

(1972) 04 DEL CK 0037

In the Delhi High Court

Case No : F.A.O. No. 92-D of 1963, against order of N.C. Gupta Sub J. 1st class,
Delhi, D/- 16-3-1963

Hanuman Oil Mills and Others

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 14-04-1972

Acts Referred:

Constitution of India, 1950 — Article 299

Citation : AIR 1974 Delhi 51

Hon'ble Judges : Prakash Narain, J;Hardayal Hardy, J

Bench : Division Bench

Advocate : M.N. Andley, for the Appellant; R.K. Mehra, for the Respondent

Final Decision : Allowed

Judgement

Prakash Narain, J.—On an award dated the 6th October, 1961 given by Shri G.S. Gaitonde in a reference of disputes to him between M/s Hanuman Oil Mills and the Union of India under an alleged Arbitration agreement between parties contained in the General Conditions of Contract governing A/T No. A 3/23/58 dated the 31st October, 1958 , the Union of India on November 4, 1961, moved an application u/s 14 and 17 of the Arbitration Act, 1940 in the court of Shri N.C Gupta, Sub-Judge 1st Class, Delhi for the filing of the said award, making it a rule of the court and passing a decree in terms thereof. Notice of this application was issued to M/s. Hanuman Oil Mills and its three alleged partners and Shri G.S Gaitonde was called upon to file the award in court. After the same was filed in court notice of the filing of the award was given to the parties, M/s Hanuman Oil Mills filed two sets of objection against the said award, one being dated the 30th April, 1962 and the other It May, 1962. Inter alias M/s. Hanuman Oil Mills pleaded that there was no concluded contract between the parties in compliance with Article 299 of the Constitution of India and so there was no arbitration agreement between the parties under which a reference could be made to an Arbitrator. It was also pleaded that the reference to Shri Gaitonde as Sole

Arbitrator was a unilateral reference and so, the Sole Arbitrator had no jurisdiction to proceed with the reference and make an award therein. Several objections were also raised as to conduct of the arbitration proceedings as well as to the maintainability of the award. The objections filed on behalf of M/s Hanuman Oil Mills were traversed by the Union of India.

On the pleadings of the parties, the trial court framed the following seven issues:

1. Whether there was a concluded arbitration agreement between the parties?
Opa
2. Whether the Arbitrator had no jurisdiction to proceed with the reference and given the award as alleged in the objection petition? OPR.
3. Whether the arbitrator misconducted himself or the proceedings as alleged and as such the award is liable to be set aside? Opr
4. Whether the objector respondent can file the supplementary objections without amending the first objection petition? OPR.
5. Whether the supplementary objections are within time? OPR.
6. If issues Nos. 4 and 5 are proved, whether the award is liable to be set aside as per reasons given in the supplementary objections? OPR.
7. Relief.

2. The trial court decided the issues in favor of the Union of India and dismissed the objections filed by M/s Hanuman Oil Mills. On there being no valid objections to the award, he made the same a rule of the court and passed a decree in terms thereof. M/s Hanuman Oil Mills filed an appeal in this court.

3. The appeal filed by M/s Hanuman Oil Mills and its partners came up for hearing before M.R.A Ansari J. who referred the matter to a larger Bench as in the learned Judge's opinion an important question of law arose as to the scope of the Bench decision of this Court in *Madhusudan Ltd. V. Ram Prakash*, (1966) 2 DLT 123. According to the learned Judge, it was held in the case of *Madhusudan Limited* that no unilateral reference was possible but that was a case in which one of the parties to the arbitration agreement who challenged the validity of an unilateral reference abstained from taking part in the arbitration proceedings and in such circumstances it was doubtful whether the rule laid down in the case of *Madhusudan Limited* would be attracted. That is how the matter came up before us.

4. The only point that has been seriously agitated before us is whether a contract satisfying the requirements of Article 299 of the Constitution of India was entered into between M/s Hanuman Oil Mills, the appellant, and the Union of India, the respondent. Before we proceed to examine this question it would be appropriate to read Article 299 of the Constitution of India which lays down as under:-

"299. (1) All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President or by the Governor of the State as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise."

5. As in the course of the arguments addressed before us a mention was also made of Article 77 of the Constitution, the same may also be read at this stage. It lays down:

"77(1) All executive action of the Government of India shall be expressed to be taken in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(3) The President shall make rules for the more convenient transaction of the business of the Government of India and for the allocation among ministers of the said business."

6. The facts of the case are that on 6th October, 1958, a notice was issued by the Chief Director of Purchase. Government of India, Ministry of Food, Army Purchase Organisation). New Delhi, for and on behalf of the President of India inviting tenders or offers for supply of cottonseed oilcake. This tender inquiry had attached to it "instructions to Tenderers" as well as conditions by which the tenders were expected to be bound and also mentioned that the General Conditions of Contract contained in the printed booklet of that name (Form WSB/133), except clause 21 and certain other clauses, would also constitute the terms of the tender that may be submitted by the prospective tenderers. The appellant submitted its tender in accordance with the Instructions to Tenderers above referred to and the same was addressed to the President of India through the Chief Director of Purchase. This tender is dated the 31st October, 1958. On 12th November, 1958, the following telegram (Ex. R. 5) was received by the appellant:-

"X Ya New Delhi 12 Ste 186 Cotcakes Bombay-A3/23/58 Oilcake(.) your Tender October Thirty-first hereby accepted for supply of two hundred sixteen tons cottonseed oilcake decorticated conforming Asc specification 138 (.) Thirty-six tons at rupee twelve and naya paise fifty per maund (.) Thirty-six tons at rupees Twelve and naya paise seventy-five per maund 50 (.) Thirty-six tons at rupees thirteen per maund (.) Thirtysix tons at rupees thirteen and naya paise fifty per

maund or for Khamgaon 100 - (..) All prices per maund Nett of oilcake inclusive packing and all other incidental charges up to station of dispatch () delivery to be completed by December Twelfth (.) Please ensure submission of Income Tax clearance

certificate by November twenty-second failing which contract liable to be cancelled at 150 your risk and cost (.) Acceptance to be governed by terms and conditions of tender enquiry even number October sixth (.) Formal acceptance tender follows (.) Acknowledge - Purfood".

It is the respondent's case that a post copy of the telegram Ex. R.5 was also sent to the appellant in which apart from reproducing the text of the telegram a request was made that the appellant should deposit a sum of Rs.3,860/- as security deposit in favor of the Pay & Accounts Officer Ministry of Food and Agriculture. New-Delhi, in any of the forms mentioned in the tender and forward the documents to the office of the Chief Director of Purchase so as to reach there by 22nd November, 1958 failing which the contract was liable to be cancelled at the appellant's risk and cost. This post copy was signed by one S.S.Bajaj, Dy. Director of Purchase for and on behalf of the President of India. The respondent contends that the formal acceptance of tender was sent to the appellant on 20th November, 1958 also signed by S.S.Bajaj, Dy. Director of Purchase for and on behalf of the President of India but by mistake in the same envelope and Acceptance of Tender addressed to another party namely M/s Vijay Oil Mills Co. Damoh (M.P.) was also enclosed. The appellant's contention is that it never received any formal acceptance of tender addressed to it and only received the acceptance of tender addressed to M/s Vijay Oil Mills Co.

It is the common case of the parties that the contract between the parties has to be spelt out from all the documents starting from the notice inviting tender and that all these documents constitute the contract between the parties. Therefore if the tender submitted by the appellant was accepted complying with the provisions of the Article 299 of the Constitution of India it has to be held that a binding contract between the parties came into existence which included the arbitration agreement contained in one of the clauses of the contract, but if there was no valid and proper acceptance of the tender as is contended by the appellant, then the mere tender inquiry and the submission of the tender inquiry and the submission of the tender cannot be regarded as sufficient to spell out a valid contract and an arbitration agreement between the parties.

7. Mr. Mahinder Narain, the learned Counsel for the appellant submitted that the law regarding the requirements of Article 299 of the Constitution is well settled and rested his contention on the rule laid down by the Supreme Court in State of Madhya Pradesh v. Ratanlal, 1967 M.P.LJ 104. In that case following its earlier decisions, the Supreme Court laid down that in the matter of making contracts binding on the Government the intention of law is to make certain that Government is not exposed to unauthorized contracts. The conditions for making the contract binding on the Government are that (i) the contract must be

expressed to be made by the Governor. (ii) it must be executed and (iii) the execution should be by such person and in such manner as the Governor might authorize. The authority need not be by a general rule but could be by an ad hoc order. The manner of conferring authority by Governor may differ from case to case by a rule a notification or a special authority. On the facts of the case where the tender was accepted by a telegram it was held that as the telegram accepting the tender was not signed by the Director who claimed to possess authorization from the State Government there was no binding contract which the State Government could enforce against the defendant and the suit was liable to be dismissed. So, what has to be made by the President of India it was expressed so in writing and the person writing had the authority and had expressed the acceptance on behalf of the President in the manner authorized by the President.

It is well settled that no formality is attached to a document or documents spelling out a contract between the Government on the one hand and another party on the other. Construing the requirements of section 175(3) of the Government of India Act, 1935 the provisions of which were in pari material with the provisions of Article 299 of the Constitution a Bench of this Court in the Punjab Registered (Iron & Steel) Stockholders Association Ltd v. Union of India, 2nd (1970) 2 Delhi 809 held as under:-

"Stock-holder on the terms and conditions embodied in the letter and was authorized to enter into the contract, the contract itself was not expressed to be made by the Governor-General nor was the letter in question executed on behalf of the Governor General."

8. Up to the point of the appellant receiving the telegram (Ex R. 5) there is no dispute as to the facts. There is divergence between the parties on whether the appellant received the post copy of the telegram and the formal acceptance of tender. We will, Therefore consider the contentions of the parties from two aspects, namely. (i) whether a concluded contract came into existence between the parties on the appellants receiving the telegram (Ex. R 5): and (ii) assuming that the appellants received the post copy of the telegram Ext. R.5 as well as the formal acceptance of tender whether a binding contract is proved to have come into existence between the parties.

9. The telegram as we have noticed earlier, is signed "PURFOOD". The telegraphic message that the appellants received only has been placed on the record and proved. The original telegram given has neither been produced nor proved. Prima facie, Therefore this telegraphic message (Ex. R. 5) cannot be regarded as emanating from the President of India or signed by the President of India or signed by the President of India or any person authorized in this behalf by any general or special order made by the President. Mr. R.K.Mehra, the learned Counsel for the respondent urged that Purfood is the telegraphic name of the President of India in the Ministry of Food and Agriculture, Department of Food (Army Purchase Organisation). New Delhi and so it must be regarded as a

document which complies with the requirement of Article 299 of the Constitution. There is no evidence on record to support this contention.

Our attention, however, was invited to a decision of the Punjab High Court in *Chiranji Lal Multani R.B. (Private) Ltd. Vs. Union of India (UOI)*, where a similar telegram came up for consideration before the court to find out whether a concluded contract in compliance of the provisions of Article 299 of the Constitution had come into existence. In that case the appellant had submitted a tender on a tender inquiry being addressed to it under the signatures of one B.R.Dhawan , Assistant Director of Purchase for and on behalf of the President of India. In the tender inquiry, it was made clear that the existence of the offer will be communicated either by telegram or by an express letter of acceptance of a formal acceptance of tender. It may be noted that the similar term exists in the tender inquiry sent in the present case also. On 16th October, 1956 the appellant's tender was telegraphically accepted and the telegraphic address of the sender of the telegram was given as "PURFOOD". A postcopy of the above telegram was also sent under the signatures of P.R. Kashyap, Assistant Director of Purchase for and on behalf of the President of India. It was proved in that case that Purfood was the telegraphic address of the Chief Director of Purchase in the Ministry of Food and Agriculture (Food), for and on behalf of the President of India, Government of India. New Delhi, by the testimony of Niranjana Dev, Senior Clerk. Registration Branch, Central Telegraph Office, New Delhi. In these circumstances, it was held that the telegram satisfied the requirements of Article 299 of the Constitution of India.

As already observed by us earlier, in the present case no evidence was led regarding the telegraphic name or address and merely because on the evidence in *Chiranji Lal's* case it was held that Purfood is the address of the Chief Director of Purchase as representing the President of India, it cannot be held in the present case that the telegraphic message (Ex. R. 5) emanated from the President of India or was signed by a person authorized to do so on behalf of the President of India or that it amounts to complying with the requirements of Article 299 of the Constitution of India. In our view, and we say this with respect to the learned single Judge of the Punjab High Court in *Chiranji Lal Multani R.B. (Private) Ltd. Vs. Union of India (UOI)*, could not hold that the provisions of Article 299 of the Constitution of India were complied with merely because the telegraphic message at the end had the word "PURFOOD" printed on it. Indeed as was observed by the Supreme Court in the case of 1967 Mplj 104, in order to make this telegraphic message one complying with Article 299 of the Constitution it had to be expressed to be made by the President and the telegram had to be executed by such person and in such manner as the President might have authorized. Purfood does not amount to expressing the telegram to be in the name of the President of India, nor is there any evidence that the person who signed the telegram had the authority to do so on behalf of the President of India. In the present case, apart from the fact that there is no evidence at all that Shri S.S. Bajaj was an officer competent to sign on behalf of the President of

India. The relevant notification or any other general or special order has neither been produced nor proved on the record.

10. This brings us to the second contingency in which we may assume that a post copy of the telegram Ex. R. 5, signed by S.S. Bajaj and a formal acceptance of tender signed by S.S. Bajaj was sent to and received by the appellants. The authority of Shri S.S. Bajaj to sign for and on behalf of the President of India has not been produced. Therefore, the conclusion is inevitable that the respondent has failed to prove that any binding contract complying with the terms of Article 299 of the Constitution of India came into existence.

11. Mr. Mehra urged that the subsequent correspondence between the parties placed on the record and duly proved shows that both the parties regarded a concluded contract having come into existence. In support of his contention that subsequent correspondence can be seen to find out whether a binding contract came into existence, he cited two decisions, one of the Calcutta High Court and the other rendered by the Supreme Court.

12. In *Damodar Shah Vs. Union of India (UOI)*, it was observed by P. C. Mallick, J. that where the existence of a contract is to be found out from correspondence that passed between the parties has to be looked into for determining whether there was a concluded contract. The rule has no application in a case in which the contract has to be evidenced by a formal document in compliance with Article 299 of the Constitution. This was also a case in which the question arose whether the contract complied with the provisions of Article 299 of the Constitution. On the facts of case, the learned Judge had come to the conclusion that the petitioner had accepted the acceptance of tender and the conduct of the petitioners went to show conclusively that the contract evidenced by the petitioner. The existence of the contract was proved by the subsequent correspondence. So, the question that the Court was required to decide was whether a contract came into existence as evidenced by the terms of the acceptance of tender. The court was not concerned with whether the acceptance of tender complying with the requirements of Article 299 of the Constitution had been issued. This case, Therefore, does not help the respondent.

13. In *Jawahar Lal Burman Vs. Union of India (UOI)*, the Court was concerned with the scope and object of Sections 28, 31, 32 and 33 of Arbitration Act and whether the condition regarding deposit of security deposit in the letter accepting the tender was a conditional acceptance of the tender and did not bring about a concluded contract. After construing the scope of the various sections of the Arbitration Act with regard to the condition about the security deposit, it was held that the acceptance letter stating the contract was concluded by the acceptance but it was subject to making the security deposit, did not amount to a conditional acceptance and a contract stood concluded on the issue of the letter of acceptance. This case also, Therefore, does not advance the arguments of Mr. Mehra.

14. A reference was also made by Mr. Mehra to a Bench decision of the court in Union of India and Others Vs. N.K. (P) Ltd. and Others, in which it was held that the issue of a formal contract was a ministerial act and was only a matter of convenience and not one on which hinged the coming into existence of a concluded contract and so, when the Railway Board wrote to a party that its offer was accepted and the formal contract would be issued shortly, there was a completed contract, although the said letter from the Railway Board. His decision which we respectfully say was contrary to the rule laid down by the Supreme Court in numerous earlier decisions was overruled by the Supreme Court in C.A. 1067 of 1971 by a judgment dated 11-2-1972 Union of India (UOI) and Others Vs. N.K. Private Limited and Another, . It was observed that the letter of acceptance was on behalf of the Secretary, Railway Board, who was not authorized to enter into a contract on behalf of the President and otherwise also the letter did not comply with the requirements of Article 299 of the Constitution of India. So no binding contract came into existence.

15. In this view of the matter, it must be held that no binding contract complying with the provisions of Article 299 of the Constitution of India was proved to have come into existence. If that be so, it follows that no arbitration agreement came into existence between the parties inasmuch as the alleged arbitration agreement is said to have been contained in one of the conditions governing the contract.

16 .An attempt was made to rely on the rules of business framed under Article 77 of the Constitution but we find that those have no relevance to the facts of the present case in which the question is about compliance with Article 299. No rule or order under this provision was brought to our notice.

17. Having taken the above view. it is unnecessary to dilate on one of the questions on which this reference was made to a large Bench namely the scope and applicability of the decision of this court in the case of Madhusudan Limited (1966) 2 DLT 123 to the present proceedings.

18. The result is that this appeal is accepted and the order of the trial court dismissing the objection filed on behalf of the appellant and making the award a rule of the court is set aside. In the circumstances of the case, we make no order as to costs.

19. Appeal allowed.