Privy Council Appeal No. 109 *of* 1914.
Allahabad Appeal No. 13 *of* 1912.

Seth Jaswant Rai - - - - *Appellant,*

v.

The Secretary of State for India in Council - *Respondent.*

FROM

THE HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN PROVINCES, ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 23RD NOVEMBER 1915.

Present at the Hearing:

VISCOUNT HALDANE. LORD WRENBURY.
LORD PARMOOR. SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* LORD PARMOOR.]

The appellant, by a contract of the 15th August 1905, agreed to execute certain descriptions of work in accordance with specified conditions and in consideration of payment being made at the rate specified in a schedule. The schedule was as follows:—

Schedule of Rates.

Description of Work from Nagda.	Unit of Calculation. (Store Depôt Site or Work.)	Rate.	Remarks.
		Rs. a. p.	
(I)—Carting P.W. material and stores by kutcha road.	Per maund per mile.	0 0 1½	
Loading into carts and unloading at destination.	Per maund -	0 0 1	
(II)—(*a*) Haulage, portable engine.	Per ton per mile	0 6 0	Portable engines on their own wheels.
(*b*) Loading, carting, and unloading explosives (special) as per note at foot of agreement.	Seven pies per maund per mile or part of a mile.	0 0 7	See note at foot of agreement.

[61] J. 461. 125.—11/1915. E. & S.

The note referred to in the above schedule is as follows :—

"Note for item (*b*) in rate column. Explosives and " cement must be carried in accordance with special " instructions to be given by the Executive Engineer. " Detonators must not be carried along with dynamite, but " in separate carts, not more than four maunds of dynamite " shall be carried in one cart. Such consignments must be " carried straight through with relays of bullocks in " covered carts protected from the weather."

In fulfilment of his obligation under the contract, the plaintiff conveyed cement in bullock carts and claimed in respect of loading, carting, and unloading such cement, 7 pies per maund per mile or part of a mile. The Subordinate Judge held that the schedule of rates was not an exhaustive one, and that the plaintiff should be allowed at the rate of 3 pies per maund per mile for carting cement. The High Court overruled this decision, holding that the contract was clear and that the plaintiff was not entitled to be paid at a higher rate than 1½ pies per maund per mile for carting cement. Their Lordships concur in the conclusion of the High Court that the rate of payment for the carting of cement is determined by the terms of the contract and depends on the construction of the schedule of rates and the note quoted above. It follows that extrinsic evidence as to the rate of payment allowed for the carriage of cement to another contractor, or to the appellant under a different contract, is irrelevant, and their Lordships intimated during the hearing of the appeal that they regarded such evidence as inadmissible.

Cement is permanent-way material, and apart from the note the appellant would clearly be entitled for carting cement to a payment of 1½ pies per maund per mile, and 1 pie per maund for loading into carts and unloading at destination. Explosives come under a different head in the column of description of work, and for

loading, carting, and unloading explosives, the appellant is entitled to payment at the rate of 7 pies per maund per mile or part of a mile. The contention of the appellant is that the note places cement in the same description as explosives, and that the appellant is entitled to be paid for loading, carting, and unloading cement at the rate of 7 pies per maund per mile or part of a mile. Their Lordships cannot accept this contention. The note does not fix the rate of payment, but the conditions of carriage. The conditions which attach to the carriage of cement are not the same as those which attach to the carriage of explosives. It is true that both explosives and cement are to be carried under special instructions, and that the cartage of cement may consequently be more costly than the cartage of other permanent-way materials, but the rate of 1½ pies per maund per mile is fixed as an over-all price, and the fact that one article may be more costly to handle than another does not affect the question of the rate of payment under the terms of the contract.

In the course of the argument it was said that if the appeal were dismissed the appellant might be deprived of his right to a payment of 1 pie per maund for loading cement into carts and unloading at destination. Their Lordships have no doubt that, so far as the work of loading the cement into carts and unloading at destination has been performed by the appellant, he is entitled to the rate of payment of 1 pie per maund, and that the appellant should not be precluded from the opportunity of substantiating any claim which may be open to him under this head. In their opinion the amount, if any, due to the appellant under this head should be settled between the parties, but unless it is so settled they reserve liberty to the appellant to apply in this suit to the Subordinate Court to settle and

determine the amount. Sir Erle Richards, who represented the respondents, very properly undertook on behalf of his clients not to raise any technical difficulty. Subject to the reservation of the above liberty to apply should it be necessary, their Lordships will humbly advise His Majesty to dismiss the appeal with costs.

In the Privy Council.

SETH JASWANT RAI

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL.

DELIVERED BY LORD PARMOOR.

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