

(1965) 06 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Civil Suit No. 34 of 1964

Kashmiri Lal Gupta

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 03-06-1965

Acts Referred:

Arbitration Act, 1940 — Section 2, 20, 30, 31, 34
Constitution of India, 1950 — Article 229
Government of India Act, 1935 — Section 175(3)

Citation : (1965) 06 J&K CK 0001

Hon'ble Judges : J.N. Bhat, J

Bench : Single Bench

Advocate : L.N. Sharma, for the Appellant; Jaswant Singh, General, for the Respondent

Judgement

J.N. Bhat, J.—The Plaintiff Shri Kashmiri Lal Gupta, has brought the present suit against the Union of India for a sum of Rs. 22,000.

According to the Plaintiff, the Union of India invited tenders in respect of a work relating to CA No. CEJK-6/63-64 provisions-of Storage

accommodation near a place in Udhampur Jammu province The Plaintiff also offered Ids tender and by a letter No. 808-J/64/E8 HO XV Corps,

Engineering Branch c/o 56 AP O. dated 29th January 1964, the Plaintiff was informed that his tender had been accepted. The site for the

construction in the tender notice was shown as an unrestricted area. The Plaintiff received an intimation dated 31st January 1963 on the 4th

February 1963 (it should be in fact 1964) from the concerned authorities to attend the office of 861 Engineers Works Section C/O 56 A. P.O. to

take over the site an start the work. The Plaintiff was given an order sheet asking to commence the work and finish it also by definite dates (the

dates are not very material for the disposal of the present petition) The Plaintiff on inspection found that the area where the work was to be set up

was a restricted area which was contrary to condition No. 8 of the tender notice. He protested against this variation by means of his letter dated 8-

2-196-1 Certain correspondence ensued between the Plaintiff and the officer in charge of the contract.

Later on by his letter dated 2I-2-1964, the Plaintiff informed the officer in charge of the Works Section 861, that he was not prepared to carry out

the contract. Again there was some correspondence between the Engineer in charge and the Plaintiff. According to the Plaintiff by Anr. letter dated

11th April 1964 No. 8084/80/E8 'HQ XV Corps Engineers Branch, the Plaintiff was given some changed conditions and in view of the conditions

of the site and the non-availability of the same in time certain facilities would be given to the Plaintiff as contained in that letter. The, Plaintiff had

deposited a sum of rupees 14,000/- as earnest money and, adding to this amount some damages, he has brought the present suit for Rs. 22,000.

2. When the Defendant was summoned, an application u/s 34 of the Arbitration Act was presented on behalf of the Defendant by the Advocate

General who represented the Defendant, the Union of India, in this suit. According to the Defendant, the Plaintiff's tender dated 23-12-1063 in

respect of this contract was accepted by the Union of India. The Plaintiff also accepted this contract and signed the acceptance on 6-2-1984. Vide

Chief Engineer's No. : 8084/63/E8 dated 30-1-1964 a copy of Prices General Summary together with a set of tendered documents and drawings

was sent to the Plaintiff to enable him to start the work and this was followed by O. C. 861 Engrs. Works Section's No. 8473/15/E8 dated 6-2-

1964. The above constitute a valid contract between the Plaintiff and the Defendant. As per condition 70 of the Conditions of Contract (IAEW-

2249) read with the documents which the Plaintiff has accepted as a part of contract between the parties, the matter had to be referred to the

arbitration of the Engineer officer to be appointed by the Engineer in Chief Army Head Quarters, New Delhi, whose decision would be final, and

binding on the parties. The Defendant has been at all relevant times and still remains ready and willing to do all things to the proper conduct of the

arbitration. The prayer of the Defendant, therefore, was that the suit should be stayed under the provisions of Section 34 of the Arbitration Act.

The Plaintiff filed his objections to this application of the Defendant. In the objections, the signatures of the Plaintiff on the documents mentioned by the Defendant have been admitted. The plaintiff has stated that the documents referred to by the Defendant in his application do not constitute a contract between the parties. Para No. 70 of the General Conditions do not and could not apply to the present case. The Plaintiff was never handed over the site of the work, nor did he ever take the possession thereof. No valid contract had come into being between the parties and all the contracts between the Union of India and a private individual had to be made in accordance with the formalities laid down of Article 229 is the Constitution of India and without such conditions being fulfilled, the agreement is unenforceable in a court of law. The Plaintiff, therefore, prayed that the application of the Defendant for the stay of the suit be dismissed. The plaintiff appeared as his own witness in support of his objections.

The Defendant did not adduce any evidence but remained content with the statement made by the Plaintiff. I have heard very lengthy and learned arguments of the learned Counsel for the parties, with respect to the application u/s 31 of the Arbitration Act filed by the Defendant.

3. The first contention of Mr. L.N. Sharma is that no valid contract has been entered into between the parties and, therefore, the arbitration clause

which is mentioned in the tender notice has no application to the facts of the present case. According to Mr. Sharma after the Plaintiff made a

tender which was accepted by the concerned authority in the military department a regular contract or an agreement-should have been drawn up

between the Plaintiff and a competent authority acting and executing the agreement on behalf of the Union of India. There was no formal contract

drawn up. There was some correspondence which could not be legally called a completed contract. To appreciate this argument, some factual

narration of the case and the documents admitted by the Plaintiff is necessary. It appears that when the tender notices were invited, the Plaintiff also

made his tender on 23-12-1963. This tender was accepted by Brig. P. D. Joshi for and on behalf of the President of India vide his "No.: 8084/E8

Head Quarters XV Corps Engineers Branch C/O 56 A. P. O. dated 29th Jan. 1964 for a lump sum of rupees 6,62,012.45. This is Ex. P1/D10.

This was accepted by the Plaintiff on 6-2-1964. Later on when the Plaintiff discovered that the construction tendered for had to be put up in a

restricted area instead of unrestricted area as contained in the tender notice, he objected to the variation. He offered to carry out this contract, if

instead of 31% above he was given a percentage of 41%. It appears that some correspondence took place between the Plaintiff and the Chief

Engineer in pursuance of which the Plaintiff is alleged to have attended the office of the Chief Engineer, more than once.

The Plaintiff raised some objections to the carrying out of contract which, is contained in his letter-dated 30-3-1964 and in particular he

emphasized two points that the area was restricted and no work register had been supplied to him. According to Mr. Sharma on 11-4-1964, the

Chief Engineer substituted a new contract for the old as tendered by the Plaintiff and thus the original tender of the Plaintiff was discharged. Mr.

Sharma has laid much stress on this letter which is marked as Annexure ""K"" by the Plaintiff in the list of his documents. When we read this letter

carefully, this does not substitute, a new contract for the old. The letter opens with the words ""Reference your letter No. 4/M/64 dated 30th

March 1964"" and it further says ""You have discussed the case with me and during the discussion the following decisions have been taken on the

points brought out by you"" the completion period of the contract is extended, the date of commencement is changed because of the non-availability

of site and certain minor changes, the gate passes' of the laborers, labour camps, guarding of dams, and working hours are-incorporated in this

letter. On pages 16 and 17 of the documents filed by the Advocate General, we find a general summary. This document is marked Ex P1/D2 and

is signed by the Plaintiff and Mr. P. D. Joshi. Ex. P1/D4 are the amended general conditions of the contract which are contained in the tender

notice.

As already indicated Ex. P1/D10 is the acceptance of the tender by the Chief Engineer which is signed by the Plaintiff on 6-2-1964. It is, therefore,

clear that the Plaintiff made a tender which was accepted for and on behalf of the President of India by the Chief Engineer. Certain minor variations

for the execution of the contract were also suggested by the Chief Engineer which were accepted by the Plaintiff on 11-4-1964. This is the

correspondence which has taken place between the Plaintiff and the Chief Engineer and this is admitted by the Plaintiff also. Mr. Sharma stressed

that there was no formal contract executed in pursuance of this correspondence. This poses a legal question that is to say whether such a

correspondence is sufficient to constitute a valid agreement on the basis of which a reference to arbitration can be made by either party to the

same. The learned Counsel for the parties have referred to a number of authorities and it may be stated with certainty that the authorities are very

clear on the point that in order to constitute a contract whereupon arbitration can be insisted, no formal, writing or no signatures of the 'parties is

necessary. This matter has come up number of times before different High Courts and the Supreme Court has laid down the law in the same terms.

The earliest authority of the Supreme Court On his point is Jugal Kishore Rameshwardas Vs. Mrs. Goolbai Hormusji, , where their Lordships

have laid down:

It is settled law that to constitute an arbitration agreement in writing it is not necessary that it should be signed by the parties, and it is sufficient in

the terms are reduced to writing and the agreement of the parties thereto is established.

The same observations are contained in Union of India (UOI) Vs. A.L. Rallia Ram, , where their Lordships have held that:

In order to constitute an 'arbitration agreement' with in the meaning of Section 2(a), Arbitration Act, there must be a valid agreement to submit

'present or future differences to arbitration and the agreement must be in writing and must be accepted by the parties. It is, however, not a

condition of an effective 'arbitration agreement that it must be incorporated in a formal agreement executed by both the parties thereto, nor is it

required to be signed by the parties.

This authority considers Anr. point which is also material in this case, but it will be taken up at its proper time. In addition to the above Supreme

Court authorities, the following authorities may well be noticed in this behalf.

Devi Prasad Sri Krishna Prasad Ltd. and Another Vs. Secretary of State, ; Firm Josvahir Singh Sunder Singh v. Fleming Shaw and Co. Ltd., A I

R 1937 Lah 851; Ram Chandra Ram Nag Ram Rice and Oil Mills Ltd. Vs. Howrah Oil Mills Ltd. and Another, ; Govt. of India and Another Vs.

Jamunadhar Rungta and Others, and M. Gulamali Abdulhussein and Co. Vs. Vishwambharlal Ruiya, , so on and so forth.

4. The authorities have gone so far as to lay down .that a contract to satisfy the conditions of. Section 30, need not be incorporated in a lonely

deed or be under seal; it may well be entered into by correspondence and by less formal documents.

5. In Union of India (UOI) Vs. A.L. Rallia Ram, , referred to above, it has been laid down:

Section 175 (3) does not in terms require that a formal document executed on behalf of the Dominion of India, and the other contracting party,

alone is effective. In the absence of any direction by the Governor-General u/s 175(3) of the Government of India Act proscribing the manner, a

valid contract may result from correspondence if the requisite conditions are fulfilled. It is true that Section 175 (3) uses the expression 'executed'

but that does not by itself con-temple execution of a formal contract by the contracting parties. A tender for purchase of goods in pursuance of

an invitation issued by or on behalf of the Governor-General of India and acceptance in writing which is expressed to be made in the name of the

Governor-General and is executed on his behalf by a person authorised in that behalf would conform to the requirement of Section 175(3).

A tender notice was issued by the Government of India, Department of Food (Division III) in the name of the Chief Director of Purchases who

had authority to contract for sale of war disposal goods and sign the contract. In his letter submitting a tender the Respondent offered to purchase

the goods on certain rates and conditions. The acceptance note was signed by the Chief Director of Purchases in his official designation without

stating in the description that the contract was executed on behalf of the Governor General.

Held that the correspondence between the parties ultimately resulting in the acceptance note, amounted to a contract expressed to be made by the

Government and therefore by the Governor-General, because it was the Governor-General who had invited the tender through the Director of

Purchases; and it was the Governor-General who through tile Chief Director of Purchases accepted the tender of the Respondent subject to the

conditions prescribed therein. No rules made by the Governor-General had been placed before the Court showing that in executing a contract for

the sale of ""war disposal"" goods the officer authorized in that behalf must describe himself as signing on behalf of the Governor-General of India.

Similarly in Lewis W. Fernandez Vs. Jivatlal Partapshi and Others, it has been held:

If the Court on the materials before it comes to the conclusion that the contract notes having been sent by one party to Anr. were accepted by the

latter either by signing the confirmation notes or by his conduct, it would be a sufficient arbitration agreement within the meaning of definition

thereof in the Arbitration Act." Therefore, in this case, on the basis of the authorities, mentioned above, there is a definite contract between the

parties.

6. Condition No. 70 of the contract as contained in the tender notice runs as follows:

All disputes, between the, parties to the contract (other than those on which the decision of the C. W. E. or any other person, Is by" the contract

expressed to be final and binding) shall, after written notice by either party to the contract to the other of them be referred to the sole arbitration of

an Engineer Officer to be appointed by the authority mentioned in the tender documents.....

There is no dispute between the parties in this case that this clause is a clear arbitration clause in the contract; the dispute only pertained to the

fact whether there was any contract at all between the parties.

7. The second argument of Mr. Sharma in this behalf was that under Article 299 of the Constitution of India, the present correspondence, or the

contract even if it be so called, does not constitute a valid and a binding contract between the parties.

8. Article 299 of the Constitution of India lays down:

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 person and in such manner as he may direct or authorise. The authorities have laid

down that when a contract purports to be entered into on behalf of the Union-of India, it must be in a proper form. It is for this very purpose that I

deferred further comment on the authority referred to above, namely, AIR 1963 S C 1685. This authority lays down, in addition to what has been

stated above, as follows:

But where the Dominion of India was a party to the arbitration agreement, which is a contract within the meaning of Section 175(3) of the

Government of India Act, 1935, it must to bind the Dominion of India, be made in the form prescribed by that section." This authority, however,

lays down that:

Section 175(3) does not in terms require that a formal document executed on behalf of the Dominion of India, and the other contracting party,

alone is effective.

Similarly in *The State of Bihar Vs. Karam Chand Thapar and Brothers Ltd.*, , and *Seth Bikhraj Jaipuria Vs. Union of India (UOI)*, and *State of*

West Bengal Vs. B.K. Mondal and Sons, the same view has been reiterated. Only one of them need be cited in detail in *The State of Bihar Vs.*

Karam Chand Thapar and Brothers Ltd., , it has been laid down:

Under Section 175(3) of the Government of India Act, 1935, a contract entered into by the Governor of a province must satisfy three conditions.

It must be expressed to be made by the Governor; it must be executed ; and the execution should be by such persons and in such manner as the

Government might direct or authorise.....

Section 175(3) does not proscribe any particular mode in which authority must be conferred on a person to execute a contract, Normally such

conferment will be by notification in the Official Gazette, but there is nothing in the section itself to preclude authorization being conferred ad hoc on

any person, and when that is established, the requirements of the section must be held to be satisfied.

The principle of Section 175(3) of the Government of: India Act, 1935 has been incorporated in Article 299 of the Constitution of India. The

article requires that when an agreement has to be executed on behalf of the Union of India, it shall be expressed to be made by the President and

shall be executed on behalf of the (President by such persons as he may direct or authorise. The authority of the Chief Engineer in this case has not

been questioned before me. The printed form of the contract clearly shows that he has been invested with the authority and it must be legally

presumed that he has been so invested. The documents have been executed in this case for and on behalf of the President of India by. Mr. P.D.

Joshi. Therefore, the contention of Mr. Sharma that the documents are not properly drawn up has no force. This decides one aspect of the case.

9. Now after having recorded a finding that there was a valid contract between the parties, which contains an arbitration clause, we have to

consider whether the suit should be stayed or not. This finding has to be based on the terms contained in Section 34 of the Arbitration Act. Section

34 of the Arbitration Act, lays down:

Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the

agreement or any person claiming under him in respect of any matter agreed to be referred any party to such legal proceedings may, at any time

before filing a written statement or taking any other steps in the proceedings, apply to the judicial authority before which the proceedings are

pending to stay the proceedings; and is satisfied that there is no sufficient reason why the matter should not be referred in accordance with the

arbitration agreement and that the applicant was at the time when the proceedings were commenced and still remains ready and willing to do all

things necessary to the proper conduct of the arbitration, such authority may make an order staying the proceedings. The conditions in which

Section 34 of the Arbitration Act can be applied have been discussed exhaustively in *Anderson Wright Ltd. Vs. Moran and Company*, where

their Lordships have laid down:

In order that a stay may be granted u/s 34, it is necessary that the following conditions should be fulfilled.

(1) The proceedings must have been commenced by a party to an arbitration agreement against any other party to the agreement.

(2) The legal proceeding which is sought to be Stayed must be in respect of a matter agreed to be referred.

(3) The applicant for stay must be a party to the legal proceeding and he must have taken no step in the proceeding after appearance. It is also

necessary that he should satisfy the Court not only that he is but also was at the time of the commencement of the proceedings ready and willing to

do every thing the proper conduct of the arbitration;

necessary for and

(4) The Court must be satisfied that there is no sufficient reason why the matter

should not be referred to an arbitration in accordance with the arbitration agreement.

In this case, on the above finding, the first three conditions are fully satisfied. Mr. Sharma's emphasis seems to be on condition No. 4 as

reproduced above, which is to the effect that the Court must be satisfied that there is no sufficient reason why the matter should not be referred to

an arbitration in accordance with the arbitration agreement. Mr. Sharma tried to make out a case that the dispute involves certain complicated

matters which could better be decided by a civil Court rather than by an arbitrator. Mr. Sharma stated that the Plaintiff denied the arbitration

agreement altogether and put in other serious objections and, therefore, the discretion vested in a Court u/s 34 of the Arbitration Act, must be

exercised in favour of the plaintiff and against the Union of India. In this behalf, the following authorities were discussed:

Suwalal Jain Vs. Clive Mills Co. Ltd., ; Century Spinning' and Manufacturing Co., Ltd. v. Motilal Dhariwal, A I R 1961 MP 333 ; Shree Bajrang

Jute Mills Ltd. Vs. Fulchand Kanhaiyalal Co. and Another, and Shriram Hanutram Vs. Mohanlal and Co., .

10. The crux of these authorities is that when the agreement itself is questioned and the arbitrator's authority is also in question, he cannot himself

decide these matters. But even a cursory glance at the facts of the case, would show that there is no such complication in this case. The contract is

a completed and enforceable contract and there is a clear arbitration clause in it, which has been reproduced above. The arbitrator has simply to

listen to the case of the parties and then to give his award. The unenforceability of the contract and other matters such as fraud, coercion and

duress etc., have not at all been mentioned in this case. Therefore, in my opinion, there is no reason which would justify the Court in exercising the

discretion against the Union of India.

11. Another aspect of the case that was discussed before me is that the arbitration clause is not so wide as to include the case of the Plaintiff, as

put forward by him in his plaint and in this behalf the following authorities were cited by the learned Counsel for the parties.

Union of India (UOI) Vs. Bharat Charcoal Co. Ltd., ; Middle East Trading Co. Vs. The New National Mills Ltd., ; Dhanrajamal Gobindram Vs.

Shamji Kalidas and Co., and Chiranji Lal Multani R.B. (Private) Ltd. Vs. Union of India (UOI), .

For the principle of law laid down in these authorities, only one need be cited and that too of the Supreme Court namely, A I R 1961 S C 1285. In

that authority their Lordships have laid down:

That dispute arising out of and in relation to contract, to be referred to arbitration-Words are wide enough to comprehend matters, which can

legitimately arise u/s 20 - Parties questioning very existence of contract-Words ""in relation to"" are wide to comprehend such case.

In this case, the arbitration clause is so comprehensive so as to include all matters arising out of and in relation to this contract. The only exception

made is with respect to those matters on which the decision of C. W. E. or any other person is by the contract expressed to be final and binding. It

is nobody's case that the matters in dispute in this suit, are those which the C. W. E. under the terms, of the, contract could give his final verdict.

Therefore, the arbitration clause in this case being wide enough to cover, all such matters can be taken recourse to by the Union of India.

12. In view of what has been stated above, I am of the opinion, that the Defendant's application for stay of the suit, must be granted.

13. The suit is, therefore, stayed and the matter will be referred to the sole arbitration of an Engineer Officer to be appointed by the authority

mentioned in the tender documents. The Advocate-General will communicate to the Court the name of the arbitrator by, 2-7-1965.

14. There will be no order as to costs at this stage.