

State Of Bihar And Anr. vs R.B. Motilal Chamaria And Anr. on 12 September, 1969

Equivalent citations: 1969(1)UJ666(SC), AIRONLINE 1969 SC 128

JUDGMENT

Shah, J.

1. Messrs. R. B. Motilal Chamaria commenced an action in the court of the Subordinate Judge, Purnea for a decree against the State of Bihar for Rs. 2,34,213-2-9. They claimed that they had entered into contracts with the Government of Bihar to supply 1,50,000 maunds of paddy--1,00,000 maunds of local paddy at the rate of Rs. 6/12/- per maund, and 50,000, maunds of Nepal paddy at the rate of Rs 7/2/- per maund, and that they earned out the contract and submitted their bill on January 17, 1947 for the price of the paddy supplied but on final adjustment of account in respect of the paddy and other transactions relating to cloth and other claims made by them the State withheld Rs. 2,34,213-2-9, claimed in the action. The amount claimed was under nine different heads as set out in the Schedule attached to the plaint:

Rs. as. p.

(A) Claim for deductions made in respect of shortages as in para 2 of the plaint 39,503-11-9 (B) Claim for deduction made for godown rents as in para 3 of the plaint. 19,272-06-6 (C) Price of 5602 mds. 11 srs. of paddy at the rate of Rs. 6/12/- per maund due as in para 4 of the plaint. 39,215-14-0 (D) Claim in respect of cloth supplied under barter scheme as in para 5 of the plaint. 29,774-00-0 (E) Loss in respect of cloth quota against paddy supplied to Katihar Rice & Oil Mills under barter scheme as in para 6 of the plaint. 40,256-00-0 (F) Loss suffered in respect of cloth quota not supplied against paddy supplied to the Government under barter scheme as in para 7 of the plaint. 40,617-00-0 (G) Claim for deduction made in respect of hand-pound rice supplied to the " Govern-

ment as per (?) in para 8 of the plaint. 5,118 06-0 (H) Excess difference wrongly charges as in para 9 of the plaint. 19,645-13-6 (I) Transport shortage as in para 10 of the plaint. 810-00-0 Total : 2,34,213-02-0

2. The State of Bihar denied liability and contended that the action was barred by the law of limitation, that there being no contract executed in the manner prescribed by Section 175(3) of the Government of India Act, 1935, the action was not maintainable, and that in any event the amounts claimed were properly withheld.

3. In the view of the Trial Court the plaintiff had acted as purchasing agents for the State, and were entitled to recover Rs. 1,379/- out of item (A), the entire claim in respect of items (B) & (C) and Rs 774 0-0 out of item (D), and nothing in respect of items (E) to (I). Against the decree passed by the Trial Court the State as well as the plaintiffs appealed. The High Court held that the plaintiffs were vendors who had supplied goods to the State of Bihar. The High Court further held that the plaintiff's suit was governed by Article 120 of the Limitation Act and the cause of action arose on September 22, 1951 when the account was finally made up by the Government of Bihar and they declined to pay the amount "of Rs. 2 34,213/2/9 to the plaintiffs. The High Court confirmed the decree of the Trial Court in respect of items (A), (B) and (C) and allowed Rs. 29,774/- for item (D). The State has appealed to this Court, with certificate granted by the High Court.

4. The dispute in these appeals only relates to items (A) to (D) decreed by the High Court.

5. Two preliminary objections to the maintainability of the claims may first be considered : (1) that there was no contract executed on behalf of the Governor, and by a person authorised in that behalf as prescribed by Section 175(3) of the Government of India Act 1935 and on that account the suit was not maintainable. The plaintiff's case at the trial was that there was a contract in writing which was duly executed in the manner provided by Section 175 of the Government of India Act. There was no express denial of that averment by the State. The plaintiffs made several applications for orders directing the State to produce the agreement relating to the contracts which they claimed were in the possession of the State. They also served interrogatives calling upon the State to admit the existence of the contracts dated August 17, 1946. The High Court was of the view that the plaintiff had asserted the existence of the contracts and the defendant had not denied that averment by their written statement. The Trial Court was also of the view that there was a contract between the plaintiffs and the State of Bihar, but that Court did not consider whether because of absence of a formal document in the 'manner required by Section 175(3) of the Government of India Act the suit was not maintainable. The High Court recorded, on a consideration of the evidence and the attitude adopted by the State in reply to the various applications submitted by the plaintiffs to which we will presently refer, that there was a contract between the plaintiffs and the Regional Grain Supply Officer acting on behalf of the Governor of Bihar, that no plea was taken that there was non-compliance with the provisions of Section 175(3) of the Government of India Act and that in the absence of that plea it was not open to the State to contend the question being one purely of fact that the contract could not be enforced.

6. In the view we have taken it is not necessary to record any finding on this part of the case. The plaintiff's claim in respect of items (C) and (D) would in law be maintainable either on foot of a contract duly executed in accordance with the terms of Section 175(3) of the Government of India Act or on the foot of an obligation arising by virtue of the State having obtained the benefit of non-gratuitous acts done by the plaintiff i. e. under Section 70 of the Contract Act. Since the plaintiffs have supplied goods not intending to do so gratuitously and the State has enjoyed the benefit thereof, it is bound to compensate the plaintiffs for the value of the goods received. We hold for reasons to be presently set out that the plaintiffs have failed to prove claims (A) and (B).

7. (2) The plea of the bar of limitation does not present much difficulty. There was an outstanding account between the plaintiffs and the State. The account related not only to the supply of paddy but also to cloth transactions and other goods which the plaintiffs claimed to have received from the Government of Bihar. Paddy was supplied to the State by the plaintiffs in the year 1946 and their bill was submitted on January 17, 1947. There was correspondence between the plaintiffs and the Government of Bihar and no final decision was made on the claim of the plaintiffs. It was for the first time on September 22, 1951 that the Government finally refused to accept the claim of the plaintiffs in respect of the nine items which formed the subject matter of the claim in suit. On that day the Government of Bihar offered to pay an amount of Rs. 77,079/14/- in full discharge of the outstanding liability and declined to pay anything more. The State claimed to make several deductions from the claim made by the plaintiffs for the value of paddy supplied. The claim made by the plaintiff was in our judgment one for an amount wrongfully withheld by the State in making up the account in respect of the various transactions in which amounts paid by the Government were to be adjusted from time to time towards the value of paddy supplied, and in respect of other claims. Such a claim was not governed by Article 52 of the Limitation Act. In our judgment, the High Court was right in holding that the claim was not barred.

8. In determining the extent of the liability of the State of Bihar it is necessary to ascertain what the terms of the contract between the plaintiffs and the State were. The plaintiffs alleged in paragraph 2 of their plaint that the contract was for supply of paddy and that they had performed their part of the contract to the entire satisfaction of the Government. This was not a plea that they were appointed agents for purchasing paddy for the Government of Bihar. The plaintiffs have claimed in paragraph 4 of their plaint certain charges for commission and also referred to a barter scheme under which they were to sell cloth. But there is no averment in the plaint that the plaintiffs were purchasing agents of the State. The claim as laid in the plaint was that the plaintiffs supplied the goods as vendors. There is nothing in the written statement filed on behalf of the State which even indirectly admits that the State treated the plaintiff, as their agents for purchasing paddy. No issue was raised in that behalf. Several applications were filed in the trial Court by the plaintiffs calling upon the Government of Bihar to admit certain documents, to admit certain facts, to produce certain documents and to answer interrogatories. On June 16, 1954 the plaintiffs served a notice under Order 12, Rule 3 CPC intimating that they proposed to adduce in evidence the documents specified and filed in the Court as "per list copy whereof was served upon the Government of Bihar". The first item in the list of documents called for was "Office copy of the contract dated August 17, 1946. Original was sent to R.G.S.O. on August 17, 1946". In another notice to limit facts under Order 12, Rule 5, CPC it was recited that the plaintiffs required the Government of Bihar to admit "Facts respectively specified in the application," and one of the facts so specified was that there was a contract dated August 17, 1946 between the State of Bihar and R. B. H. M. Jute Mills to supply rice and paddy. An application for an order directing production of certain documents from the custody of the Government of Bihar was also submitted, one of the documents of which production was demanded was "Office copy of the Contract dated August 17, 1946", and with that application the plaintiff filed, a copy of the form of the Agreement in which the contract was executed. The form of the agreement clearly indicates that it was an agreement to purchase paddy and not an agreement by the plaintiffs as purchasing agents of paddy on behalf of the Government. Clause 1 of the form of agreement recites :

"Whereas the first party (the plaintiffs) has agreed to sell and supply to the Government of Bihar, (hereinafter called the Government) foodgrains of various kinds on the basis of offers made by the second party from time to time, subject to the terms and conditions specified hereunder".

In the interrogatories administered by the plaintiffs on August 20, 1954, the first interrogatory was: "Did not the Regional Grain Supply Officer, Purnea made contracts with parties in Purnea as purchasing agents for supply of rice and paddy (both Nepal and local) to Government of Bihar between the years 1946 and 1948 If so with whom (name the parties) ?".

9. Reading these applications together with the form of the agreement relied upon by the plaintiffs, there is no doubt that the plaintiffs' pleaded that the contract was for sale of paddy by them to the Government of Bihar and that they were not acting as purchasing agents for and on behalf of the Government of Bihar. At the trial of the suit Ram Kumar Sakseria asserted that the plaintiffs were appointed in August 1946 purchasing agents under the Government for supply of 1,00,000 maunds of paddy to the Regional Food Grains Supply Officer and that the contract was made in August 19-46 though the supply had started earlier in June 1946 as directed.

10. Counsel for the plaintiffs relied in support of the case of the plaintiffs that they were purchasing agents on the memorandum dated October 10, 1950 from the Secretary, Supply and Price Control Department, Bihar, Patna to the District Magistrate, Purnea in the case of B. Bhattacharjee, Purchasing Agent, Kishanganj. It was recited in that memorandum "It appears that at the time the party stored foodgrains on behalf of Government there was no fixed rate for payment of godown rent. The low rate which came into force subsequently under order of Government was allowed to this party. The Government under the above circumstances are pleased to order that the godown rent at the same scale as that allowed to food-grains syndicate may be paid to the party viz', /2/- per maund for storage for less than 6 months and-/4/-per mauni for storage for 6 months and above".

A list of 308 purchasing agents was maintained by the Government for procuring paddy But admittedly the plaintiffs were not included in that list of purchasing agents. Other persons may have been paid storage charges but that does not enable the plaintiffs to claim that amount in the absence of any such contract between them and the State. The original contract which was by law required to be reduced to writing and to be executed in the manner required by Section 175(3) of the Government of India Act is not before the Court. The copy which according to the plaintiffs represented the form of the contract does not support the plaintiffs case. The plaintiffs in their plaint have not asserted that they were purchasing agents for and on behalf of the Government of Bihar and the only evidence in support of the plaintiffs' case is that of Ram kumar Sakseria. The learned Trial Judge accepted the statement of Ram Kumar Sikseria that the plaintiffs were purchasing agents for the Government of Bihar. The learned Trial Judge referred to Ext. 8 a register known as "Personal Ledger Accounts for Agents" maintained in the office of the Regional Grain Supply Officer, which showed that the plaintiffs were treated as agents by the Government for the transactions in question and upon the plaintiffs accounts of purchases and supply maintained at pp. 79 and 127 of Ext. 8. In the view of the learned Trial Judge the inference arising from the Register was corroborated by Ext. 8 which disclosed that advances were sometimes made in excess of the

supplies and they had to be adjusted at the time of final accounting. The learned Trial Judge observed that it was the "definite case" of the plaintiffs that either before or after the "barter scheme" they never had any transactions with the Government for the supply of foodgrains and in view of that circumstance it must be held that the plaintiffs acted as purchasing agents for procuring foodgrains under the notification concerning the barter scheme Ext. B-7.

11. The High Court did not agree with that view. The High Court pointed out, after referring to the letters Exts. 2 (c) & 2 (b), that the correspondence indicated that the contract was for the supply of paddy and it did not support the plaintiffs case that they were purchasing agents. The High Court observed :

"Before an agency can be inferred, it has to be established that the State of Bihar had confined in the plaintiffs for the management of some business to and it was to be transacted in the name of State of the Bihar and on their account, but such a case has not been made out, either in the plaint or at the trial. The plaintiffs have submitted their bills (exhibit 3 series) not as agents but as suppliers of paddy. Besides that, in case of agency, the principal has to bear all the losses. All these factors are not present and accordingly the case of agency has to be ruled out."

The plaintiffs never pleaded the case that they were purchasing agents. That was no issue raised about it. The original contract which was by law required to be in writing and had to be executed on behalf of the Governor and by an officer authorised in that behalf is not on the record. The copy of the contract which according to the plaintiffs proves the terms of the contract does not support the plaintiffs' case that they were purchasing agents. No one claimed to give secondary evidence of the contents of the contract and even Ram Kumar Sekseria had to admit that there was no covenant in the terms of the contract under which they had to be paid any godown charges. We agree with the High Court, therefore, that the plaintiffs were not purchasing agents but were suppliers or sellers of the paddy.

12. Turning now to the items (A), (B), (C) & (D) in dispute, not much need be said about items (C) & (D). According to the plaintiffs a quantity of paddy was received by the Government of Bihar from one Nathmal as agent of the plaintiffs on the view that paddy was not supplied by the plaintiffs' bill, it is common ground that the Government of Bihar have not paid Nathmal the price of paddy supplied to the Government. The trial court held that the paddy referred in item (C) was received by the Government and with that view the High Court has agreed. Both the courts have also held that the goods were supplied by Nathmal for and on behalf of the plaintiffs in execution of the terms of the contract. Even if the plaintiffs have failed to establish the contract executed by an authorised person for and on behalf of the Governor under Section 175(3) of the Government of India Act they are still entitled to compensation for the paddy received by the Government from the agent of the plaintiff.

13. Item (D) relates to certain deductions made by the Government in respect of profits amounting to 11 1/2% of the price payable to the Government of Bihar. Rs. 29,774/- were withheld by the Government in respect of the claim for profits from cloth supplied. The plaintiffs averred in

paragraph 5 of the plaint that "the Government during the period of barter scheme directed the plaintiffs to pay 20% of profit on the purchase of cloth to the importers who used to retain 81/2% as their own profit and the remaining 11 1/2% was to be deposited by the importers under the rules of the said barter scheme". The plaintiffs asserted that they paid the full-amount of price and profit @ 20% as required by the said barter scheme, but the D.S.O. unauthorisedly deducted from the bill of the plaintiffs Rs. 29,774/-. It was, therefore, the plaintiffs' case that they had paid 20% of the profits to the importers and it was the duty of the importers to deposit 11 1/2% of the profits with the Govt. In the written statement filed by the State on May 15, 1953, there was a bare denial: it was asserted that the averments made in paragraph 5 of the plaint were "wholly incorrect and made for the purpose of the suit", and that the State of Bihar was not liable to pay the amount alleged to be due to the plaintiff on the barter scheme. In the second written statement filed on November 15, 1954 it was averred in paragraph 4 that the purchasers Katihar Cloth Importing Company was the concern of the plaintiffs and the proprietor of Nadram Satyanarayan was a partner of the plaintiffs", and that "the purchaser had "not paid 11 1/2% out of the margin of profit and the amount being Rs. 29,000 ', and on that account the margin of profit out of 20% was rightly deducted from the plaintiff's account. It is unnecessary on these pleadings to consider whether there were a common partner between the plaintiffs and the purchasing firm. The claim made by the State of Bihar is in the nature of a counter-claim and it was necessary before the claim could be adjudicated upon that the purchasers were made parties to the counter-claim. It was not the case that the purchasers were a branch of the plaintiffs; it was only suggested that one of the partners of the two firms was common. Assuming that it was so, in order to succeed in the counter-claim against the plaintiffs the Government of Bihar had to establish that the partnership between the plaintiffs and the purchasers and that an amount equal to 11 1/2% out of 20% of profits paid by the plaintiffs, was payable by the purchasers and had not been paid. There is no averment that the amount of 20% which was payable by the plaintiffs was not paid to the purchaser and the purchaser had made default in making the payment. The claim for Rs. 29,000/- was, therefore, rightly allowed by the High Court, the balance of Rs.774/- having been already-allowed by the Trial Court.

14. We may now turn to item (B), This relates to a claim for "godown rent" in respect of shortage of paddy in Nepal. The plaintiffs claimed that they had to purchase and store paddy to make it available to the State and for that purpose they had spent Rs. 29,272/6/6. The plaintiffs did not tender in evidence their books of account in support of their claim and there was no other reliable evidence of payment of "godown rent". The plaintiffs sought to rely upon the circumstance that one B. Bhattacharjee, purchasing agent, was paid by the Government rent at the rate of -/2/ per maund for storage charges. But if the plaintiffs were not purchasing agents, and were merely sellers of paddy payment of storage charges to Bhattacharjee and other purchasing agents will not assist the plaintiffs claim. The High Court was of the view that the claim may Under Section 44 of the Sale of Goods Act. But the expenditure incurred by the plaintiffs for making the paddy agreed to be sold by them available to the Government pursuant to the contract was incurred by them on their own behalf and in the absence of any contract to the contrary they cannot claim from the State. The form of the contract on which the plaintiff relied also go against their claim. In paragraph 5 of the form of agreement it is stated :

"From the date of acceptance of an offer, the foodgrains to which the offer or acceptance may relate shall become the property of the Government although the Government may not have made any payment or may not have taken delivery thereof; and the first party shall have no right to their disposal in any manner whatsoever including the pledging of these stocks with any bank without the express permission in writing of the Government, the Regional Grain Supply Officer or an officer duly authorised by him".

This covenant expressly provides that it is only after acceptance of the offer that the foodgrains become the property of the Government and not till then. There is no evidence on the record that there was in existence an offer before the date on which any "go-down charges" were incurred. The claim of the plaintiffs for the amount of Rs. 19,272/6/ must therefore fail.

15. The last claim relates to item(A). The plaintiffs claimed by paragraph 2 of their plaint an amount of Rs. 30,503/11/9 in respect of shortages which they suffered by reason of destruction caused by insects and rats and other forms, and on account of dryage. But if the plaintiffs were not agents for purchasing paddy, they could not claim compensation for any loss suffered by them in the shortage of goods. The learned Trial Judge awarded an amount of Rs. 1,373/- in the respect of this item and the High Court agreed with that view. For reasons set out in dealing with the claim under item (B), we are of the view that this claim cannot be sustained.

We accordingly modify the decree passed by the High Court and disallow the claim for Rs. 19,272 6/6 in respect of item (B) and Rs. 1,373/- for item (A) of the Schedule. Subject to that modification the appeals are dismissed. The parties will bear their own costs throughout.