

(1989) 03 GAU CK 0012
In the Gauhati High Court
Case No : Second Appeal No. 123 of 1979

State of Assam

APPELLANT

Vs

Mahalchand Binod Kumar

RESPONDENT

Date of Decision : 15-03-1989

Acts Referred:

Constitution of India, 1950 — Article 299, 299
Contract Act, 1872 — Section 70, 70

Citation : (1989) 2 GLJ 70

Hon'ble Judges : R.K.Manisana Singh, J

Bench : Single Bench

Advocate : A.R.Paul Majumdar, Advocates appearing for Parties

Judgement

1. This is an appeal from the judgment and decree passed by the learned District Judge Goalpara in Money Appeal No 1 of 1978.

2. Facts The plaintiff supplied 75 quintals of rice to SubInspector of Supply on 3.7.73 as it was urgently required and on the understanding that formal order would be issued on the next day. The Superintendent of Supply, Goalpara, issued a letter dated 4.7.73 to the plaintiff for the supply of 75 quintals of rice for flood relief at Lakhimpur. Thereafter the plaintiff submitted a bill dated 4.7.73 for Rs.9,357.00 for the value of the rice supplied and charges for loading and unloading. The plaintiff instituted the suit on 1.9.76. However the Superintendent of Supply, on the recommendation of the SubDivisional Officer Goalpara paid Rs.9,338.25 to the plaintiff on 29.3.79 after adjustment of loading charges. The plaintiff received the same on 29.3.79 without raising the question of interest during the pendency of the suit. The trial Court dismissed the suit. On appeal the lower appellate Court set aside the decree and awarded interest @ 8%.

3. The /only question which arises for consideration is whether the plaintiff is entitled to interest.

4. The case of the State is that there was no contract whatsoever and, therefore,

the plaintiff is not entitled to interest. It is settled that until a contract, in accordance with the requirements under Article 299, is drawn up there is no complete contract to give rise to contractual obligation under the contract. In other words, if the contract is not drawn up in the form required under Article 99, the contract is not binding on or enforceable against the Government. If any authority is retired v; any refer to State of Punjab vs. /M/S Om Prakash, 4IR 1988 SC 2149. In that case the Supreme Court has held that where the tender of the contractor for construction of bridge was accepted by the Executive Engineer and the letter of acceptance was signed by the Executive Engineer but it was not in the name of the Governor, it could not be said that there was a valid contract in conformity with Article 299 (1) of the Constitution.

5. In view of the decision of the Supreme Court, above, in the present case there was no contract as such for supply of rice under Article 299 (1) of the Constitution. Article 299 of the Constitution makes it clear that State should not be saddled with liability of unauthorised contracts. Therefore, if the contract between the State and the private individual is not in the form required by Article 299 of the Constitution, it cannot be enforced and as such, the State cannot be sued by the private individual for interest.

6. The question then is, Is the plaintiff entitled to interest on the ground of equity ?

7. As in the present case, sometime Government may have to act in emergency, or in pursuance of the welfare policy of the State, Government Officers have to enter into contract orally or through letters, without complying with the provisions of Article 299, for the benefit of the public or the Government. In such a case, section 70 of the Indian Contract Act will step in, and, if the conditions prescribed under section 70 are complied with, the State is bound to make compensation in respect of, or to restore, the thing so done or delivered. Section 70 has been founded on the equitable principle of restitution. In *Bengal Nagpur Railway vs. Ruttanji Ramji*, AIR 1939 PC 67, the Privy Council has held that interest can be awarded in some cases by Courts of equity. In the present case, the plaintiff has been paid by applying the principles under section 70 and not on the basis of contractual right. But the plaintiff has claimed interest by way of damage. It is well settled interest as damage cannot be awarded. If any authority is required, we may refer to *Mahabir Prasad vs. Darga Dutta* AIR 1961 SC 990. For these reasons the plaintiff is not entitled to interest on the ground of equity.

8. In the result, the appeal is allowed. The judgment of the lower appellate Court is set aside. No costs.