

## LETTERS PATENT APPEAL

Before D. K. Mahajan and H. R. Sodhi, JJ.

BUDH RAM, ETC.—Appellants.

versus

THE DHURI CO-OPERATIVE-CUM-MARKEING-CUM-PROCESSING  
SOCIETY, DHURI, ETC.—Respondents.

Letters Patent Appeal No. 707 of 1970.

July 26, 1973.

*Contract Act (IX of 1872)—Section 23—Essential Commodities Act (X of 1955)—Section 3—Cotton Control Order (1955)—Clause 9—Person holding license under, agreeing to enter into partnership with a non-licensee firm to work the license—Such agreement—Whether void as opposed to public policy—Control Order not containing express prohibition of formation of partnership—Such prohibition—Whether implied—Parties to a void partnership agreement not in pari delicto—Suit for rendition of accounts of such partnership when dissolved—Whether maintainable.*

*Held*, that there is a prohibition contained in the Cotton Control Order, 1955, and no person can purchase, sell, store or carry on business in cotton or even hold cotton in hypothecation or against a pledge except under and in accordance with the conditions of a license issued in this behalf. There is, therefore, a definite prohibition from carrying on the business covered by a license except by the licensee himself. This prohibition against dealing in cotton which is a controlled item applies equally to a partnership as to any individual or a corporate body. Consequently a partnership which does not hold a license in its name cannot be constituted to undertake a commercial enterprise which can be undertaken only under a license. Hence where a person holding a license under the Control Order enters into an agreement of partnership with a non-licensee firm to work the license, the constitution of such partnership to work the licence issued in the name of a partner is obviously illegal. Such a contract is opposed to public policy and void being hit by section 23 of the Contract Act. (Para 3).

*Held*, that no doubt the Control Order does not contain an express prohibition of the formation of partnership by the licensee but this prohibition is in the very nature of things implied when a license is issued under a Control Order in the name of a particular person. The license is a personal privilege the benefit whereof cannot be extended to others by entering into partnership with them when they do not hold any such license. Any such action on the part of the licensee will be circumventing the provisions of the Control Order unless the formation of a partnership is permitted by the Control Order itself or the statute under which such order is promulgated. (Para 4)

*Held*, that a suit for rendition of accounts of a dissolved partnership is maintainable, no matter that the partnership agreement is void, when it is found that parties to such void agreement are not in *pari delicto*. (Para 5)

*Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice D. S. Tewatia, dated 17th July, 1970 passed in RSA 395 of 1964 reversing that of Shri Raj Kumar Sharma, Senior Sub-Judge, Barnala, dated 30th November, 1963, affirming that of Shri Vinod Kumar Jain, Sub Judge Ist Class, Dhuri dated 3rd December, 1962, dismissing the plaintiff's suit with costs.*

J. V. GUPTA, AND G. C. GARG, ADVOCATES, for the appellants.

K. N. TEWARI, ADVOCATE, for the respondents.

#### JUDGMENT

The judgment of this court was delivered by :—

H. R. SODHI, J.—This letters patent appeal is directed against the judgment of a learned single Judge who allowed the second appeal preferred by the plaintiff and reversing the judgment and decree of the Court of first appeal directed the trial Court to proceed further with the suit for rendition of accounts.

(2) The plaintiff is a co-operative society working under the name and style of Dhuri Co-operative Marketing-cum-Processing Society, hereinafter called the society. It is registered under the Punjab Co-operative Societies Act and is a corporate body. Defendant 2 is a partnership firm known as Balak Ram-Budh Ram (referred to hereinafter as the firm) of which defendant-appellant Budh Ram is the proprietor. Defendant-respondent 4 is only proforma and he was connected with the plaintiff society, but did not join in the suit. On 30th September, 1957, a partnership deed, Exhibit P. 1, was executed between the society acting through Pritam Singh, defendant-respondent 4, and the firm through its proprietor Budh Ram, defendant-appellant. The firm was holding a license under the Cotton Control Order, 1955, promulgated by the Central Government in exercise of the powers conferred on it by section 3 of the Essential Commodities Act, 1955. Clause 9 of the Order provides that—

“No person shall purchase, sell, store or carry on business in cotton or shall hold cotton in hypothecation or against a

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pledge except under and in accordance with the conditions of a licence in Form "A".

*Exception.* Nothing in this clause shall apply.—

- (a) to a manufacturer ;
- (b) to a person who purchases or stores cotton for his own use and not for the purpose of sale and who does not at any time have in his possession a quantity of cotton exceeding 24 bales of ginned and pressed cotton or boras of ginned cotton ;
- (c) to cotton known as Assam/Comilla ;
- (d) to any transaction of sale or purchase of cotton authorised in writing by the licensing authority;
- (e) to a grower in respect of cotton produced by him.

Form "A" in which the license is to be issued is prescribed by the Order itself and is appended thereto. Where the applicant is a corporation or a partnership firm, the names of the directors or the partners, as the case may be, have to be stated in the application form. According to the terms of the agreement, Exhibit P. 1, the newly constituted partnership by the society and the firm was to take Karkhana (factory) on lease for ginning purposes. This document is silent as to whether the partnership so formed was intended for the sale and purchase of cotton as well which was controlled by the Cotton Control Order or that it was confined only to the ginning of cotton. One of the material issues framed in the case, therefore, was whether the partnership between the parties was only for ginning purposes. The trial Court decided this issue against the plaintiff and dismissed the suit. We are not referring to the other issues as findings thereon are not material for the purposes of the present appeal. The Court of first appeal concurred with the finding of the trial Court, and held that the business activity of the partnership was not restricted to ginning purposes only and that it was a partnership between the firm and the society for indulging in purchase and sale of cotton as well. The lower appellate Court took the view that since the business of buying cotton and selling Barnaula and Rui could not have been carried on by the partnership without a proper license under the aforesaid Cotton Control Order, the partnership constituted under Exhibit P. 1 for carrying on illegal business activities, was, therefore, void as it was hit by section 23 of the Indian Contract Act.

In the second appeal preferred on behalf of the plaintiff, it was contended before the learned single Judge that the object of partnership was only to take on lease the Karkhana for ginning purposes and the firm defendant 2, which held a license under the Cotton Control Order alone carried on the business of buying and selling of cotton and that the partnership under the agreement, Exhibit P. 1, was not for the purpose of working the license. It was further contended that the partnership even for working the license could not make the contract of partnership in question void under section 23. The Courts below had come to the conclusion that the plaintiff had settled the account and this finding too was assailed as being not based on any evidence. The learned Single Judge, after discussing a volume of case law, took the view that since the Cotton Control Order does not contain any provision prohibiting a licensee from entering into a partnership with a non-licensee, the agreement of partnership was not hit by the provisions of section 23. In the result, the partnership as per Exhibit P. 1 was held not to be forbidden by law or opposed to public policy. The learned Judge also held that even if it be assumed that the partnership agreement was void as being opposed to public policy, the parties to the agreement were not in *pari delicto*. Relying on the observations of their Lordships of the Supreme Court in *Sita Ram v. Radha Bai and others* (1), it was held that in the circumstances of the present case, the Court should not shirk from helping the plaintiff-appellant in having the accounts settled with the defendant-respondents. The finding of the lower appellate Court that the accounts had been settled was held to be not based on any evidence and, therefore, reversed. In the result, the appeal was allowed and the case remanded to the trial Court with a direction to proceed with the suit in accordance with law. It is against this remand order that the defedants have come up in Letters Patent Appeal.

(3) After hearing the learned counsel for the parties at length, we are of the opinion that it cannot be laid down as correct law that a partnership entered into to work a license issued under the Cotton Control Order does not offend against section 23 of the Contract Act. In the circumstances of the instant case, we are, however, in agreement with the learned single Judge that the parties are not in *pari delicto* even if it be assumed that the partnership was intended also to work a license and the plaintiff society is, therefore, entitled to enforce its right to claim rendition of accounts. Before advertng to

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(1) A.I.R. 1968 S.C. 534.

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the first proposition, section 23 of the Indian Contract Act may be reproduced hereunder for facility of reference:—

“23. The consideration or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.”

It is needless to refer to the authorities considered by the learned single Judge whose attention does not seem to have been invited to *V. Basavayya v. N. Kottayya* (2), decision wherein is based on the observations of their Lordships of the Supreme Court in an unreported judgment in *Govinda Rao v. Nathmal* (3). The plaintiff there had filed a suit for accounts of a dissolved firm. The defendants challenged the partnership on the ground that it contravened the Central Provinces and Berar Food Grains Control Order (1945) and was, therefore, illegal. The relevant provisions of this Food Grains Control Order were almost in similarity to those of the Cotton Control Order. Every dealer who dealt in food grains was required to take a license and the words “dealer” includes any group or association of persons like a firm or partners. The plaintiff there who held the dealer’s license for dealing in foodgrains entered into partnership with the defendants and the partnership conducted transactions of purchase of the controlled stuff. The prohibition under the Food Grains Control Order was to the effect that no person was to deal in foodgrains as a wholesale dealer except under and in accordance with a license issued by the Deputy Commissioner of the district. The phrase “deal in foodgrains” had also been defined as to engage in the business of purchase, sale or storage for sale of foodgrains whether on one’s own account or on account of or in partnership or in association with any other person or as a commission agent or *arhatiya*, and whether or not in conjunction with any other business. In these circumstances, it was held by their Lordships that the license in the name of the plaintiff could not be said to be in favour of the partnership and the

(2) A.I.R. 1964 A.P. 145.

(3) C.A. No. 30 of 1960 decided by Supreme Court on 11th April, 1962.

whole of transaction of partnership being, therefore, in contravention of the Food Grains Control Order was illegal justifying dismissal of the suit for accounts. There is a similar prohibition contained in the Cotton Control Order in question and no person can purchase, sell, store or carry on business in cotton or even hold cotton in hypothecation or against a pledge except under and in accordance with the conditions of a license issued in this behalf. A person who indulges in the purchase, sale, storage, etc., of cotton without obtaining a license is liable to a penalty under the Essential Commodities Act, 1955, under which the Cotton Control Order is issued. There is, therefore, a definite prohibition from carrying on the business covered by a license except by the licensee himself. No doubt, there is no definition of a dealer given in the Cotton Control Order, the like of which we find in the Central Provinces and Berar Food-Grains Control Order, but that will not make any difference. The word "person" as defined in the General Clauses Act includes any company or association or body of individuals whether incorporated or not and this definition is wide enough to include a partnership firm. A partnership is certainly an association of individuals for certain purposes though not incorporated as a company. The prohibition against dealing in cotton which is a controlled item because of the Cotton Control Order applies equally to a partnership as to any individual or a corporate body. Consequently, the partnership which did not hold a license in its name could not be constituted to undertake a commercial enterprise which could be undertaken only under a license. The constitution of partnership to work a license issued in the name of a partner is, therefore, obviously illegal and such a contract is void being hit by section 23 of the Contract Act. To permit the contract to take effect would be defeating the provisions of the Cotton Control Order and if the matter were to rest there, the plaintiff would not be entitled to claim rendition of accounts from the defendant.

(4) In *Basavayya's case* (2), which related to the Madras Cloth (Dealers) Control Order, 1944, a license had been issued to a dealer in cloth under the said Control Order. The licensee entered into partnership with others and a Division Bench of the Madras High Court following the aforesaid Supreme Court judgment in *Govinda Rao's case* (3) held that the privilege which was personal to the licensee could not be extended to persons with whom the licensee chooses to form a partnership. The learned Judges answered in very clear terms that "the fact that the said Order does not contain an

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express prohibition of the formation of partnership or transfer of license or an express provision that formation of partnership or transfer of licence is illegal, is immaterial when such a prohibition, formation or transfer can be implied from the Order." We are in respectful agreement with these observations and are of the considered view that the prohibition of formation of partnership by the licensee is in the very nature of things implied when a license is issued under a Control Order in the name of a particular person. The license is a personal privilege the benefit whereof cannot be extended to others by entering into partnership with them when they do not hold any such license. Any such action on the part of the licensee will be circumventing the provisions of the Control Order unless the formation of a partnership is permitted by the Control Order itself or the statute under which such order is promulgated. To this extent we find ourselves unable to uphold the finding of the learned single Judge. This will not, however, make any difference as regards the final decision reached by him.

(5) The other approach of the learned single Judge in holding that the parties are not in *pari delicto* and the plaintiff is, therefore, entitled to ask for rendition of accounts is unexceptionable. The learned Judge, on a consideration of the evidence, has in a very elaborate judgment held that the plaintiff was merely a sleeping partner and was providing finances to the partnership firm the business of which was being managed by the defendant-appellants. According to the learned Judge, the evidence disclosed that the defendants stood in fiduciary relationship to the plaintiff and this finding has not been assailed before us. The observations of their Lordships of the Supreme Court in *Sita Ram's case* (1) (supra) were relied upon by the learned Judge in holding that the suit for rendition of accounts of the dissolved partnership was still maintainable no matter that the partnership agreement be assumed to be void when it is found that the parties are not in *pari delicto*. We are thus of the view that the ultimate decision of the learned Judge, who allowed the appeal of the plaintiff, set aside the judgment and decree of the lower appellate Court and remanded the case to the trial Court for disposal in accordance with law, must be upheld.

(6) For the foregoing reasons, there is no merit in the appeal which stands dismissed with costs.

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N. K. S.