M/S. BINANI COMMERCIAL CO., LTD.

v.

RAMANLAL, MAGANLAL MEHTA

(P B. GAJENDRAGADKAR and K. N. WANOHOO, JJ.)

Conttol of •supply—Noh-ferrous metals—Statute empowering Government to fix maximum quantity that may be sold—Notification fixing such maximum—Validity of—Agreement to sell more than maximum quantity fixed—If void—Suny and Prices of Goods Act, 1950 (70 of 1950), ss. 4 and 5 —Government of India Notification dated September 2, 1950.

The Supply and Prices of Goods Act, 1950, made provisions for the control of prices, supply and distribution of certain goods essential to the national economy. Section 40 empowers the Central Government to fix the maximum quantity of such goods which may be sold to any person in one transaction. Section 4(2)(a) provides that the maximum quantities may be fixed for the same goods differently in different localities or for different classes of dealers or producers. Section 5(1)(c) providr:s that no dealer or producer shall sell or agree to sell or offer for sale goods exceeding the maximum fixed under s. 4. The Central Government issued a notification prohibiting dealers and prodncers from selling any non-ferrous metal exceeding one ton except upon a declaration by the purchaser that the quantity did not exceed his requirements for three months. The appellant entered into an agreement to sell to the respondent 300 tons of zinc. The respondent did not take thc entire quantity and the appellant filed a suit for damages for breach of contract. The respondent resisted the suit on the ground that the agreement was void as it offended s. of the Act. The appellant contended that the notification was invalid as only an immutable arithmetical maximum could have been fixed for each non-ferrous mctal but the notification did not do so pnd also as it did not fix the maximum by reference to different classes of dealers and produccrs according to s. It was further contended that the notification applied only to a sale and not to an agrecment to sell and as such the agreement did not offend s.5(1)(c).

Held, that the notification was perfectly valid and that t e agreement was void as it offended s. 5(1)(c) of the Act. Section did not require the fixing of an immutable arithmetical maximum asa large number of goods were intended to be covered by the Act which would be required by different classes of persons under a variety of circumstances. Section 4(2)(a) was merely an enabling provision and did not oblige the Government to fix the

Binani Commerco., Ltd.

v.

Ramanlal,

maximum differently for different classes of dealers and producers; s. was not a proviso to s, 4(1)(c). Once the maximum was fixed, then by the combined operation of s. 4(1)(c) and s. 5(1)(c) an agreement to sell or an offer to sell such goods in excess of the maximum was immediately hit.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1961 371 of 1957.

Appeal from the judgment and decree dated August cial 22, 1955, of the Bombay High Court in Appeal No. 49 v. of 1955.

Maganlal Mehta

C. B. Agarwata, J. B. Dadachanji, Ravinder Narain and O. C. Mathur, for the appellant.

Ajit H. Mehta and I. N. Shi'0ff, for the respondent.

1961. May l. The Judgment of the Court was delivered by

GAJENDRAGADKAR, J.—This appeal arises from a Gajendragadkar J. suit filed by M/S. Binani Commercial Co. Ltd., on the Original Side of the Bombay High Court against the respondent Ramanlal Maganlal Mehta. In its suit the appellant sought to recover from the respondent a sum of Rs. 93,053-3-0 which represented the loss suffered by it in the transaction in question or in the alternative damages for Rs. 88,229-3-0 for breach of the contract in respect of the said transaction.

The appellant is a, Limited Company and it carries on business in Bombay as metal merchants, bankers and commission agents. The respondent also carries on business in Bombay under the name and style of M/S. Balasinor Export and Import Co., and also as M/S. Ramanlal and Sons. In January 1952 the appellant agreed to sell to the respondent 300 tons of Electrolytic Zinc ot the rate of Rs. 171 per cwt. against delivery orders issued under the regulations of the Metal Traders

Binani CommerCo., Ltd.

Association, Ltd., for Posh Sudi 15 delivery (January 12, 1952). The respondent promised to pay for the said goods by January 21, 1952 and to take delivery thereafter. The respondent paid to the appellant several sums aggregating Rs. 1,56,000 as a deposit for the price of the said goods. The appellant tendered the said goods to the respondent whereupon he arranged to take delivery of only 160 tons and made payments on account. The appellant then tendered the balance of 140 tons to the respondent but the respondent failed and neglected to take delivery of the said balance and to pay for it. As a result of the respondent's default in taking delivery the appellant had to sell the balance in the falling mbl'ket at Rs. 81 per cwt., and that had resulted in the loss to the appellant. That in brief is the nature of the claim made by the appellant against the respondent.

cial

v.

Ramanlalt

Magønlal Mehta

Gajendragadkav J This claim was resisted by the respondent on several grounds. The principal ground urged by him, however, was that the transaction in suit för the gale of 300 tons of Electrolytic Zinc was in contravention of the provisions of Supply and Prices of Goods Act, 1950 • (70 of 1950) and cl. (b) of the Government of India Notification No. 1(4)-32(17)50 issued on September 2, 1950. According to the respondent the said transaction was void a,nd illegal and therefore the appellant's claim was not maintainable in law. The respondent also raised other contentions on the merits without prejudice to his principal contention about the illegality of the contract.

The suit was tried by Coyajee, J. on the Original Side of the Bombay High Court. The principal defence

Binani Commerco ., Ltd.

Raman!al,

raised by the respondent was tried as a preli. minary issue by the learned Judge. On this preliminary issue, the learned Judge held that the defence set out by the respondent was not good and not applicable to the facts and .circumstances of the case. His conclusion, therefore, was that the contract was valid. The learned Judge, after delivering this interlocutory judgment, proceeded to try the issues on the merits, and having found in favour of the appellant on the said issues he directed that the matter be referred to the Commissioner for taking accounts to ascertain the damages suffered by the appellant in the light of the directions given in the Judgment.

Against this decision the respondent preferred an appeal and the Division Bench of the Appeal Court allowed his appeal. Before the Court of Appeal only one point was argued and that was in regard to the validity of the contract. The Court of Appeal has held, reversing the conclusion of the trial Judge, that the defence raised by the respondent was good and that the contract in question was invalid. In the result the Appeal Court has directed that the appel- 1961 lant's suit should be dismissed with costs. The appellant then applied for and obtained a certificate Cia' from the V. said High Court and it is with that certificate that it has come to this Court by its present appeal;

and the main contention raised by Mr. Agarwala on Mehta behalf of the appellant iB that the view taken by the Division Bench in upholding the contention of theGajendragadkav J. respondent against the validity of the contract is erroneous in IBW. It is, therefore, necessary at the outset to refer to the material provisions of the Supply and Prices of Goods Act 70 of 1950 (hereafter called the Act) and to examine very broadly its scheme and pur-

ni CommerCo., Ltd.
pose.

The Act has been passed in pursuance of a resolution under Art. 249 of the Constitution for the control of prices of certain goods and the supply and distri- bution thereof. Article 249 confers on Parliament the power to legislbte in regard to a motter in a State List but the said power can be exercised only in national interest and after the Council of State passes a resolution in that behalf supported by at least twothird of the members voting. There is no doubt that the Act has been passed in national interest because national interest undoubtedly required thot the supply and prices of certain types of goods should be controlled by the Central Legislature. The prices in regard to those goods which ore essential for national economy ore apt to vary from place to place, and unless the supply of goods is rationally controlled the goods may be available in plenty in one place and may not be available in adequate measure in another. It is with a view to make the supply of controlled goods fairly available in the country at a reasonable price that the Act purports to impose the necessary restrictions to regulate the supply and sole of the said goods. Section 2 of the Act defines goods as meaning goods to which the Act opplies. Section 3 provides, inter alia, that the Act applies to the goods specified in the Schedule and to such other goods that the Central Government may by o notified order specify in

80

1961 that behalf. Section 4 deals with the fixing of maximum prices and maximum quantities which may be Cia' held or sold, while s. 5 imposes restrictions on posses v. sion and sale by dealers and producers where maxiRaman!al, mum is fixed under s. 4. Under s. 6 is imposed a Maganlat Mehta general limitation of quantity which may be possessed at any one time, and the proviso to sub-s. (l) makes it Gajendragadkar J.

clear that it does not apply to the persons specified in cls. (a) and (b) of the proviso. A duty to declare possession of excess stocks is imposed by s. 7, while s.

8 imposes an obligation to sell goods as therein specified. Failure to comply with the requirements of the said section is made an offence under the Act. Under s. 13 power is conferred on the Central Government to regulate production and distribution of goods, and s. 16 confers power on the Central Government to authorise by general .or special order any offcer not below the rank of an inspector of police to effect search and seizure for the purpose of enforcing the provisions of this Act. It is thus clear that the sections of the Act have been so framed as to give effect to the object of the Act to regulate and control the supply and prices of goods which are brought within the purview of the Act in the interest of national economy.

In the present appeal we are directly concerned with the notification issued under s. It is, however, necessary to read s. 4. Section 4 provides thus:

"4. (1) The •Central Government may, by notified order, fix in respect of any goods—

(a) the maximum price or rate which may be charged by a dealer or producer;

(b) the maximum quantity which may at any one time be possessed by a dealer or producer;

(c) the maximum quantity which may in one transaction be sold to any person.

(2) Any such order may—

(a) fix maximum prices or rates and maximum quantities for the some description of goods differ. ently in different localities or for different classes of dealers or producers;

(b) instead of specifying the maximum price or rate to be charged, direct that that price or rote shall be computed in such manner and by reference cial to such

1961

v.

ni CommerCo., Ltd.

matters as may be provided by the order." Section 5 imposes restriction on possession and sale by dealers and producers in cases covered by s. 4 and Mehta provides by sub-s. (l)(c) that no dealer or producerGajendragadkav J. shall sell or agree to sell or offer for sale to any person in any one transaction a quantity of any goods exceed. ing the maximum fixed under cl. (c) of sub-s. (l) of s. 4. It would be recalled that the respondent's contention is that the contract in suit is void because it contravenes the provisions of s. in that it does not comply with the requirements of the notification issued under s. 4(l)(c). Thus, for deciding the narrow controversy between the parties it would be necessary to determine the scope and effect of the provisions of s. 4(l)(c) and the notification issued under it and the provisions of s. 5(1)(c).

Let us now read the notification. The notification provides:

"(b) No such. dealer or producer shall sell any non-ferrous metals exceeding one ton unless he has obtained a declaration in writing from the buyer that the quantity proposed to be sold Ito him does not exceed his requirements for consumption for three months or in case the buyer is o dealer his require. ments for normal trade for three months."

What does the notification provide? It provides that no dealer shall sell any non-ferrous metals exceeding 1 ton unless the other requirement of the notification is satisfied. In other words, the notification imposes in the first instance a general ban on sole of non-ferrous metals beyond I ton but this ceiling is not absolute. Sale beyond 1 ton can be validly effected pro. vided the dealer obtains a declaration in writing from the buyer that the quantity proposed to be sold to him does not exceed his requirement for consumption for three months. It also

cial

allows latitude to sell more than I ton in the case of a buyer who is dealer. The effect of the notification, therefore, is that two kinds of ceilings are imposed and thereby two maxima are 961 fixed. Upto 1 ton sale can be effected without any declaration; beyond 1 ton sale can be effected either to a consumer or to a dealer provided the consumer v.or the dealer makes o declaration that the quantity Ramanlal, sold to him does not exceed his requirements for ganlal Mehta three months. It is common ground that no declara — tion was given by the respondent to the appellant dragadkar J

Ma

' before the agreement to sell was made, and so the respondent contends that agreement to sell more than 1 ton of the non-ferrous metal in question is violative of the requirements of the notification and as such it contravenes s. 4(1)(c) read with the notification and attracts s. of the Act.

Mr. Agarwala contends that this notification does not fix the maximum quantity because according to him the requirement of the section can be satisfied by fixing an arithmetical quantity and that too in an immutable form. The argument is that the failure to comply with the provisions of the relevant sections of the Act is made penal, and so it is necessary to fix one maximum quantity in respect of a specified non-ferrous metal, and since that has not been done by the notification it is invalid. We are not impressed by this argument. Having regard to the large number of goods intended to be covered by the Act and the variety of circumstances under which they would be required by different classes of persons or dealers it would be entirely unrealistic to suggest that the maximum which is required to be fixed by s. 4(1)(c) is the maximum determined in arithmetical term and fixed immutably in all cases. Besides, s. 4(2)(a) itself indicates that different maxima can be prescribed by reference to different localities or

Binani CommerCo., Ltd.

different classes of dealers or producers. Therefore, the argument that in the absence of the fixation of any arithmetical quantity of the immutable maximum the notification is bad must be rejected.

Then it is urged that the notification is invalid because it is inconsistent with the provisions of s. 4(2)(a). It would be noticed that s. 4(2)(a) enables the Central Government to fix maximum prices or rates and maximum quantities for the same description of goods

differently in different localities or for different classes 1967 of dealers or producers. It is urged that the maximum Binani Connnerto be fixed under s. 4(l)(c) must therefore be the maxi. Gia! Co.. Ltd. mum fixed by reference to different classes of dealers v. or producers, and since the impugned notification does Raman1aZ, not purport to do so it is inconsistent with s. 4(2)(a) _ Magan!az *Mehta* and therefore invalid. This contention is clearly mis- Gajendragidkar J. conceived. It is obvious that s. 4(2)(a) cannot be read as a, proviso and cannot be pressed into service for the purpose of controlling s. 4(l)(c). Section 4(2)(a) is an enabling provision and it is intended merely to serve the purpose of showing that notwithstanding the provisions of s. 4(l)(c) which refers to persons it may be open to the Centrol Government to prescribe the maximum either in the way of prices or rates or quantities by reference to different localities or differ. ent classes of dealers or producers. Section 4(l)(c) speaks of the fixation of maximum quantity which may in one transaction be sold to any person, and lest it be said that the maximum cannot be fixed in reference to classes of dealers or producers the Legis•lature has added the enabling provision as s. 4(2)(a). Therefore to rely on s. 4(2)(a) for the purpose of construing g. 4(l)(c) appears to us to be wholly unreasonable. Now, if we look at s. as we must, it is obvious that the notification is perfectly consistent with s. 4(l)(c) inasmuch as it prescribes the maximum by reference to consumers as well as dealers.

There is one more argument which has been very strongly pressed before us by Mr. Agarwala which still remains to be considered. He contends that though the notification may have prescribed a maximum quantity under s. 4(l)(c) we cannot ignore the fact that as the notification is worded contravention of the requirements of the notification would not attract the provisions of s. 5(1)(c) in the present case. The argument is this. The notification prescribes the

maximum for sale at any one time, and sale in the context must mean actual sale. The notification

therefore cannot refer to or cover cases of agreement to sell or offer to sell. In the present case the appellant no doubt agreed to sell to the respondent a quantity

9

contrary to the condition prescribed by the notifica- Binani Conuney- tion; but, at the stage of the agreement to sell the cial Co., Ltd. notification would not apply and so the agreement is v. perfectly valid. If by his failure to give the neces- Ramanlal, sary declaration the respondent has made the perfor- Magan!al Mehta mance of the contract illegal be cannot take advan- tage of his own default and stomp the whole of the Gajcndya gadkar J• transaction as illegal under s. 5(l)(c). In our opinion this argument is based on a misconception of the effect of the provisions of s. 4(l)(c) and s. 5(l)(c) read together and of the notification issued under s. 4(l)(c). The scheme of the two sections is plain. Under s. 4(l)(c) the Central Government by a notified order is required to fix the maximum quantity which may be sold to any one person in one transaction, and that the impugned notification has done. Once the maximum is thus fixed by a notified order s. 5 immediately comes into operation, and it provides that in regard to commodities the maximum quantity of which has been determined by a notified order under s. 4(1)(c) there is a prohibition against agreement to sell, offer for sale, or sale in respect of the said commodities contrary to the requirements of the notification. In other words, once a notified order fixes the maximum in respect of the sale of any goods the agreement to sell the goods or the offer for the sale of such goods above the maximum specified in the notification for the purposes of sale is immediately hit, not by virtue of thc notification as such but by the combined operation o.f the provisions of s. and the notification issued under it and the provisions of s. 5. Therefore, in our opinion, it is futile to suggest that because the notification refers only to sale and not to an agreement to soll s. 5(l)(c) would not hit the present contract in suit.

In this connection, we ought to add that any argument based on the distinction between an acreemcnt to sell and the actual sale as well as on the conduct of the respondent is really not open to the appellant at this stage. The judgment of the learned trial

Judge as well as of the Appeal Court clearly show that the appellont's learned cousel Mr. Misbree expressly con. ceded before both the Courts that if under the relevant clause of the notification it is held that a maximum has 196 been validly prescribed then the respondent's defence —

Binani Commerwould be valid and the appellant would have no v. case cid Co., Ltd. on the point of law. In fact the Appeal Court has referred to this concession more than once in the Ramanial, course of its judgment and it has made it perfectly Maganlal Mehta clear that on the appellant's side it was expressly stated Rajendragadkar before the Court that if the point of law raised J. by the appellant about the invalidity of the notification failed he would be out of Court. That is why we think that the point raised by Mr. Agarwala that the agreement to sell was valid in this case is really not open to him.

It is true that in the trial Court the learned Judge has made certain observations that it appeared to be an implied term of the contract that the buyer would be ready and willing to give the declaration at the time of actual sale and it also appears that the learned Judge thought that it was not open to the respondent to take up the defence about the invalidity Of the agreement to sell. It is diffcult to see how these observations can be reconci [ed with the concession made by the appellant's counsel even before the trial Court; but we have referred to these observations because it is on these observations that Mr. Agarwala wanted to build up an argument that the respondent is precluded from disputing the validity of the agreement to sell and so his default in giving a, declaration should be taken into account in dealing with the point of law urged by him. In our opinion, apart from the fact that in view of the concession made by the appellant's counsel this argument cannot be raised, we are satisfied that there is

no substance in it. As we have just indicated the scheme of ss. 4(l)(c) and 5 is clear and so any distinction between a sale and an agreement to sell is obviously invalid. That is why we have no doubt that Mr. Mistree was perfectly justified in making the concession that he did.

In the result the appeal fails but there would be no order as to costs.

Appeal dismissed.