

PETITIONER:
THE K.C.P. LTD.

Vs.

RESPONDENT:
STATE TRADING CORPORATION OF INDIA & ANR.

DATE OF JUDGMENT 08/08/1995

BENCH:
MANOHAR SUJATA V. (J)
BENCH:
MANOHAR SUJATA V. (J)
PUNCHHI, M.M.

CITATION:
1995 SCC Supl. (3) 466 JT 1995 (6) 83
1995 SCALE (4) 697

ACT:

HEADNOTE:

JUDGMENT:

JUDGMENT

Mrs. Sujata V. Manohar. J.

These appeals arise from a common judgment of the Andhra Pradesh High Court dated 3.2.1976 in O.S. Appeal Nos. 5, 7 and 9 of 1974. Some of the relevant facts for the purposes of these appeals are as follows:-

The appellant-K.C.P. Limited has a cement factory situated at Macherla in Guntur District, Andhra Pradesh. Prior to 1956 the Government of the composite State of Madras was considering establishment of a cement factory in Kurnool District of Rayalaseema, by a private enterprise Mr. V. Ramakrishna, Chairman of the appellant-company offered to start such a factory and applied for a licence to start the factory, to the Government of India through the Government of Madras. At this time there was a proposal to construct a dam over the River Krishna near Nandikonda. This project which was initially named Nandikonda Dam Project later came to be known as the Nagarjunasagar Project. It was proposed that the appellant would establish a cement factory at Macherla near the project site and would supply cement to the said project. The Chairman of the appellant-company offered to supply cement to the Nagarjunasagar Project at the rate of Rs.48/- per ton loose from the proposed factory site at macherla. This is recorded in the letter dated 12th of April, 1955 from Mr. Ramakrishna to the Secretary to the Government of India in which he has stated that he was enclosing the final confirmation to supply cement for the said project at the rate of Rs.48/- per ton loose ex-factory. On 31.10.1955 the Government of India wrote a letter to the appellant saying that they proposed to issue a licence subject to the condition inter alia that almost the entire production of the factory shall be used locally by Nandikonda Dam Project (as it was then known) for the next 4 or 5 years. The Nandikonda Control Board, however, was desirous of getting the price of cement further reduced.

It, therefore, continued negotiations with the appellant for a further reduction in the price of cement which was to be supplied for the said project. On 30th of April, 1956 there was a meeting of the Negotiating Committee of the Nagarjunasagar Control Board with the Chairman of K.C.P. Limited when it was agreed that the appellant-company would charge Rs.47.50 per ton of portland cement plus excise duty and sales tax subject to variations upwards and downwards due to new taxation. For the supply during the period from 1.10.56 to 31.3.1958, however, the rate charged would be the flat rate of Rs.47.50 per ton plus excise duty and sales tax without any variation. Thereafter the Nagarjunasagar Control Board desired that the draft agreement which was to be entered into with the appellant-company should be scrutinised by the two concerned State Governments. It seems that drafts were exchanged between the parties but no concluded agreement was arrived at.

While these negotiations were going on the Cement Control Order, 1956 came into effect from 1.7.1956. In view of the coming into force of the Cement Control Order of 1956, in the draft agreement a clause was added to the effect that it would be subject to the sanction of the State Trading Corporation. This was because by virtue of the Cement Control Order, 1956, the State Trading Corporation was appointed as a canalising agency for the purchase of cement at a controlled price fixed under the Cement Control Order of 1956.

When the Cement Control Order, 1956 came into effect the appellant had not started production of cement and hence the factory of the appellant was not mentioned in the schedule to the Cement Control Order of 1956. The factory commenced production in February, 1958. By this time the appellant was brought on the schedule of the Cement Control Order on 25.1.1958. The appellant informed the State Trading Corporation on 2nd of February, 1958 that it had entered into an agreement with Nagarjunasagar Control Board for the supply of cement for the said project at the concessional rate of Rs.47.50 per ton loose ex-factory instead of the controlled price of Rs.54.50 fixed under the Cement Control Order. The State Trading Corporation by its letter dated 5th of February, 1958 stated that the rebate of Rs.7/- per ton, that is to say, the difference between the ex-works price allowed to the appellant which was fixed by the Government of India at Rs.54.50, and the concessional rate of Rs.47.50, would be allowed, and the appellant would be paid by the State Trading Corporation the ex-works price less rebate. The rebate would be passed on to the Nagarjunasagar Control Board, the purchaser.

The appellant was appointed by the State Trading Corporation as their selling agent for the purpose of supplying cement to the Nagarjunasagar Control Board. Hence the appellant, as the selling agent of the State Trading Corporation started supplying cement directly to the said project from 18.4.1958. As the producer of cement, the appellant became entitled to receive the price of cement so supplied from the State Trading Corporation. It recovered the price from the purchaser as agent of the State Trading Corporation. In the bills drawn by the appellant the sale price was being shown as fixed by the Cement Control Order and a rebate of Rs.7/- was shown as being deducted from the ex-works price. Thus the appellant as the selling agent of the State Trading Corporation collected from the Nagarjunasagar Control Board/the State of Andhra Pradesh the price of Rs.47.50 per ton. As the selling agent of the State Trading Corporation the appellant from time to time

submitted its accounts to the State Trading Corporation in respect of the cement so supplied to the Nagarjunasagar Control Board retaining with itself the price at the rate of Rs.47.50 per ton as the producer of cement.

The notified price of cement was increased from Rs.54.50 to Rs.60.50 with effect from 1.7.1958. The appellant, however, continued to give a rebate of Rs.7/- to the Nagarjunasagar Board while supplying cement. In the bills which were drawn by the appellant, the price was shown as the controlled price less rebate of Rs.7/-.

From 1st of November, 1961, however, when the new Cement Control Order, 1961 came into operation, the appellant did not show any rebate in the bills supplied to the Nagarjunasagar Board and claimed the price as fixed under the Cement Control Order. The Board (the State of Andhra Pradesh), however, paid to the appellant the controlled price less a rebate of Rs.7/-. In the statements of accounts, however, which were submitted by the appellant to the State Trading Corporation, the appellant did not show any rebate and claimed the full amount of the controlled price from the State Trading Corporation which it retained with itself by debiting the full price to the State Trading Corporation in the statements of accounts. From 1.1.1966 cement was decontrolled.

It is the contention of the State of Andhra Pradesh that the price which the appellant had agreed to charge to the Control Board for supply of cement for the said project was a fixed price of Rs.47.50 per ton, and that the appellant had recovered excess amounts from the State of Andhra Pradesh by charging controlled price less rebate of Rs.7/-. The State of Andhra Pradesh filed a suit being C.S. No.2 of 1970 against the appellant and the State Trading Corporation praying that a formal agreement embodying the term that cement would be supplied by the appellant to the Control Board at a fixed price of Rs.47.50, be directed to be executed. It also prayed that cement supplied by the appellant to the Control Board should be paid for at the rate of Rs.47.50 per ton irrespective of the changes in the controlled price from time to time. In the suit the State of Andhra Pradesh also claimed a refund of the excess amount recovered from them by the appellant. There was also a prayer for reference to arbitration. The State Trading Corporation filed a suit against the appellant being C.S. No.1 of 1970 for the recovery of the rebate of Rs.7/- which the appellant had recovered from the State Trading Corporation by reversal of entries in the accounts for the period after 1.11.1961. Both these suits were tried and decided by a common judgment. The suit filed by the State of Andhra Pradesh against the appellant and the State Trading Corporation was dismissed; while the suit filed by the State Trading Corporation against the appellant was decreed.

Three appeals were filed from this common judgment and order before the Andhra Pradesh High Court under clause 15 of the Letters patent. O.S.A. No.7/1974 was filed by the State of Andhra Pradesh against the judgment and order dismissing their suit. O.S.A. No.5/74 was filed by the appellant against the decree which was passed against them in C.S. No.1/70 while O.S.A. No.9/74 was filed by the State Trading Corporation in respect of the judgment and order in C.S.No.1/70 in so far as it directed the State Trading Corporation to pay court fee on its claims separately. The Andhra Pradesh High Court by the impugned judgment and order which is a common judgment in the three appeals, has dismissed these appeals and has awarded costs as set out in the impugned judgment and order. The present appeals are filed by

appellant from this judgment and order in so far as it upholds the claim of the State Trading Corporation against the appellant.

The Andhra Pradesh High Court has examined in detail the entire correspondence which was exchanged between the appellant and/or its Chairman and the Government of India as also the Government of the concerned States in connection with the setting up of the factory of the appellant and the concessional rate at which the appellant offered to supply cement for the nagarjunasagar Project. The High Court has come to the conclusion that there was no concluded contract between the parties for the supply of cement for the said project at a fixed price of Rs.47.50. We do not see any reason to take a different view in the light of the facts and circumstances which are set out at length in the judgment of the Division Bench of the High Court of Andhra Pradesh. In view of this finding the question of the alleged agreement being drawn up in accordance with the provisions of Article 299 of the constitution of India, or its non-enforceability on that count, does not arise.

The High Court has, however,, held that in view of the facts and circumstances which are set out in the judgment, the appellant had offered a rebate of Rs.7/- on the Control Price of cement in respect of the cement supplied for the Nagarjunasagar Project. It was in the light of this concessional rate offered by the appellant that licences were issued from time to time to the appellant for the Cement factory and for expansion of its capacity. The High Court has also pointed out that in fact the appellant gave a rebate of Rs.7/- on the controlled price in respect of the cement supplied for the said project and it continued to give this rebate upto 1.11.1961. The appellant also wrote to the State Trading Corporation informing it that the appellant had agreed to give a rebate of Rs.7/- on the Control Price of Cement in respect of the cement which was to be supplied by it for the Nagarjunsagar Project and the State Trading Corporation accepted this arrangement. The appellant also showed this amount as rebate in the bills which were drawn by it for the supply of cement upto 1.11.1961. It was not entitled to withdraw this rebate after 1.11.1961. In fact, even after 1.11.1961 it continued to recover only the concessional price. It has not taken any steps against the State of Andhra Pradesh to recover the amount of rebate so granted by it although its bills after 1.11.1961 do not show the rebate.

In view of the above the High Court has, in our view, rightly come to the conclusion that the State of Andhra Pradesh was entitled to the supply of cement from the appellant at control Price less a rebate of Rs.7/- during the period when the Cement Control Orders were in operation. As the State of Andhra Pradesh has in fact paid this price, that is to say, Control Price less rebate of Rs.7/-, no further relief is required to be granted as its claim to receive cement at the fixed price of Rs.47.50 per ton has been negatived. Although the appellant declined to give this rebate in its bills after 1.11.61 it has in fact not filed any suit for the recovery of this rebate of Rs.7/- as against the State of Andhra Pradesh. In these circumstances the High Court has rightly come to the conclusion that the State of Andhra Pradesh is liable to pay for the cement supplied, control price less a rebate of Rs.7/-.

The State Trading Corporation was only a canalising agency and it had agreed to pass on a rebate of Rs.7/- to the State of Andhra Pradesh in view of the agreement which was entered into between the appellant and the State of

Andhra Pradesh. The High Court has rightly observed that it is difficult to see how the appellant can at all make a complaint against the State Trading Corporation for the amount of rebate which was granted by the appellant to the State of Andhra Pradesh. It has, therefore, held that the appellant was not entitled, to claim the amount of rebate from the State Trading Corporation after 1.11.1961 as was done in the statements of accounts submitted by it to the State Trading Corporation. It has, therefore, upheld the claim of the State Trading Corporation for recovery of the excess amount for which credit was thus taken by the appellant. It has held that as selling agent, the appellant was receiving the full price minus Rs.7/- per ton given as rebate. It is only that price which should have been paid to the appellant as producer. The reversal of entries in the accounts made by the appellant as selling agent of the State Trading Corporation is unwarranted and clearly illegal. The State Trading Corporation was justified in filing the suit and claiming the amount of rebate which had been wrongfully debited to their account by the appellant by making reversal entries. The High Court has, therefore, dismissed the appeal filed by the appellant being O.S.A. No.5 of 1974 with costs. We agree with the reasoning and conclusion of the Andhra Pradesh High Court for reasons set out above.

no order as to

The appeals are dismissed with no order as to costs.