(1982) 10 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil First Appeal No. 51 of 1982

State of Rajasthan and Another — APPELLANT

Vs

Jai Narain Jha and Another — RESPONDENT

Date of Decision : 20-10-1982

Acts Referred:

Constitution of India, 1950 — Article 229, 299
Contract Act, 1872 — Section 65, 70
Government of India Act, 1935 — Section 175

Citation : (1982) WLN 628

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.P. Gupta, J.—The only question which arises in this appeal is as to whether there was an agreement between the plaintiff and the State of Rajasthan within the meaning of Article 229 of the Constitution. The trial court held that there was absence of a completed contract within the meaning of Article 229 of th3 Constitution, because the alleged contract was neither expressed to be made by the Governor of the State nor it was executed by or on behalf of the Governor.

2. In this appeal, it was argued by the learned Government Advocate, appearing for the State, that the contract was executed by the General Manager of the State Woollen Mills, Bikaner, who was an officer duly authorised to execute the contract on behalf of the Governor of the State and merely because the contract has not been expressed to have been executed on behalf of the Governor of the State, the same would not amount to non-compliance of the provisions of Article 229 of the Constitution. Learned Counsel relied upon the decisions of their Lordship of the Supreme Court in Union of India (UOI) Vs. A.L. Rallia Ram, and in Davecos Garments Factory and Another Vs. State of Rajasthan, in support of his above contention. Union of India (UOI) Vs. A.L. Rallia Ram, which related to Section 175(3) of the Government of India Act, 1935, which is similar to Article

299 of the Constitution of India, it was held by their Lordships of the Supreme Court that execution of a formal document by the contracting parties is not necessary for due compliance of the conditions of Section 175 of the Government of India Act, 1935 and completion of contract may result from correspondence, if the requisite conditions of Section 175(3) were fulfilled. In that case a tender for the purchase of goods, in pursuance of a notice issued by or on behalf of the Governor General of India, was accepted in writing which was expressed to be made in the name of Governor General and was executed on his behalf by a person duly authorised, was held to be sufficient compliance with the requirements of Section 175(3).

3. In Davecos Garment Factory''s case (3) an agreement expressed to be in the name of the Governor of the State of Rajasthan and executed by the Inspector General of Police, Rajasthan, who was duly authorised by the Governor of Rajasthan, on behalf of the Governor was considered to be sufficient to constitute a legal contract within the meaning of Article 229(1) of the Constitution It was observed in that case that in the absence of properly framed rules, there is no specific requirement of mentioning the word "on behalf of the Governor" at the place where the person authorised by the Governor to enter into the contract, has to append his signature and in the absence there of it is not possible to hold that the contract did not comply with the requirements of Article 299(1) of the Constitution.

4. In the present case also, it is not disputed that the General Manager of the State Woollen Mills was a person duly authorised by the Governor of Rajasthan to execute the contract on his behalf and learned Counsel for the appellant argued that merely on account of omission of the words "on behalf of the Governor of Rajasthan", while the General Manager of State Woollen Mills executed the agreement by appending his signature thereon, it should not be held that Article 299(1) of the Constitution was not complied with and it must be presumed that the contract was executed on behalf of the Governor. The argument is plausible so far as it goes, however, a formidable defect lies in the way of learned Government Advocate in as much as the agreement in the present case has not been expressed to have been executed in the name of the Governor of Rajasthan. In Seth Bikhraj Jaipuria Vs. Union of India (UOI), which case again related to the interpretation of Section 175(3) of the Government of India Act, 1935, it was observed by their Lordships of the Supreme Court as under:

It is clear that the Parliament intended in enacting the provision contained in Section 175(3) that the State should not be saddled with liability for unauthorised contracts and with that object provided that the contracts must show on their face that they are made on behalf of the State i.e. by the Head of the State and executed by the person authorised. The provision, it appears, is enacted in the public interest, and invests public servants with authority to bind the State by contractual obligations incurred for the purposes of the State,

5. It was further observed by their Lordships in the aforesaid case:

The whole aim and object of 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 and 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.

In The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, their Lordships of the Supreme Court specified with clarity the requirements which must be satisfied to make a contract, entered with the State or the Union Government, enforceable under the law:

It is now well settled that the provisions of Article 299 of the Constitution which are mandatory in character require that a contract made in the exercise of the executive power of the Union or of a State must satisfy three conditions viz. (i) it must be expressed to be made by the President or the Governor of the State as the case may be; (ii) it must be executed on behalf of the President or the Governor, as the case may be; and (iii) its execution must be by such person and in such manner as the President or Governor may direct or authorise. Failure to comply with these conditions nullifies the contract and renders it void and unenforceable (See decisions of this Court in The State of Bihar Vs. Karam Chand Thapar and Brothers Ltd., , Seth Bikhraj Jaipuria Vs. Union of India (UOI), end State of West Bengal Vs. B.K. Mondal and Sons,

It was further observed by their Lordships that there was no question of estoppel or ratification in a case where there was contravention of the provisions of Article 299(1) of the Constitution. Thus, one of the essential conditions which must be satisfied before a contract entered into with the State or Union Government or any authority of such Government could be held to be valid and enforceable is that such a contract is expressed to be made in the name of the Governor or the President, as the case may be. There is no doubt that it has been held in some cases referred to above that the contract can be spelled from a number of documents or out of correspondence, but the basic requirement is that the agreement should be in writing and the three conditions specified by their Lordship of the Supreme Court in Bihar Eastern Gauge tic Fishermen Cooperative Society''s case (4) should be fulfilled. It may be pointed out that in Union of India (UOI) Vs. A.L. Rallia Ram, their Lordships of the Supreme Court observed that "the correspondence between the parties ultimately resulting in the acceptence note amounted 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." Similarly in Davecos Garments Factory and Another Vs. State of Rajasthan, , as mentioned above, one of contracting parties was described as "Governor of the State of

Rajasthan". In Rclliaram''s case and Devecos''s case, the only defect pointed out was that the person who executed the documents though duly authorised by the President or the Governor, while appending his signatures to the agreement, did not say in so many words that he bad signed the agreement on behalf of the President or the Governor or that the contract was not contained in one document.

In Union of India (UOI) and Others Vs. N.K. Private Limited and Another, it was observed by their Lordships of the Supreme Court as under:

As can be seen from the various documents already extracted that the tender notice invited offers'' to be addressed to the President of India through the Director of Railway Stores, Railway Board. Under the general conditions the seller was defined to mean the President of India acting through the Director, Railway Stores and in the default clause it was provided that where the buyer fails to execute the contract, the seller shall have power under the hand of the Director, Railway Stors, Railway Board, to declare the contract at an end. In the letter written by Oak on 25-5-1968, as earlier noticed, it was pointed put to the respondents that their offer was not addressed to the President of India as required under clause 1(3) of the Instructions to the Tenders and, therefore, the respondents were required to confirm that their offer can be deemed to have been addressed to the President and is open for acceptance on behalf of the President and their reply should be addreesed to the President of India, through the Director of Railway, Stores, Railway Board. Even the draft contract dated 27-8-1968, in terms of which the respondents were insisting on a final contract to be issued to them by the appellants, was to be executed by the respondents as buyers on the one part and the President of India acting through the Director, Railway Stores Ministry of Railways (Railway Board) as the seller on the other.

7. Thus, it was necessary, in order to fulfil the requirements of Article 299 of the Constitution, that one of the contracting parties should be described as the Governor of the State, though it may act through a person authorised in this behalf.

8. Learned Counsel for the appellant drew my attention to the decision of this Court in Kalu v. Board of Revenue 1979 RLW 526 In that case, the question considered was whether a contract may be considered to have been entered into when the bid list containing signatures of the contractor was signed by the Deputy Commissioner, Excise and Customs in token of acceptance of

the tender. It was admitted in that case undoubtedly that the Deputy Commissioner, who had accepted the bid entered into the contract on behalf of the Government. The first requirement, pointed out by their Lordship of Supreme Court in Bihar Bihar Eastern Gangetic Fishermen Cooperative Society''s case (4) was not subject matter of consideration in that case and no argument or discussion is contained in the judgment in Kalu''s case RLW 1979 (RAJ)526 on this aspect. When one of the mandatory requirements of Article 299 of the

Constitution is that the contract must be expressed to have been entered in the names of the Governor of the State, even though three may not be a formal document and the contract is to be inferred from correspondence or from a number of documents, consisting of a tender, a bid seet and the acceptance note, then also as pointed out by the Lordships of the Supreme Court in Rallia Ram''s case 1), the tender should have been invited by and should have been addressed in the name of Head of the State, so that the contract may be held to have been expressed in the name of the Governor of the State.

9. In the present case, one of the contracting party was J.N. Jha, Managing Partner of M/s Jai Ambey Woollen Industries, Gurgaon, Haryana and the other contracting party has been described as "State Woollen Mills, Bikaner, through its General Manager". It is so apparent, therefore, that the first requirement pointed out by their Lordships of the Supreme Court in Bihar Eastern Gangetic Fishermen Cooperative Society''s case (4) has been not satisfied and as one of the mandotory conditions has not been fulfilled, the contract is nullified and has been rendered void and unenforceable.

10. Learned Government Advocate submitted that a part of the amount, the recovery of which was sought under the certificate issued under the Public Demands Recovery Act, included the price of 56,000 Kgs. of Woollen thread supplied by the State Woolen Mills, Bikaner to the plaintiff and the State was at least entitled to recover the price of the goods supplied by it. If the State has any claim against the plaintiff-respondent in respect of goods supplied by the State Government to it, then the State might claim the price of such goods invoking the provisions of Section 65 or Section 70 of the Contract Act, in a properly constituted suit, but as one of the essential conditions contained in the provisions of Article 299 of the Constitution have not been fulfilled in the present case, there was no binding contract between the parties and the certificate issued on the basis thereof was equally void and unenforceable, as the contract itself Then fore, the trial court was justified in decreeing the plaintiff''s suit setting aside the certificate issued under the Public Demands Recovery Act.

11. In the result, the appeal has no merit and the same is dismissed.

