
(1970) 05 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Second Appeal No's. 485 to 489

State of Rajasthan

APPELLANT

Vs

Jairam Das and Others

RESPONDENT

Date of Decision : 12-05-1970

Acts Referred:

Constitution of India, 1950 — Article 299
Contract Act, 1872 — Section 65, 70

Citation : (1970) WLN 482

Hon'ble Judges : C.M. Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

C.M. Lodha, J.—All these appeals by the defendant State of Rajasthan involve a common question of law, and can be conveniently disposed of by a Single Judgment.

2. It appears that the respondent-plaintiff in all these cases gave highest bid in the auction held on different dates in respect of different areas for royalty collection contract in respect of building stone for the period commencing from 1.4.1958 to 31.3.1959. As provided in the Rajasthan Minor Mineral Concession Rules. 1955 which were then in vogue no bid was to be regarded as accepted unless confirmed by the Government. The plaintiff's complaint is that they deposited 25% of the amount of bid for one year on completion of the auction as provided in Rule 37 of the aforesaid Rules (which for the sake of brevity called "the Rules" hereinafter). But the acceptance of the Government, was not conveyed to the plaintiff till 3.6.1958 by which time two months of the period of contract had already expired. It was alleged that on the receipt of the auction dated 30.3.1958 on 3.6.1958 the plaintiff in all cases refused to execute the contract and informed the Government that they were not prepared to enter into the contract and the amount deposited by them may be refunded to them. However, the Mining Engineer informed the plaintiffs that they were liable to pay

full amount of the contracts and action was being taken to recover the same under the Public Demands Recovery Act. Subsequently it appears that for realisation of the dues the Government actually attached some property belonging to the plaintiff under the Public Demands Recovery Act. Consequently the plaintiffs filed the present suit for refund of of the 25% of the amount of bid for one year paid by them at the time of auction and also prayed for issue of an injunction against the State of Rajasthan restraining them not to realise any amount from the plaintiff in respect of the contracts in dispute.

3. The defendant State of Rajasthan contested the plaintiff's claim, and pleaded that the plaintiff in all the cases had commenced the work from 2.4.1958 and they were liable to pay the whole of the contract money. The defendant took some other technical objections also but they were not pressed in this appeal, and, therefore, it is not necessary to make any reference to those objections.

4. None of the parties examined any witness and merely relied upon the documents produced by them, The learned Munsiff-Magistrate Jaipur City (East) Miss. Mohini Saxena by her judgment dated 18.10.1962 decreed the plaintiff's claims in all the cases for refund of the 25% of the amount of bid deposited by them and also issued a perpetual injunction restraining the defendant from realising the balance of the contract money.

5. The defendant State of Rajasthan filed appeals which have been dismissed by the Sonior Civil Judge, Jaipur City and consequently the State of Rajasthan has come in second appeal in these cases.

6. The only point for determination in these appeals is whether the plaintiffs are entitled to get back the deposits made by them at the time of completion of the auction and whether they are not liable to pay the balance of the contract money?

7. The learned Distt. Judge has held on the basis of a series of decisions of various High Courts that if the contract between the Govt. & any other person is not in compliance with Article 299(1) of the Constitution, it would be no contract at all and not be enforced either by the Government or by the other person as a contract. Article 299(1) provides that all contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise. Admittedly in the present case no contracts were executed as provided in Article 299(1) of the Constitution. It has been repeatedly held by their Lordships of the Supreme Court that in view of Article 299(i) of the Constitution there can be no implied contract between the Government and any other person, the reason being that if such implied contracts were allowed they would in effect make Article 299(1) useless. It has been further held that if there is no contract in full compliance with the aforesaid Article it would be no contract at all and could not be enforced either by the

Government or by the other persons as a contract. Reference in this connection may be made to K.P. Chowdhary Vs. State of Madhya Pradesh and Others, , and Mulamchand Vs. State of Madhya Pradesh, . In view of this of this position of law it is crystal clear that the Government of Rajasthan is not entitled to realise the balance of the contract money as no contract will be deemed to have come into existence in the eye of law in absence of compliance with Article 299(1) of the Constitution.

8. The learned Additional Advocate General, however, argued that Article 299 has been introduced in the Constitution for the benefit of the the Government who alone can take a advantage of it, and not any other party to the contract. Learned Additional Advocate General could not cite any law in support of this submission which in my view cannot be accepted in face of the clear pronouncement of their Lordships of the Supreme Court in the cases referred to above to the effect that the provisions of Article 299(1) of the Constitution are mandatory in character, and the contravention of these provisions nullifies the contracts and makes them void. In other words it would be no contract at all and could not be enforced either by the Government or by the other person as a contract. Thus there is no escape from the conclusion that decree granted by the lower court restraining the defendant from realising the balance of the contract money is perfectly in order.

9. As regards the refund of deposits made by the plaintiffs in these cases on completion of the auction, the learned Additional Advocate General contended that the bidder had actually taken the benefit of the contract and he started collecting royalty in question from 1.4.1958 and did so upto 9.6.1958 when they communicated to the Government that they did not want to execute the contract. It may be observed that even though the defendant-appellant look a plea in the written statement that the plaintiff had actually availed of the contract for two months is did not press for any issue on that point, nor the defendant led any evidence to show that the plaintiff had actually collected royalty for eny period. It may be noticed that in the letter dated 9-6-1958 where by the plaintiff in each case had pressed the desire not to take the contract it was mentioned that two months "period of the contract had already elapsed and no-body had paid royalty to him. To this letter it was never asserted by the Government that the " bidder had started collecting royalty and could not back out of the contract. On the other hand, in the reply dated 21.6.1958 (Ex. 3) it was stated by the Government that notice for surrender was not acceptable unless and until the proper agreement was executed, and from this letter it is further clear that the Government insisted on execution of the contract by the bidder. In this state, again it is not possible to hold that the bidder had actually availed of the contract and had collected any royalty for two months or for any lesser period. It is true that even if the contract is void but it were proved that bidder had collected the royalty in persuance of the completion of auction in his favour but later on abondoned the collection of his own accord, the State could have legitimately claimed the forfeiture of the deposit and plaintiff could not have claimed

restitution of the deposit made at the time of completion of the auction. But in absence of any such evidence we fail to see how, the restitution of the deposits made by the plaintiffs can be refused more so when the circumstance indicate that for want of communication of the acceptance of the bid the bidder had only not collected any royalty but had communicated his desire not to execute the contract as the sanction had not been given in time and two months of the contract period had already elapsed. In these circumstances the State cannot take advantage of Section 70 of the Contract Act and is liable to refund the deposit it has received from the bidder at the time of completion of the auction. In this connection reference may be made to Section 65 of the Contract Act according to which any person who has received any advantage under an agreement which is discovered to be void, is bound to restore it or to make a compensation for it to the person from whom he received it. Consequently the lower courts have rightly decreed the suit for refund of the deposits made by the plaintiffs and the judgments and decrees passed by the courts below in these appeals do not call for any interference.

10. In the result all these appeals are dismissed, but in the circumstances of the case the parties are left to bear their own costs. Let a copy of this judgment be placed on the record of each appeal.