
(1970) 03 DEL CK 0017
In the Delhi High Court
Case No : First Appeal No. 5 of 1968

R.D. Gupta

APPELLANT

Vs

The New Delhi Municipal Committee

RESPONDENT

Date of Decision : 12-03-1970

Acts Referred:

Citation : (1970) ILR Delhi 38

Hon'ble Judges : V.S. Deshpande, J;Hardayal Hardy, J

Bench : Division Bench

Advocate : M.L. Dhawan, for the Appellant;

Judgement

Hardayal Hardy, J.

(1) This is an appeal against an order made by a learned Single Judge in exercise of the original civil jurisdiction of this Court, on an application u/s 20 of the Arbitration Act, 1940.

(2) The respondent New Delhi Municipal Committee, had invited tenders for carrying out special repairs to roads in Connaught Place New Delhi, vide its resolution dated 22nd March, 1966. The rates received in the tenders being high, the Committee tried to settle the rates by negotiations. On 30th September, 1966, the Committee invited the appellant who was one of the persons submitting the tender, to participate in the negotiations. By letter dated 1st November, 1966, the appellant was informed by the Municipal Engineer of the Committee that his tender for special repairs had been accepted vide Committee's resolution No. 69 dated 14-10-1966 at his tendered percentage and that he should attend the office of the Committee to complete the formal agreement within seven days of the receipt of the letter. The appellant was also required to start the work at once. On 8th November, 1966, the appellant was asked to supply a stamp-paper for executing the " contract so that running payments for the work done by him could be made by the Committee. On 9th November, 1966, the appellant supplied the requisite stamp-paper and a formal

contract was got typed by the Committee. The appellant signed the contract on 10th November 1966.

(3) It however appears that although on the typed contract the words "Vice-President N.D.M.C. New Delhi", "Member N.D.M.C. New Delhi", and "Secretary N.D.M.C. New Delhi" were typed those officials did not actually sign the contract. To the contract thus signed by the appellant alone was annexed the cyclostyled form Public Witness D. 8 which appears to be the standard printed form of agreement and it was mentioned in the contract that the appellant had agreed to undertake the work in accordance with the terms and conditions and specifications contained in the said cyclostyled form Public Witness D. clause 25 of the form Public Witness D. 8 provides for settlement of disputes by arbitration by the Addl. Chief Engineer. Central Public Works Department, in charge of the work at the time of the dispute or, if there be no Addl. Chief Engineer, the administrative head of the said Public Witness D. at the time of such appointment, as arbitrator.

(4) The appellant carried out some work and preferred claims for certain items of work done by him but his claims were rejected by the Committee. He Therefore filed an application u/s 20 of the Arbitration Act in this Court. The application was, however, opposed by the Committee on whose behalf it was contended that since the contract was not executed in accordance with Section 47 of the Punjab Municipal Act, 1911, it was not binding on the Committee and Therefore there was no existing arbitration agreement between the parties.

(5) Section 47 requires that every contract, made by or on behalf of the Committee of any municipality of the first class, whereof the value .or amount exceeds one hundred rupees, shall be in writing and must be signed by two members, of whom the president, or a vice-president shall be one, and that it should also be countersigned by the secretary provided that when the power of entering into a contract on behalf of the Committee has been delegated u/s 46 the signature or signatures of the member or members to whom such power has been delegated shall be sufficient. It is common ground that in the present case there was no such delegation of power and Therefore the contract the value of which admittedly exceeded one hundred rupees, had to be signed by the president or a vice-president and one other member of the Committee and countersigned by the secretary.

(6) SUB-SECTION (3) of Section 47 provides that no contract executed otherwise than in conformity with the provisions of Section 47 shall be binding on the Committee.

(7) It was no doubt alleged by the appellant and the allegation was not denied by the Committee, that the contract made between the appellant and the Committee as a result of acceptance of his proposal was sanctioned by a resolution passed by the Committee at its meeting held on 28-10-1966 and that the said sanction was reduced to writing and signed by the President and

countersigned by the Secretary New Delhi Municipal Committee. But the contention urged on behalf of the Committee was that the resolution passed by the Municipal Committee was no substitute for the agreement as required by Section 47 of the Punjab Municipal Act.

(8) The Committee did not dispute the existence of disputes between the parties as the appellant had obviously made certain claims in connection with the work executed by him and his claims had been declined by the Committee. It was also not disputed that the said disputes were covered by the arbitration clause. The Committee however maintained that in the absence of a formal contract executed in conformity with the provisions of Section 47 of the Punjab Municipal Act, there was no arbitration agreement.

(9) The contention found favor with the learned Single Judge who, Therefore declined to order the alleged agreement to be filed or to refer the disputes to arbitration. Hence the present appeal.

(10) At the hearing of the appeal, learned counsel for the appellant contended that the provisions as to signatures by two members and counter-signature by the secretary, are not mandatory and as such the contract which was not signed in the manner prescribed by Section 47 of the said Act could not be held to be void. He also contended that the contract had been acted upon and the Committee having taken advantage of the services performed by the appellant could not allowed to resile from its obligation to pay for the same as the appellant could not have intended to render those services free of cost. In any case, the only requirement of a valid arbitration agreement as defined in Section 2(a) of the Arbitration Act, 1940 is that it should be in writing and its object should be to submit present or future differences to arbitration. In the present case it was not disputed that the agreement Public Witness D. 8 was in writing and it also contained an arbitration clause. It was there fore not necessary that it should also have been signed by the parties.

(11) The argument is not well-founded. We are not concerned in the present case as to whether the appellant is entitled to sue on quantum meruit; what we are concerned with is whether there is in existence an arbitration agreement which can be ordered to be filed and under which the disputes can be referred to arbitration. It is true that an arbitration agreement which is in writing need not be signed, but the arbitration clause on which reliance is placed by the appellant is an integral part of the contract and if the entire contract does not fulfill the requirements of section 47 it must be held that it does not bind the Committee and consequently there subsists no valid and binding arbitration agreement between the parties.

(12) The decision of the question as to whether the provisions of Section 47 of the Punjab Municipal Act are mandatory and whether a contract which is not signed in the manner prescribed by the said section would not be binding on the Committee stands settled by the Supreme Court in Dr. H.S. Rikhy and Others Vs.

The New Delhi Municipal Committee, where it was held that Section 47 is mandatory and a contract entered into by the municipality otherwise than in conformity with the formalities required under that section is not binding on it.

(13) The difficulty in up-holding the arbitration agreement in the present case Therefore is that such an agreement cannot exist in vacuum. It must be related to some existing contract between the parties out of, or in relation to which the disputes may arise. It is true that there may be arbitration clauses that are wide enough to include claims on quantum meruit, but in a situation like the present where the entire work to be done is covered by a contract which is not binding on the Committee it cannot be said that the arbitration clause exists by itself. In *Khaddah Company v. Raymon & Co. (India) Pvt. Limited* . it was held by the Supreme Court that the expression "arising out of. or "concerning" or "in connection with" or "in consequence of" occurring in a contract may be sufficiently wide to take in a dispute as to the validity of the agreement but when an agreement is found to be had no portion of it can be held to be good and when the whole perishes its parts must also perish. In that case the Supreme Court approved of the following observations of Viscount Simon L.C. in *Heyman v. Darwins Ltd.* 1942 A.C. 356.

"IF the dispute is whether the contract which contains the clause has ever been entered into at all, that issue cannot go to arbitration under the clause, for the party who denies that he has ever entered into the contract is thereby denying that he has ever joined in the submission. Similarly, if one party to the alleged contract is contending that it is void ab initio (because, for example, the making of such a contract is illegal), the arbitration clause cannot operate, for on this view the clause itself also is void. But, in a situation where the parties are at one in asserting that they entered into a binding contract, but a difference has arisen between them whether there has been breach by one side or the other, or whether circumstances have arisen which have discharged one or both parties from further performance, such differences should be regarded as differences which have arisen "in respect of or "with regard" or "under" the contract and an arbitration clause which uses these or similar expressions should be construed accordingly."

(14) We are Therefore in agreement with the learned Single Judge when he says that the test is : is the arbitration clause an integral part of the contract which is illegal and where the contract is determined by something outside its if the arbitration clause is determined with it but if it is determined by something arising out of the contract, the arbitration clause remains effective and can be enforced. In the present case, the arbitration clause if taken in isolation will have to exist in value as the remaining contract does not bind the parties and it must Therefore, be held that the said clause does not remain effective. There is thus no escape from the conclusion that having regard to the circumstance of the case the appellant may be entitled to sue on quantum meruit but so far as the arbitration clause is concerned the same does not subsist.

(15) The argument that the contract had been acted upon and the Committee having taken advantage of the services performed under it by the appellant, could not decline to pay for them, can also be of no avail to the appellant. As we have already said the question is not whether the appellant is entitled to be paid for the work done by him; the question is whether the appellant is entitled to enforce the contract which as we have already said, is not binding on the Committee and the objection as to the validity of the Contract is such that it cannot even be waived by a statutory" like the Municipal Committee.

(16) It may be mentioned here that a provision similar to section 47 of the Punjab Municipal Act also existed in Section 175(3) of the Government of India Act, 1935 and was repeated in substantially the same form in Article 299(1) of the Constitution. But in both these provisions there is nothing comparable to sub-Section (3) of Section 47 of the Punjab Municipal Act which in terms provides that no contract or transfer of the value mentioned in subSection (1) executed otherwise than in conformity with the provisions of the said section shall be binding on the Committee. And yet while construing the relevant provision of the Government of India Act the Supreme Court held in Seth Bikhraj Jaipuria Vs. Union of India (UOI), that contracts which were not expressed to be made and executed in the manner laid down therein were not binding on the Government and no damages could be claimed against the Government by the aggrieved party for breach of such contract. Explaining the purpose of such a provision, Shah J. who spoke for the Court observed :-

"IT is in the interest of the public that the question whether a binding contract has been made between the State and a private individual should not be left open to dispute and litigation; and that is why the legislature appears to have made a provision that the contract must be in writing and must on its face show that it is executed for and on behalf of the head of the State and in the manner prescribed. The whole aim and object the legislature in conferring powers upon the head of the State would be defeated if in the case of a contract which is in "form ambiguous, disputes are permitted to be raised whether the contract was intended to be made for an on behalf of the State or on behalf of the person making the contract. This consideration by itself would be sufficient to imply a prohibition against a contract being effectively made otherwise than in the manner prescribed. It is true that in some cases, hardship may result to a person not conversant with the law who enters into a contract in a form other than the one prescribed by law. It also happens that the Government contracts are sometimes made in disregard of the forms prescribed; but that would not in our judgment be a ground for holding that departure from a provision which is mandatory and at the same time salutary may be permitted."

(17) In the judgment of the Supreme Court there is a reference to an old decision of Bombay High Court in Municipal Corporation of Bombay v. Secretary of State 1905 29 Bombay 5 80 where in a suit between the Government of Bombay and the Municipal Corporation of Bombay, the latter claimed that it was

entitled to remain in occupation, on payment of a nominal rent of an extensive piece of land because of a resolution passed by the Government of Bombay sanctioning such user. Jenkins C.J. in delivering the judgment of the Court observed :-

"I think that a disposition in 1865 of Crown's lands by the Governor in Council was dependant for its validity on an adherence to the forms prescribed and that Therefore the resolution was not a valid disposition of the property for the interest claimed."

(18) Although the case related to disposal of real and personal estate vested in Her Majesty, the case has some relevance in the controversy arising before us. In that case too the Municipal Corporation of Bombay was already in occupation of the land which had been transferred to it on payment of a nominal rent pursuant to a resolution passed by the Government of Bombay. The grant was thus acted upon but since it was otherwise than in conformity with the manner prescribed by the Secretary of State in Council its was held to be invalid.

(19) In Union of India (UOI) Vs. A.L. Rallia Ram, , the Supreme Court was concerned with an award in pursuance of an arbitration clause contained in a form setting out general conditions of contract which was accompanied by the letter of acceptance of tenders issued and signed by the Chief Director of Purchases (Disposals) Food Department Government of India. The arbitrators appointed by the parties having differed, the dispute was referred to an umpire who made an award in favor of the contractor against the Union of India. The validity of the award was challenged, inter alias on the ground that there was no valid arbitration agreement in conformity with Section 175(3) of the Government of India Act, 1935 which authorised the umpire to make his award. The subordinate judge refused the motion for setting aside the award and ordered that a decree be passed in accordance therewith. In appeal against the order refusing to set aside the award, the High Court of Punjab confirmed the order. On appeal to the Supreme Court it was held :-

"THE authority of an arbitrator depends upon the authority conferred by the parties by agreement to refer their differences to arbitration. By section 2(a) of the Arbitration Act 1940 "arbitration agreement" means "a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not." A writing incorporating a valid agreement to submit differences to arbitration is Therefore requisite: it is however not a condition of an effective arbitration agreement that it must be incorporated in a formal agreement executed by both the parties thereto, nor is it required to be signed by the parties. There must be an agreement to submit present or future differences to arbitration, this agreement must be in writing, and must be accepted by the parties. Clause 13 in Form F.D. (M) 70 fulfills all these requirements. But the Dominion of India being a party to the arbitration agreement, to be binding the agreement had also to conform to the requirements of Section 175(3) of the Government of India Act, 1935,lor an

arbitration agreement is a contract within the meaning of the Government of India Act and it must, to bind the Dominion of India, be made in the form prescribed by that section."

(20) Learned counsel for the appellant argued that in spite of the above observation in *Ralia Ram's* case the Supreme Court had nevertheless declined to set aside the award on the ground that there was no valid arbitration agreement between the parties and had even gone to the length of holding that a valid contract might as well result from correspondence. The argument proceeds on a mis-apprehension of what was held in *Ralia Ram's* case. The contract in that case was for "sale of war disposal goods." Section 175(3) of the Government of India Act does not in terms require that a formal document executed on behalf of the Dominion of India and the other contracting party alone is effective. It was Therefore said that in the absence of any direction by the Governor-General u/s 175(3) of the Government of India Act, 1935 prescribing the manner, a valid contract might result from correspondence if the requisite conditions were fulfilled. It was found that the contracts for "sale of war disposal goods" were not directed by the Governor-General to be made by a formal document executed on behalf of the Governor-General as well as by the purchasing party. The Director of Purchases (Disposals) had issued in that case an invitation to tender. He had done so by or on behalf of the Governor-General of India. In response to the invitation the contractor had submitted his tender which was accepted in writing and the acceptance was expressed to be made in the name of the Governor-General and was executed on his behalf by a person authorised in that behalf. It was in these circumstances that it was held that the requirements of Section 175(3) had been met.

(21) In the present case, it is the common case of the parties that the contract was required to be made in accordance with the manner prescribed by Section 47 of the Punjab Municipal Act and since the requirements of that Section had not been complied with there could be no question of the contract being binding on the Municipal Committee.

(22) Counsel for the appellant then referred to the decision of the Supreme Court in *Seth Banarsi Das Vs. The Cane Commissioner and Another*, . The case-does not appear to us to be of any help to the argument of the learned counsel. The U.P. Sugar Factories Control Act which required an agreement to be entered into between the occupier or manager of a factory and the Cane Commissioner did not contain any provision that if the agreement was not entered into in the form prescribed under the rules the agreement would be invalid. The only consequence attaching to the failure to execute the agreement in the form prescribed under the rules was to make it punishable with fine. It was also said in that case that although the form prescribed]by the rules was not used the terms incorporated in the form actually used, were precisely the same as those stated in the form prescribed. Moreover, Section 18(2) of the Act which provided for execution of an agreement was itself held by the Court as capable of being

read as directory. The Court, however, went on to add :-

"EVEN if it be read as mandatory we have shown already that the failure of the appellant to sign the form is not a matter of which he can take advantage regard being had to his own conduct. The blanks also do not matter in view of the existence of form No. 10 which supplied the information accidentally omitted from the agreement. The form is also sufficiently identified by the signature on behalf of the Society and it has been acted upon not only by the Society but also by the appellant who is complaining of the want of signature. In our opinion, the agreement was binding. "It may be pointed out that the arbitration clause in the agreement was enforceable if agreed to, even without the signature of the appellant as it is settled law that to constitute an arbitration agreement in writing it is not necessary that it should be signed by the parties and it is sufficient if the terms are reduced to writing and the agreement of the parties thereto is established. See Jugal Kishore Rameshwardas Vs. Mrs. Goolbai Hormusji, .

(23) It was in these circumstances that the argument advanced by the appellant in that case that there was no binding contract between the parties was repelled by the Supreme Court. The case Therefore does not afford a parallel to the case before us.

(24) The result is that the appeal fails and is dismissed, but in the circumstances there will be no order as to costs. As was observed by the learned Single Judge it is un-fortunate that the appellant should have been prevented from putting forth his claim before a named arbitrator because of a lapse on the part of the officers of the Committee. The appellant had been called upon to supply a stamp-paper for execution of the formal contract. He signed the same and the paper was retained by the Committee for the signatures of two members and counter-signature by its Secretary and yet in complete disregard of their obligations they did not do so. We hope the authorities concerned will not permit a lapse on part of the officers of the Committee to be availed of by the Committee in defeating a just claim of the acceptance in case one is established to their satisfaction.