
(1970) 08 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Regular Second Appeal No. 52 of 1964 & Second Appeal No. 52 of 1964

Mangalji Chhotey Lal

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 25-08-1970

Acts Referred:

Constitution of India, 1950 — Article 299(1)

Citation : AIR 1972 Raj 1

Hon'ble Judges : C.M. Lodha, J

Bench : Single Bench

Advocate : P.N. Datta and V.S. Dave, for the Appellant; S.K. Tiwari, for the Respondent

Final Decision : Allowed

Judgement

C.M. Lodha, J.—The only point for decision in this second appeal by the plaintiffs is whether the plaintiffs are entitled to the refund of the earnest money deposited by them with the defendant State of Rajasthan at the time of submitting their tender for supply of maize and iowar?

2. The trial court decreed the suit for refund of Rs. 2500/- being the earnest money and also for Rs. 450/- as interest thereon, total Rs. 2950/-. On appeal by the defendant, the suit was dismissed. Consequently the plaintiffs have come in second appeal to this Court.

3. The facts relevant for the purposes of this appeal are as follows:

The State of Rajasthan by a notification (Ex. A. 4) published in the Rajasthan Rajpatra dated 6-12-1953 invited tenders for purchase of Baira. maize Jowar etc. The tenderer was required to make a deposit at the rate of -/4/- for each maund of grain to be supplied, as earnest money with the Commissioner. Civil Supplies. Rajasthan. It was further provided by Clause (8) of the said notification that the tenderer whose tender is accepted would be required to complete the supply of

the grain as contracted by him within one month of the communication of the acceptance of the tender failing which the earnest money would be forfeited by the Government. The plaintiffs submitted tender for supply of maize and Jowar at Kota, Jhalawar, and Baran and deposited Rs. 2500/- as earnest money. His tender was accepted vide letter of the Commissioner of Civil Supplies, dated 27-12-1953 Ex. A. 1, by which the Commissioner, Civil Supplies also called upon them to contact the Collectors "Kota and Jhalawar for execution of the agreement and arrange delivery of the grain within the specified period. It appears that the plaintiffs were not able to supply the contracted grain within one month as stipulated. Consequently they sought extension of period for fulfilment of the contract, and by his letter dated 6-2-1954 the Commissioner, Civil Supplies extended time for delivery by another fortnight as a special case. The original letter dated 6-2-1954 has been placed on the record and marked Ex. 5 and Ex. A. 3. The plaintiffs' case is that they offered delivery of the contracted food-grains but the same was refused by the Collectors concerned. It is further averred that the Collector, Jhalawar by his letter dated 17-2-1954 informed the plaintiffs that the Government would not purchase the food-grains from them as they had not executed the agreement upto 15th February, 1954. The plaintiffs served a notice dated 24-7-1956 on the defendant State of Rajasthan requiring the latter to refund the earnest money Rs. 2500/- failing which they would file suit against the State for recovery of the said amount along with interest. In reply to the said notice the Collector, Jhalawar asked the plaintiffs vide his letter dated 6-10-1956 to give the necessary details about the deposit of Rupees 2500/- and also to supply a copy of the receipt so that the necessary steps may be taken for refund of the earnest money. The letter dated 6-10-1956 is marked Ex. 2. By a subsequent letter dated 22-1-57. (Ex. 3). the Collector, Jhalawar asked the plaintiffs to approach the Administrative Officer, Civil Supplies Rajasthan for necessary action. The earnest money was however, not refunded. Consequently the plaintiffs filed the present suit in the Court of Civil Judge, Kota on 18-2-1957 for refund of earnest money Rs. 2500/- along with interest, i.e. Rs. 450/-. total Rs. 2950/-.

4. The State of Rajasthan resisted the plaintiffs' suit and pleaded that the plaintiffs had failed to deliver the food-grains within one month of the acceptance of the tender as provided in the notification and that the order of extension dated 6-2-1954 (Ex. A 3) was being used by the plaintiffs only as a pretext to cover their default, and in any case there is nothing to show that the Collector, Kota ever refused to accept the delivery of food-grains by the plaintiffs. It was also pleaded that the plaintiffs were not entitled to get the refund of the earnest money inasmuch as the Government were entitled to forfeit the same on account of failure on the part of the plaintiffs to deliver the food-grains within one month of the acceptance of the tender.

5. After recording the evidence produced by the parties, the learned Civil Judge, Kota allowed the plaintiffs' claim and decreed the suit for Rupees 2950/- as prayed.

6. Aggrieved by the judgement and decree of the trial court the State of Rajasthan filed appeal in the Court of District Judge. Kota who by his judgment dated 30-9-1963, set aside the judgment and decree by the trial court, and dismissed the plaintiffs' suit. The plaintiffs have, therefore, filed this second appeal.

7. Learned counsel for the appellants has contended that a fresh period of 15 days had been granted to the plaintiffs by the letter dated 6-2-1954 (Ex. 5) for supply of the food-grains but before the expiry of this period the Collector. Jhalawar by his letter dated 17-2-1954 (Ex. 1) informed the plaintiff that he would not accept the food-grains. Thus according to the plaintiffs the Government of Rajasthan had committed breach of contract, and, therefore, it was not entitled to forfeit the earnest money. It may be observed that according to the terms settled between the parties the plaintiffs were to supply only 162 Mds. of maize to the Collector, Jhalawar and the rest of food-grains were to be supplied at Kota and Baran, and, therefore, the letter Ex. 1 did not stand in the way of the plaintiffs, so far as the supply of the rest of the contracted food-grains is concerned. Consequently the plaintiffs cannot successfully set up the letter Ex. 1 as a complete defence for not supplying the food-grains which they had contracted to supply. They have however, produced oral evidence in support of their assertion that Raghunath Prasad (P. W. 1) approached the Collector. Kota on their behalf and offered the food-grains to him but the latter refused to accept the same. To substantiate their allegation in this connection the plaintiffs produced P. W. 1 Raghunath Prasad, P. W. 2 Ghasilal. P. W. 3 Shanti Kumar. P. W. 4 Dhanna Lal. P. W. 5 Manakchand and P. W. 6 Sunderlal. The learned District Judge has discussed the evidence of these witnesses and has come to the conclusion that their evidence is not worthy of belief. It is remarkable that the plaintiffs did not address a single letter of protest to the Commissioner of Civil Supplies regarding the refusal by the Collector, Kota to accept the contracted food-grains from them. On the other hand, the State has examined D. W. 2 Shri Bhagwat Dutt Thakur, the then Collector of Kota and D. W. 1 Jogendrapalsingh, the then Godown Officer, Civil Supplies. Department of Kota. Shri Bhagwat Dutt Thakur has stated in clear and unequivocal terms that he had never refused to accept the supply of food-grains from the plaintiffs. The learned District Judge did not accept the plaintiffs' version and I not only do not see any reason to differ from this finding of fact arrived at by him but confirm it on merits also.

8. Learned counsel for the appellants however contended that even if it be held that they did not deliver the food-grains as contracted by them yet the Government was not entitled to forfeit the earnest money as no agreement had been executed as required by Article 299(1) of the Constitution of India.

9. As a matter of fact the plaintiff-appellants had not taken such a plea in the plaint but the Government's case was that the Collector, Jhalawar was right in refusing to purchase gram from the plaintiffs as the latter had not executed the required agreement vide his letter dated the 17th February, 1954 (Ex. 1). In the letter of acceptance of tender Ex. 6. the Commissioner of Civil Supplies while

accepting the tender called upon the plaintiffs to contact the Collectors. Kota and Jhalawar for execution of the agreement. The Question, therefore, arises whether in the absence of an agreement as contemplated by Article 299(1) of the Constitution any valid contract had come into existence, and if not whether the Government is entitled to forfeit the earnest money? This aspect of the case has not been examined by any of the two courts below. But since it is a pure question of law and there is no dispute between the parties that such an agreement had not been executed, it would not be improper to examine this aspect of the matter even in second appeal.

10. Learned counsel for the appellants has invited my attention to Seth Bikhraj Jaipuria Vs. Union of India (UOI), . State of West Bengal Vs. B.K. Mondal and Sons, Laliteshwar Prasad Sahi Vs. Bateshwar Prasad and Others, Mulamchand Vs. State of Madhya Pradesh, : Abdul Rahiman Khan Vs. Sadasiva Tripathi, and Ram Swarup Maru Vs. State of Bihar and Another, in support of his contention.

11. On the other hand the learned Deputy Government Advocate has submitted that a valid contract had come into existence by acceptance of the tender by the Commissioner of Civil Supplies and it was not necessary to execute a formal agreement as required by Article 299(1) of the Constitution and since the plaintiffs defaulted in performance of the contract, the Government was perfectly within its right in forfeiting the earnest money. He has relied upon Union of India (UOI) Vs. A.L. Rallia Ram, ; Devi Prasad Sri Krishna Prasad Ltd. and Another Vs. Secretary of State, and Firm Lakshminaravan v. State. AIR 1967 Mys. 156.

12. In Devi Prasad Sri Krishna Prasad Ltd. and Another Vs. Secretary of State, Allahabad High Court held that the contract evidenced by tenders and acceptance of tenders is not excluded by Section 30(2) of the Government of India Act 1919 (to which Article 299(1) corresponds) on the ground that,

"A good deal of Government business is being done in the form of tenders and acceptance of tenders in which, till a very late stage, formal deeds are not drawn up.....In our opinion, it is sufficient compliance with the terms of section 30 if the agreement is expressed in writing, and this writing may comprise of a series of letters or a series of informal documents."

13. It may be noted that a later Division Bench of the Allahabad High Court in Brij Lal Suri Vs. State of Uttar Pradesh and Others, held that the decision in Devi Prasad's case (supra) which was decided on the language of Section 30(2) of the Government of India Act. 1919 would not apply u/s 175(3) of the Government of India Act. 1935, which introduced two new expressions namely "expressed to be made" and "executed on behalf of". It was further observed that under the Act of 1935 a contract does not bind the Government unless it is not only executed on behalf of the Government but is also expressed to be made in the name of the Governor.

14. In Union of India (UOI) Vs. A.L. Rallia Ram, their Lordships were pleased to observe as follows:

"In the absence of any direction by the Governor-General u/s 175(3) of the Government of India Act prescribing 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 contemplate 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 requirements of section 175(3)".

It was further held that correspondence between the parties ultimately resulting in the acceptance note, in our Judgment, amounts 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 the Chief Director of Purchases accepted the tender of the respondent subject to the conditions prescribed therein.

15. Again in AIR 1967 Mys 156 it was held that the offer made by the plaintiff in pursuance of the tender notice was accepted by the Government and that the acceptance of the offer duly communicated to the plaintiff was sufficient in law to constitute a completed and concluded contract between the plaintiff and the defendant State of Mysore. The learned Judge was further pleased to observe that the offer and acceptance of the offer being in writing, it could be said that the contract was in writing and since the Director of Industries and Commerce accepted the tender on behalf of the Government of Madras, all the requirements of Article 299(1) had been duly complied with and consequently the agreement was valid.

16. Now I may deal with the authorities cited by the learned counsel for the appellant. In *Seth Bikhraj Jaipuria Vs. Union of India (UOI)*, it was held that where a contract between the Dominion of India and the private individual is not in the form required by Section 175(3), it cannot be enforced and therefore the Dominion of India cannot be sued by the private individual for compensation for breach of contract. In *State of West Bengal Vs. B.K. Mondal and Sons*, their Lordships of the Supreme Court reiterated the view taken in the earlier case and observed that since section 175(3) of the Government of India Act, 1935 has been held to be obligatory, it inevitably follows that contravention of the said section implies the nullification of the contract. In *Laliteshwar Prasad Sahi Vs. Bateshwar Prasad and Others*, it was held by majority that a mere agreement entered into in contravention of Article 299 of the Constitution and in fact not ratified could not be called a "contract" within Section 7(d) of the Representation of the People Act, 1951. In *Mulamchand Vs. State of Madhya Pradesh*, it was found that there was no formal compliance of the provisions of Article 299 of the Constitution but it was found that the bids had been accepted by the Deputy Commissioner. Balaghat and the acceptance had also been communicated to the

appellant who worked the contracts and actually collected lac in the forests in Question. The trial court refused to grant a decree to the appellant in this case with regard to the claim on the ground that the contract was not void and although there was no conformity with the provisions of Article 299 of the Constitution there was nothing to prevent the ratification of such contracts if they are for the benefit of the Government. The trial court further observed that the appellant had performed his part of the contract and worked and collected lac from the jungles in pursuance of the agreement and was therefore not entitled to refund the amount in deposit. This finding was affirmed by the High Court. Their Lordships of the Supreme Court however held that the reasoning adopted by the High Court was not correct and after referring to the earlier cases on the point, they were pleased to hold that the provisions embodied in Section 175(3) of the Government of India Act and Article 299(1) of the Constitution based on the ground of public policy cannot be waived and dispensed with and that there is no question of estoppel by ratification in such a case. Thus, their Lordships treated the contracts as void but held that the provisions of Section 70 of the Indian Contract act can be invoked by the aggrieved party to the void contract. In a still later case Abdul Rahiman Khan Vs. Sadasiva Tripathi, in a matter arising out of the Representation of the People Act, 1951 where no final contracts had been executed as contemplated by Article 299(1) of the Constitution their Lordships were pleased to observe as follows:

"The appellant proceeded on the footing that there was a binding contract under which he had undertaken the work of construction for the State, and the State allowed work and had offered to pay him for the work done at the rates set out in Form K-2. The appellant could not by virtue of Article 299 sue in a civil court on the agreement in Form K-2 for compensation for breach of contract. But we are unable to hold that the appellant was not disqualified u/s 9A of the Representation of the People Act merely because the contracts were not enforceable against the State because of Article 299(1) of the Constitution."

17. The law thus appears to be well settled that the provisions of Article 299(1) of the Constitution of India are mandatory in character and the contravention of these provisions nullifies a contract and makes it void. In other words it would be no contract at all and could not be enforced either by the Government or by other person as a contractor. Even in cases arising out of election matters under the Representation of the People Act, 1951 their Lordships of the Supreme Court have made it clear that contracts in contravention of the provisions of Article 299(1) of the Constitution cannot be enforced even though under certain circumstances the parties entering into such contracts may be disqualified under the provisions of the Representation of the People Act. There is therefore no escape from the conclusion that there cannot be ratification or waiver in the matter of a contract entered in contravention of the provisions of Article 299(1) of the Constitution. It is therefore to be seen whether in the present case the provisions of Article 299(1) of the Constitution have been complied with. The Deputy Government Advocate has strenuously urged that the notification marked

Ex. A. 4 was issued by the Commissioner, Civil Supplies Department Government of Rajasthan on behalf of the the Government of Rajasthan and that the acceptance of the tender by the same officer vide letter dated 27th December. 1953 marked as Ex. 6 must be deemed to be on behalf of the Governor of Rajasthan. It is urged that the acceptance of the tender must be deemed to have been, expressed in the name of the Government and therefore there was compliance with the provisions of Article 299(1) of the Constitution even though no formal agreement expressed to be made by the Rajpramukh of the State of Rajasthan was executed.

18. After having bestowed my most careful and anxious consideration on the matter. I find myself unable to accede to the submission made by the learned Deputy Government Advocate. A brief analysis of the cases decided by their Lordships of the Supreme Court referred to above gives a clear indication that in their Lordships' view a strict compliance with the provisions of Article 299(1) of the Constitution is indispensable in case of agreements entered into by the Union or a State. In other words, their Lordships seem to be of the view that execution of a formal agreement in accordance with the provisions of Article 299(1) cannot be overemphasised. In the present case admittedly no agreement was executed even though the Government was anxious that the agreement in this respect must be executed before the contract is carried out. In the letter of acceptance (Ex. 6) the Commissioner of Civil Supplies has directed the plaintiffs to contact the Collectors. Kota and Jhalawar for execution of agreement and the Collector. Jhalawar also in his letter dated 17th of February. 1954 (Ex. 1) addressed to the plaintiffs clearly stated that the Government was not prepared to purchase the foodgrains from the plaintiffs as the latter had not executed the agreement. These letters make it abundantly clear that the Government wanted a formal agreement to be executed before the contract was carried out. Apart from that it cannot be said definitely that the notification inviting tenders Ex. A4 was issued by the Government of Rajasthan and so far as the letter of acceptance of the plaintiffs' tender is concerned even the learned Deputy Government Advocate had to concede, and in my opinion rightly, that the acceptance was not issued on behalf of the Government of Rajasthan. But his submission was that by reading the letter of acceptance with reference to the notification Ex. A4 it must be deemed to have been issued by the Commissioner of Civil Supplies on behalf of the Government of Rajasthan. There is nothing to show that the Commissioner of Civil Supplies had accepted the tender, on behalf of the Government of Rajasthan or in the name of the Governor of Rajasthan or was authorised to issue the same on behalf of the Government of Rajasthan. In this view of the matter apart from there being no formal agreement as contemplated by Article 299(1) of the Constitution it cannot be said that the notification invitine tenders was issued by or on behalf of the Rajpramukh of Rajasthan or the acceptance of the plaintiffs' tender was expressed to be made in the name of the Raipramukh or was made by a person authorised in that behalf. The Inevitable conclusion of the foregoing discussion is that no valid contract came into existence between the plaintiffs and

the Government of Rajasthan and the latter was consequently not entitled to forfeit the amount of deposit.

19. In the result I allow this appeal, set aside the Judgment and decree by the District Judge. Kota dated 30th September. 1963 and award a decree for Rs. 2500/- by way of refund of the deposit in favour of the plaintiffs against the State of Rajasthan. The claim for interest on this amount upto the date of the suit is not pressed. The appellant will however be entitled to get interest pendente lite and also future interest till realisation at the rate of 3 per cent per annum.

20. In the circumstances of the case the parties are left to bear their own costs throughout.

21. Learned Deputy Government Advocate prays for leave to appeal to a Division Bench. However I do not consider it a fit case for granting leave to appeal. The prayer is therefore disallowed.