931/2006, (2006) 3 CURCC 1, (2006) 4 ALLMR 153 (SC), (2006) 5 SUPREME 85, (2006) 64 ALL LR 475, (2006) 4 MPLJ 328, (2006) 3 PUN LR 76, (2006) 4 RAJ LW 2608, 2006 (5) SCC 311, (2006) 3 RECCIVR 255, (2006) 6 SCALE 328, (2006) 2 WLC(SC)CVL 538, (2007) 1 CIVLJ 20, (2005) 5 CTC 264 (MAD)

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Bench: B.P. Singh, R.V. Raveendran

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           CASE NO.:
Appeal (civil)  150-151 of 2001

PETITIONER:
M/s Bhagwati Prasad Pawan Kumar

RESPONDENT:
Union of India

DATE OF JUDGMENT: 25/05/2006

BENCH:
B.P. SINGH & R.V. RAVEENDRAN

JUDGMENT:
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J U D G M E N T B.P. SINGH, J.

These two appeals by special leave have been preferred by the appellant against the judgment and order of the Gauhati High Court in MA (F). No.180 of 1996 dated May 19, 2000 and the order passed in Review Petition No.85 of 2000 dated July 28, 2000. The High Court by its judgment and order impugned dismissed the appeal preferred by the appellant against the order of the Railway Claims Tribunal, Guwahati Bench dated August 30, 1996 in Application No.915 of 1993. The review petition preferred against the judgment and order of the High Court was also rejected by order dated July 28, 2000.

The factual background in which the dispute arose is as follows:-

> Two consignments of iodised salt were booked in favour of the appellant. The first consignment consisted of 767 bags and the second 744 bags. These consignments were not delivered. The appellant, therefore, lodged two claims dated April 26, 1991 claiming the value of the said goods, namely Rs.53,264/- and Rs.51,686/- in respect of the two consignments. By letters dated April 7, 1993 (despatched in August, 1993) the Railways admitted the claims only to an extent of Rs.9,111/- and Rs.9,032/- and enclosed two cheques in favour of the appellant for the sum of Rs.9,111/- and Rs.9,032/- in respect of the two claims. Both the cheques were dated July 27, 1993. The letters contained the following condition :-
>
> "In case the above offer is not acceptable to you, the Cheque should be returned forthwith to this office: failing which it will be deemed that you have accepted the offer in full and final satisfaction of your claim. The retention of this cheque and/or encashment thereof will automatically amount to acceptance in full and final satisfaction of your above claim without reason and you will be estopped from claiming any further relief on the subject".

On receipt of two letters alongwith the two cheques, the appellant wrote to the Railways two identical letters of August 20, 1993 stating that the claims were placed under PROTEST and could not be accepted and that the balance amount should be remitted within 15 days. We extract below one of the letters dated August 20, 1993:-

> "We regret to inform you that our above noted claim has been settled for Rs.9111/- instead of Rs.53284/- the claimed amount. The same is therefore placed under :
>
> PROTEST : and cannot be accepted. Please therefore remit the balance amount to us within a period of 15 days from the date of receipt of this letter, failing which, we shall be compelled to lodge a Civil suit against the Rly for recovery of the balance amount. Please treat this as most urgent".

It is not in dispute that the cheques were encashed, though the exact date of encashment is not apparent from the record. It is also not disputed that the balance amount claimed by the appellant was not paid by the Railways. In these circumstances the appellant filed a claim application before the Railway Claims Tribunal, Guwahati Bench for Rs.21,151/- and Rs.20,258/- (after adjusting the freight payable namely Rs.23,022/- and Rs.22,396/-) in all Rs.41,409/- as balance compensation in regard to the two invoices.

Before the Railway Claims Tribunal the Railways pleaded full and final settlement since the cheques were not returned and were in fact encashed. The Tribunal took the view that there was no scope for the applicant to treat the amount as part payment by making a protest and if the applicant found the amount to be insufficient he should have returned the cheques because the offer made by the Railways was in very clear terms, namely that the amount could be accepted only in full and final satisfaction of the claim or else the cheques had to be returned. In this view of the matter the claim application was dismissed by the Railway Claims Tribunal.

The appellant preferred an appeal before the High Court which came up for hearing before a learned Single Judge of the High Court who referred the matter for consideration by a Division Bench, since it appeared to the learned Judge that there was a conflict of opinion between two judgments of Single Judges of the Court in case reported in AIR 1973 Gauhati 111 : Union of India vs. M/s. Rameshwarlal Bhagchand and an unreported decision in Second Appeal No. 77 of 1982 of March 11, 1991 (M/s. Assam Bengal Cereals Ltd. vs. Union of India). The matter was heard by a Division Bench of the High Court and by judgment and order of May 5, 2000 the appeal preferred by the appellant was dismissed.

The moot question that arose for consideration of the High Court was whether the acceptance of the two cheques by the appellant and their encashment by it did not amount to acceptance of the offer contained in the two letters of April 7, 1993. The aforesaid letters of April 7, 1993, as noticed earlier, offered the amounts contained in the two cheques in full and final settlement of appellant's claim and further provided that in case the offer was not acceptable, the cheques should be returned forthwith. It is the case of the Railways that by retaining the cheques and encashing them, the appellant signified its acceptance of the amounts comprised in the two cheques in full and final settlement of its claims. Such acceptance by conduct is recognized by Section 8 of the Contract Act.

On the other hand the appellant contended that it had written a letter rejecting the offer and placing the claims "under protest" and called upon the respondent to pay the balance amount claimed by it. The appellant, therefore, submitted that there was no acceptance by conduct as envisaged by Section 8 of the Contract Act, and that its retention of the cheques must be viewed in the light of the protest made by it under its letters of August 20, 1993. The sole question which, therefore, arises for consideration by us is whether by its conduct, the appellant accepted the offer contained in the letters of the Railways dated April 7, 1993.

Section 8 of the Contract Act reads as under :-

> "8.Acceptance by performing conditions, or receiving consideration - Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal".

The High Court considered the case of Rameshwarlal Bhagchand (supra) on which reliance was placed by the Raiwlays. In that case the plaintiff-respondent, M/s. Rameshwarlal Bhagchand had transported 210 bags of groundnut through Railways, but when it took delivery, the consignments were found to be so damaged as not fit for human consumption. It was so certified by the Railway Officer concerned. The consignee served a notice on the Railway Administration claiming compensation in the sum of Rs.2,368.25 ps.. The General Manager sent a cheque in the sum of Rs.1173.19 ps. to the consignee on May 5, 1964 alongwith a letter stating that the cheque was being sent in full and final settlement of the claim. The consignee encashed the cheque but subsequently communicated to the General Manager by its letter dated July 29, 1964 that the cheque received satisfied only a part of the claim and that the balance amount should be remitted. Since the General Manager failed to make payment of the balance amount claimed by the consignee a suit for recovery of the balance amount was filed. In these facts the High Court took the view that the plaintiff having

encashed the cheque without first communicating to the General Manager that it did not agree to the proposal made by him, it must be assumed in terms Section 8 of the Contract Act to have accepted the proposal by mere acceptance of the cheque. It was held that the fact that it wrote a letter on July 29, 1964 after encashing the cheque, and denying that the amount had fully settled its claim, did not alter the position. If the consignee did not agree to the offer made by the General Manager in his communication dated May 5, 1964, it should have communicated its refusal to accept the offer, before encashing the cheque. Otherwise it would be assumed that the cheque was encashed on the terms offered by the General Manager, and only later the consignee changed its mind after realizing the proceeds of the cheque.

The judgment of the Gauhati High Court in Assam Bengal Cereals Limited (supra) proceeded on a different set of facts. In that case the consignee/claimant had received an offer from the Railways to accept the cheque in full and final settlement of its claim. In response thereto, by letter addressed to the Railways, it informed the Railways that the cheque had been retained and the Railways should give reasons for withholding the balance amount. It was stated in the letter that if no reply was received within 15 days, the acceptance of the cheque would not amount to full and final settlement. In fact, the cheque was not encashed for 15 days after issuance of the letter by the claimant/consignee. In these facts it was held that that principle laid down in Rameshwarlal Bhagchand case (supra) was not applicable to the case since the claimant had responded to the offer of the Railways demanding from them the reasons as to why the entire claim was not admitted, and further provided that unless reasons are assigned within 15 days from the receipt of the letter, the retention of the cheque would not be treated as acceptance of the payment in full and final settlement. In the peculiar facts of the case, therefore, it was held that the encashment of the cheque did not amount to acceptance of the offer made by the Railways.

In the impugned judgment and order, the Division Bench of the High Court has agreed with the view in Rameshwarlal Bhagchand case (supra).

We may refer to the other decisions cited at the Bar.

In AIR 1972 All 176 : Amar Nath Chand Prakash vs. Bhearat Heavy Electricals Limited the facts were that the respondent gave a contract to the appellant for doing certain construction work which was completed by the first week of March 1965. The appellant company prepared a final bill of the work done on March 29, 1965. The appellant signed a no claim declaration and also gave a receipt in token of accepting the amount found due to the appellant. The appellant thereafter raised a dispute alleging short payment etc. It invoked the arbitration clause and called upon the respondent to appoint an arbitrator. When the respondent did not respond to the notice issued by the appellant, an application under Section 20 of the Arbitration Act was filed by the appellant. The respondent contested the application contending that the appellant having given a no claim certificate in final settlement of its claim and having accepted the payment by means of a cheque in full and final settlement of its dues, it amounted to discharge of the contract alongwith which the arbitration agreement also stood extinguished and, therefore, there was no dispute capable of being referred to arbitration. The High Court considered the material on record and found that though the declaration was signed by the appellant, as also the memorandum of payment, in the final bill there

was an endorsement to the effect that the appellant had accepted the payment under protest. This was done on March 29, 1965 whereas the cheque was actually prepared and delivered much later on December 14, 1965. In the absence of any oral evidence, the High Court was required to construe the document in order to ascertain the intention of the contractor in making such an endorsement and of the company in permitting such an endorsement to be made. In the facts of the case the High Court observed that the endorsement dispelled any intention to remit the performance in regard to the balance of the claim. On the contrary it clearly evinced that the receipt of the amount was not unconditional so as to effect the discharge of the contract. On the contrary it safeguarded the position of the contractor and indicated that he was not accepting the payment without any reservation. The appellant specifically stated that he was receiving the money 'under protest' which clearly amounted to making a reservation. The reservation could only be that the acceptance of payment was not in discharge of the contract. Consequently it could not be said that the appellant dispensed with, or remitted the performance of the contract, for the rest of his dues. Reliance was placed on the principle enunciated in (1889) 22 QBD 610 : Day vs. Mciea in which it was observed :-

> "If a person sends a sum of money on the terms that it is to be taken, if at all, in satisfaction of a larger claim: and if the money is kept it is a question of fact as to the terms upon which it is so kept. Accord and satisfaction imply an agreement to take the money in satisfaction of the claim in respect of which it is sent. If the accord is a question of agreement, there must be either two minds agreeing or one of the two persons acting in such a way as to induce the other to think that the money is taken in satisfaction of the claim, and to cause him to act upon that view. In either case it is a question of fact."

Applying this principle it was held that there was no accord and satisfaction in the sense of bilateral consensus of intention. The appellant made it clear that it was accepting the money 'under protest', that is, conditionally. Under the circumstances it cannot be said that signing the no claim certificate and the grant of the receipt amounted to discharge of the contract.

In AIR 1977 Madhya Pradesh 215 : Union of India and another vs. M/s. Gangaram Bhagwandas, the respondent had filed a suit on January 6, 1970 claiming by way of damages a sum of Rs.504.58 ps. on account of goods being damaged due to negligence and misconduct on the part of the Railways and its employees. While the suit was pending a cheque for Rs.283.05 was sent under cover of a letter dated March 6, 1970 which stated that the amount was being sent in full and final settlement of the claim. The respondent encashed the chque. The High Court on facts found that there was no denying the fact that the plaintiff did not accept the cheque in full satisfaction. It had not passed a receipt in full satisfaction, nor did it send a receipt to the Railways acknowledging receipt of the amount. On the contrary, even after receiving the cheque the respondent prosecuted the suit for the balance of the amount. The Railway had led no evidence to show that the intention of the plaintiff was to accept the cheque in full and final settlement of its claim. On this finding, relying upon the principle laid down in Day vs. Mciea it was held that :

> "The question was thus primarily one of fact and since the defendant did not choose to lead any evidence on the point nor are there such circumstances brought on the

> record to lead to the conclusion that the cheque was accepted in discharge of the whole debt, I am unable to come to the conclusion that the acceptance of the cheque amounted to satisfaction of the whole claim."

The decision of this Court in AIR 1963 SC 250 : Lala Kapurchand Godha and others vs. Nawab Himayatalikhan Azamjah, may not be of much assistance as in that case apart from the fact that the appeal was decided with reference to Section 63 of the Contract Act, there was clear evidence on record that the plaintiffs therein had received the sum of Rs. 20 lakhs in full satisfaction of their claim and duly discharged the promissory notes by endorsement of "full satisfaction" and received payment in full.

Section 8 of the Contract Act provides for acceptance by performing conditions of a proposal. In the instant case, the Railways made an offer to the appellant laying down the condition that if the offer was not acceptable the cheque should be returned forthwith, failing which it would be deemed that the appellant accepted the offer in full and final satisfaction of its claim. This was further clarified by providing that the retention of the cheque and/ or encashment thereof will automatically amount to satisfaction in full and final settlement of the claim. Thus, if the appellant accepted the cheques and encashed them without anything more, it would amount to an acceptance of the offer made in the letters of the Railways dated April 7,. 1993. The offer prescribed the mode of acceptance, and by conduct the appellant must be held to have accepted the offer and therefore, could not make a claim later. However, if the appellant had not encashed the cheques and protested to the Railways calling upon them to pay the balance amount, and expressed its inability to accept the cheques remitted to it, the controversy would have acquired a different complexion. In that event, in view of the express non acceptance of the offer, the appellant could not be presumed to have accepted the offer. What, however, is significant is that the protest and non acceptance must be conveyed before the cheques are encashed. If the cheques are encashed without protest, then it must be held that the offer stood unequivocally accepted. An 'offeree' cannot be permitted to change his mind after the unequivocal acceptance of the offer.

It is well settled that an offer may be accepted by conduct. But conduct would only amount to acceptance if it is clear that the offeree did the act with the intention (actual or apparent) of accepting the offer. The decisions which we have noticed above also proceed on this principle. Each case must rest on its own facts. The courts must examine the evidence to find out whether in the facts and circumstances of the case the conduct of the "offeree" was such as amounted to an unequivocal acceptance of the offer made. If the facts of the case disclose that there was no reservation in signifying acceptance by conduct, it must follow that the offer has been accepted by conduct. On the other hand if the evidence disclose that the "offeree" had reservation in accepting the offer, his conduct may not amount to acceptance of the offer in terms of Section 8 of the Contract Act.

Coming to the facts of this case if the appellant, before encashing the cheques, had sent the communication dated August 20, 1993, it could perhaps be argued that by retaining but not encashing the cheques, it did not intend to accept the offer made in the letter of the Railways dated April 7, 1993. At the same time if the evidence disclosed that it encashed the cheques and later sent a

protest, it must be held that it had accepted the offer unconditionally by conveying its acceptance by the mode prescribed, namely by retaining and encashing the cheques, without reservation. Its subsequent change of mind and consequent protest did not matter.

In the instant case there is neither pleadings nor evidence on record as to the date on which the cheques were received and the date on which the same were sent for encashment. It is, therefore, not possible to record a categoric finding as to whether the letters of protest were written after encashing the cheques or before encashing the cheques. It was for the appellant to plead and prove that it had not accepted the offer and had called upon the Railways to pay the balance amount. This it must have done before encashing the cheques. If the appellant encashed the cheques and then wrote letters of protest to the Railways, it cannot be held that it had not accepted the offer by conduct, because at the time when it sent the cheques for encashment, it had not conveyed its protest to the offerer. In the absence of any pleading or evidence to establish that the encashment of the cheques was subsequent to the protest letters by the appellant, it is not possible to hold that by encashing the cheques the appellant had not adopted the mode of acceptance prescribed in the letters of the Railways dated April 7, 1993. In the absence of such evidence it must be held that by encashing the cheques received from the Railways, the appellant accepted the offer by adopting the mode of acceptance prescribed in the offer of the Railways.

In this view of the matter these appeals must fail. Accordingly these appeals are dismissed, but without any order as to costs. 27779