
(1984) 07 DEL CK 0018
In the Delhi High Court
Case No : First Appeal No. 61 of 1981

Prahlad Rai Dalmia

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-07-1984

Acts Referred:

Citation : AIR 1986 Delhi 76 : (1984) 26 DLT 331 : (1984) 7 DRJ 226

Hon'ble Judges : Gian Chand Jain, J;A.B. Rohtagi, J

Bench : Division Bench

Advocate : D.K. Sayal and Ratan Lal, for the Appellant;

Judgement

Avadh Behari, J.

(1) This is an appeal from the order of a learned single judge of this court dated March 31, 1981.

(2) The short question in this appeal is whether Delhi courts have jurisdiction to try the suit filed by the appellant, M/s. Prahlad Rai Dalmia against the respondent Union of India, Dalmia filed a suit against the Union of India seeking declaration that the contract, namely, the Acceptance of Tender No. BTX-7/62707/364/PACD entered into between the parties was not a valid and a concluded contract. In paragraph 24 of the plaint the jurisdiction was sought to be conferred on the courts in Delhi by making the following averments:

"24.That the Defendant Union of India have its principal office at the functions at New Delhi within the territorial jurisdiction of this Hon"ble Court....."

(3) This was tried as a preliminary issue. It was decided by the learned judge against Dalmia. He hold that Delhi courts have no jurisdiction to try this suit. Consequently he ordered the plaint to be returned to the plaintiff for presentation to the proper court. From his order Dalmia appeals to this Court.

(4) This question of jurisdiction came before a division bench of this court in similar circumstances in the case of Union of India v. Bakhtawar Singh Bal

Krishan, (1984) Delhi Law Times 153. A division bench of this court (D.K. Kapur and S. Ranganathan JJ) held that the Union of India is not a natural person. Nor a corporation. It is legal entity. Therefore, the expression used in Section 20 of the Code of Civil Procedure, namely, voluntarily resides, carries on business and personally works for gain refers to natural persons and not legal entities. In Binani Bros. (P) Ltd. v. Union of India, 2nd (1975) II Delhi 196, the same view was taken. The learned judges in Bakhtawar Singh's case followed Binani Bros. (P) Ltd. and held that Union of India cannot be sued at Delhi simply on the ground that it carries on business and works for gain at New Delhi.

(5) Mr. Sayal, on behalf of Dalmia, has strongly relied on Union of India (UOI) and Another Vs. Ladu Lal Jain, . This decision was cited before the judges in Binani Bros. They distinguished the case and said : We do not read the cited case, Therefore, to be lying down the rule that the courts at Delhi will have jurisdiction in regard to all disputes relating to all contracts executed by Union of India simply because the Union has its office at Delhi. As we read Ladulal Jain's case we think that this case was limited to the commercial activity of the railways. Railway was held to be a business. The Supreme Court, Therefore, held that in case of railway you can sue the Government at its headquarters. The principle of that case cannot be extended to all other activities of the Government. The commercial activity is to be distinguished from the sovereign functions of the Government. Rationing of food is a sovereign function. (See Director of Rationing & Distribution v. Corporation of Calcutta, Air 1960 Cat. 1335.) But running of railways is a business, it is the nature of activity which defines its character.

(6) The Railway is a business. But not the present contract which was entered into by Dalmia with the Director General of Civil Supplies. In this case the Director General invited by tender quotations for supply of certain articles. Dalmia submitted a tender. A contract was formed. The Union of India alleged breach of the contract. They claimed damages to the tune of Rs. 4,13,2251-. In terms of the arbitration clause in the contract the disputes between the parties were referred to arbitration. The arbitrator held his sittings at Bombay. He made his award there. So no part of the cause of action arose at Delhi. Only on the ground that the Union of India carries on business at Delhi, Dalmia brought the present suit in Delhi. We are in respectful agreement with the view taken in Bakhtawar Singh's case and hold, in agreement with the learned single judge, that Delhi courts have no jurisdiction to try the suit.

(7) For these reasons the appeal is dismissed. The parties are, however, left to bear their own costs.

(8) The plaint will be returned to the plaintiff for presentation to the proper court.