Banarsi Das vs Cane Commr., U.P., Lucknow And Anr. on 20 October, 1954

Equivalent citations: AIR1955ALL86

ORDER

M.L. Chaturvedi, J.

1. This is a petition under Article 226 of the Constitution.

2. The petitioner Seth Banarsi Das was the lessee of Shiva Prasad Banarsi Das Sugar Mills, Bijnor, for five years. The period of his lease was to expire on 30-6-1951. The dispute in the present case is with respect to the commission payable by the petitioner to the respondent No. 2, namely, the Cane Marketting Society Limited, Bijnor, (hereinafter called the society) for the years 1949-50 and 1950-51.

Under the U. P. Sugar Factories Control Act of 1938 and the Rules made thereunder, it was for the respondent No. 2 to first make an offer to the petitioner in Form No. 10 mentioned in the Rules of the quantity of sugarcane which the Society offered for sale to the Mills of which the petitioner was the lessee. After the offer an agreement was to be entered into between the two parties in the form of the agreement as given in Form No. 12.

For the years 1949-50 and 1950-51 the Society made offers in Form No. 10 but the petitioner thought that the offer was not for the entire quantity of cane which he was entitled to purchase from the Society and he wanted the Society to make offers for larger quantities. For the year 1949-1950, the Society offered to sell 36.25 lakh maunds of cane and for the year 1950-51 it offered 32 lakh maunds whereas according to the petitioner the Society should have offered 39 lakh maunds of cane for the year 1949-50 and 46.92 lakhs in 1950-51.

It is the petitioner's case that in these two years the price of Gur and Khandsari sugar had gone up considerably and the members of the Society therefore wanted to offer to the petitioner less quantity of cane than he was entitled to under the Rules.

On 14-6-1950, the petitioner wrote to the Society that there was a shortage in the supply of sugarcane during the year 1949-50 amounting to nearly 13 lakh maunds. A reply to this letter was sent by the Society on 4-10-1950, repudiating the petitioners claim to the purchase of the quantity mentioned by him and further asserting that the So-

ciety was only bound to supply the quantity mentioned in the agreement. As a result of the dispute

with respect to this quantity the petitioner says that he never entered into the agreement mentioned in Form No. 12 for the purchase of cane either for the year 1949-50 or 1950-51. The petitioner appears to have preferred a claim before the Cane Commissioner by means of his letter dated 31-10-1950 claiming compensation for the Society's omission to sell the entire quantity of cane to the petitioner. This claim, however, was not adjudicated upon and nothing has been heard about it at all.

In the accounts sent by the petitioner to the Society he allowed to the Society the amount of commission to which the Society was entitled for the cane already supplied by the Society to the petitioner but debited the loss suffered by the petitioner on account of short supply of cane to him.

The Society's case was that the petitioner was not entitled to any compensation from the Society for short supply of cane as the supply really was not short, on the other hand, it was the Society which was entitled to receive the amount of commission from the petitioner for the cane that it had supplied to him. It consequently filed a claim against the petitioner before the Cane Commissioner for the recovery of the commission amounting to Rs. 2,63,624/2/6 which claim included the amount due for the year 1948-49 also. The Society also claimed interest on the amount of this compensation.

The Cane Commissioner decided to deal with the matter himself and fixed 18-8-1951 for hearing and informed the parties of the claim and the date fixed for hearing. The matter was taken up on 18th of August, and the statement of Shri R. S. Mathur, Special Attorney of the Society was recorded but an objection was raised on behalf of the Society to tne effect that the petitioner was not duly represented in the proceedings before the Cane Commissioner.

The General Manager of the petitioner then requested the Cane Commissioner to fix another date to enable the petitioner to be present at the hearing and the proceedings were then adjourned to 4-9-1951. The present petition was filed on 3-9-1951, and the contentions of the petitioner in this petition are that no agreement for the purchase and sale of cane having been entered into between the parties in Form No. 12 as required by the rules, the Cane Commissioner did not get a jurisdiction to decide the dispute between the parties and also that Rule 23 (1) of the Sugar Factories Control Rules was void because it was inconsistent with Article 14 of the Constitution.

The main prayers contained in the petition are that a writ of Certiorari or other suitable direction or order be issued calling for the record of the case from the Cane Commissioner (Respondent No. 1) and quashing the proceedings that are pending before him and that a writ of prohibition be issued forbidding the Cane Commissioner from continuing the proceedings.

3. The position taken up by the Society in the counter-affidavit filed on its behalf is that the petitioner has suppressed some material facts and the petition should therefore be dismissed on this ground alone. The facts suppressed are five in number detailed in paragraph 2 of the counter-affidavit.

It is then said that the Cane Commissioner has jurisdiction to deal with the dispute between the parties, that the Society sold to the petitioner the entire quantity of cane in both the years which the

petitioner was entitled to purchase and the petitioner is not entitled to recover any compensation for the alleged short supply of sugarcane by the Society; that the petitioner designedly did not return the agreement in Form No. 12 to the Society though he had been acting as if the agreement was in full force. It is said that the Society sent several reminders to the petitioner to return the agreement in Form No. 12 but the petitioner failed to send the signed agreements to the Society.

In the rejoinder affidavit the petitioner reiterated the position taken up by him in his first affidavit and denied that there was concealment of any material facts in his first affidavit.

4. Learned counsel for the petitioner has urged two points before me. His first contention is that no agreement in writing between the parties having been entered into, the provisions of Rule 23 (1) do not come into play and the Cane Commissioner has neither the jurisdiction to decide the case himself nor to refer it for adjudication to an arbitrator.

The second contention is that Rule 23 (1) of the Sugar Factories Control Rules is void as it authorises the Cane Commissioner at his sweet will either to decide the dispute himself with respect to the agreement referred to in the Rules or to send it for adjudication to an arbitrator. No guiding principles have been laid down as to which cases should be referred to an arbitrator and which should be decided by the Cane Commissioner himself. He can refer the same case to an arbitrator or arbitrators or keep it for decision by himself and that this law is inconsistent with Article 14 of the Constitution.

The respondents have challenged the correctness of both the petitioner's contentions mentioned above and have further alleged that the petition should be dismissed as it conceals some material facts of the case.

5. Before proceeding to consider these questions I may refer to the relevant provisions of the Sugar Factories Control Act and the Rules made thereunder, before the above Act was passed the sugar factories used to deal directly with the cane-growers and the Government thought that in the interest of both of them the purchase and supply of cane should be controlled. The officer put in charge of this control for the entire State of U. P. was called the Cane Commissioner and provisions were made in the Act for marking out reserved areas for the different factories and the cane grown in this area could be purchased only by the sugar factory for which the area was reserved. No other manufacturer of sugar was entitled to purchase the cane grown in this area and the factories were expected to purchase the whole cane grown therein minus such deductions for seed and other matters which might be prescribed.

The Sugar Factories were required to obtain licences and, as far as purchase of cane was concerned, provision was made under Section 18(1) for the cane growers or the Cane Grower's Co-operative Society to make offers for the sale of cane. The Manager or occupier of the factory was then directed to enter into an agreement, in such Form as may be prescribed, to purchase the cane offered to the factory by the grower or the Co-operative Society. Besides this reserved area there could be also an assigned area but I am not concerned with it in this case.

6. Section 18(2) of the Act is important and may be quoted in full:

> "(2) The occupier or manager of a factory for which an area is reserved shall enter into an agreement, in such form, by such date and on such terms and conditions as may be prescribed, to purchase the cane offered in accordance with Sub-section (1):
>
> Provided that he shall not purchase or enter into an agreement to purchase cane grown by a member of a Cane-Growers' Co-operative Society from any person except from such Cooperative Society:
>
> Provided further that he shall not be required to purchase or enter into an agreement to purchase ratoom cane or cane of any variety if the same has been declared by notification under Section 17-A to be unsuitable for use in such factory".

Section 30 is the section which gives power to the State Government to make rules and Clause (u) of Sub-section (2) of the Section authorises the Government to make rules for "the reference to the Cane Commissioner of disputes relating to the supply of cane for decision or, if ho 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 decision of the Cane Commissioner or the awards of arbitrators;"

> As far as the Rules are concerned, it is necessary to quote only Rule 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."

The above provisions of law would show that according to the scheme of the Act and the Rules an offer for the sale of cane was to be made by the grower or the Co-operative Society in the reserved area in Form No. 13 and an agreement in Form No. 12 was to be executed between the Society or the grower and the factory. This agreement in Form No. 12 contains ten paragraphs and the last paragraph provides that any dispute between the parties regarding the matter pertaining to the agreement shall be referred to arbitration in the manner provided in the rules. Section 18(2) of the Act makes it obligatory on the occupier or manager of a factory to enter into this agreement and to purchase the cane offered by the Society or the grower. According to Rule 23 (1) any dispute touching this agreement or the one mentioned in Section 19(2) must be referred to the Cane Commissioner for decision or, if he so directs, to arbitration, but no suit shall lie in a civil or revenue Court in respect of any such dispute.

7. The learned counsel for the Society urged that his client had signed the agreement and sent it on to the petitioner and the petitioner also may have signed it. But the evidence produced in the case does not prove that the agreement was signed either by the petitioner or by the Society. In paragraph 5 of the affidavit filed with the petition it has been stated that no agreement at all was entered into between the parties as required by Section 18(2) of the Act. Again in paragraph 13 it has

been stated that the agreement referred to in Form No. 12 of Appendix No. III attached to the Sugar Factories Control Act was never executed by the parties for the years 1949-50 and 1950-51.

As against these clear assertions of facb mentioned in the affidavit filed with the petition, the counter-affidavit only mentions in clause No. 5 of paragraph No. 2 that the petitioner evaded return of one copy of the prescribed agreement in Form No. 12 in spite of several reminders. It has nowhere been stated in the counter-affidavit that the agreement was signed on behalf of the Society and sent to the petitioner, but the use of the word "return" might suggest that it was at least sent to the petitioner and as far as the signatures by the petitioner are concerned the counter-affidavit is completely silent. As regards the signatures on behalf of the Society also there is no assertion that the agreement was so signed by it.

There is thus no evidence that the petitioner signed the agreement and the petitioner says that he did not sign it. Under the circumstances it may be taken to be proved that he did not sign it. As far as the Society is concerned it is possible that the agreement may have been signed on behalf of the Society or it may not have been signed. There is neither an assertion that it was signed on behalf of the Society nor that it was not signed. On this state of evidence I think that this petition must be decided on the assumption that no agreement in Form No. 12 had actually been signed by the parties.

8. Coming now to the first point, the argument of the learned Counsel for the petitioner is that no such agreement as is provided in Section 18(2) or 19(2) having been executed the provisions of Rule 33 (1) do not come into play at all and the Cane Commissioner acquired no jurisdiction under this rule to decide the matter himself or to refer it to arbitration. His argument is that it is not possible to say that there was any dispute touching the agreement when no agreement was in existence at all.

I think that the contention of the learned counsel for the petitioner on this point should not be accepted. Rule 23(1) says that any dispute touching an agreement referred to in Section 18(2) shall be referred to the Cane Commissioner for decision or, to arbitration. The question here is which is the agreement which is referred to under Section 18(2) of the Act? If the sub-section refers also to the unsigned agreement then it is clear that a dispute concerning an unsigned agreement is also to be referred to the Cane Commissioner; whereas, if that sub-section refers only to the signed agreement the dispute with respect to the unsigned agreement cannot be referred to the Cane Commissioner for decision.

Section 18(2) of the Act says that the occupier or manager of a factory for which an area is reserved (as is the case here) shall enter into an agreement, in such form, by such date and on such terms and conditions as may be prescribed, to purchase the cane oifered in accordance with Sub-section (1). What the sub-section contemplates is the existence of an agreement in the form and containing the terms and conditions prescribed by an officer of the Government and it lays an injunction on the manager or occupier of a factory to enter into it.

I agree with the learned counsel for the petitioner so far that the expression "enter into" means nothing else than signing the agreement. The form, the terms and conditions have to be laid down

by somebody other than the parties to the agreement and then it has to be an agreement for the purchase of the quantity of cane offered by a Cane-Growers' Co-operative Society under Sub-section (1) of Section 18. It would thus appear that everything else that the agreement is to contain is settled by the officers of the Government and the occupier or manager of the factory has been directed to enter into such an agreement which can only mean that he should sign it.

The object of Section 18(2) is to compel the occupier or manager to sign the agreement made for him by the officers of the Department and the only thing that is left for him is to sign the agreement. But this does not mean that Section 18(2) does not refer to the unsigned agreement. As a matter of fact, it very clearly refers to the agreement, the form, the terms and the conditions of which have been prescribed, and it then directs the occupier or manager to sign such a document. In my opinion, on a plain reading of the wording of Section 18(2), the proper interpretation is that it does refer to the agreement both before and after the signatures, and if it refers to an unsigned agreement also, the provisions of Rule 23(1) are attracted and any dispute touching the signed or unsigned agreement must be referred to the Cane Commissioner for decision, who may send it to arbitration, if he so considers proper.

This is likely to be the intention of the rule-making authority also, otherwise it would lead to the result that the occupier or manager of a factory can by his own illegal omission oust the jurisdiction of the Cane Commissioner to deal with the matter in dispute. An intentional failure to enter into an agreement, as required by Sub-section (2) of Section 18, is made punishable under Section 27(3)(b) of the Act. There might have been some force in the argument of the learned counsel for the petitioner, if the petitioner had any right to settle the terms and conditions of the agreement or the form in which it should be executed. But that is not the position here. He has got to accept the agreement in the terms and conditions prescribed and the offer for the quan-

tity of the cane to be crushed by the factory is also there having been made under Section 18(1). The occupier or manager has been directed to sign the agreement and by his omission to do so he cannot confer an advantage on himeslf. I consequently hold that Rule 23(1) applies to unsigned agreements also.

9. In the present case the facts proved are that without signing the agreement the petitioner intended (indented?) for & purchased the cane in the manner provided for in the rules & he throughout acted in the manner in which he would have acted if he had signed the agreement. He actually went to the length of making a reference to the Cane Commissioner against the Society for the recovery of damages for the alleged short supply of cane. It does not appear what happened to this claim; presumably it was rejected by the Cane Commissioner. The making of such a claim to the Cane Commissioner may not amount to an estoppel but it does show that, till the date of making the claim, the petitioner thought that the agreement was in existence and the dispute between him and the Society could be decided by the Cane Commissioner.

The learned counsel for the petitioner has laid great stress on the fact that his client had been protesting all along, that more cane should have been offered by the society and, therefore, it cannot be said that his client had accepted the terms of the agreement, It is true that the petitioner did ask

for a larger quantity of cane, but it also appears that he did agree to accept and crush the cane that had already been offered according to the terms of Section 18(1) of the Act. His conduct shows that he had accepted the terms of the agreement though there is no proof that he had signed it also. The general question whether the agreement of preference can be accepted orally or by conduct also, or that it must bear the signatures of the parties, does not arise for decision in this case, because in my opinion even, in the absence of signatures of the parties, the matter in dispute concerning the agreement referred to in section 18(2), attracts the provisions of Rule 23(1). It is clearly proved in this case that the Society had sent the agreement to the petitioner for his signature and the existence of the written agreement is not in doubt.

10. It was urged by the learned counsel for the Society that Rule 30 of the Sugar Factories Control Rules provides that all matters connected with the interpretation of these rules shall be referred to the Cane Commissioner whose decision shall be final, and his argument was that it was for the; Cane Commissioner to interpret Rule 23(1) and it was for him to decide whether a dispute concerning an unsigned agreement could be decided by him or not. I am unable to accept this argument because this would be making the Cane Commissioner the final judge of the question whether he has jurisdiction or not to deal with a particular matter.

11. The next contention of the learned counsel for the Society is that the provision in Section 18(2) of the Act concerning the agreement being in such form and on such terms and conditions as may be prescribed is merely directory and not manda-

tory so that Section 18(2) would cover any agreement for the purchase of cane whether made orally or in writing and whether continuing all the terms given in Form No. 12 or not. I do not think it would make any real difference whether this provision is mandatory or directory because Rule 23(1) specifically mentions the agreement referred to in Section 18(2) and the agreement referred to in that section is the one in Form No. 12 as prescribed by the rules. Rule 23(1) refers to a particular agreement and to no other, that being the agreement which has been prescribed by the rules in Form No. 12. If there is some agreement which is not in Form No. 12 as prescribed by the Rules, I do not think that the provisions of Rule 23(1) would apply to it. A specific agreement having been referred to in Rule 23 it is that agreement and that agreement alone which would attract the provisions of the rule. Every agreement to purchase cane whether oral or in writing which is not in the form prescribed by the Rules would not be an agreement referred to in Section 18(2).

12. It is further difficult to say that the provision in Section 18(2) concerning the form of agreement is not mandatory. The word used here is 'shall' and a penalty for intentionally failing to enter into an agreement is also provided for by Section 27(3) of the Act, In the case of -- 'Jagan Nath v. Jaswant Singh', AIR 1954 SO 210 (A), it has been observed :

> "A provision of a statute is not mandatory unless the non-compliance with it is made penal."

This observation certainly shows that if the non-compliance with the provision is made penal then the provision is mandatory. Generally speaking the position is that the language of each statute

along with other circumstances has to be seen in order to find out whether the statutory direction is mandatory or directory I may here quote the words of Lord Penzance in the case of -- 'Howard v. Bodington', (1877), 2 P. D. 203, at p. 211 (B):

> "I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter, consider the importance of the provision and the relation of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decide whether the enactment is what is called imperative or only directory".

In cases, however, where the disobedience of a provision is made penal it can safely be said that the provision is mandatory. Learned counsel for the petitioner referred to the case of -- 'Patiram v. Baliram', AIR 1954 Nag 44 (C), where a provision was held to be directory and not mandatory with the result that the contract was not held to be void. The facts of that case were different and the case is not of any real help in the determination of the point under consideration before me.

13. I now come to the question whether Rule 23 (1) of the Sugar Factory Control Rules 1938 is void as being inconsistent with the provisions of Article 14 of the Constitution.

The argument of the learned counsel for the petitioner is that this rule authorises the Cane Commissioner to either decide the dispute himself or refer it for arbitration. No guiding principles have been laid down as to which class of cases shall be decided by the Cane Commissioner and which class referred to arbitration. It is left to the sweet will of the Cane Commissioner to decide any case he likes himself or to refer the same for arbitration. Out of persons similarly situated the case of one can be tried by the Cane Commissioner whereas the case of another may be referred to arbitration.

In cases referred to arbitration an appeal lies from the decision of the arbitrator or arbitrators to the Commissioner of the Division but no such appeal lies if the case is decided by the Cane Commissioner himself. It is said that the persons similarly situated do not have the equal protection of law because in one case an appeal is provided whereas in the other no right of appeal has been given. Right of appeal is a very valuable right and depriving a person whose case has been decided by the Cane Commissioner of this right is said to be discriminatory.

14. It has been argued in reply by the learned counsel for the Society that on a correct interpretation of Rule 23 it should be held that the Cane Commissioner should also be treated as an arbitrator and that an appeal lies against his decision also to the Commissioner of the Division and there is thus no prejudice caused to the party whose case the Cane Commissioner decides himself, and the procedure which is to be followed by the arbitrator and the Cane Commissioner is practically the same.

15. In my opinion the contention of the learned counsel for the Society on this point is not correct. Section 30, U. P. Sugar Factories Control Act, is the section which confers powers on the State Government to make rules to carry out the provisions of the Act and in Clause (u) of Sub-section (2) it is provided that rules may be framed to provide for reference to Cane Commissioner of disputes

relating to the supply of cane for decision or if he so directs to arbitration. They may also be framed for the purpose of appointing an arbitrator or arbitrators and the procedure to be followed in proceednigs before the Cane Commissioner or such arbitrator or arbitrators and also for the enforcement of the decisions of the Cane Commissioner or the awards of arbitrators.

From a reading of this clause it appears to be clear that the judgment by the Cane Commissioner is called a 'decision' whereas the judgment by the arbitrator or arbitrators is called an 'award'. Rules are to be framed for procedure to be followed in proceedings before the Cane Commissioner or before the arbitrator or arbitrators, and also for the enforcement of the 'decision' of the Cane Commissioner and the 'awards' of the arbitrators. The 'award' by the arbitrator arid the 'decision' by the Cane Commissioner have thus been treated as separate matters.

Rule 23, Sub-rule (1) again says that the disputes shall be referred to the Cane Commissioner for 'decision' or if he so directs to 'arbitration'. Sub-rule (2) provides for reference to a sole arbitrator but if a sole arbitrator is not acceptable to both the parties then the dispute is to be referred to a board of arbitration consisting of one representative of each party and an umpire acceptable to both the representatives. If the representatives are unable to elect such an umpire the Cane Commissioner may himself act as an 'umpire' or nominate one. Sub-rule (3) says that the sole arbitrator or the president of the board of arbitration shall have the power of a Court in respect of summoning the parties, witnesses and records. According to Sub-rule (4) the award of the arbitrator or board of arbitration is to be binding on the parties and is not to be called in question in any civil or revenue Court.

Sub-rule (5) says that the above authorties 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. This rule goes to show that the Cane Commissioner himself is not called as an arbitrator as he is the person who fixes the time for giving an award and if the award is not given within that time he may withdraw the dispute for decision by himself. Sub-rule (6) says that any party considering himself aggrieved by an award may appeal to the Commissioner of the Division in which the factory is situated and the Commissioner's order in appeal according to sub-rule (7) is to be final.

Sub-rule (8) is again important and what it says is that on application being made to the civil Court the decision of the Cane Commissioner or the 'award' of the arbitrator or arbitrators or the Commissioner's order in appeal shall be enforced by the Court as if such decision, award, or order in appeal were the decree of that Court. It would appear from what has been stated above that 'decision' of the Commissioner is something quite different from the 'award' and is not included in the latter.

The wordings of this rule go against the contention of the learned counsel for the Society. It is true that no separate procedure has been, provided for the hearing of the case by the Cane Commissioner. But this may be due to the fact that the Cane Commissioner having been given the power to decide the case he is to be deemed to be a Court and the provisions of the Code of Civil Procedure are made applicable to him by Section 141 of the Code, the proceedings before him being

clearly of a civil nature. Sub-section (2) of Section 23 speaks of the reference of a 'suit' to arbitration by the Cane Commissioner. This shows that the proceedings before the Cane Commissioner are treated as a 'suit' which he can refer to arbitration.

According to the definition of the word 'court' as given in Section 3, Evidence Act, all persons except arbitrators authorised to take evidence are included in the word. According to rules the Cane Commissioner has been authorised to decide the dispute and the dispute before him has been called a 'suit' and I am inclined to think that these provisions point to the conclusion that the Cane Commissioner's to act as a 'Court' though it has not been said in so many words that he is entitled to take evidence.

In Clause 10 of form No. 12 mentioned in appendix 3 of the Sugar Factories Control Rules it is provided that any dispute between the parties regarding the matters mentioned in the clause shall be referred to arbitration in the manner provided for in rules and no suit shall lie in the civil or revenue Court in respect of any such dispute. Here it is' not said that the matter shall be referred to the Cane Commissioner for decision, but the Cane Commissioner having been given the authority to decide the dispute by Rule 23(1) it did not require the consent of parties to confer power upon him to decide the matter. It is necessary to have an arbitration clause in such agreements but not a provision for decision by a person who is constituted a Court by Statute. The omission to include the Cane Commissioner in Clause 10 of the agreement does not in my opinion help the learned counsel for the Society.

16. It is true that an appeal is provided against the award given by an umpire and the Cane Commissioner himself may be an umpire in some cases though no appeal is provided against the decision of a Cane Commissioner but this may be due to the fact that where the Cane Commissioner acts as an umpire he can give his vote only in cases of disagreement between the representatives of the parties. His vote thus would decide only that matter concerning which there is a disagreement and in all other matters the decision of the two representatives would be the award of the board of arbitration. His powers here are very much limited and that may be the reason that an appeal lies against the decision of the board of arbitration but no appeal lies against the decision of the Cane Commissioner.

Supposing that the Code of Civil Procedure does not apply to proceedings before the Cane Commissioner, the rules of natural justice would govern the procedure before him and the omission to provide for procedure in the rules does not lead to the conclusion that the Cane Commissioner is also called an arbitrator. The fact that no appeal is provided against his decision may be due to the responsible position that he holds being a person put in charge of working of all the Sugar Factories in the State.

17. The learned counsel for the Society strongly contended that the rules may not be happily worded but an interpretation should be given to them which would lead to justice and fair play between the parties. He argued that there have been cases where the wordings of the statute have not been given their natural meaning and reference was made to Maxwell on the Interpretation of Statutes, 10th edn. page 235, where cases of "obvious oversights" by the legislature have been discussed and courts

have given meanings to the words of statutes which were different from their literal or grammatical meaning. These interpretations were held to be justified by the great inconvenience which would have resulted from a rigid adherence to Such meaning, or because it would have led to unjust results which the legislature presumably had never intended.

He also cited the Full Bench case of -- 'Bharat Singh v. Mt. Chadi', AIR 1947 All 27 (FB) (D), where it has been held that the words of a statute may be construed differently from their literal meaning when a literal construction would result in an absurdity, or inconsistency and the words are capable of another construction which will carry out the manifest intention. It was accordingly held that the word 'transferee' was used by the Legislature in U. P. Act No. 10 of 1937 in the restricted sense denoting a purchaser or transferee out and out and not in the wider sense so as to include a mortgagee or lessee also.

He also referred to the decision of the House of Lords in the case of -- 'Arthurhill v. The East & West India Dock Co.', (1884) 9 AC 448: 53 LJ Ch 842 (E). Earl Cairns observed, "It appears to me that both of these instances to which I have been referred, the construction contended for by the appellants and the construction placed upon the section by Lord James J. are possible constructions; and where there are two constructions, the one of which will do, as it seems to me, great and unnecessary injustice, and the other of which will avoid that injustice, and will keep exactly within the purpose for which the Statute was passed, it is the bounden duty of a court to adopt the second one and not to adopt the first of those constructions."

I respectfully agree with the decision mentioned above but in my opinion the construction placed on the wordings of Rule 23 by the learned counsel for the Society is not a possible construction. In Maxwell on the Interpretation of Statutes 10th Edn., p. 201 the rule of interpretation has been stated as follows, "A sense of the possible injustice of an interpretation ought not to induce Judges to do violence to well settled rules of construction, but it may properly lead to the selection of one rather than the other of two reasonable interpretations."

In my opinion the expressions ''decision by the Cane Commissioner" and "the award by the arbitrators" have been used in a manner so as to clearly indicate that the decision is something different from an award and it would be doing violence to the language used in the ruie if I were to hold that the decision by the Cane Commissioner is also called an award by the arbitrator.

This is not the only statute where the officer-in-charge of the department has been given a right either to decide or to refer the matter to arbitration and his decision is treated as quite different from the award by the arbitrator. In the Co-operative Societies Act, No. 2 of 1912, Clause (1) of Sub-section (2) of Section 43 which is the rule-making section (is?) worded in language similar to Clause (u) of Sub-section (2) of Section 30 of the U. P. Sugar Factories Control Act. In Clause (1) of Section 43 (2) also the Registrar of the Co-operative Societies is authorised to decide himself certain disputes or to refer them to arbitration. Rules 115 and 116 are the rules framed under this clause. Rule 115 says that the disputes mentioned therein "may be decided either by the Registrar or by arbitration and Rule 116 says that the Registrar shall either decide the dispute himself or refer it for decision to an arbitrator or arbitrators.

In view of what I have stated above I agree with the contention of the learned counsel for the peti-

tioner that Rule 23 of the Sugar Factories Control Rules permits the Cane Commissioner to decide the dispute himself or to refer it for arbitration and also that an appeal lies against the decision of the arbitrator or the. board of arbitration but no appeal lies against the decision of the Cane Commissioner.

18. The next question for consideration is whether the omission of the right of appeal in one case and its presence in the other is so discriminatory in character as to be said to deny to the petitioner equality before the law or the equal protection of the laws and make the law contained in Rule 23 void as being inconsistent with Article 14 of the Constitution. It is true that the right of appeal is a valuable right and giving one person a right of appeal and denying the same to another similarly situated will generally be taken to be an act of improper discrimination, but the other test is whether in the circumstances of a particular case this denial of right of appeal has substantially prejudiced the party.

19. It appears from the notice issued by the Cane Commissioner that he has decided to determine the dispute himself and in a case like this no appeal by the unsuccessful party would lie but I think that no substantial prejudice is caused to a person by deprivation of this right of appeal when the dispute is determined by the Cane Commissioner himself. The Cane Commissioner is a very responsible officer of the Government and his position is very different from that of an ordinary arbitrator or arbitrators. His position is such that he is probably a good substitute for the appellate authority, namely, the Divisional Commissioner.

Instances are not wanting where a person has been given a right of appeal if his case has been tried by a lower Court but the same is denied to another similarly situated whose case has been determined by a more experienced officer. Section 413, Criminal P. C., denies a person the right of! appeal in which a Court of Session passes a sentence of imprisonment not exceeding one month or in which the Court of Session or District Magistrate or other Magistrate of the First Class passes a sentence of fine not exceeding Rs. 50/-. Persons convicted of the commission of minor offences may be tried by any Magistrate but if he is tried and sentenced by a second or a third class Magistrate to any amount of fine he has a right of appeal against the decision but if he is convicted of the commission of the same offence by a Court of Session or a District Magistrate or a Magistrate of the First Class and is sentenced to a fine not exceeding Rs. 50/- a right of appeal is denied to him.

Similarly a person convicted by any Magistrate and sentenced to any term of imprisonment has a right of appeal but if he is sentenced for the commission of the same offence under the same section of the Penal Code to imprisonment upto one month by a Court of Session he cannot go up in appeal against the sentence. Power has also been given to the Magistrate to try certain cases summarily though offences under the same sections may also be tried like ordinary summons and warrant cases but if the trial has been sum-

mary then a sentence of fine not exceeding Rs. 200/- by a Magistrate empowered to try the case summarily is not appealable.

Then there is the fact that an appeal against the decision of a second and third class Magistrate lies to the District Magistrate who may transfer it to a first class Magistrate empowered in this behalf whereas an appeal from an order of a first class Magistrate lies to the Court of Session. The conviction may be under the same section of the Penal Code and for the commission of a similar offence but the forum of appeal in the two cases is different, and it is well known that a Court of Session is a Court of greater experience than the Court of a Magistrate.

Similarly, in civil cases the honorary munsifs are authorised to hear and try cases of small cause court nature and a decree passed in such a case by an honorary munsif would be appealable whereas if the same case were heard by the Small Cause Court Judge no appeal would lie from his decree.

The above instances show that if a person's case has been tried by a higher officer he may not be given a right of appeal whereas if it has been heard by an officer having lesser powers the right of appeal may be provided. In my opinion these provisions will not be held to deny to any person equality before the law or equal protection of the laws as the basis for the classification is discernible, the basis being the experience and the status of the officer trying the case. Applying the same analogy to the case before me and in view of the position of the Cane Commissioner, a denial of right of appeal against his decision cannot bo said to be an act of improper discrimination.

No case has been cited before me by the learned counsel for the petitioner where the mere existence of a right of appeal in one case and the denial of it in another has by itself been held to be such a circumstance as to make the statute void as being inconsistent with Article 14 of the Constitution.

In the case of -- 'Suraj Mall Mehta and Co. v. Vishwanatha Sastri', AIR 1954 SO 545 (F), there were a number of circumstances which induced their Lordships of the Supreme Court to hold that Section 5(4), Taxation on Income (Investigation Commission) Act, 1947, was void and the absence of right of appeal was one of the circumstances. Under the Income-tax Act an appeal is provided, then a second appeal and also a revision against the order of an Income-tax Officer passed under Section 34 of the Act whereas no appeal, second appeal, or revision was provided against a similar order passed by the Income-tax Investigation Commission. Their Lordships held in that case that there was a material and substantial difference in the procedure provided in the two Acts including the right of appeal, second appeal, or revision. They then considered the other circumstances creating discrimination and came to the conclusion, that Section 5(4), Income-tax (Investigation Commission) Act, was a piece of discriminatory legislation offending against the provision of Article 14 of the Constitution.

In the instant case no right of second appeal or revision is provided at all even to a person whose case has been referred to arbitration and there is only one right of appeal to the Divisional Commissioner. In cases decided by the Cane Commissioner there is no right of appeal but I think no substantial prejudice is caused to any person by the deprivation of this right of appeal to the Divisional Commissioner. The provision of this law, in my opinion, is not discriminatory and it does not deny equality of law or equal protection of laws and is thus not inconsistent with Article 14.

20. I have now to see whether there was such concealment of material facts in the application and affidavit filed by the petitioner as to deprive him of the right to press this petition.

In the counter affidavit filed on behalf of the society five cases of such suppression are mentioned in paragraph No. 2.

The first suppression mentioned there is said to be the omission of the petitioner to mention in his petition that he himself had sent a letter on 31-10-1950 invoking the jurisdiction of the Cane Commissioner to decide a dispute under Rule 23(1) of the Sugar Factories Control Rules. It is said that the Cane Commissioner entertained the claims of both the parties. This latter part of the allegation does not appear to be correct.

It appears from the affidavit filed in rejoinder that on 14-6-1950 the petitioner wrote to the society claiming a sum of over a lac of rupees as damages for short supply of cane. The society sent a reply on 4-10-1950 to the above letter and one of the pleas that it took up was the denial of its liability. On 31-10-1950 the petitioner then preferred his claim to the Cane Commissioner but the Cane Commissioner took no notice of the claim and no proceedings were started by the Cane Commissioner on this claim.

Sending of a claim to the Cane Commissioner which was taken no notice of is not such a circumstance the omission to mention which should result in the dismissal of the petition.

The sending of the claim may have a bearing on the point but the omission to mention this fact does not appear to have been deliberate and it might well have been considered by the petitioner to be an unimportant circumstance.

The second act of suppression is said to be the omission of the petitioner to mention the fact that his General Manager had attended the proceedings of the case before the Cane Commissioner on 18-8-1951. At this hearing an objection was raised on behalf of the Society that the petitioner was not properly represented at the proceedings and the proceedings were adjourned to the 4th of September. The present petition was, however, filed one day before the date fixed by the Cane Commissioner. The petitioner having been considered not to be properly represented by his General Manager and the proceedings having been adjourned on this ground the omission to mention these facts cannot be said to be improper.

It further appears from the affidavit filed in the rejoinder that the petitioners' legal adviser was also sent to represent the petitioner and he wanted to file a written statement which inter alia challenged the jurisdiction of the Cane Commissioner to decide the dispute but the Cane Commissioner refused to accept the written statement from the legal adviser, and wanted personal presence of the petitioner and adjourned the case for 4-9-1951. The petitioner thus cannot be said to have submitted to the jurisdiction of the Cane Commissioner as in the statement proposed to be filed the jurisdiction of the Cane Commissioner was challenged. The omission to mention this fact cannot be said to be a material concealment of any fact.

It is then said that in his letters dated 14-8-1950 and 4-11-1950 the petitioner admitted his liability to pay commission to the society but now he was disputing his liability to pay the same. It is said that the petitioner should have mentioned the sending of the above two letters. I do not think that the contention of the Society is correct on this point either. The petitioner even now is not denying his liability for the payment of the commission due to the Society but what he is denying is the fact that the Commissioner has jurisdiction to decide this dispute.

The fourth fact concealed is said to be that the petitioner, had purchased cane from the reserved area on requisition slips and identification cards issued by the Society and by making these purchases the petitioner became liable to pay commission to the Society but the petitioner did not mention this fact in his petition or affidavit. As to this point it may again be said that the petitioner is not denying his entire liability to pay commission but only the jurisdiction of the Cane Commissioner and in the petition and affidavit filed by him there was no concealment of the fact that the petitioner had purchased some sugar-cane from the reserved area worked by the Society.

It is lastly urged that the petitioner did not return the agreement in form No. 12 to the Society in spite of several reminders though he had purchased sugar-cane by sending requisitions and his other conduct was also such as to have caused the Society to believe in the existence of agreement in Form No. 12. This is a matter of evidence and the petitioner's case is that there has been no conduct of his which justifies the inference that he accepted or signed the agreement in form No. 12. He says that he wrote back to the Society to say that their offer was not for the entire quantity of sugar cane that they ought to have supplied to the petitioner. The petitioner's easa in the petition is that the agreement in form No. 12 was not signed and the provisions of Rule 23(1) therefore did not come into operation and the Cane Commissioner had no jurisdiction to decide the dispute.

1 do not think that there has been a concealment of any such material fact as to lead to the dismissal of this petition on the ground of improper concealment of facts alone, and I do not agree with the contention of the learned counsel for the Society on this point.

(21) As a result of my decision on points Nos. 1 and 2 this petition should fail and I dismiss it with costs which I assess at Rs. 300/- payable to respondent No. 2.