
(1976) 11 RAJ CK 0018
In the Rajasthan High Court
Case No : Civil First Appeal No. 24 of 1966

Kirorilal

APPELLANT

Vs

The State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 04-11-1976

Acts Referred:

Constitution of India, 1950 — Article 299(1)
Contract Act, 1872 — Section 70

Citation : AIR 1977 Raj 101 : (1977) RLW 6 : (1976) 9 WLN 652

Hon'ble Judges : M.L. Jain, J;A.P. Sen, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sen, J.—This appeal filed by the plaintiff is directed against the judgment and decree of the Senior Civil Judge, Gangapur dated 15th September, 1965, disallowing his claim against State Governments of Rajasthan and Madhya Pradesh for recovery of Rs. 1,73,165/- as price of 20,80,000 c. ft. sand alleged to have been supplied to the State Government of Madhya Pradesh.

2. Three questions arise for consideration in the appeal, The first is, whether the mining lease dated 20-3-1957, Ex. 6, executed by the Mining Engineer, Mines and Geology Department, Government of Rajasthan, Jaipur, for the extraction of sand (Bajri) from Rameshwar Ghat, was a contract in conformity with Article 299(1) of the Constitution and, therefore, a valid and binding contract came into existence; secondly, if the mining lease was not valid or enforceable on the ground of non-compliance of Article 299(1) the Mining Engineer was not a person duly authorised to enter into a contract in the name of the Governor, the plaintiff was still entitled to recover the price of 20,80,000 c. ft. sand extracted from the leased area, on the basis of quantum meruit u/s 70 of the Contract Act; and thirdly, whether, in any event, the plaintiff was entitled to a decree for Rs. 14,000/- as per the terms of the offer made by the Chief Engineer, Chambal Hydel and Irrigation Scheme, Madhya Pradesh by his letter dated 28-2-1959, Ex.

29.

3. The facts are not in controversy and may be shortly stated. The Chambal Hydel Project was a joint venture of the State Government of Rajasthan and Madhya Pradesh. For the construction of the project, the State Government of Madhya Pradesh required huge amount of sand. The only source of supply was Rameshwar Ghat of Chambal river in Tehsil Khandar, District Sawai Madhopur. The place was inaccessible from the Rajasthan side because of sand dunes and ravines and it was situate on the opposite bank of the Chambal river and the river could only be crossed by boats. The State Government of Madhya Pradesh, therefore, constructed a temporary bridge at a cost of Rs. 15,000/- from the Madhya Pradesh side up to the sand area, for the transport of the sand from Rameshwar Ghat to the Main Canal. For this purpose, it also laid a fair-weather macadam road of 7 1/2 miles in length to Main Canal chainage 2360 in mile 48 and the Executive Engineer, Canal Construction, Dn. 2, Sheopur Kalan invited tenders for the transport of sand.

4. The Superintending Engineer, Chambal Canal Circle, Sheopur Kalan, Madhya Pradesh by letter dated 13-4-1957 addressed to the Director of Mines and Geology, Rajasthan, Ex. 74, mentioning that the Chief Engineer, Chambal Hydel and Irrigation Scheme, Madhya Pradesh was requested by his letter dated 2-2-1957 to approach the State Government of Rajasthan for exemption from payment of royalty on sand as it was required for Government work. The Executive Engineer, Canal Construction Division, Sheopur Kalan similarly addressed a letter dated 11-4-1957, Ex. 75, to the Collector, Sawai Madhopur, with copy to the Director of Mines and Geology, Rajasthan, stating that the matter regarding exemption of royalty on sands for works on Chambal Hydel Project has been referred to the higher authority. On the same day, he addressed a letter to the Executive Engineer, Ohambal Hydel Irrigation Scheme, Madhya Pradesh stating that the Government had been moved for exemption of royalty.

5. The plaintiff had, along with others, submitted a tender for the same but hig tender was not accepted. The State Government of Madhya Pradesh started removing the sand in March 1957. The plaintiff suppressed the fact and addressed a letter dated 2-3-1957 to the Mining Engineer, Jaipur making an offer of Rs. 500/- per year for the direct working of the quarry Chambal sand at Rameshwar Ghat. In the application dated 20-3-1957, neither the area nor its location was mentioned. The mining lease, Ex. 6, does not contain any description of the area demised to the plaintiff.

Clause 4 of the Mining lease provides-

"Whereas the lessee has applied to the Government in accordance with the Rajasthan Minor Mineral Rules, 1955 (hereinafter referred to as the said rules) for a Mining lease for Chambal Sand (Bajri) in respect of the lands hereinafter described in Clause 1 (b) and has deposited with the Government the sum of Rs. 125/- as security and the sum of Rs. Nil for meeting the preliminary expenses for

a Mining lease."

Clause 1 (b) of the deed gives no description of the leased area. Nor is there any plan with the boundary marked appended to the lease. It would thus be apparent that there was no actual demise of any area.

6. The site plan, Ex. P/2, is said to have been later submitted by the plaintiff. The Mining Engineer issued the sanction order dated 20-3-1957, Ex. 3, mentioning therein that the contract was sanctioned to the plaintiff for an area 1 1/2 miles in length and 1/2 mile in width as per plan for the period from 1-4-1957 to 31-3-1958 on the terms mentioned therein. The copy of the order was sent to the Mining Guard, Sawai Madhopur, with an endorsement on the back of Bhagwati Prasad, the plaintiff's agent that demarcation had been done on 9-4-1957. No copy of the site plan was sent to the Mining Guard, Sawai Madhopur and evidently it was not possible for him to have demarcated the area. The endorsement "Copy to the Mining Guard" was in copying pencil, appears to be forged, because below it were the signatures of the Mining Engineer with the date 19-3-1957.

7. Having secured the mining lease by practice of fraud, the plaintiff started interfering with the extraction of sand. The Executive Engineer, Canal Construction Dn. 2, Sheopur Kalan. accordingly addressed a letter dated 17-4-1957. Ex. 7, to the Mining Engineer, Mines and Geology Department, Jaipur, asking him to issue instructions to the plaintiff not to interfere in Government work of collection of sand from the river-bed. In compliance thereof, the Mining Engineer addressed the letter of even date, Ex. 9, to the plaintiff not to obstruct in the removal of the sand. The Director of Mines and Geology, Rajasthan, by his letter dated 31-5-1957, EX. A/22, directed the Mining Engineer to cancel the lease forthwith. It, however, appears from the letter of the State Government of Rajasthan dated 8-7-1957 to the Mining Engineer, Ex. 73, and the Mining Engineer's letter dated 5-8-1957, Ex 72, that the Director of Mines and Geology, Rajasthan, had later withdrawn the cancellation order and the matter was under consideration of the State Government of Rajasthan, Eventually, the State Government of Rajasthan by letter dated 3-1- 1958. Ex. A/23, addressed to the Director of Mines and Geology, Rajasthan, terminated the mining lease of the plaintiff forthwith.

8. The plaintiff, however, complains that during the period from 1-4-1957 to 30-5-1957 he was prevented by the State Government of Rajasthan from excavating sand from the leased area and that during the said period the State Government of Madhya Pradesh had wrongfully removed 20,80,000 c. ft. sand therefrom. The plaintiff accordingly claimed Rs. 1,73,165/- from the State Governments of Rajasthan and Madhya Pradesh holding them to be jointly and severally liable to pay the same.

9. By making an investment of Rs. 500/- as rent and Rs. 125/- by way of security deposit, i. e. Rs. 625/- in all, the plaintiff now seeks to recover Rs.

1,73,165 as price of 20,80,000 c. ft. sand utilised by the Government in the construction of the Chambal Hydel Project

10. The learned Senior Civil Judge, In the course of a carefully written judgment, has on the evidence come to the following conclusions, namely, (i) the mining lease dated 20-3-1957, Ex. 6, executed by the Mining Engineer, Department of Mines and Geology, Government of Rajasthan, was not valid and binding, being not in conformity with the requirements of Article 299(1) of the Constitution as well as against the provisions of the Rajasthan Minor Mineral Concession Rules, 1955; (ii) the provisions of Article 299(1) being mandatory, its non-compliance renders the contract void and, therefore, there could be no ratification of the mining lease granted by the Mining Engineer by the State Government of Rajasthan; (iii) the State Government of Madhya Pradesh had already started excavating sand from Rameshwar Ghat before the grant of the mining lease to the plaintiff and, therefore, the plaintiff did not get an uninterrupted possession of the area leased to him; (iv) the Mining Engineer, Mines and Geology Department, Rajasthan, did not give any assurance to the plaintiff regarding the payment of cost of the sand removed by the State Government of Madhya Pradesh. Furthermore, he had no authority to give any such assurance, and the assurance, if any, given was illegal and void. The State Government of Rajasthan was, therefore, not liable to pay the cost of the sand; (v) the area known "Rameshwar Ghat" comprised in the mining lease granted to the plaintiff was alleged to have been demarcated on 9-4-1957; (vi) the State Government of Madhya Pradesh removed 15,95,460 c. ft. sand from Rameshwar Ghat; (vii) the State Government of Madhya Pradesh was, however, not liable to pay the cost of the sand to the plaintiff, its only liability was to pay royalty to the Government of Rajasthan at the rate of Re. 1/- per ton as per Rule 4, Part B read with Rule 31 (1) and Schedule I, Item 4 of the Rajasthan Minor Mineral Concession Rules; (viii) the plaintiff was not entitled to any relief on the basis of quantum meruit u/s 70 of the Contract Act, and (ix) the plaintiff's suit was governed by Article 120 of the Limitation Act and, therefore, not barred by limitation,

11. It is now well settled that where a contract between the Government and a private individual is not in the form required by Article 299(1) of the Constitution, it was void and cannot be enforced and, therefore, the Government cannot be sued by a private individual for breach of such a contract. Article 299(1) lays down three conditions for the making of a contract by a Governor of a State. They are : it must be expressed to be made by the Governor; it must be executed, and the execution should be by such person and in such a manner as the Governor may direct or authorise, The principle is that provisions of Article 299 (X) are mandatory in character and the contravention thereof nullifies the contracts and makes them void. There is no question of estoppel or ratification in such a case. The reason is that the provisions of Article 299(1) of the Constitution have not been enacted for the sake of mere form but they have been enacted for safeguarding the Government against unauthorised contracts. The provisions are embodied in the Constitution on the ground of public policy --

on the ground of protection of general public and these formalities cannot be waived or dispensed with. That is the reason why the plea of estoppel or ratification cannot be permitted in such a case. (See, Seth Bikhraj Jaipuria Vs. Union of India (UOI), ; State of West Bengal Vs. B.K. Mondal and Sons, ; The State of Bihar Vs. Karam Chand Thapar and Brothers Ltd., Union of India (UOI) Vs. A.L. Rallia Ram, ; The New Marine Coal Co. (Bengal) Private Ltd. Vs. Union of India (UOI), ; State of Madhya Pradesh v. Ratanlal 1967 MPLJ 104 , K.P. Chowdhary Vs. State of Madhya Pradesh and Others, and Mulamchand Vs. State of Madhya Pradesh,

12. In The State of Bihar Vs. Karam Chand Thapar and Brothers Ltd., their Lordships of the Supreme Court laid down that the authority need not be by a general but could be by an ad hoc order. The dictum laid down in that case was applied in Seth Bikhraj Jaipuria Vs. Union of India (UOI), their Lordships pointed out that the manner of Conferment of authority upon persons of Government for the purpose of execution of contract may differ from case to case. Sometimes a rule, sometimes a notification and sometimes a special authority may validly issue. Nevertheless, in all the cases, their Lordships have laid down that all the three tests indicated must be satisfied and that Article 299(1) of the Constitution is mandatory. In State of Madhya Pradesh v. Ratanlal (1967 MPLJ 104) (supra), their Lordships have reiterated these principles. In State of West Bengal Vs. B.K. Mondal and Sons, and The New Marine Coal Co. (Bengal) Private Ltd. Vs. Union of India (UOI), their Lordships said that even if the contract fails, payment may be ordered quantum meruit on the basis of Section 70 of the Contract Act. That view was reiterated in Mulamchand Vs. State of Madhya Pradesh, . In K.P. Chowdhary Vs. State of Madhya Pradesh and Others, , their Lordships have held that the provisions of Art. 299(1) of the Constitution do not contemplate implied contract between the Government and any other person,

13. It is now settled by their Lordships that though the words "expressed" and "executed" in Article 299(1) of the Constitution might suggest that it should be by a deed or a formal written contract, a binding contract by tender and acceptance can also come into existence, if the acceptance is by a person duly authorised on this behalf by the President of India. In holding that a contract by tender and acceptance could be valid, provided the other requirements of Article 299(1) are fulfilled, their Lordships in Union of India (UOI) Vs. A.L. Rallia Ram, made the following pronouncement:--

"It is true that Section 175(3) uses the expression "executed" but that does not by itself contemplate execution of a formal contract by the executing 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 requirements of Section 175 (3)."

14. In Union of India (UOI) and Others Vs. N.K. Private Limited and Another,

their Lordships, in somewhat similar circumstances, where the Secretary to the Railway Board, on whose behalf offer of a company for purchase of rails was accepted, was not the person authorised to enter into a contract on behalf of the President of India, held that even if the letter of acceptance written by such authority was assumed to be a concluded contract, there was no valid and binding contract brought into existence. It is pertinent to notice their observations in that connection:--

"It is now settled by this Court that though the word "expressed" in Article 299(1) might suggest that it should be by a deed or by a formal written contract, a binding contract by tender and acceptance can also come into existence if the acceptance is by a person duly authorised on this behalf by the President of India. A contract whether by a formal deed or otherwise by persons not authorised by the President cannot be binding and is absolutely void."

In that case, the only person authorised to enter into the contract on behalf of the President was the Director, Railway Stores. It was, however, urged that the Members of the Railway Board were Secretaries to the Central Government and hence the Board on whose behalf the Secretary communicated the acceptance could enter into a binding contract. In repelling the contention, their Lordships observed:--

"This submission also is without force because there is no material before us to conclude that the Board was so authorised. In these circumstances, even if the correspondence shows that the formalities necessary for a concluded contract have been satisfied and the parties were ad idem by the time the letter of acceptance of the 15th July, 1968 was written, about which we do not wish to express any opinion, there is no valid or binding contract because the letter of acceptance, on the evidence before us, is not by a person authorised to execute the contracts for and on behalf of the President of India."

That precisely is the case here.

15. There can be no doubt that the Mining Engineer, Department of Mines and Geology, Government of Rajasthan, Jaipur, was not a person authorised to enter into such a contract. The relevant notification reads as follows:--

"General Administration Department

NOTIFICATION

Jaipur, November 1, 1956.

No. F. 1" (6) GA/A/56.-- In pursuance of Clause (1) of Article 299 of the Constitution of India, the Governor of Rajasthan is hereby pleased to direct that all contracts and assurances of property made in the exercise of the executive power of the State of Rajasthan shall be executed on behalf of the Governor by any of the officers mentioned in the Schedule hereto annexed,"

By order of the Governor,

KISHEN PURI

Chief Secretary to the Government

THE SCHEDULE.

1. A Secretary, Special Secretary, Additional Secretary, Deputy Secretary, or Additional Deputy Secretary to the Government.
2. The Head of a Department.
3. The Collector of a District.
4. Deputy Commissioners of Civil Supplies.
5. The Munsarim, Purejat. Published in Raj. Rajpatra dated December 6. 1956 Part I (b) at page 705."

The Director of Mines and Geology was "Head of a Department" and he alone could have granted a mining lease. In State of Rajasthan Vs. Raghunath Singh, a Division Bench of this Court has come to the same conclusion. There, the lease-deed was complete in all respects but was not signed by the Director of Mines and Geology, who alone was competent to grant the lease. It was accordingly held that there was no valid contract which could be enforced or for the breach of which damages could be awarded. As a result, no binding contract came into existence and neither the State Government of Rajasthan nor the State of Madhya Pradesh could be held liable for payment of any price.

16. The Mining Engineer, Mines and Geology Department, Rajasthan, was also not competent to grant the mining lease in question. Under Notification No. F. (6) (Cim) 55 dated 8-3-1956 published in Rajasthan Gazette dated 7-4-1956, the Mining Engineer had powers under Rule 25 to grant or refuse a mining lease where the annual rent did not exceed Rs. 1,000/-; but, in the present case, the dead rent exceeded and came to Rupees 16,820/- as the area leased was 1 1/2 miles X 1/2 mile X 1/4 mile i. e. an area of 480 acres. The dead rent prescribed in Schedule II of the Rajasthan Minor Mineral Concession Rules, 1955 was to be not less than Rs. 2/- and not more than Rs. 20/- per acre of the land granted under the lease, which had to be determined by the Director, Mines and Geology. In the present case, the dead rent was never fixed by the Director of Mines and Geology. No doubt, proviso to Rule 25 empowered the State Government to relax its provisions in a particular case or for a particular mineral. There is nothing to show that in the case of the plaintiff, the provisions of Rule 25 were relaxed. On the contrary, the State Government of Rajasthan by letter dated 3-1-1958, Ex. A/23, addressed to the Director of Mines and Geology, Rajasthan, cancelled the mining lease on the ground that the Mining Engineer was wholly incompetent to grant it,

17. Section 70 of the Contract Act provides-

"70, Where a person lawfully does anything for another person, or delivers

anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

There is no foundation laid in the pleadings for the alternative relief. There is also no basis for the plaintiff to sue on a quantum meruit. In order to attract Section 70 of the Contract Act, three conditions are required to establish a right of action at the suit of a person who does anything for another: (1) the thing must be done lawfully; (2) it must be done by a person not intending to act gratuitously; and (3) the person for whom the act is done must enjoy the benefit of it. In *Chedilal v. Bhagwan Das* ILR (1889) All 234, Straight, J., observed:

"I presume that the Legislature intended something when it used the word "lawfully" and that it had in contemplation cases in which a person held such a relation to another as either directly to create or by implication reasonably to justify an inference that by some act done for another person the party doing the act was entitled to look for compensation for it to the person for whom it was done,"

But this view has been criticised as reading so much into the word as to render the rest of the section tautologies. Thus in the *State of West Bengal Vs. B.K. Mondal and Sons*, Gajendragadkar, J. stated.

"It is urged that in the light of this test it cannot be said that the respondent held such a relation to the appellant as to be able to claim compensation from the appellant. With respect, we are not satisfied that the test laid down by Straight, J., can be said to be justified by the terms of Section 70. It is of course true that between the person claiming compensation and person against whom it is claimed some lawful relationship must subsist, for that is the implication of the use of the word "lawfully" in Section 70; but the said lawful relationship arises not because the party claiming compensation has done something for the party against whom the compensation is claimed but because what has been done by the former has been accepted and enjoyed by the latter. It is only when the latter accepts and enjoys what is done by the former that a lawful relationship arises between the two and it is the existence of the said lawful relationship which gives rise to the claim for compensation."

Nonetheless, we are of the view that, the word "lawfully" in this section is not a mere surplusage. On the contrary, it is of the essence of the section.

18. Here, nothing was done by the plaintiff for either the State Government of Rajasthan or the State Government of Madhya Pradesh. The only thing done by the plaintiff was that he was refrained from interfering with the agents of the State Government of Madhya Pradesh from carrying sand from the area. That was not tantamount to the doing of a positive act giving rise to a claim for compensation. The mere fact that the Executive Engineer, Canal Construction, Dn. 2. Sheopur Kalan by his letter, Ex. 7, had requested the Mining Engineer, Mines and Geology Department, Jaipur, to direct the plaintiff not to interfere with

the extraction of sand, does not imply that the plaintiff made the sand available to the State Government of Madhya Pradesh. That direction was issued by the Mining Engineer, Mines and Geology Department, Jaipur, in exercise of his statutory powers because there was in fact no valid demise to the plaintiff. It cannot, therefore, be regarded as something which was lawfully done within the meaning of Section 70 of the Contract Act, for which the State Government of Madhya Pradesh was liable to reimburse the plaintiff.

19. Where a person, as here, merely derived a benefit without the person seeking compensation having done anything for him, the section will not come into play. We fail to appreciate how the observations of their Lordships in the State of West Bengal Vs. B.K. Mondal and Sons, quoted above, can be of any avail to the plaintiff.

20. The decision in that case is clearly distinguishable on facts. That was a case where the plaintiff had rendered services in pursuance of a transaction, supposed by him to be a contract, but which, in truth, was without legal validity. The rationale of the decision of their Lordships was that the plaintiff was entitled to recover reasonable remuneration for work done in pursuance of the contract though found to be void. In those circumstances, it was held that the plaintiff could sue on a quantum meruit,

21. In the present case, the principle of quantum meruit cannot be invoked. The contract being void, the title to goods never passed to the plaintiff, the jural relation of buyer and seller never came into existence. The plaintiff was never placed in possession of the leased area. Indeed, mining lease, Ex. 6, as already stated, contains no description of the area demised. Nor is there any plan annexed to it. The plaintiff cannot, therefore, be regarded as having made the sand available for extraction under an implied promise to pay. Thus there is no question of the plaintiff being granted relief on quantum meruit.

22. Much stress was, however, laid on the letter dated 28-2-1959 of the Chief Engineer, Chambal Hydel and Irrigation Scheme, Madhya Pradesh, addressed to the plaintiff, the material portion of which reads :--

"I am prepared to recommend to Government for payment to you for quarrying of sand and Bajri at the rate of Re. 1/- per c. ft as cost of materials plus Re. 1/- per 100 c. ft which you have stated to have been paid to the State Mining Department as royalty, You are further requested to produce letter from the Rajasthan Government certifying the amount of royalty to have been paid by you to the Rajasthan Government,"

23. It must be said to the credit of Shri Singhvi, learned counsel for the appellant, that he confined the plaintiff's claim, during his submissions, to an amount of Rs. 14,000/- as per the terms contained in the aforesaid letter of the Chief Engineer, Chambal Hydel and Irrigation Scheme, Madhya Pradesh. It was urged that this amounted to an admission of the plaintiff's claim, and he was entitled to a decree for Rs. 14,000/- upon that basis. We are afraid, the

contention cannot be accepted, The letter merely signifies willingness on the part of the State Government of Madhya Pradesh to settle the plaintiff's claim by making payment of Rs. 14,000/-, The attempt to arrive at a settlement, however, fell through. That was because the plaintiff did not show his willingness to accept the offer. This is borne out by the averment made by the State Government of Madhya Pradesh in para. 22 of its written statement. When the offer was not accepted by the plaintiff, there is no question of granting a decree for Rs. 14,000/-; more so, when the plaintiff had no right or title to extract any sand from Rameshwar Ghat.

24. The result, therefore, is that the appeal fails and is dismissed with costs.