Supreme Court of India
Waverly Jute Mills Co. Ltd vs Raymon & Company (India) Pvt. Ltd on 4 May, 1962
Bench: B.P. Sinha (Cj), K. Subbarao, N.R. Ayyangar, J.R. Mudholkar, T.L.V.

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                CASE NO.:
Appeal (civil)  389-392 of 1960

PETITIONER:
WAVERLY JUTE MILLS CO. LTD.

RESPONDENT:
RAYMON & COMPANY (INDIA) PVT. LTD.

DATE OF JUDGMENT: 04/05/1962

BENCH:
B.P. SINHA (CJ) & K. SUBBARAO & N.R. AYYANGAR & J.R. MUDHOLKAR & T.L.V.
AIYYAR

JUDGMENT:
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JUDGMENT 1963 AIR (SC) 90 = 1962 (3) SCR 209 VENKATARAMA AIYAR, J. -

These are appeals by special leave against judgments of High Court of Calcutta setting aside awards which directed the respondents to pay compensation to the appellants for Breach of contracts, on the ground that they were in contravention of a notification of the Central Government dated October 29, 1953, and were in consequence illegal and void. These appeals were heard along with Civil Appeals Nos. 98 & 99 of 1960 as there were common questions of law to be decided in all.

In Civil Appeals Nos. 389 & 390 of 1960 the facts are that on September 7, 1955, the appellants who are a company owning a Jute Mill at Calcutta entered into an agreement with the respondents who are also a Company doing business as dealers in jute, for the purchase of 2, 250 bales of the jute cuttings at Rs. 80 per bale of 400 lbs. to be delivered 750 bales every month in October, November and December, 1955. Clause 14 of the agreement provides that all disputes arising out of or concerning the contract should be referred to the arbitration of the Bengal Chamber of Commerce. The respondents delivered, pursuant to the contract, in all 2000 bales and made default in the delivery of the balance. The appellants then applied to the Bengal Chamber of Commerce for arbitration in accordance with cl. 14 of the agreement. The respondents appeared before the arbitrators and contested the claims on the merits. The arbitrators made an award in favour of the appellants for Rs. 10, 525, and that was filed under s. 14(2) of the Indian Arbitration Act in the High Court of Calcutta on its original side and notice was issued to the respondents. Thereupon they filed an application presumably under s. 33 of the Arbitration Act for a declaration that the contract dated September 7, 1955, was illegal as it was in contravention of the notification of the Central Government dated October 29, 1953, and that the award based thereon was a nullify. The learned Judge on the original side before whom the application came up for hearing dismissed it, and passed a decree in terms of the award. Against both the judgment and the order, the respondents preferred appeals to a Division Bench of the High Court appeals Nos. 148 & 141 of 1957. They were heard by Chakravartti, C.J., and Lahiri, J., who held that the contract dated September 7, 1955, was illegal, as

it fell within the prohibition contained in a notification of the Central Government dated October 29, 1953, and accordingly allowed the appeals and set aside the award. The appellants then applied for a certificate under Art. 133(3) of the Constitution by the same was refused. Thereafter they applied to this Court for leave under Art. 136 of the Constitution and that was granted. This is how these appeals come before us.In Civil Appeals Nos. 391 and 392 of 1960 the facts are similar. The appellants who are a company carrying on business in the manufacture of jute entered into a contract with the respondents on October 17, 1955, for the purchase of 500 bales of jute cuttings at Rs. 87-8-0 per bale of 400 lbs., to be delivered in equal instalment of 250 bales in November and in December 1955. Clause 14 of the agreement provides that all differences arising out of or concerning the contract should be referred to the Bengal Chamber of Commerce for arbitration. The respondents made default in the delivery of the goods and thereupon the appellants moved the Chamber of Commerce for arbitration under cl. 14 of the agreement. The respondents appeared before the arbitrators and contested the claim on the merits. The arbitrators made an award in favour of the appellants for Rs. 17, 500, and that was filed in the High Court of Calcutta on it original side and notice under s. 14(2) of the Arbitration Act was served on the respondents. Thereupon they filed an application in the High Court of Calcutta, presumably under s. 33 of the Arbitration Act, for a declaration that the contract dated October 17, 1955, was in contravention of the notification of the Central Government dated October 29, 1953, and was therefore illegal and that the arbitration proceedings pursuant thereto and the award passed therein were all void. The learned single Judge on the original side before whom the application came up for hearing dismissed it and passed a decree in terms of the award. Against the above judgment and order the respondents preferred appeals to a Division Bench of the High Court, Appeals Nos. 142 and 143 of 1957. They were heard by Chakravartti, C.J., and Lahiri, J., who held that the contract dated October 17, 1955, was illegal as it fell within the prohibition contained in the notification of the Central Government dated October 29, 1953, and accordingly allowed the appeals and set aside the awards. The appellant thereafter applied under Art. 133(1)(c) for a certificate and that having been refused they obtained from this Court leave under Art. 136 of the Constitution and that is how these appeals come before us. The points for decision in all these appeals are the same and this Judgment will govern all of them.The following contentions have been urged in support of these appeals :-

(1) The Forward Contracts (Regulation) Act, 1952, is ultra vires and the notification dated October 29, 1953, is in consequence null and void.

(2) On the terms of the arbitration clause the question whether the contracts dated September 7, 1955, and October 17, 1955, are illegal is one for the arbitrators to decide and that it was not open to respondents to raise the same in applications under s. 33 of the Arbitration Act.

(3) The respondents submitted to the jurisdiction of the arbitrators and that amounts to fresh agreement for arbitration and the award is accordingly valid and binding on them.

(4) The contracts dated September 7, 1955, and October 17, 1955 are non- transferable specific delivery contracts and they are not hit by the notification dated October 29, 1953.

(1) The first question relates to the vires of Forward Contracts (Regulation) Act, 1952 (Act 74 of 1952), hereinafter referred to as 'the Act'. This statute was enacted by Parliament and received the assent of the President on December 26, 1952. Its validity is attacked on two grounds; that Parliament had no competence to enact it, and that the provisions of the Act are repugnant to Art. 14 and Art. 19(1)(g) of the Constitution and therefore void. If this contention is well founded, then the notification dated October 29, 1953, which was issued by the Central Government in exercise of the powers conferred by s. 17 of the Act would be null and void.

Dealing first with the question as to the competence of Parliament to enact the impugned law, it will be convenient to set out the entries in the Legislative Lists in Seventh Schedule of the Constitution bearing on this question.

List I-Entry 48 - Stock Exchanges and Futures Markets.List II-Entry 26 - Trade and commerce within the State subject to the provisions of entry 33 of List III.

Entry 27 - Production, supply and distribution of goods subject to the provisions of entry 33 of List III.

List III-Entry 7 - Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

Now the contention of the appellants is that the subject-matter of the impugned legislation is either Trade and Commerce or Production, supply and distribution of goods, within entries 26 or 27 in List II of the Seventh Schedule, and that it is within the exclusive domain of the State Legislature. The contention of the respondents, and of the Union which has intervened, is that the impugned Act is legislation on 'Futures Markets' falling under entry 48 in List I and that it is Parliament which has the exclusive competence over it, and in the alternative it is one on contracts, and that is covered by entry 7 in List III in the Seventh Schedule and is intra vires. To decide this question, it is necessary to ascertain the true nature and scope of the legislation, its pith and substance. The object of the Act as stated in the preamble is "to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for the matters connected therewith". The statute makes a distinction between" ready delivery contracts"and" forward contracts."

When a contract provides for the delivery of goods and payment of price therefor either immediately or within a period not exceeding eleven days it is a ready delivery contract. All other contracts are forward contracts. Forward contracts are again divided into two categories 'specific delivery contracts' and 'non-transferable specific delivery contracts', 'Specific delivery contracts' mean forward contracts which provide for actual delivery of specific goods at the price fixed during specified future period. 'Non-transferable specific delivery contracts' are specific delivery contracts the rights or liabilities under which are not transferable. Section 15 confers power on the Government to issue notifications declaring illegal forward contracts with reference to such goods or class of goods and in such areas as may be specified. Section 17 authorises the Government to prohibit by notification any forward contract for the sale or purchase of any goods or class of goods to which the provisions of s. 15 have not been made applicable. Section 18 exempts non- transferable

specific delivery contracts from the operation of these sections. Thus the law is what is purports to be, a law regulating Forward Contracts.That being the scope of the enactment, the point debated before us is whether it is a law on Trade and Commerce of Production, supply and distribution of goods within entries 26 or 27 in List II or on Futures Markets within entry 48 in List I. It would be noticed that both the entries 26 and 27 in List II are subject to entry 33 in List III. Entry 33 as it now stands is :

"Trade and commerce in, and the Production, supply distribution of..... (e) raw jute"

. The impugned Act in so far as it relates to raw jute - and that is what we are concerned with in these appeals - will clearly be intra vires if it fell under this entry. But it should be mentioned that cl. (e) in entry 33 was inserted by the Constitution (Third Amendment) Act, 1954 and as the impugned Act was passed in 1952, its validity must be determined on the provisions of the Constitution as they stood prior to the Amendment Act in 1954 and entry 33 in List III therefore must be excluded from consideration.

Now turning to the question whether the impugned Act is legislation on Futures Markets or on Trade and commerce, the contention of the appellants is that a law with respect to Forward Contracts, is not a law with respect to Futures Markets, because the ordinary and accepted meaning of 'Market' is that it is a place where business in the sale and purchase of goods in carried on. In support of this contention we are referred to the Dictionary meaning of the word 'Market' and the decisions of the Madras High Court reported in Public Prosecutor v. Cheru Kutti 1925 AIR(Mad) 1095.] and Commissioner, Coimbatore Municipality v. Chettimar Vinayagar Temple Committee [1956 (2) MLJ 563.]. According to the Concise Oxford Dictionary the word 'Market' means "gathering of people for purchase & sale of provisions, livestock, etc.; open space or covered building in which cattle etc. are exposed for sale"

. In Public Prosecutor v. Cheru Kutti [1956 (2) MLJ 563.] the facts were that the accused was charged under facts were that the accused was charged under s. 170 of the Madras Local Boards Act, 1920 for keeping open a new private market without a licence. His defence was that the place where the sales were held was not truly a market, and that was accepted. In that context, discussing the meaning of the word 'market', the Court observed that it meant "a place set apart for the meeting of the general public of buyers and sellers, freely open to any such to assemble together, where any seller may expose his goods for sale and any buyer may purchase"

. In Commissioner, Coimbatore Municipality v. Chettimar Vinayagar Temple Committee [1956 (2) MLJ 563.], the question arose this time with reference to the Provision in Madras District Municipalities Act, 1920 requiring a place used as an open market under the Act to be licensed. The Court held that the ordinary meaning of market was place where the public could go during particular times for purpose of buying and selling and that on the facts the place in question was market. It is contended on the strength of the above rulings that as the impugned Act is not one with reference to building where business is being transacted it is not a law with reference to markets.We are unable to agree with this contention. Market no doubt ordinarily means a place where business is being transacted. That was probably all that it meant at a time when trade was not developed and

when transactions took place at specified places. But with the development of commerce, bargains came to be concluded more often than not through correspondence and the connotation of the word 'market' underwent a corresponding expansion. In modern parlance the word 'market' has come to mean business as well as the place where business is carried on. Labour Market for example, is not a place where labourers are recruited but the conditions of the business of labour. The word 'market' being thus capable of signifying both business and the place where the business is carried on, the question in what sense it is used in a particular statute must be decided on a consideration of the context of that statute. Thus in Public Prosecutor v. Cheru Kutti 1925 AIR(Mad) 1095.] and Commissioner, Coimbatore Municipality v. Chettimar Vinayagar Temple Committee [1956 (2) MLJ 563.], the question arose with reference to provisions as to licensing by local authorities, and for that purpose market was interpreted as meaning a place. So we must examine what the word market means in entry 48 "Futures Markets" in List I. The word 'Futures' is thus defined in Encyclopaedia Britannica :

"contracts which consists of a promise to deliver specified qualities of some commodity at a specified future time. The obligation is for a single quantity in a given month..... Futures are thus a form of security, analogous to a bond or promissory note"

. In this sense a market can have reference only to business and not to any location. In our opinion a legislation on Forward Contracts would be a legislation on Futures Markets.It is next argued for the appellants that even if a law on Forward Contracts can be said to be a law on Futures Markets, it must be held to be legislation falling under entry 26 in List II, and not entry 48 in List I, because Forward Contracts form a major sector of modern trade, and constitute its very core, and to exclude them from the ambit of entry 26 in List II, would be to rob it of much of its contents. Reliance was placed in support of this contention, on the rule of construction that the entries in the Lists should be construed liberally and on the decision in Bhuwalka Brothers Ltd. v. Dunichand Rateria 1952 AIR(Cal) 740.], which, on this point was affirmed by this Court in Duni Chand Rateria v. Bhuwalka Brothers Ltd. [1955 (1) SCR 1070.] The rule of construction is undoubtedly well established that the entries in the Lists should be construed broadly and not in a narrow or pedantic sense. But there is no need for the appellants to call this rule in aid of their contention, as trade and commerce would, in their ordinary and accepted sense, include forward contracts. That was the view which was adopted in Bhuwalka Brothers Ltd. case 1952 AIR(Cal) 740.] and which commended itself to this Court in Duni Chand Rateria's case [1955 (1) SCR 1071.]. Therefore, if the question were simply whether a law on Forward Contracts would be a law with respect to Trade and commerce, there should be no difficulty in answering it in the affirmative. But the point which we have got to decide is as to the scope of the entry 'Trade and commerce' read in juxtaposition with entry 48 of List I. As the two entries relate to the powers mutually exclusive of two different legislatures, the question is how these two are to be reconciled. Now it is a rule of construction as well established as that on which the appellants rely, that the entries in the Lists should be so construed as to give effect to all of them and that a construction which will result in any of them being rendered futile or otiose must be avoided. It follows from this that where there are two entries, one general in its character and the other specific, the former must be construed as excluding the latter. This is only an application of the general maxim that Generalia specialibus non derogant. It is obvious that if entry 26 is to be construed as comprehending Forward Contracts, then "Futures Markets" in entry 48 will be

rendered useless. We are therefore of opinion that legislation on Forward Contracts must be held to fall within the exclusive competence of the Union under entry 48 in List I.It now remains to deal with the decisions on which the appellants rely in support of their contention that the legislation is really one on Trade and commerce falling within entry 26. In Bhuwalka Brothers Ltd. case 1952 AIR(Cal) 740.] the question was with reference to the validity of the West Bengal Jute Goods Futures Ordinance, 1949. That Ordinance had been promulgated by the Governor without obtaining the consent of the Governor- General and the contention was that the legislation fell within entry 7 'Contracts' in List III and as the consent of the Governor-General had not been obtained it was invalid. As against this it was contended that the legislation was with respect to Trade and commerce which fell within List II and that therefore the consent of the Governor-General was not necessary. In accepting the latter contention the Court observed :

"In pith and substance the legislation was one on trade and commerce and not on contracts and that therefore it was within the powers of the provincial legislature"

. There was an appeal taken against this decision to this Court and there the correctness of this view was accepted. Vide Duni Chand Rateria's case [1955 (1) SCR 1071.]. Now the contention before us is that on this authority it should be held that the legislation was one on Trade and commerce falling within entry 26.

We are unable to accept this contention. The validity of the West Bengal Jute Goods Futures Ordinance, 1949, has to be judged in accordance with the provisions of the Government of India Act, 1935, which was the Constitution Act then in force. In that Act there was no specific entry relating to 'Futures Markets'. Such an entry was introduced for the first time in the present Constitution in 1952. The contest in Bhuwalka Brothers Ltd. case 1952 AIR(Cal) 740.] therefore was not between a general entry on trade and commerce and a specific entry on the futures markets, as in the present case, but between Trade and commerce in List II and Contracts in List III. In the absence of a specific entry like the one contained in entry 48 in List I, the decision in Bhuwalka Brothers Ltd. case 1952 AIR(Cal) 740.] would be correct but it is no longer law in view of the change in the Constitution.In the present case the question was also raised whether the impugned legislation would fall under entry 7 of List III. While the respondents insisted that it fell under entry 48 in List I, they were also prepared, in case that contention failed, to fall back on entry 7 in List III as a second line of defence. Entry 7 is general in its terms and cannot prevail as against specific entry such as entry 48 in List I or 26 in List II. On this point, we are in agreement with the decision in Bhuwalka Brothers Ltd. case 1952 AIR(Cal) 740.]. In the result we must hold that the attack on the impugned Act on the ground of legislative incompetence must fail.

The second ground of attack on the vires of the Act is that it is repugnant to Art. 14 and to Art. 19(1)(g) of the Constitution and is, therefore, void. So far as Art. 14 is concerned, the question is now concluded by the decision of this court in M/s. Raghubar Dayal Jai Prakash v. The Union of India [1962 (3) SCR 547.] where it has been held that the impugned Act does not infringe that Article and is valid. This point is therefore on longer open to debate and indeed the appellants addressed no arguments on it.

Then as regards the attack based on Art. 19(1)(g) the position is that though the appellants raised this contention in the pleadings they did not press it before the learned Judges in the Court below because there was a decision on the Bench of the Calcutta High Court which had decided the point against the appellants. The point, however was taken in the grounds of appeal to this Court, and has been sought to be pressed before us. The respondents complain and rightly that a point like this should not be allowed to be taken at this stage as a decision thereon will turn on investigation of facts which has not been made. It is also contended that there being a strong presumption in favour of the constitutionality of a legislation the appellants must fail as they have not placed any materials before the Court to rebut that presumption. The answer of the appellants to this contention is that as the Act is on the face of it violative of the fundamental rights under Art. 19(1)(g), it was for the other side to place materials for showing that it was protected by Art. 19(6) as one which is reasonable and made in the interests of the general public, and not for them to show negatively that it was not and reliance was placed on the observations of this court in Saghir Ahmed v. The State of Uttar Pradesh and Others [1955 (1) SCR 707, 726.]. We are of opinion that those observations cannot be read as negativing the presumption as to the constitutionality of a statute. But it is unnecessary to say more about it, as the appellants abandoned this point after some argument. This contention this point after some argument. This contention also must therefore be found against the appellants.(2) It is next contended for the appellants that the question as to the validity of the contracts between the parties was one for the arbitrators to decide and that in consequence it was not open to the respondents to raise it in an independent application under s. 33 of the Arbitration Act. This question has been considered by us in Khardah Company Ltd. v. Raymon & company (India) (P.) Ltd. [1963 (3) SCR

183.] with which these appeals were heard and therein we have held that it a contract is illegal and void, an arbitration clause which is one of the terms thereof, must also perish along with it and that a dispute relating to the validity of a contract is in such cases for the Court and not for the arbitrators to decide. Following that decision we must overrule this contention.

(3) The appellants next contend that even if the arbitration clause in the original agreement between the parties should be held to be inoperative by reason of the validity of the contract itself being in question, when the respondents subsequently appeared before the arbitrators and filed statements in support of their defence, that must be held to amount to a new agreement by them for arbitration, on which the arbitrators would be entitled to act and that in consequence the award could not be attacked on the ground of want of jurisdiction. This the respondents dispute. They contend that mere participation in the arbitration proceedings cannot be held to be a new agreement for arbitration, and that the jurisdiction of the arbitrators must be decided solely with reference to cl. 14 of the agreement. The point for decision is as to the true effect of what happened before the arbitrators on their jurisdiction to hear the dispute. The principles applicable in the determination of this question are well settled. A dispute as to the validity of a contract could be the subject- matter of an agreement of arbitration in the same manner as a dispute relating to a claim made under the contract. But such an agreement would be effective and operative only when it is separate from and independent of the contract which is impugned as illegal. Where, however, it is a term of the very contract whose validity is in question, it has, as held by us in Khardah Co. Ltd. case [1963 (3) SCR 183.], no existence apart from the impugned contract and must perish with it.We shall now refer to

the decisions cited before us, bearing on this distinction between the two categories of agreements. In Shiva Jute Baling Ltd. v. Hindley and Company Ltd., [1960 (1) SCR 569.] the difference between these two classes of agreements was noticed, though in a somewhat different context. A decision directly bearing on this distinction is the one in East India Trading Company v. Badat and Co. [(1959) I.L.R. Bom. 1004, 1018, 1019.]. There the facts were that there was a general agreement between the parties as to the terms on which they should do business and it was provided therein that all disputes arising out of the contract should be settled by arbitration. Subsequent thereto the parties entered into several contracts and then a dispute arose with reference to one of them. One of the parties denied the contracts and the question was whether an award passed by the arbitrators with reference to that dispute was without jurisdiction. In holding that the arbitrators had jurisdiction to decide the matter by virtue of the agreement antecedent to the disputed one, the Court observed :

"Now, the principle of the matter is this that when a party denies the arbitration agreement, the very basis on which the arbitrator can acts is challenged and therefore the Courts have taken the view that in such a case the arbitrator has no jurisdiction to decide whether he himself has jurisdiction to adjudicate upon the dispute..... If the arbitration agreements is part and parcel of the contract itself, by denying the factum of the contract the party is denying the submission clause and denying the jurisdiction of the arbitrators. But in this case the position is different. We have an independent agreement by which the parties agreed to refer the disputes to arbitration. Pursuant to this agreement, contracts were entered into and when the plaintiffs made a claim against the defendents, the defendants denied their liability. Therefore, what was denied was not the jurisdiction of the arbitrators, not the submission clause, but business done pursuant to the submission clause and to which the submission clause applied"

. That in our judgment is a correct statement of the true legal position.The point then for decision is whether there is in this case an agreement for reference to arbitration apart from cl. 14 of the contract. It is not contended for the appellants that there was any express agreement between the parties for referring the disputes under the contract dated September 7, 1955, to arbitrators. All that is said is that the respondent filed statements before the arbitrators setting out their defence on the merits, and that must be construed as an independent agreement for arbitration and the decisions in National Fire and General Insurance Co. Ltd. v. Union of India 1956 AIR(Cal) 1.] and Pratabmull Rameswar v. K. C. Sethia Ltd. [(1959) 64 C.W.N. 616.] are cited as authorities in support of this contention.

Now an agreement for arbitration is the very foundation on which the jurisdiction of the arbitrators to act rests, and where that is not in existence, at the time when they enter on their duties, the proceedings must be held to be wholly without jurisdiction. And this defect is not cured by the appearance of the parties in those proceedings, even if that is without protest, because it is well settled that consent cannot confer jurisdiction. But in such a case there is nothing to prevent the parties from entering into a fresh agreement to refer the dispute to arbitration while it is pending adjudication before the arbitrators, and in that event the proceedings thereafter before them might be upheld as referable to that agreement, and the award will not be open to attack as without jurisdiction. But it will make all the difference in the result whether the parties have entered into an

arbitration agreement as defined in s. 2(a) of the Arbitration Act or have merely taken steps in the conduct of proceedings assumed or believed to be valid. In the former case the award will be valid; in the latter, a nullity.Now what are the facts in the present case ? We have gone through the statements filed by the respondents before the arbitrators, and we do not find any thing therein out of which a new agreement to refer the dispute to arbitration could be spelt. The respondents merely contested the claim on the merits, and then added :

"The sellers submit that this reference is improper, unwarranted, frivolous and vaxatious and should be dismissed with cost."

It is impossible to read this statement as meaning an agreement to refer to arbitration.

The decisions in National Fire and General Insurance Co. Ltd's. case 1956 AIR(Cal) 1 1.] and Pratabmull Rameswar's case [(1959) 64 C.W.N. 616.] relied on for the appellants are not really in point. In both these cases there was a valid submission on which the arbitrators proceeded to act. Before them the parties filed statements and therein they put forward a claim which was not actually covered by the reference, and invited them to give their decision thereon. The party against whom the award had gone contended that the arbitrators had acted without jurisdiction in deciding that claim. In overruling this contention the Court held that it was open to the parties to enlarge the scope of a reference by inclusion of a fresh dispute, that they must be held to have done that when they filed their statements putting forward claims not covered by the original agreement, that these statements satisfied the requirements of s. 2(a) of the Arbitration Act, and that it was competent to the arbitrators to decide the dispute. The point to be noticed is that in both these cases there was no want of initial jurisdiction, but a feeding of existing jurisdiction by an enlargement of the scope of the reference. That this does not involve any question of jurisdiction of the arbitrators will be clear from the scheme of the Act. If an award deals with a matter not covered by the agreement it could either be modified under s. 15(a) or remitted under s. 16(1)(a). And where such matter is dealt with on the invitation of the parties contained in the statements, there can be no difficulty in holding that the arbitrators actual within jurisdiction. In the present case the arbitrators had no jurisdiction when they entered on their duties, nor is it established that there was any subsequent agreement which could be held to be a submission of the question as to the validity of the contracts. We are accordingly of the opinion that the respondents are not precluded by what they did before the arbitrators from agitating the question of the validity of the contracts in the present proceedings.(4) The last contention of the appellants is that the contracts dated September 7, 1955, and October 17, 1955, are non-transferable specific delivery contracts, as defined in s. 2(f) of the Act and under s. 18 they are exempt from the operation of s. 17, and that they are therefore not hit by the notification dated October 29, 1953. The facts are similar to those considered by this Court in Khardah Company Ltd. case [1963 (3) SCR 183.] with which these appeals were heard, and for the reasons given by us in our Judgment in those appeals delivered to day, we accept the contention of the appellants, and hold that the contracts in question are not hit by the notification dated October 29, 1953.

In the result the appeals are allowed, with costs throughout, one set in Civil Appeals Nos. 389 and 390 of 1960 and one in Appeals Nos. 391 and 392 of 1960, and one hearing fee.