

## CHAPTER XXI

### MARKETING—CONTRACTS AND MISCELLANEOUS MATTERS

In this part we deal with the functioning of the markets at Calcutta for raw jute and jute goods and the agencies operating there. In particular we have discussed the question of speculation in these markets and circumstances leading to the closure of the gunny *Fatka* market in December 1952, which we have been asked to examine specifically. We have also dealt with the general question of futures markets for raw jute and jute goods and the method that should be adopted for the proper functioning of such a market. We have assessed certain factors which induce price fluctuations in these markets and suggested methods for checking speculation. To complete our survey and also to deal with certain complaints that have been received we include in this part an examination of the existing arbitration procedure and questions like inspection and maintenance of statistics of jute and jute goods.

The main agencies operating in the markets and controlling it in the case of raw jute are, the I.J.M.A. the Bengal Jute Dealers Association, the Bharat Jute Sellers Association, the Calcutta Baled Jute Association, the Calcutta Baled Jute Shippers Association, the Calcutta Hydraulic Press Association, the Calcutta Jute Brokers and Dealers Association, European Mofussil Jute Balers Association and the Jute Balers Association. In respect of jute goods, the I.J.M.A. the Calcutta Fabric Shippers Association, Gunny Trades Association, the Indian Jute Fabric Shippers Association and Jute Fabric Brokers Association are the main agencies. Main agencies.

All these organisations have published rules and regulations. Raw jute is sold to the mills only under the I.J.M.A. contract forms. There is at present no provision for registration of contracts and there has been no demand for such registration. Both the contract for raw jute and jute goods negotiated on these forms are normally meant for actual delivery. Contract form for Jute.

It has become necessary for us to examine to what extent the existing standard forms of contract for sale and purchase of jute goods are satisfactory and whether there are any loopholes in the procedure for the issue of 'pucca delivery' orders as obtaining at present. We also received complaints about sundry defects in the forms of contracts and suggestions about improvements to be effected in them, in the procedure for delivery of goods and regarding the procedure for Inspection and arbitrations. We therefore deal with all such matters here.

Contract  
form for  
Jute goods.

In Appendix VIII we have indicated the standard forms of the I.J.M.A. contracts for sale and purchase of jute and jute goods (not printed) and form of P.D.O. Form A is the one which has been accepted and used in the trade for jute goods. The period of delivery is specified in it and there is a provision to allow inspection if asked for by buyer. To obviate difficulties on account of delay in issue of shipping instructions within due date or default by buyer, intimation by sellers within the due date that goods are available for delivery, is considered sufficient tender. There is a *force majeure* clause of a very wide nature which enables a seller to give timely notice in circumstances beyond his control rendering it impossible for him to fulfil the contract and ask for extension; and if the buyer is not agreeable, the contract can be cancelled by him without having any further claims against sellers. The Director of Supplies, Calcutta, has pointed out that this clause is construed too widely so that even cases which are not Acts of God are held to constitute conditions beyond control of seller and the buyer is denied the normal contractual remedy for losses resulting from non-fulfilment of contract by seller. Arbitration is provided by a tribunal constituted by the Bengal Chamber of Commerce. Contracts are fulfilled by delivery; in the case of export delivery by having the goods placed alongside the vessel on receipt of instructions from the buyer, or in other cases by issue of *Pucca Delivery Orders*.

In the case of contracts for raw jute it has been pointed out by the Bengal Jute Dealers Association, that the forms are far from satisfactory and are one-sided and in favour of the buyers. They have criticised clause 10 of the I.J.M.A. contract form for Indian jute in *kutch* bale packing, which allows the buyer after arbitration award is given to exercise one of three options, (a) to accept the goods with the allowances awarded, (b) to cancel the contract.

and claim the difference between contract and market rates, and (c) to cancel the contract and accept a fresh tender. As the buyer initially gets three months' time to decide after watching the market to choose his remedy, this is regarded as unduly in his favour, as he could select his option in a falling market; but if the market rises there is no provision for the benefit of the sellers whose goods have been rejected. It is also alleged that claims on account of quality and moisture are made in a general way by the buyer without specifically indicating the amount claimed as an allowance. The main suggestion is that the arbitrator should give one complete and final award. Certain Associations, namely the Bharat Jute Sellers Association and the Jute Balers Association, have also pointed out that the I.J.M.A. loose jute contract form is unsatisfactory. While the I.J.M.A. and the Bengal Chamber of Commerce have regarded these forms as generally satisfactory, the Bengal National Chamber have considered them as out of date and affording opportunity for deliberate repudiation of liability in the gunny trade on account of the rights and liabilities of buyers and sellers not being explicitly defined. The Calcutta Baled Jute Association have pointed out that the grade of jute mentioned are too rigid and no standards have been prescribed for *bimli*, *mesta* and *jungli* jute. There is also the general complaint that in arbitration matters Indian interests are not sufficiently taken care of, and that the Indian Chamber of Commerce should be included in the arbitration panel.

An examination of the I.J.M.A. contract forms for selling jute goods and buying raw jute gives the impression that both these forms are devised to suit mill interests. Quite a number of mills have stated that the existing forms which have been used by them and by shippers and dealers for over half a century are quite satisfactory. The pressure from the buyers we feel however will ultimately require changes to be made in the I.J.M.A. contract form A for sale of goods and the sooner the trade and industry in this country anticipate the inevitable change, the better. We suggest that the Jute Board should examine the appropriateness of the present forms in use in present day circumstances in markets overseas and make suitable changes in these forms used in India to see that long term interests of sellers in this country are not affected. Defects in regard to the raw jute contract form have been pointed out earlier. The form for purchase and sale of raw jute being purely an internal affair, the defects pointed out therein should also

I.J.M.A.  
contract  
forms.

be set right immediately by the I.J.M.A. in consultation with the raw jute interests. Here again, the Jute Board in which these interests would be represented, should be in a position to help.

**Arbitration.**

We have received a number of complaints regarding the present system of arbitration in regard to jute contracts. The main one is that buyers get two months' time to file the case before the Bengal Chamber of Commerce who at present appoint the panels of arbitration. Over and above the time taken on arbitration proceedings, the buyer of raw jute is allowed a further five days before he is called upon the exercise one of the three options mentioned earlier. The net result of all these is that where the market is in favour of the buyer (mill interests) they may accept the goods with the allowance but otherwise cancel the contract. Another point mentioned is that in case of dispute the buyer of raw jute does not submit a proper statement of facts laying down his case and the amount he actually claims as allowance with the result that the seller does not specifically know the basis of the dispute. We feel that the normal arbitration practice should be followed in this matter and consider that the arbitrator's award should be precise and complete and not leave the door open for any options to be exercised by either side later.

We have received a number of complaints regarding the present system of forming panels for arbitration. It appears that generally one has to go to the tribunal of arbitration of the Bengal Chamber of Commerce for the settlement of any disputes. The tribunal has the buyers' and sellers' panel of arbitrators and usually appoints one from each to settle any disputes. Complaints have been received against the latter panel on the ground that it consists mainly of members (brokers and dealers) whose interests lie with the mills who are the buyers. For the system to work satisfactorily the panels must enjoy the fullest confidence of those on whose behalf they are established. The parties to the dispute should be left free to choose their own arbitrators or if it is considered expedient, the panels should consist of men in whom both the parties have complete faith. Objections have also been raised that these proceedings are often held in mill premises and as such the atmosphere is not conducive to impartial arbitration. A large section of interests in the trade, mainly in which India interests predominate, asked for the inclusion of the Indian Chamber of Commerce also in the arbitration

panel. The demand seems to be a fair and legitimate one. We recommend that the deficiencies in the present procedure mentioned above should be removed as early possible and as the procedure is in itself only ancillary to the general contract procedure in vogue, necessary changes should be made simultaneously with modifications in the contract procedure that we have suggested.

As far as the *pucca* delivery order form is concerned, the complaint is that there is no single standard form in use. The I.J.M.A. and trade Associations generally consider the form in general use satisfactory as it has stood the test of time. Further, it has been explained that the P.D.Os. are normally issued on the basis that goods are ready for delivery ; but at the same time it is open to the purchaser for any reason whatsoever to leave the goods in the custody of the mills. As far as sales to dealers are concerned, the system of issue of P.D.Os. enables the latter to negotiate their value on sale although custody may still be retained by the mills. Parties connected intimately with the trade have told us that this gives a measure of flexibility which has been advantageous both to the mills and the trade, as it permits the maximum turnover to take place. The P.D.O. has been so far regarded as a document of title to goods on the basis of which discounting facilities have been given freely by the banks. In the view of one section any fundamental change in this system restricting its issue to earmarked stocks would be disadvantageous to the trade and industry.

*Pucca deli-  
very orders.*

On the other hand, it has been pointed out that the very flexibility of the system lays it open to abuse on occasions. The Gunny Trades Association has contended that—

“In cases where shipping instructions are sent against mills’ P.D.Os. some of the mills do not bring down goods for a considerable number of days as a result of which P.D.O. holders are unable to fulfil their contractual obligations with their own buyers. The time limit for the delivery of goods against P.D.Os. is neither provided in the contract terms nor on the P.D.Os. The P.D.O. holder after making payment for the P.D.O. is left at the mercy of the mill for the delivery of goods and he cannot take any action against the mills. The payment against P.D.Os. is made under clause 3 of the contract. It is therefore suggested that it should be specifically provided

in the contract terms that mills are to bring down goods within seven working days after the receipt of shipping instructions against a P.D.O. under threat of penalty of payment of damages suffered by the P.D.O. holders."

The Bengal National Chamber of Commerce has suggested, "the introduction of forms which should be issued only against goods actually manufactured by the mills concerned and not against those procured from other mills by arrangement."

Abuses in  
system ex-  
amined.

It seems to be generally agreed that the drawback in the present system is the absence of a provision regarding the period within which the delivery should be effected by the mills. The Indian Chamber have suggested that the period of delivery should be ten clear working days and if the mills fail to deliver the goods to the buyer within the prescribed time limit of 10 days mentioned, the latter should have the right to claim damages. Such a provision should form part of the relevant contract also.

Over-issue  
of P.D.O.

We enquired from the Chairman, I.J.M.A. about a case in 1952 where a mill had issued P.D.Os. greatly in excess of their holdings and were on presentation unable to deliver the goods. He has informed us that to his knowledge within the last 20 years there has been no other case of substantial over-issue of P.D.Os. Certain other industrialists have also confirmed this view.

We have obtained details of production of hessian and sacking from the mills for the period 1948-49 to 1952-53. They also have furnished the quantity covered by P.D.Os. A general examination showed that there has been in many cases no direct correlation between the quantum of production per month and sales including their own P.T.Os. in that month. This has been explained as due to production being a continuous process, while market demand affects the actual sales on P.D.Os.

Recommen-  
dation.

The prominent case of failure to delivery goods against P.D.Os. issued by one group of mills in November-December 1952 brought to our attention the possibility of a random selection of 17 mills and obtained the assistance of the Chief Cost Accounts Officer of the Ministry of Finance to examine on our behalf the relevant records of stocks and issue of P.D.Os. He was directed to pay special

attention to the trends between April 1952 and the time when the forward market was closed in December 1952. All the selected mills were in the I.J.M.A. group and were representative as they covered both Indian and Non Indian managed mills. These mills represented a coverage of 22,000 looms as against the total loomage of 69,000. The mills selected belong to 12 managing agency groups of which six were Indian and six Non Indian. We have considered the Chief Cost Accounts Officer's reports and are submitting it as a confidential annexure to the report. Our examination discloses the following points. Five of the 17 mills were found not to be maintaining proper detailed accounts of sales of P.D.Os. In the majority of cases there were only small differences between the current monthly production and the issue of P.D.Os. there-against, i.e., in these cases the small over issue in excess of current month's production was explained as due to anticipating a few days' future production which is not unusual, or as being covered by past accumulations of stock. It was also noticed that five of the mills maintained quite satisfactory records of sales and regulated their sales in accordance with their production and current availability. Seven mills were found to be in the habit of repurchasing their own P.D.Os. or P.D.Os. of their group, while three others admitted to have done such repurchase occasionally. In the case of five mills there were instances of extensive purchase of P.D.Os. of other mills to cover sales. In one or two instances mills have also admitted that contracts were settled without issue of P.D.Os. In the case of the particular mill group where large over issues were noticed in November and December, the stock-taking in March 1953 showed unreconciled deficiencies. Quite a large number of instances were noticed of overissue during the period forward markets were in operation, particularly in the months of August 1952 and October-November 1952, by as many as 8 mills. In one or two cases among these the excesses have been explained as covered by accumulated stocks or as due to unadjusted cancellation of orders. One mill was in the habit of over-issuing P.D.Os. for B Twills. From the above it will be clear that under the present practice P.D.Os. are often issued in excess of actual production and stocks. These are also issued against anticipated production expected to be completed in due course before presentation of P.D.Os., as it happens that delivery is not usually called or made within a week or ten days of their issue. We are therefore of the opinion that this

practice of issuing P.D.Os. partly in anticipation of production and the feeling that this could legally be done so long as no ultimate default in delivery occurs, was a contributory factor favouring the gross over issue of P.D.Os. in the speculation racket of 1952. We are told however that the I.J.M.A. have under consideration the question of introducing a procedure by which an endorsement will be made on the P.D.O. to the effect that the goods covered thereby are available for inspection within a reasonable time, but no indication was given as to when this will be carried out. The I.J.M.A. are not in favour of introducing any fixed time limit as they apprehend that this would make the system rigid. On the other hand, in view of the abuses noticed, we are inclined to accept the suggestion of the Indian Chamber of Commerce referred to above and to recommend that the standard form of contract of the I.J.M.A. as well as the P.D.O. form should refer to the period of delivery and in the case of the P.D.O. there should also be an endorsement or declaration that the goods are ready and will be available for inspection or delivery within a specified period. Whether this limit should be a week or ten days may be left to trade usage to decide, but a change in this direction is immediately called for. Mills should also maintain a complete record of all P.D.Os. issued by them from time to time and a system should be evolved of verifying that goods against uncashed P.D.Os. are physically available. Alternatively, a test check may be provided for by the I.J.M.A. or, if they are unwilling to take on this responsibility, by the staff of the Jute Commissioner.

Other defects.

In this connection it has also been brought to our notice that the Gunny Trades Association lodged a complaint to the I.J.M.A. that a certain mill refused to deliver goods to the shippers (the last P.D.O. holder) on the plea that the mill had claims over the immediate buyer in connection with other disputes. Although the case raised an important general issue, the I.J.M.A., after taking legal advice, held that the matter was essentially one for settlement between the contracting parties in which the Association had no authority to intervene. The attitude of the mill in this particular case seems to cut at the roots of the system of commercial faith under which holders in due course who have paid for the value of the goods and obtained the P.D.Os. can transfer them for consideration or obtain bank accommodation thereon. A tech-



nical plea that the party claiming delivery of the goods was not registered with the mills as the holder of the P.D.O. amounts to legal quibbling. This is a serious defect in the P.D.O. system which should be set right at once.

The Gunny Trades Association have brought it to our notice that under the existing procedure mills who had complied with shipping instructions can receive payments on the basis of mate's receipt from the immediate buyer. The party who sells to the ultimate shipper is not in a position to claim payment in direct sequence and it often happens that the shipper can on the strength of bills of lading issued to him by the shipping company receive payment from the bank without the mate's receipt and thus deprive the intermediate parties of the basis of their claims. If this is the general position, it should be considered as unsatisfactory as it contains frictional factors which would lead to litigation. The I.J.M.A. should consider taking this up with the trade as well as shipping companies for such rectification of procedure as may be necessary.