
(1960) 04 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 128-D of 1955

Kishanlal Malhotra

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 27-04-1960

Acts Referred:

Contract Act, 1872 — Section 196, 197
Government of India Act, 1935 — Section 175(3)
Independence (Rights, Properties and Liabilities) Order, 1947 — Article 8(1), 8(1)
Limitation Act, 1908 — Article 158

Citation : AIR 1961 P&H 5

Hon'ble Judges : A.N. Grover, J

Bench : Single Bench

Advocate : Nanak Chand R.B. and Keshav Dayal, for the Appellant; Shiv Narain Shankar, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Grover, J.—This appeal is directed against an order setting aside the award of the umpire. In the year 1943 the appellant entered into a contract with the Government of India (Stores Department) for the supply of 1500 boxes of what was called stationery filed (sic) at Rs. 45/- each box. The contract was on the usual conditions embodied in the printed form WSB 133, C/34. The contractor supplied goods from time to time and received payment accordingly, but later on a dispute arose between the parties with the result that in pursuance of the terms of the contract the matter was referred to the arbitration of R. B. Devi Chand Khanna and Mr. Harbans Singh, Bar-at-Law (now a Judge of this Court). The arbitrators, however, could not agree and Mr. R. P. Khosla (now a Judge of this Court) was appointed an umpire. He gave his award on 25-7-1947 holding that the contractor was entitled to a sum of Rs. 11,221/13/6 including interest.

2. It was not until the 28th September 1953 that the umpire filed an application in the Delhi Courts for filing of the award. It appears that no order was made by the Court directing that the award be filed and that a notice be sent to the

opposite party to file the usual objections. All that the Court said was that the application be registered and a notice be sent for 5-12-1953. The notice which was sent, however, was accompanied with a copy of the application of the umpire. It was duly served on the Union of India on 6-10-1953.

Objections u/s 30 of the Indian Arbitration Act were filed on 14-11-1953 after a lapse of the period of thirty days prescribed by Article 158 of the Indian Limitation Act. The Court below framed the necessary issues and decided almost all of them against the contractor with the result that the award was ordered to be set aside.

3. The first contention that has been raised by the learned counsel for the contractor is that the objections, which had been filed by the Union, were barred by time. A period of thirty days is prescribed for filing of objections to an award from the date of service of the notice of filing of the award by Article 158 of the Limitation Act. The objections admittedly were filed beyond that period, and it is contended that they should have been rejected on that ground. It is quite clear from what has been found by the Court below and from an examination of the proceedings which took place when the application for filing of the award was made by the umpire that no specific order was made directing that the award be filed and that notice should be given of such filing.

That is what is required by law, and the copy of the application of the umpire, which accompanied the notice to the Union was not sufficient to satisfy that requirement. The limitation runs only from the date of service of the notice of filing of the award. The notice in the present case, which was given was not of that nature. The notice merely related to the application which had been filed by the umpire for the purpose of filing the award. In *Hari Chand v. Lachhman Das* AIR 1948 EP 11 the order recorded the presence of the parties when the award was filed by the arbitrators, but did not say that any notice of the filing of the award was given to them.

It was held that no notice could be implied from that order, nor could the notice be implied from the mere mention of the fact that the award had been filed, especially when the order passed by the Court on subsequent dates made it clear that it was only on the subsequent date that the Court thought of giving of notice of the filing of the award. Although the facts in that case are somewhat distinguishable, but it appears that the trend of observations is, and that is in consonance with the language of Article 158 of the Indian Limitation Act, that the limitation will run only from the date the notice of the filing of the award has been served.

That necessarily implies an act of the Court which has to be by an order to the effect that the award has been filed by the arbitrator or the umpire and then a notice has to go with regard to the award having been filed. This is for the purpose of enabling the other party or parties to file objections to the award, if they so desire, within the period of thirty days. I do not consider, therefore, that

the objections of the Union could be rejected on the ground that they were barred by time.

4. Next, the finding of the Court below on issue No. 2 has been assailed. There was a condition in the contract according to which the decision of the Inspector was to be final with regard to the rejection of the goods and could not form the subject-matter of a reference to arbitration. About 141 boxes had been rejected by the Inspector and the Court below considered that in view of the aforesaid condition the umpire's jurisdiction, was excluded with regard to deciding any dispute relating to them.

In this connection the learned counsel for the contractor has invited my attention to the award of the umpire. He clearly proceeded on a different ground altogether which was that after the rejection of the goods by the Inspector the Inspection Branch addressed a communication accepting the boxes, which had been rejected, subject to reduction of price. This, it is pointed out, was done in pursuance of a term in the contract itself. Clause 13(v)(b) provided for buying of the quantity of the stores rejected. The dispute thus related not to the correctness or otherwise of the rejection by the Inspector but to the question whether the Department had itself agreed to buy the rejected boxes at a reduced rate. The umpire found that this was, in fact, done and he based his finding on the evidence which had been produced. I am not satisfied that the award could be set aside on this ground and I must record my disagreement with the view of the Court below on this point.

5. On issue No. 3 the finding is that the contract was void because of non-compliance with the mandatory provisions contained in Section 175(3) of the Government of India Act, 1935, which is now equivalent to Article 299 of the present Constitution. The contract was signed by Nawab Nawazish Ali, Deputy Assistant Controller of Purchase. Admittedly, he had the authority to enter into the contract on behalf of the Governor General-in-Council, but the contract was not expressed to have been made for and on behalf of the Governor General-in-Council. The contractor, however, put forward the plea of ratification which can be validly sustained, if established, and which cures any defect of the nature pointed out by the Government, but the difficulty is that ratification was never pleaded by the contractor and in his reply to the objections of the Government he based his case mainly on acquiescence and estoppel on the part of the Government.

The learned counsel for the contractor has referred to a number of facts, which would establish ratification, which may be detailed as follows:

- (1) The Government agreed to accept the boxes at reduced rates in pursuance of the terms of contract;
- (2) it entered into arbitration with the contractor which dragged on for such a long time;

(3) no objection, either by the arbitrators who had been originally appointed or the umpire, was ever taken on the ground of non-compliance with the provisions of Section 175(3) of the Government of India Act;

(4) it was nearly after a lapse of ten years after appearance before the umpire that this objection was raised for the first time.

6. I have no doubt that there is a good deal of force in what is submitted on behalf of the contractor and these facts would have been sufficient to establish ratification of the contract by the Government, but the difficulty, as stated before is that no such plea was ever raised, and in the absence of such a plea, which involves not only question of law but also question of fact, the court below was fully justified in not finding that the aforesaid defect had been cured by reasons of ratification.

7. Even if the finding under issue No. 3 had been given in favour of the contractor, the decision of the Court below must be upheld on issue No. 4-B. Admittedly, the award had been given before the partition of the country in July 1947. The Indian independence (Rights, Property and Liabilities) Order, 1947, contains provisions for determining the liability of the Dominion of India as well as the Dominion of Pakistan with regard to those contracts which had been entered into before the partition of the Country.

Article 82(1) of that order provides that any contract made on behalf of the Governor-General in Council before the appointed day shall, as from that day, (a) if the contract is for purposes which as from that day are exclusively purposes of the Dominion of Pakistan be deemed to have been made on behalf of the Dominion of Pakistan instead of the Governor-General in Council; It has been proved and there is nothing to show the contrary that the goods in dispute delivered to the O. I. D. (Ordnance Inspection Depot), Lahore.

It is true that the contractor gave evidence that the goods were meant for the Central Government and were to be consigned to Asansol, but the court below has rightly rejected that evidence, because it is not possible to believe that the goods would have been sent to Lahore and delivered there in case they were meant for Asansole, The learned counsel for the contractor submits that in the acceptance form it was stated that the price was payable in New Delhi and that the contract had been entered into here and, therefore, it must be held that the contract was for purposes of the Dominion of India and not Pakistan.

In Union of India (UOI) Vs. Chaman Lal Loona, their Lordships of the Supreme Court have laid down the test to determine whether a contract was exclusively for the purpose of the Dominion of Pakistan or not. According to the test formulated by them, what has to be seen is that if the contract had been entered into on 15th August 1947 whether it would have been a contract for the purposes of the Dominion of Pakistan, or if the Dominion of Pakistan had been in existence when the contract had been entered into, whether it would have been a contract for the purposes of Pakistan.

In that case the purpose of the contract when it was entered into was to supply fodder to the Manager, Military Farms, Lahore, which farms were in Pakistan on the appointed day, namely, 15th August 1947. It was held that the contract came under Clause (a) of Article 8(1) of the Order and Was therefore exclusively for the purposes of Pakistan as on the appointed day. It is apparent in the present case that the purpose of the contract was to send goods to the O. I. D. at Lahore which was in Pakistan on the appointed day and, therefore, the contract had been made exclusively for the purposes of Pakistan. The learned counsel for the appellant referred to a letter Exhibit A. W. 3/1, dated 16th July 1948 which was sent to the contractor.

In that letter it was stated that in order to avoid hardship to the contractor, the Government, after consideration had decided that they should undertake the initial liability for the payments which related to areas now included in Pakistan and recover Pakistan's share through debt settlement. Then the procedure for collection, checking and payment of those claims was detailed in the letter. It is contended that this letter constituted waiver on the part of the Government of the position which obtained under the Independence Order, No such waiver was pleaded, but even if it had been pleaded, it is not possible to spell out waiver from the aforesaid letter.

Indeed, in *Pannalal Mukherjee Vs. Union of India (UOI)*, it has been observed that waiver belongs to the realm of contract and depends on the conduct of the parties. Where it is sought to be shown that rights arising under the aforesaid order had been waived by the Government, then it was for the claimant to show that the Dominion of India or the Union of India had agreed not to assert its rights under Order. In that case also a notification had been issued by the Government making a similar provision for payment to contractors who had sent goods to territories which were included in Pakistan at the time of the partition.

The learned Calcutta Judge observed that the Dominion of India had, in order to alleviate the suffering of some contractors, graciously offered to pay them their claims after the same had been established; as a result of the enquiries to be instituted. It was held that there was no express or implied waiver as a result of the publication of the notification. There also the draftsman of the plaint did not raise the question of waiver at all. It is true that the aforesaid letter is not in the form of a notification, and it is addressed to the contractors individually containing a general decision of the Government to help the contractors on consideration of hardship to them but as waiver was not expressly pleaded, I do not consider that at this stage that plea can be entertained in the present case.

8. In the result, the order of the Court below must be upheld. The appeal is consequently dismissed, but I leave the parties to bear their own costs throughout.