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**(1983) 01 DEL CK 0016**  
**In the Delhi High Court**  
**Case No : FAO (OS) No. 50/79**

Dodsal Pvt. Ltd.

APPELLANT

Vs

Delhi Electric Supply Undertaking

RESPONDENT

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**Date of Decision :** 16-01-1983

**Acts Referred:**

**Citation :** (1983) 5 DRJ 55 : (1984) 1 ILR Delhi 378

**Hon'ble Judges :** S. Ranganathan, J;D.K. Kapur, J

**Bench :** Division Bench

**Advocate :** U.R. Lalit and P.C. Gokhale, for the Appellant; Bishamber Dayal, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

S. Ranganathan, J.—This three appeals raise the same common issue and can be disposed of altogether. As it is common ground that the facts involved are the same and the disposal of one of the appeals will also cover the other two, we proceed to deal with the facts and the contentions urged in F.A.O (OS) 50/79, the order in which will cover the other two appeal as well.

2. The appellant M/s Dodsal Pvt. Ltd. submitted a tender on 23-9-1968 giving quotations for the erection and commissioning of a boiler with its auxiliaries for the 5th Unit at the Indraprastha Power Station Project at Delhi. This tender was made to the Executive Engineer, Electrical III, Delhi Electric Supply Undertaking (a department of the Municipal Corporation of Delhi) in response to an advertisement calling for tenders published by the above officer. According to the appellant the tenders submitted by it as well as other contractors were examined and the appellant's tender was accepted after negotiations held with the General Manager, Delhi Electric Supply Undertaking (DESU), the officers of the Central Water and Power Commission and other representatives of various other Governmental agencies. Following these negotiations the appellant was given a letter of indent signed by the Executive Engineer. Electrical III and the appellant was asked to commence work immediately. They are stated to have commenced

work on 11th December, 1968.

3. A formal contract embodying the terms and conditions subject to which the work of construction and erection was entrusted to the appellant was executed on 28th April, 1969. This contract admittedly contained an arbitration clause under which all disputes arising between the parties the settlement of which was not specifically provided for in the contract were to be referred to two arbitrators, one to be nominated by the DESU and one by the contractor and in the event of disagreement between the arbitrators to an umpire appointed by the arbitrators.

4. It appears that certain disputes did arise between the parties. The appellant appointed Shri K.R. Chaudhary as its arbitrator and the respondent appointed Shri K.L. Vijn as its arbitrator and the two arbitrators entered upon the reference. During the pendency of the arbitration, the work continued and further disputes arose which were referred to the aforesaid two arbitrators by way of two subsequent references. It is in this manner that there were three references before the arbitrators in regard to the three claims which can be conveniently referred to as Claim No. 1, Claim No. 2 and Claim No. 3. The arbitrators, after hearing the parties on a number of occasions, made their awards. In respect of Claim No. 1 the award was made on 9-8-1975 by which the arbitrators directed the DESU to pay to the appellant company within a period of 30 days a sum of Rs. 1,10,000/- in full discharge and satisfaction of all their claims against the DESU in respect of this claim. The counter claim made on behalf of the DESU was rejected in toto. In regard to Claim No. 2 the award, also made on 9-8-1975, directed the DESU to pay to the appellant company a sum of Rs. 3,33,000/- and rejected the counter claim on behalf of the DESU. Again Claim No. 3 was disposed of by the award dated 9-8-1975 by directing the DESU to pay to the appellant company a sum of Rs. 5,57,000/- and rejecting the counter claim of DESU in this regard. In other words, all the three references ended in awards of substantial sums in favor of the appellant company to be paid by the DESU within a period of 30 days.

5. The appellant company thereafter filed applications under Sections 14 and 17 of the Arbitration Act. It was stated that the applicant had requested the arbitrators to file the award in the court and prayed that a decree may be pronounced in accordance with the award. On the other hand the respondent DESU filed objections under Sections 30 and 33 of the Arbitration Act contending that the award was without jurisdiction, invalid and void and praying also that the award was liable to be set aside for various reasons. Among the various objections taken by the DESU was the following plea :

"2. That the said award is in pursuance of an alleged contract agreement No. C-Ext./E. III/8(1/68 dated 28th April, 1969, containing an Arbitration Clause. The said contract agreement re its execution does not fulfill the mandatory requirements of the Delhi Municipal Corporation Act and its relevant bye-laws and the Arbitration Clause is, Therefore not binding.

3. That there can be no estoppel against law and the Arbitration Clause is void, as well as the said contract agreement."

These pleas have been accepted by the learned single judge who thereupon accepted the objection petitions and dismissed the petitions under Sections 14 and 17. It is against this order of the learned single judge dated 5-1-1979 that the appellant company has preferred these three appeals.

6. As before the learned single judge, two principal questions arise for our consideration. The first is as to whether there is a valid arbitration agreement between the parties and the second is whether, assuming that there is no such valid arbitration agreement, it is open to the DESU to raise this plea at a belated stage in its objections to the award, particularly having regard to its conduct in the matter throughout. The factual background in regard to these two contentions may now be set out.

7. The first objection raised on behalf of the DESU before the learned single judge was that under the terms of Delhi Municipal Corporation Act (DMC Act) and the Bye Laws of the Municipal Corporation of Delhi (MCD) a contract entered into by the Corporation has to fulfill certain procedural formalities and other requirements and that as these requirements have not been fulfilled in the present case there has been no valid contract between the parties. It is contended that the agreement dated 28-4-1969 Being invalid and unenforceable the arbitration clause contained in the said agreement would be equally void and inoperative. The relevant provisions of the Delhi Municipal Corporation Act are contained in Sections 201 and 202. Section 201 provides :

"201. Subject to the provisions of Sections 202 and 203, the Corporation shall be competent to enter into and perform any contract necessary for the purposes of this Act."

Section 202 which, according to the marginal note deals with the "procedure for making contracts", reads as follows :

"202. With respect to the making of contracts, the following provisions shall have effect, namely :--

(a) every such contract shall be made on behalf of the Corporation by the Commissioner ;

(b) no such contract, for any purpose which in accordance with any provision of this Act the Commissioner may not carry out without the approval or sanction of the Corporation or some other municipal authority shall be made by him until and unless such approval or sanction has been duly obtained ;

(c) no contract (other than a contract for the acquisition of immovable property) which will involve an expenditure exceeding ten thousand rupees or such higher amount as the Corporation may fix shall be made by the Commissioner unless the same is previously approved by the Standing Committee;

(d) every contract (other than a contract for the acquisition of immovable property) made by the Commissioner involving an expenditure exceeding two thousand rupees but not exceeding ten thousand rupees or such higher amount as may be fixed under Clause (c) shall be reported by him within one month after the same has been made to the Standing Committee ;

(e) no contract for the acquisition of immovable property shall be valid :--

(i) unless the contract has been approved by the Standing Committee, where the price stipulated to be paid for such property exceeds five thousand rupees but does not exceed fifteen thousand rupees ; or

(ii) unless the contract has been approved by the Corporation, where the price stipulated to be paid for such property exceeds fifteen thousand rupees."

Section 203 deals with the "mode of executing contracts" and is in the following terms :

"203. (1) The mode of executing contracts under this Act shall be prescribed by bye-laws made in this behalf.

(2) No contract which is not made in accordance with the provisions of this Act and the bye-laws made there under shall be binding on the Corporation."

It is also necessary to mention that Section 491 authorises the Commissioner to delegate, by means of an order, his powers under the Act to any other municipal officer or employee and that by virtue of Section 504(1) of the Act all references in the Act to the Commissioner and the Standing Committee have to be construed, in relation to any matter pertaining to the DESU, respectively as references to the General Manager (Electricity)-briefly referred to as the G.M. and the Delhi Electric Supply Committee.

8. The Bye Laws framed under the Municipal Corporation of Delhi Act also cover the matter of execution of contracts. The Bye Laws framed by the Government of India u/s 481(1) & (2) in this regard are the Delhi Municipal Corporation (Execution of Contracts) Bye Laws, 1958, Bye Law No. 3 is in the following terms :

3. (1) Every contract entered into by the Commissioner on behalf of the Corporation shall be entered into in such manner and form as would bind him if such contract were made on his own behalf, and may in the like manner and form be varied or discharged. Provided that :--

(a) the common seal of the Corporation shall be affixed to every contract; and

(b) every contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding one thousand rupees or such higher amount as the Corporation may from time to time fix, and every contract or other instrument relating to the acquisition of immovable property, shall be in writing and shall specify ;--

(i) the work to be done or the materials or goods to be supplied or the immovable property to be acquired, as the case may be ;

(ii) the price to be paid for any such work, materials, goods, or immovable property ; and

(iii) in the case of a contract for works or for supplies, the period within which the contract or specified portion thereof shall be carried out.

(2) The common seal of the Corporation shall remain in the custody of the municipal secretary and shall not be affixed to any contract or other instrument, except in the presence of a member of the Standing Committee, who shall sign the contract or instrument in token that the same was sealed in his presence.

(3) The signature of the said member shall be distinct from the signature of the witness to the execution of such contract or instrument.

(4) Notwithstanding anything contained in proviso (b) to Clause (1), it shall be lawful for :--

(i) the Standing Committee, to authorise the Commissioner to enter into a contract for the supply of any materials or goods without the execution of a written instrument for reasons which shall be recorded in the proceedings of the said Committee ;

(ii) the Commissioner to dispense with the execution of a written instrument in the case of contracts relating to the execution of any work or the supply of any materials or goods, if such work has already been performed or the materials or goods have already been supplied to his satisfaction."

Bye-law 4 is in terms similar to Section 504(1) and need not be here repeated.

9. The point on behalf of the DESU was that the contract dated 28th April, 1969 was signed by one Shri Joginder Singh, Executive Engineer (TG) of the respondent Undertaking, and it neither bears the common seal of the Corporation nor fulfills the other requirements of Sections 202 and 203 of the Act read with the Bye-laws above-mentioned. It is on this basis that the DESU contended before the learned single judge that the agreement dated 28-4-1969 which contained the arbitration clause was not binding on the Corporation and that Therefore the reference to the arbitration was invalid.

10. The appellant, of course, attempted to meet the objection raised by the DESU and sought to contend that the agreement dated 28-4-1969 was a valid and binding agreement. But quite apart from that, it also took up the plea that it was too late in the day for the DESU to wriggle out of its obligations under the contract for the following reasons. It was submitted in the first place that the contract had been fully acted upon. The work in respect of the entire contract had been completed and the payments in pursuance of the contract had been made to the appellant by the respondent DESU. Having accepted work from the appellant and having also made the payment in pursuance of their obligations

under the agreement, it was not open to the DESU to contend that the agreement was invalid merely because certain disputes were raised by the appellant which required reference to arbitration under the agreement. Secondly, in response to the appellant's letters seeking arbitration and appointing their arbitrator in terms of the agreement, the DESU also nominated its own arbitrator. In fact even before the agreement was entered into on 28-4-1969, the DESU had nominated one N.S. Vasant, Project Engineer, to represent the DESU in any arbitration that may arise out of the contract. This order of authorisation had been passed by the General Manager on 11-3-1969 and it was in pursuance thereof that the respondent also nominated its arbitrator. Not only this ; they also filed counter claims in respect of each of the claims filed by the appellant for adjudication by the arbitrators. Thirdly, the arbitration proceedings could not be finalised within the period of four months and periodical extensions had to be obtained from the Court. This was done by joint applications made by both the parties before the court from time to time. Lastly, the respondent had engaged an advocate to present their case before the arbitrators and at no time during the proceedings before the arbitrators was any point taken on behalf of the respondent that the arbitration proceedings were totally invalid and without jurisdiction. Having regard to this course of conduct by the DESU the appellant contended before the learned single judge that the respondent should be estopped from raising at this belated stage the plea that there was no valid reference to arbitration at all.

11. The learned single judge upheld the objections raised on behalf of the DESU and rejected the plea of estoppel raised by the appellant. The learned single judge held that there was no getting away from the fact that the statute and the bye laws required a contract of the nature presently in question to be in writing, to be executed by the General Manager with the approval of the Standing Committee and also to bear the seal of the Corporation. These conditions were clearly not fulfilled in the present case and hence the respondent could not be bound by the terms of the agreement. The learned single judge also pointed out that it was a well settled proposition of law that there could be no estoppel against the statute. It may be that the respondent had also acted, at the earlier stages of the proceedings, under the impression that there was a valid reference to arbitration but that did not disentitle them from raising objections, based on the statute, to the validity of the arbitration agreement. The learned single judge also rejected an attempt made on behalf of the appellant to show that Shri Joginder Singh had been delegated the authority to enter into the contract in question on behalf of the DESU. He gave an opportunity to the parties to place material relevant to the point and called for the entire file containing the orders of delegation maintained by the Corporation. He came to the conclusion after giving an opportunity to the appellant to scrutinise the records of the Corporation that there was no delegation in favor of Shri Joginder Singh to execute the contract in question. In view of his above conclusion the learned single Judge accepted the objections raised by the DESU and dismissed the petitions filed by

the appellant.

12. Sri Lalit, learned counsel for the appellants, contended that there was no infirmity attaching to the contract. He submitted that the absence of a seal was not at all a matter of substance, that the approval of the contract by the Standing Committee need not appear *ex facie* on the contract and that it was inconceivable that Joginder Singh could have signed such a huge contract or allowed it to be performed without proper authority. He further submitted that the contract did not infringe any terms of the statute and even if it did not conform to some bye-law or other this was immaterial as the requirements in the bye-laws should be treated as only directory and not mandatory. He urged that the objection is taken by the DESU were belated, lacked detail and did not voice any specific grounds for the objections. He urged that these objections pertained to the "internal management" of the affairs of the DESU and that a party seeking a contract from the DESU, should not suffer if the DESU failed to observe its obligations under the statutes and bye-laws regarding the making of contracts.

13. We may first consider whether the contract complied with the statute and bye-laws. The relevant provisions of the statute and the bye-laws have been set out earlier. The terms of Section 203(2) make it clear that a contract, made on behalf of the Corporation, in order that it may be binding, should comply not only with the statutory requirements but also with the provisions of the bye-laws. Compliance with the bye-laws is also a must and cannot be treated as secondary or merely directory. The statutory provisions and the bye-laws read together require that a contract of the type and magnitude hereunder consideration should :--

(i) be in writing ;

(ii) be executed by the General Manager or an official authorised by him u/s 491 ;

(iii) have received the previous approval of the Standing Committee ;

(iv) have the common seal of the Corporation affixed to it in the presence of a member of the Standing Committee ;

(v) contain the signature of a member of the Standing Committee in token that the same was sealed in his presence.

We may now proceed to consider whether these conditions have been complied with.

Condition (i) : The contract in the present case is admittedly in writing. However, with a view to get over the further objections that the other conditions which such a contract has to fulfill have not been fulfilled in the present case, Sri Lalit sought to make out that there was a valid and binding oral contract, in the present case quite independent of the written agreement dated 28-4-1969. Basing himself on the reference to a "contract... made" in Sections 202 and 203(2) as contrasted with a reference to the "mode of executing contracts" in

Section 203(1), he attempted to contend that Act makes a distinction between the making and execution of a contract and that, in the present case a contract had been made, acted upon and fully carried out which is binding on the Corporation even though in the process of reducing it to writing and "executing" it the requirements of the bye-laws may not have been meticulously complied with.

14. It may be pointed out that this contention is not of much help to the appellant. In order to sustain its claim for a reference to arbitration the appellant has necessarily to rely on the terms of the written contract of 28-4-1960. If this written contract is left out of account, there can be no reference to arbitration at all and the order of the learned single Judge will have to be upheld on that short ground. Sri Lalit contended that though the main contract may be taken as oral and hence binding the arbitration clause of the contract dated 28-4-1969 should be read as a separate arbitration agreement which, not being required to fulfill the formalities of Sections 201-3 and the bye laws and was, Therefore, valid. In support of this contention he referred to certain observations (at pages 347, 357-8) in the case of Heyman v. Darwin's Ltd. 1942 1 A.E.R. 337 and to the decisions of the Supreme Court in The Union of India Vs. Kishorilal Gupta and Bros., . We do not think that this attempt of counsel to sustain the arbitration clause as a separate arbitration agreement and taking it on to a binding oral agreement can succeed. After considering Heyman v. Darwin (Supra), the Supreme Court in Kishore Lal Gupta (Supra) explained the position thus :

"An arbitration clause is a collateral term of a contract as distinguished from its substantive terms : but note the less it is at integral part of it. If an arbitration clause is couched in widest terms, the dispute, whether there is frustration or repudiation of the contract, will be covered by it It is not because the arbitration clause survives, but because, though such repudiation ends the liability of the parties to perform the contract, it does not put an end to their liability to pay damages for any breach of the contract. The contract is still in existence for certain purposes. But where the dispute is whether the said contract is void abolition the arbitration clause cannot operate on those disputes, for its operative force depends upon the existence of the contract and its validity."

(underlining ours)

The present case falls in the category of cases covered by the underlined words. When the terms of a contract are reduced to writing but such writing creates no enforceable rights, the arbitration clause which is an integral part of that writing cannot above be held to constitute an operative agreement. Moreover, the arbitration clause covers only the disputes that may arise under the agreement dated 28-4-1969 and cannot be taken to cover disputes arising out of an independent oral contract alleged to have been entered into between the parties but ineffectively reduced to writing.

15. The above considerations apart, we do not think that the subtle distinction



sought to be made by counsel is one of substance. It seems to us that in the context of Sections 201-203 the word "executing" used in Section 203(1) has a wide connotation and should be understood as synonymous with the word "making". If the appellant's restricted interpretation of Section 203(1) is correct, it could be even urged that bye laws 3 and 4 are valid only in so far as they provide for the requirements to be fulfilled if and where contracts are made in writing but that they are ultra virus in so far as they purport to lay down the circumstances in which contracts made on behalf of the Corporation should be in writing and when not. Such an extreme contention was neither urged on behalf of the a reliant nor do we think it would be tenable In our view the language of Section 203(1), though envisaging bye-laws regarding the mode of executing contracts, is wide enough to empower the framing of bye-laws including provisions as to when contracts should be made orally, when in writing and what formalities are to be fulfilled in the latter eventuality. Bye-laws (3) and (4) , which concern this aspect, we think, are clearly intra vires. The Act requires that such a contract, as here, to be binding, should be made on behalf of the Corporation by the General Manager who should have obtained the previous approval of the Standing Committee. The bye-laws prescribe a mode of execution necessary for the fulfillment of these conditions. The requirement that the common seal should be brought out from the custody of the Municipal Secretary and affixed to the contract in the presence of a member of the Standing Committee will clearly ensure that the contract is being entered into on behalf of the Corporation and that the Standing Committee has also approved of it, for one may reasonably expect that the Municipal Secretary will not part with the seal expect to a person authorised to execute the contract and that the member o. the Standing Committee will, before attesting the affixation of the seal, satisfy himself that the contract has had the imprimatur of the Standing Committee. We are, Therefore, unable to give relief to the appellants on the basis of any contract between the appellants and DESU in respect of which arbitration could be sought other than the written contract of 28 4-1969 which, though in writing, does not, unfortunately, fulfill the statutory requirements.

Condition (ii) : Section 202 requires that a contract on behalf of the DESU should be entered into by its General Manager (GM). For the reasons discussed earlier, we may leave out of account the contention of the appellant that the contract had been made after negotiations with the GM; we are concerned not with a \\y oral contract but only with the written contract of 28-4-1969. This has not been entered into by the GM. It is true that Section 491 of the Act empowers the GM to delegate his powers in this behalf to some other officer of the DESU. It has been held (vide *Akshay Kumar v. Commissioners of Bogra*, 1923 75 I.C. 506) that in such cases the onus to show that the contract executed by an authorised person is on the person asserting the legality of the contract. But, leaving the question of onus aside, the position is this. The respondents state that there is no such delegation. The only way in which they can prove this negative is by producing its records, concerning such delegation, from which the appellant and

the Court could satisfy itself that there is no such order of delegation. The Corporation has done this and the appellants have not been able to lay their hands on any order of delegation in favor of Joginder Singh. Sri Lalit, however, wants us to infer that such delegation must exist from two circumstances. The first is the high degree of improbability that a contract of such magnitude could have been entered into without the knowledge and approval of the GM or the Standing Committee. The second is that the appellant has been able to discover, at the stage of the present appeals, an office memorandum of the DESU dated 28-1-1964 issued by the GM authorising all Executive Engineers "to sign contracts relating to the Works being carried out under them in the Engineering Section under the Chief Engineer" which, he seeks, by CM 560/81, to adduce as additional evidence. We grant the appellant leave to refer to this document but we find that the two circumstances referred to do not justify any such inference as the appellants want us to draw.

16. As to the first circumstance, it is no doubt true that such a huge contract could not have been allowed to be carried out and paid for unless it had the approval of the GM and the Standing Committee and, in the case of the present contract, perhaps even the higher authorities of the Central Government. But the question is not whether the contract had such approval but whether it has been entered into and executed in the proper manner, on behalf of the DESU. This question can be answered only on the basis of the statute and it is for the parties to satisfy us that the contract had been executed by an authorised official. It is urged that the appellant cannot be expected to produce some order which, if at all, can only be in some file of the DESU and which is not needed to be published in the Gazette or in some similar way made public and accessible to public. There are two answers to this contention. One is that, having regard to the statutory conditions, the appellant could and should have before entering into the contract of 28-4-1969, called for and obtained from the respondents the necessary authorisation and have only themselves to thank for not having taken this precaution. The second is that, if the appellant finds it difficult to prove the positive it is impossible for the DESU, in case no such delegation had been issued, to prove the negative. The only thing that can be done in the circumstances is to look into the relevant records of the Corporation and this has been done.

17. The office memorandum of 28-1-1964 produced by the appellants before us is also of no avail to them. It does not pertain to contract under consideration. Again, as against this, the respondents had produced an office order of the GM dated 8-2-1965 delegating the power of signing contracts in favor of Executive Engineer in the Indraprastha Power Station Extension Project, but that was restricted only to award of contracts involving expenditure of Rs. 10,000/- or less and was further subject to a condition that contracts awarded by them involving more than Rs. 2000/- should be reported to the DESU Committee each month. In the circumstances, the only inference possible is that the contract dated 28-4-1969 has not been entered into by a person having the authority to act on

behalf of the Corporation and binding it by his acts.

Condition (iii) : Sri Lalit rightly points out that there is no specific pleading by the DESU that the contract had not been approved by its Standing Committee. He also points out that neither the statute nor the bye-laws require that the written contract should ex facie show the existence of such approval. There is also no evidence before, or finding by, the learned Judge in this regard. On the contrary, the contract does not contain any attestation of the document (if not sealing) by a member of the Standing Committee and there is nothing to show that such approval had been obtained. We need not, however, pursue this aspect.

Conditions (iv) and (v) : Admittedly these conditions have been fulfilled .There is no signature on the contract of any member of the Standing Committee and there being no affixation of the seal of the Delhi Municipal Corporation to the document, the question of attestation of such affixation by such member does not at all arise.

18. Thus, the contract dated 28-4-1969 does not fulfill three out of the five conditions enumerated in the statute and the bye-laws.

19. Faced with this situation, learned counsel sought to contend that these aspects did not vitiate the validity of the contract but were merely in the nature of minor irregularities or defects that could be cured. It is not possible to accept this contention. These provisions of the Delhi Municipal Corporation Act are intended to safeguard the interests of a local authority like the Corporation and to ensure that contracts on its behalf are entered into by duly authorised persons after complying with certain formalities which ex facie show the regularity and validity of the transaction. It has been held (vide : Municipal Council, Tiruvarur v. P.R. Kannuswami Pillai and Anr., AIR 1930 Mad. 600) that municipal contracts not complying with statutory formalities are null and void and can be shaken off even if the contract has been wholly executed. The position has become much clearer in recent years. In Gupta v. N.D.M.C. 1970 2 Delhi 38 a Bench of this court held that where an arbitration clause is contained in an agreement which does not comply with Section 47 of the Punjab Municipal Act--which has been referred to earlier--the contract is void and unenforceable and the arbitration clause also falls with the contract. Moreover, it may be pointed out that the provisions in the Municipal Act now being considered have analogous provisions in Section 175 of the Government of India Act, 1935 and Article 299 of the Constitution enacted with a like purpose. It is settled law that such seemingly formal requirements have an important objective and should be strictly adhered to and that the Government or local authority will not be held bound if they are not. It is sufficient to refer to a decision of the Supreme Court under the Municipal Acts, the principle wherein has been uniformly and consistently applied by the Supreme Court in cases arising u/s 175 of the 1935 Act and Article 299 of the Constitution. Dr. H.S. Rikhy and Others Vs. The New Delhi Municipal Committee, perhaps furnishes an extreme example of the strictness of the courts in this regard. The New Delhi Municipal Committee had let out a large number of shops

and residential flats at varying rents. The "tenants" filed applications u/s 8 of the Delhi and Ajmer Rent Control Act (38 of 1952) praying for the fixation of fair in rents respect of the premises in their occupation. Thereupon, the Committee raised a preliminary objection to the maintainability of these applications to the effect that there was no relationship of landlord and tenant between itself and the applicants. It was this objection, upheld by the High Court, that came up for consideration before the Supreme Court. The Supreme Court, after pointing out that the Rent Control Act applied only to that species of letting by which the relationship of landlord and tenant was created between the parties, that is to say, by which interest in the property let, however, limited in duration, is created, proceeded to refer to Sections 18, 46(2) and 47 of the Punjab Municipal Act. Section 47 (2) enacted that any transfer of Immovable property of the Committee must be made by an instrument in writing, executed by the President or Vice President and by at least two members of the Committee with their execution attested by the Secretary and Section 47(3) declared that no transfer executed otherwise than in conformity with the provisions of the Section shall be binding on the Committee. The Court held :

"Now, in order that the transfer of the property in question should be binding on the Committee, it was essential that it should have been made by an instrument in writing, executed by the President or the Vice-President and at least two other members of the Committee, and the execution by them should have been attested by the Secretary. If these conditions are not fulfilled ,the contract of transfer shall not be binding on the Committee. But it has been contended on behalf of the appellants that the non compliance with the provisions aforesaid of Section 47, quoted above, would not render the contract of transfer of property void but only voidable. In other words, where the acting's of the parties have given effect to the transactions, as in the instant cases, by delivery of possession of the property by the Committee and payment of rent by the appellants, the absence of formalities would not render the transactions of no legal effect. But it has to be noted that it was not contended on behalf of the appellants that the provisions of Section 47(3) of the Municipal Act are not mandatory and are merely directory. Such an argument was not and could not have been advanced because it is settled law that the provisions of a Statute in those peremptory terms could not but be construed as mandatory."

It is of interest to note that, in the ensuing discussion, Sinha C.J. proceeded to distinguish certain English decisions cited before the court by pointing out that they did not involve any question of the infringement of the mandatory provisions of a parliamentary statute but referred with approval to *Young & Co. v. Mayor & Corporation of Royal Limington* (1883) 8 AC 517 where a claim to recover from the respondent Corporation the costs of the works constructed by the plaintiff at the instance of the Corporation was negatived on the ground that the contract did not bear the common seal of the respondent Corporation which was mandatory u/s 174 of the Public Health Act which governed the case. In the light of these decisions, it is difficult to accept the contention that the above

defects in the execution of the contract of 28.4.1969 do not affect its validity. There was some discussion before us as to whether such a contract could be validated by rectification and learned counsel for the appellant referred to *Chatturbhuj Vithaldas Jasani Vs. Moreshwar Parashram and Others*, . But it is unnecessary to go into this question as there is nothing to show that there was any ratification of the contract by any competent authority at any stage.

20. There is also no force in Sri Lalit's contention that the objections raised by the DESU relate to matters of internal management of the affairs of the Corporation. The requirements, on the fulfillment of which the respondent insists, are all spelt out in the statutes and bye-laws. The appellant was, Therefore, under a duty to ensure itself, before executing the written contract, that it had been properly executed on behalf of the Municipal Corporation of Delhi. It should have ensured that the contract was got signed by the GM, or, where some other person signed the same, that he was duly authorised by the GM. It should have got the Municipal Corporation of Delhi to affix the seal in the presence of and under the attestation of a member of the Standing Committee. This case no doubt exposes the pitfalls that may face a person who seeks to enter into a contract with a local authority or Government. It also highlights the necessity, on the part of the local authority, to take steps to ensure that contracts on its behalf, particularly vital ones, as in the present case, are got executed by the properly authorised officials and in conformity with the provisions of the Acts and bye-laws. But the laxity on the part of the parties in carrying out their obligations cannot obliterate or affect the legal infirmity or invalidity of the contract as executed in any particular case.

21. Sri Lalit has not been, in our opinion, able to get over the consistent line of authorities construing such statutory conditions strictly. He, however, contended that in such circumstances as the present, the respondents, having acted upon the contract, obtained benefits there under and even participated in arbitration proceedings, should be estopped from raising a plea that the contract is not binding on them. In support of this contention, he relied on the following observations in paragraphs 3 and 4 of the judgment of the Supreme Court in *Timber Kashmir Private Ltd. Vs. The Conservator of Forests, Jammu*, :

".....the Constitutional provision, relied upon on behalf of the appellant, relates to the manner of the execution of the formal document containing the contract after its sanction. It is true that the contract could not be executed without the sanction. Nevertheless, if the sanction could be either expressly or impliedly given by or on behalf of the Government as we think it could, and if some acts of the Government could fasten some obligations upon the Government, the lessee could also be estopped from questioning the terms of the grant of the sanction even where there is no written contract executed to bind the lessee.

4. In the case before us, we have agreements from which the appellant company has derived benefits. And, there are contracts validly executed on behalf of the Government of Jammu and Kashmir by the Conservator of Forests. It is true that,

if the appellant could take up the legal plea that the contracts were not duly executed, in accordance with Section 122(1) of the Constitution of Jammu & Kashmir, it could urge that they did not have any effect at all as contracts whatever other legal consequences its acts or conduct may have had. But, this does not mean that, if a party obtains benefits on the understanding that it would abide by certain conditions, as the appellant company had done, it could not be compelled to observe those conditions such as the condition to refer disputes to arbitration "

These observations, no doubt, appear to support the appellant's plea of estoppel. It is, however, seen from the succeeding passages of the judgment that the Court did not consider it necessary to go into the question of estoppel. The only point that fell for decision of the Court was whether formal execution of the leases by duly authorised officers had been proved. This question was answered in the affirmative and the Court had, Therefore no occasion to consider what the position would have been had there been no duly executed lease deeds conforming to the requirements of Section 122 of the Jammu and Kashmir Constitution corresponding to Article 299 of the Constitution of India. This decision cannot, Therefore, be considered an authority for holding that the respondents are estopped from pleading the invalidity of the agreement.

22. Learned counsel also referred to the Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, . At page 643 (paragraph 23) reference is made to the discussion in the Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., of an argument that, if the Government were held bound by every representation made by it regarding its intention the result would be that the Government would be bound by a contractual obligation even though no formal contract in the manner required by Article 299 was executed. Bhagwati, J. summarised the effect of the discussion thus :

"23. It was also contended on behalf of the Government that if the Government were held bound by every representation made by it regarding its intention, when the exporters have acted in the manner they were invited to act, the result would be that the Government would be bound by a contractual obligation even though no formal contract in the manner required by Article 299 was executed. But this contention was negative and it was pointed out by this Court that the respondents are not seeking to enforce any contractual right : they are seeking to enforce compliance with the obligation which is laid upon the Textile Commissioner by the terms of the scheme, and we are of the view that even if the scheme is executive in character, the respondents who were aggrieved because of the failure to carry out the terms of the Scheme were entitled to seek resort to the Court and claim that the obligation imposed upon the Textile Commissioner by the Scheme be ordered to be carried out".

It was thus laid down that a party who has, acting in reliance on a promise made by the Government, altered his position, is entitled to enforce the promise against the Government, even though the promise is not in the form of a formal

contract as required by Article 299 and that Article does not militate against the applicability of the doctrine of promissory estoppel against the Government."

and again :

"The law may, Therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Govt. would be held bound by the promise and the promise would be enforceable against the Govt. at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Art, 299 of the Constitution."

Sri Lalit relies strongly on these observations. It may be mentioned that the observations of Bhagwati, J. in the above case have been dissented from in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, . But, that apart we do, not think they help in the present case. The learned Judge made the above observations in the context of his discussion as to whether the doctrine of equitable or promissory estoppel would be available against the Government. He relied on earlier decisions to show that there was no justification to exclude Government from the applicability of the doctrine. It is, however, difficult to agree with the wide interpretation placed on these words by counsel for the appellant and hold that the respondents should be estopped from raising the contention that the contract of 28-4-1969 was void and unenforceable for non-compliance with the statutory requirements and conditions. The learned Judge himself has, later in the judgment, pointed out that the doctrine of promissory estoppel cannot be invoked "for preventing the Government from acting in discharge of its duty under the law "or" in the teeth of an obligation or liability imposed by law" or "to compel the Government or even a private party to do an act prohibited by law". The statutory requirements of Article 299 and similar provisions in the Municipal or other enactments are mandatory and cannot be sought to be overcome by applying the doctrine of promissory estoppel. Moreover, as pointed out by Sri Bishamber Dayal, the DESU never made any representation or promise to the assessee regarding the validity of the contract or that it will be bound by the contract, irregularities of execution notwithstanding. There is indeed nothing to indicate that the DESU was at any earlier stage conscious of the irregularities in the execution of the contract. The DESU no doubt made payments to the appellant for the work it had done but this the DESU was bound to do, even in the absence of a valid contract, on the basis of quantum meruit. That the DESU "accepted" the work under the contract and paid for it does not necessarily spell the inference that it recognised or held out the validity of the contract. According to Sri Bishamber Dayal, the "contract" was for a lump sum and this had been paid to the appellant. The appellant's present claim for further amounts is, according to him, unjustified and it is because of this, counsel says, that the DESU has been constrained to object even to

arbitration, on a "technical" plea. Whether this contention is right or wrong, it is well settled by a long catena of judicial decisions that where one party seeks arbitration under the terms of an alleged contract, it is open to the other party to plead, inter alia, that the contract, on the basis of which arbitration is sought, is void and unenforceable and that, Therefore, the arbitration clause, with the rest of the agreement, fails. It is equally well settled that such a plea cannot be resisted by the plea of estoppel merely because the objecting party appeared at and participated in the proceedings before the arbitrator without voicing any such objection. Reference may be made in this regard to the decisions in *The Union of India Vs. Kishorilal Gupta and Bros.*, . , *Waverly Jute Mills Co. Ltd. Vs. Raymon and Co. (India) Private Ltd.*, and *Jaikishan Dass Mull Vs. Luchhimirain Kanoria and Co.*, .

23. The decision in *N. Chellappan Vs. Secretary, Kerala State Electricity Board and Another*, on which Sri Lalit relied, is distinguishable, In that case, the arbitrators appointed by the parties had nominated an umpire. The arbitrators failed to give an award within the permitted time and on an application by and consent of the parties the Court directed the "umpire" to enter upon the reference. The parties participated before him, but, finding the award against it, the Board raised an objection to the validity of appointment of the umpire. This objection was rejected both on the ground that the umpire had been appointed on the Board's consent and his appointment acquiesced in, but also on the ground that even otherwise he had jurisdiction to enter on the reference. When the arbitrators failed to make an award within the extended time. The question was whether the umpire had been appointed by consent or in circumstances permitted by the statute and both aspects were answered in the affirmative. It was not a case of want of inherent jurisdiction as contended for by the Board. The present case is different. Here the reference to arbitration is being challenged on the ground of the invalidity of the contract on the basis of which arbitration is claimed. This point is directly covered by the decisions earlier referred to. The respondent was, Therefore, entitled to raise this objection at the stage of the proceedings in the High Court.

24. For the reasons discussed above, we agree with the reasoning and conclusion of the learned Judge in the judgment under appeal and dismiss these appeals. We shall, however, leave the parties to bear their own costs.