

(1959) 06 CAL CK 0013

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 1510 of 1953

Mati Lal Samanta

APPELLANT

Vs

Commissioners of Tamluk Municipality

RESPONDENT

Date of Decision : 02-06-1959

Acts Referred:

Bengal Municipal Act, 1932 — Section 103, 103(2), 103(3)
Contract Act, 1872 — Section 65

Citation : 64 CWN 231

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : Binoy Krishna Mukherjee, for the Appellant; S.C. Janah and Arun Kumar Janah, for the Respondent

Final Decision : Dismissed

Judgement

Banerjee, J.—This appeal at the instance of the defendant is directed against an appellate decree reversing the decree of a learned Munsif. The commissioners of the Tamluk Municipality, who are the respondents before me, instituted a suit for recovery of compensation for breach of a contract, alleged to have been entered into by and between the plaintiffs respondents and the defendant appellant.

2. According to the plaintiffs, the defendant entered into an agreement with them for supply of 10,000 cft. of Khoa from Jhama bricks at the rate of Rs. 35/- per cft. and 1,50,000 pieces of picked and first class bricks, in equal proportions, at the rate of Rs. 40/- per 1000 to be delivered to the plaintiffs in Tamluk, on a specified plot of land, during the period beginning from the month of January to the month of October. 1949, according to the requirements of the plaintiffs. The plaintiffs had applied to the Government for supply of 8 wagons of coal, about 170 tons in weight, and obtained a permit for the coal from the Government. The defendant approached the then Chairman of the municipality and proposed to him that the permit of coal be handed over to him for taking delivery of coal as an agent of the municipality and in consideration therefor the defendant agreed

to deliver to the municipality bricks and khoa at the rates hereinbefore mentioned. The permit for coal was made over to the defendant and an agreement was signed on December 15, 1947. Thereafter the old municipal commissioners ceased to hold office and a new body of commissioners was elected. The agreement was placed before the commissioners at a meeting held on August 13, 1948, in the presence of the defendant and was sanctioned by the commissioners and the common seal of the municipality was affixed thereon.

3. The case made by the plaintiffs was that on being called upon to perform the contract by the newly elected Chairman of the municipality, the defendant, by his letter, dated February 5, 1948, replied that he would be able to deliver materials worth about Rs. 5000/- only by February 25, 1948. The defendant thereafter delivered some goods and submitted a bill therefor. He was paid Rs. 900/- on account. The defendant, however, did not deliver the remaining portion of khoa and bricks, agreed to be supplied, with the result that roads could not be repaired. The municipality was in a hurry to repair the roads, because of the impending visit of the Governor of West Bengal to the locality. Bricks were not locally available; therefore, the municipality had to purchase the same from elsewhere. The defendant was informed about the situation, but he took no steps. The municipality had, therefore, to engage other contractors and to get the roads repaired. In this way the municipality was put to costs to the extent of Rs. 4238/3/-. If the defendant had supplied the bricks and khoa, as agreed upon, the costs would have been only Rs. 2126/1/-. On account of failure of the defendant to supply, the plaintiffs were put to loss amounting to Rs. 2112/2/-.

4. Alternatively, plaintiffs pleaded that if for any reason the contract between the plaintiffs and the defendant was found to be ineffective, the plaintiffs would be entitled to get compensation from the defendant, u/s 65 of the Indian Contract Act, for the benefit the defendant received on the coal permit being made over to him.

5. On the allegations aforesaid, the plaintiff's laid their claim for compensation or damages at the round figure of Rs. 2000/-.

6. The suit was contested by the defendant. According to the defendant there was no valid contract between the plaintiffs and the defendant and the purported agreement on which the plaintiffs relied contravened the provisions of section 103 of the Bengal Municipal Act. The defendant contended that the plaintiffs were not entitled to get any compensation, as claimed, or at all. The defendant further disputed that the municipality incurred any loss because of the non-fulfilment of the terms of the alleged agreement by the defendant. The permit for coal, according to the defendant, was made over to him by Ashutosh Misra, who was at the material time a commissioner of the municipality, with the object of benefiting the defendant for past services rendered by the defendant to the said Ashutosh Misra. The defendant contended that in the aforesaid circumstances the plaintiffs were not entitled to any compensation u/s 65 of the Indian Contract Act.

7. The learned Munsif was satisfied that the contract with the defendant was not lawful, contravening, as it did, the provisions of section 103 of the Bengal Municipal Act. The learned Munsif was further of the opinion that the transfer of coal permit was not permissible under the law and inasmuch as a part of the consideration was unlawful, the contract must fail. The learned Munsif came to the alternative conclusion that at the meeting of the commissioners, held on the 13th August, 1948, the contract was not sanctioned by the commissioners either expressly or impliedly. There was, as the learned Munsif found, only a counter-offer made to the defendant in the subject-matter of the contract. In the above view of the matter the learned Munsif dismissed the plaintiffs' claim.

8. The plaintiffs appealed to the lower appellate court. The lower appellate court reversed the decree passed by the learned Munsif and allowed the appeal to this extent that it sent back the matter to the trial court, on remand, for a decision on the quantum of damages payable by the defendant to the plaintiffs. The grounds which weighed with the lower appellate court, in reversing the finding of the trial court are hereinbelow quoted:

(a) "There should be no confusion about the making of the contract and the sanction of the contract. A contract can be made by any commissioner as (sic) forth above but the sanction should be given by the commissioners at a meeting. In this case the contract was made by the defendant on the one hand, and the commissioner Sri Ashutosh Misra and the then Chairman of the Municipality, on the other hand, on 15-12-47. The Chairman and the Commissioners had every right to enter into the contract subject of course to the sanction of the said contract by the Commissioners at a meeting. Thus, I hold that the contract was duly entered into between the plaintiffs and the defendant as required by the provisions of sec. 103 Bengal Municipal Act, for, it was made in writing and signed by two commissioners including the Chairman and duly sealed with the common seal of the Commissioners.

Next it was urged for the respondents that the contract was not sanctioned by the commissioners at a meeting. In this connection the contents of Exhibit have to be examined. Exhibit 5 relates to a proceeding of a meeting of the Commissioners held on 13-8-48. It is true that there is no explicit order in Ex. 5 showing that the contract (Ex. 1) was sanctioned. But I am of opinion that the effect of the resolution passed by the Commissioners at a meeting held 13-8-48 was to sanction the contract (Ex. 1). The agreement (Ex. 1) was duly considered and the defendant was present when it was so considered. The defendant was directed to supply bricks and khowas according to the agreement (Ex. 1) and the Commissioners observed that they would reconsider the rates mentioned in the agreement (Ex. 1), provided the defendant supplied the bricks and khowas according to the agreement. The contract (Ex. 1) was not rejected and the defendant was directed to proceed with the supply of the materials. The learned Munsif observed that the contract was not accepted either explicitly or impliedly by the Commissioners and that they only made a counter offer. He then observed

that there was no complete contract. I am unable to agree with the observations of the learned Munsif. The rates were duly mentioned in the agreement (Ex. 1) and they remain in force, and all that the Commissioners decided was that if the defendant supplied the materials they would re-consider the rates. I do not think this had the effect of a counter offer; nor can I agree with the finding of the learned Munsif that there was no complete contract. The contract was completed long before 13-3-48, and on the last mentioned date it was duly sanctioned by the Commissioners at a meeting."

(b) "The learned Munsif held that delivery of the coal permit was illegal, for it was in violation of the Colliery Control Order 1945. He held that the alleged consideration, viz., delivery of the coal permit, was forbidden by law and opposed to public policy, and accordingly, the contract (Ex. 1) was illegal. The coal permit is not on record, and I am not in a position to know under what terms it was issued in favour of the plaintiffs. In this connection I may refer to the provisions of Cl. 12B of the Colliery Control Order, 1945.

Under the said section a person who has allotted coal shall not use it otherwise than in accordance with the conditions contained or incorporated in the document containing the order of allotment and shall not divert or transfer any such coal to any other person except under a written authority from the Central Government. As the coal permit is not on record I do not know under what condition the permit was issued to the plaintiffs, nor am I in a position to know what were the conditions incorporated in the document."

(c) "Transfer of the coal permit is not absolutely prohibited, and under certain circumstances it can be transferred as mentioned in Sec. 12-B, of the Colliery Control Order, 1945. Whether the plaintiffs had obtained the written authority or not is not known, nor is it known whether the permit itself contained any provisions regarding use of the said permit by anybody other than the defendant-appellants."

(d) "Even if it is assumed that delivery of the permit to the defendant was not permissible under the law then also it cannot be said that the consideration for the contract (Ex. 1) was illegal. The delivery of the Coal permit did not, in my opinion constitute the consideration for the contract (Ex. 1). Even if it did, it cannot be said that the delivery of the permit to the defendant invalidated the contract (Ex. 1) entered into between the plaintiffs and the defendant. The plaintiffs, it was not disputed, were given the coal permit for the purpose of preparation of bricks etc. This may be reasonably inferred from the letter (Ex. 3/k). The plaintiffs delivered the coal permit to the defendant for the purpose for which the permit was issued in favour of the plaintiffs, viz., preparation of bricks etc. If instead of burning and preparing the bricks themselves the plaintiffs had it done through the defendant, who was a contractor, it could not be urged that the plaintiffs had acted against the conditions under which the coal permit was issued to them. The purpose remained the same, and instead of having the work done by their own men the plaintiffs tried to have the work, viz., preparation of

bricks, done by the defendant. Thus, the object for which the permit was issued remained the same and the delivery of the permit to the defendant had not the effect of making the contract (Ex. 1) illegal.

9. It is the propriety of the judgment of the appellate court which is being contested before me in this second appeal.

10. Mr. Benoy Krishna Mukherjee, learned Advocate for the appellant, argued before me that the contract entered into on December 15, 1947, without the previous sanction of the commissioners, was void and inoperative and its subsequent ratification would not validate the contract. He further contended that a portion of the consideration of the contract, in the form of the transfer of the coal permit, by the plaintiffs to the defendant, was illegal and therefore the entire contract was void.

11. For the purpose of appreciating the argument advanced by Mr. Mukherjee it is necessary for me to refer to the terms of the contract between the parties, which is marked Ext. 18, and the material portion of which is quoted below:

Permit of 8 (Eight) wagons of coal (Rubble) allotted for the months of November--January, 1948, covered by Government of Bengal, (Department of Civil Supplies, Bengal) BRK. Serial No. 28440, dt. 27-11-47 issued in favour of Chairman, Tamluk Municipality, is delivered to Babu Mati Lal Samanta, Brick-field owner, Banpur, Post. Kolaghat, Dist. Midnapore, against 10000 cft. of khoa from 1st class and Jhama bricks at Rs. 35/- per c. cft. and 1,50,000 picket and 1st class bricks in equal proportions (chimney burnt) at Rs. 40/- (Rupees forty) per thousand to be supplied to the Tamluk Municipality at Tamluk on the Municipal khas land near the present toddy shop from the months of January, 1948 to October, 48 according to the requirements of the Municipality. Dated, Tamluk, the 15th December, 1947

Sd. M. Basu,

Chairman,

Tamluk Municipality.

Sd. Ashutosh Misra, M.C.

15-12-47.

(Seal of the Municipality).

12. The contract shows that in the matter of execution of the contract. provisions contained in Section 103(2) of the Bengal Municipal Act were complied with to the extent that the contract was in writing and was signed by two commissioners, of whom one was the Chairman and also did bear the common seal of the commissioners. Unless this was so, the contract would not have been binding on the commissioners, under the provisions of section 103(3) of the Bengal Municipal Act.

13. The contract, however, was for a sum exceeding Rs. 200/- and, therefore, required to be sanctioned by the commissioners at a meeting, under the provisions of section 103(2) of the Bengal Municipal Act. On the date when the contract was executed, that is to say, on December 12, 1947 or at any time prior thereto, the sanction to the contract by the commissioners at a meeting had not been given. According to the plaintiffs themselves the sanction was not taken until as late as August 13, 1948. It was not disputed before me that the provisions as to the sanction of the commissioners at a meeting to a contract is a matter of substance and not of mere form. In my opinion, the provision as to the sanction is to safeguard the municipality against the contracts, unauthorised by law, entered into by the municipality thoughtlessly or otherwise. If a contract is sanctioned, after due deliberation by the commissioners at a meeting, the risk of entering into an unauthorised contract is to a very great extent minimised and therefore there is the provision for sanction.

14. A contract, which has not the sanctity of sanction of the commissioners at a meeting, is a void contract and cannot be enforced. This position of law was accepted by both the parties. What was contended before me, by the learned Advocate for the appellant, was that the sanction must be first had and obtained and the agreement must thereafter be executed. It was also contended that an agreement executed, before the sanction of the commissioners at a meeting was obtained, becomes void and cannot be ratified later on. It was further contended that the sanction to the instant agreement, granted at the meeting of the commissioners, if that was any sanction at all, was in the nature of ratification of a void contract and had not the effect of validating the contract.

15. Section 103(2) of the Bengal Municipal Act does not expressly state that the sanction must be obtained previous to the execution of the instrument of contract. There is no reason why the provision for sanction shall be read so as to imply that sanction of the commissioners at a meeting is a condition precedent to the execution of a valid contract.

16. It is an established rule of construction that "enactments, also, which impose forms and solemnities on contracts on pain of invalidity, are construed so as to be as little restrictive as possible of the natural liberty of contracting." (Maxwell on Interpretation of Statutes, 9th Edition, page 295).

17. It is also a rule of construction that "the courts will not be astute to construe an Act so as to avoid a contract, or a contract so as to bring it within the prohibition of a statute" (Craies on Statutes, 5th Edition, Chapter I, page 236).

18. It is, therefore, reasonable to construe section 103(2) of the Bengal Municipal Act so as to mean that the sanction of the commissioners at a meeting may follow the execution of the contract. A contract executed without the sanction previously had and obtained is not void and subsequent sanction does not amount to ratification of a contract initially void. I come to the above conclusion, regard being had to the language of the section and also the scheme

of the Act.

19. Under the scheme of the Act, sanction is necessary to safeguard the municipality against contracts unauthorised by law entered into thoughtlessly or otherwise. When such a contract comes to the notice of the commissioners, the additional safeguard is that they may refuse sanction to such a contract. I am, therefore, of the opinion that the obtaining of the sanction is not a condition precedent to the formation of a valid contract. As such I overrule the first contention of Mr. Mukherjee.

20. On the question of invalidity of the contract because the consideration therefor was illegal, as the defendant alleged, the court of appeal below gave several reasons why that was not so. Hereinbefore I have quoted in extenso the reasons given by the court of appeal below. I add to the reasons given one of my own. Consideration for the supply of bricks and khoas was in substance money consideration, but it was provided that to the contractor would be delivered a permit of coal issued in favour of the municipality. The purpose apparently was that the coal would be utilised in the manufacture of bricks to be supplied to the municipality. The money value of the bricks and khoas to be supplied was certainly fixed after taking into consideration the fact that the coal for brick manufacture would be provided by the municipality itself. The mere fact that instead of taking delivery itself, the contractor was authorised to take delivery of the coal and utilise the same in brick manufacture, for supply to the municipality, did not amount to a deviation or transfer of coal as contemplated in Clause 12B of the Colliery Control Order. There was no question of any transfer or diversion of coal in the instant case, because the coal was going to be utilised for the purpose of the municipality itself. I, therefore, hold that the consideration of the contract was not vitiated by any illegality. Both the contentions raised by Mr. Mukherjee, therefore, fail and I dismiss this appeal with costs.