Privy Council Appeal No. 14 *of* 1939

The Raneegunge Coal Association Limited - - - *Appellants*

v.

The Tata Iron and Steel Company Limited - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 18th JUNE, 1940

Present at the Hearing:

LORD RUSSELL OF KILLOWEN

SIR LANCELOT SANDERSON

MR. M. R. JAYAKAR

[*Delivered by* LORD RUSSELL OF KILLOWEN]

The point for decision on this appeal is the true construction of one clause in an agreement dated the 16th January, 1919, and made between the appellants and the respondents. By the agreement the appellants (called therein "the sellers") sell to the respondents (called therein "the buyers") the output of coal from certain seams in their collieries, for a period which commenced on the 1st April, 1921, and which has still a few years to run.

The clause in question is the 4th clause, which runs as follows:—

> "In the month of January immediately preceding the commencement of a year (which term shall for the purpose of this Agreement be deemed to mean a period of 12 calendar months commencing on the first day of April and ending on the thirty-first day of March) the price payable by the Buyers for the coal to be delivered during such year shall be settled and adjusted at eight annas per ton above the price payable under or in respect of the then latest contract for the purchase of first class Jharriah coal loaded into wagons at Colliery Siding entered into by the Railway Board or if that Board shall have been abolished then by such authority as shall be constituted or established in its place or if no such authority shall be established or if no purchase shall have been made by such Board or authority for nine months prior to the commencement of such year than by Purchasers in the Calcutta Market PROVIDED NEVERTHELESS that the price so to be settled and adjusted as aforesaid shall in no case be less than Rupees Three and annas twelve per ton."

A consideration of the clause reveals the fact that it contains two features or provisions, which, if construed according to their literal and grammatical meaning, are

inconsistent with each other—viz. (1) The first part, ending with the words "Railway Board," is a provision that the price for each contract year shall be settled and adjusted in the preceding month of January on the basis of the then latest contract of the Railway Board; whereas (2) the substituted provision for that settlement and adjustment in the month of January being made on the basis of Calcutta market contracts, is brought into operation in an event, the happening or non-happening of which cannot be ascertained until two months later than the end of January.

The difficulty which may arise is obvious; and it did in fact arise in connection with the contract year commencing on the 1st April, 1932. The Railway Board made no contracts of the kind specified in the clause (which may conveniently be called relevant contracts) at any time between the 1st July, 1931, and the 31st January, 1932; but the Railway Board did enter into relevant contracts after the 31st January, 1932, and before the 1st April, 1932.

A difference thereupon arose between the parties, and it became necessary to have the clause authoritatively construed; and for that purpose the respondents instituted the present suit in which, as ultimately settled by the Court, the relief sought took the following form:—

> "(a) Whether on the true construction of Clause 4 of the Agreement of 16th January 1919 and on the basis of there being no contract for the purchase of 1st class Jharriah coal made by the Railway Board or any similar authority between the 1st of July and the 31st of January following the Plaintiffs are entitled to have the price of the coal supplied by the Defendant under the Agreement in the year commencing from the following 1st April calculated on the footing of the latest purchasers contract in the Calcutta market entered into during the said period i.e. between the 1st of July and 31st of January following; or on what other basis such price should be calculated."

It will be observed that what is sought is to have the clause construed without reference to the events of any particular year, but upon a specified basis.

The plaintiffs contended that by the clause, the price for the subsequent contract year has to be settled and adjusted by the end of January by reference to the then latest Railway Board relevant contract, but that if no such contract had been entered into between the preceding 1st July and the 31st January, the price must be settled and adjusted by reference to the then latest contract entered into by purchasers in the Calcutta market during the same period.

On the other hand the defendants contended that the price for each contractual year must be settled and adjusted primarily by reference to the price of the latest relevant contract of the Railway Board made in the period from the preceding 1st July to the 31st March, and that recourse could only be had to market contracts if no such contract had been made by the Railway Board during that period

Engineer J. decided in favour of the plaintiffs' view, and made a declaration in terms of the relief prayed. An appeal from that decree was dismissed, but a declaration (amended in a small detail) was substituted for that contained in the original decree. Beaumont C.J. while not, it would seem, favouring the contention of the defendants, felt some doubt about the correctness of the plaintiffs' construction. His doubt, however, was not strong enough to induce him to dissent. He seems to have preferred a construction suggested by himself, for which neither party contended, and which seems to their Lordships open to the objection that it provides for the settlement and adjustment of two alternative and contingent prices in January, a proceeding which none of the language used would appear to justify. Blackwell J. agreed with Engineer J. thinking that less violence was done to the language used, by adopting the declared construction than by adopting the construction contended for by the defendants.

After consideration of close and careful arguments before the Board, their Lordships find themselves in agreement with the Courts in Bombay.

That there exists an apparent inconsistency according to the literal construction of the words used, is clear; and in such a case if by any other reasonably possible construction the apparent inconsistencies can be reconciled, that construction should be adopted.

Turning to the clause in question it is to be observed that the whole clause, from beginning to end, hinges on and and is governed by the mandatory provision that the price for each contract year shall be settled and adjusted in the preceding January. In each of the three cases of "then latest" contracts which are specified (viz. Railway Board contracts, substituted-authority contracts, and market contracts) they must, according to the clause be under consideration at the settlement and adjustment in the month of January; and in every case the word "then" must, and can only, refer to the only point of time mentioned in the clause, viz., the month of January. No other meaning is capable of being assigned to the language used. The same, however, is not true of the words which create the apparent inconsistency, viz. "or if no purchase shall have been made by such Board or authority for nine months prior to the commencement of such year, etc." The point of time when the necessary enquiry or investigation as to the existence of contracts of the Board or authority has to be made, is unchanged. It is still the time of the settlement and adjustment in January. The words accordingly may well mean "if no purchase shall, at the time of the settlement and adjustment in January have been made by such Board or authority for nine months prior to the commencement of such year." In such a context it does but little violence to the last ten words to construe them as referring to a period which commences nine months before the 1st April and ends at the

time of the settlement and adjustment. The position accordingly is this: that of the two portions of the clause which disclose the inconsistency, one is susceptible of a possible construction different from its literal meaning, while the other is not: and if the possible construction is applied all inconsistency disappears. That construction must therefore be adopted.

This alternative construction of the clause is not, their Lordships think, open to the objection which seems to have pressed upon the Chief Justice. It does not convert a condition precedent into anything other than a condition precedent; nor does it involve having recourse to the Calcutta market otherwise than on the condition specified, except of course according to the literal meaning of the words used. What the Courts in Bombay have done is, in order to reconcile two apparent inconsistencies, to attribute to the words used a meaning which the words used are capable of bearing, though different from their literal meaning. The condition precedent so construed remains as a condition precedent, and the condition specified by the agreement is the condition as so construed.

It was suggested that the reason why the month of January was mentioned in the clause was, or might be, because at the date of the agreement the Railway Board was wont to make its coal contracts during the period between July and January. It is not for a Court to speculate as to the reasons which may have dictated the employment of the language used in a contract; indeed if any such speculation were allowable, it could equally be suggested, as a commercial reason, that the month of January was selected in order to afford the buyers sufficient time in which to make their other commercial arrangements, with a knowledge of the price which they would then be paying for their coal.

For the reasons indicated their Lordships are of opinion that this appeal should be dismissed, and they will humbly advise His Majesty accordingly.

The appellants will pay the costs of the appeal.

(24858) Wt. 017—49 170 7/40 P. St. G. 338

In the Privy Council

THE RANEEGUNGE COAL ASSOCIATION LIMITED

v.

THE TATA IRON AND STEEL COMPANY LIMITED

DELIVERED BY
LORD RUSSELL OF KILLOWEN

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS.
POCOCK STREET, S.E.1

1940