
(1955) 01 CAL CK 0005

In the Calcutta High Court

Case No : Appeal From Appellate Decree No. 1148 of 1949

The Municipal Commissioners of Howrah, Dfdts.

APPELLANT

Vs

Bibhuti Bhusan Banerjee

RESPONDENT

Date of Decision : 21-01-1955

Acts Referred:

Bengal Municipal Act, 1932 — Section 103
Contract Act, 1872 — Section 23

Citation : 59 CWN 762

Hon'ble Judges : S.R. Das Gupta, J; Mallick, J

Bench : Division Bench

Advocate : Bholanath Roy and Satya Charan Pain, for the Appellant; Susil Kumar Biswas, for the Respondent

Final Decision : Dismissed

Judgement

Mallick, J.—The suit out of which this appeal arises is a suit for the recovery of the sum of Rs. 2,999-15 instituted by the plaintiff, who is the respondent before us. The plaintiff is a contractor doing construction work of the Howrah Municipality. His name is registered as a contractor, who can be entrusted to perform such works of the Municipality. It appears that in May, 1944, estimates were prepared by the overseer of the Municipality, one Panchanan Ghatak in respect to seven petty works and these estimates were sanctioned by the Engineer as well as the Vice-Chairman of the Municipality. Upon the estimates being sanctioned the work was entrusted to the plaintiff by the Municipality and seven separate works orders were issued by the Municipality in favour of the Plaintiff. The works were duly performed and thereafter the plaintiff submitted his bills. The value of each one of these contracts is less than Rs. 500 and the total value of the seven works is Rs. 2,790-14. The Municipality not having paid the amount after repeated demands the present suit was instituted for the recovery of the said amount plus interest claimed as, and by way of, damages. A written statement has been filed by the Municipality wherein a number of defences have been set up. It is to be noted that the Municipality does not make

out a case that the contract has not been duly performed or that the work was defective. The substantial defence set up by the Municipality is set out in paragraph 4 of the written statement. The said defence is to the effect that the work covered by the seven works orders was in respect of one scheme, that is, brick-on-edging and putting up a retaining wall in Mallick Lane to be carried out under one contract and it was absolutely necessary under the law to comply with the formalities prescribed by section 103 of the Bengal Municipal Act and Rule 147 of the Municipal Account Rules in the matter of execution of a contract in respect of the said work. But nothing of the kind was done. It is pleaded that the Chairman and the Vice-Chairman illegally adopted the device of deliberately splitting up the estimate for this one work into several parts valuing each part at a figure below Rs. 500 with a view to get round the imperative provisions of the said section 103 and Rule 147. Thereupon on the pleadings several issues were framed and the learned Munsif, who decided the case overruled all the objections of the defendant Municipality and passed a decree in favour of the plaintiff. Against that decree an appeal was taken by the Municipality which appeal was dismissed. The appeal Court concurred with each one of the findings of the learned Munsif. Against the said decision of the appeal Court the present appeal has been taken before us. Mr. Roy appearing on behalf of the appellant confined his argument on one and only one point. He contended that the contracts in suit were illegal being in violation of the mandatory provisions of section 103 of the Bengal Municipal Act. The other points that were urged before the Courts below namely the points as to notice and limitation have not been urged before us. Before we take up the argument advanced by Mr. Roy, it is necessary for us to refer to certain sections of the Bengal Municipal Act. u/s 15 of the Bengal Municipal Act, the Commissioners of the Municipality shall be a body corporate having perpetual succession and a common seal and may sue and be sued in the name of the Commissioners of the Municipality. Section 51 of the Act sets out the powers of the Chairman of the Municipality. It states that Chairman shall exercise all the powers vested by this Act in the Commissioners, and where by any other law power is vested in the Commissioners for any purpose, the Chairman may transact any business or make any order authorised by that law in the exercise of that power, unless it is otherwise expressly provided in that law : Provided that the Chairman shall not act in opposition to, or in contravention of any order of the Commissioners at a meeting or exercise any power which is directed to be exercised by the Commissioners at a meeting. Section 54 provides that in the absence of the Chairman the Vice-Chairman will perform the function of Chairman and is vested with all the powers of the Chairman. Section 103 deals with contracts made by the Municipality. The sections reads as follows :

103(i). The Commissioners may enter into and perform any contract necessary for the purposes of this Act.

(2) Every contract made on behalf of the Commissioners in respect of any sum exceeding two hundred rupees or which shall involve a value exceeding two hundred rupees, shall be sanctioned by the Commissioners at a meeting and

shall be in writing and signed by at least two of the Commissioners, one of whom shall be the Chairman or Vice-Chairman, and shall be sealed with the common seal of the Commissioners:

Provided that in the case of a Municipality the income of which during the preceding year was two and a half lakhs of rupees or more, the provisions of this sub-section shall apply as if the words "five hundred rupees" were substituted for the words "two hundred rupees."

2. It is the common case that the income of the Howrah Municipality is more than two and a half lakhs and hence in sub-section (2) instead of two hundred rupees five hundred has to be read. Sub-section (3) of section 103 says that unless so executed, such contract shall not be binding on the Commissioners. Section 104 makes the Commissioners or any one of them liable for any loss or waste occasioned to the Municipality if such loss or waste is a direct consequence of his misconduct while he was the Chairman, Vice-Chairman or Commissioner. As noticed before, the whole defence of the Municipality is based on section 103(2) of the Act. It has been urged that the contracts in suit constitute a contravention of section 103(2) of the Act. In consequence the contracts are not binding on the Commissioners in terms of section 103(3) of the Act. In order that section 103(2) may apply it has to be established that the contract complained of must be a contract whose value is more than Rs. 500. In this particular case it is not disputed that the value of each one of the contracts in question is less than Rs. 500. Prima facie section 103(2) does not apply in this case. Mr. Roy, however, contended that even though there are seven separate contracts in this case it is in reality a single contract, because it refers to one particular scheme and this single contract has been split up into seven several contracts. If there is a work to be performed or one scheme to be completed, it does not follow that under the Act, there is to be a single contract. It is left to the discretion of the Municipal authorities either to have the work done by a single contract or to split up the work into a number of works to be covered by a number of contracts. The section does not contain any prohibition to that effect, and the section did not contemplate to fetter the discretion of the municipal authorities one way or other.

3. It was left to the Municipality to consider whether a construction work or road repair work is to be covered by a single contract or to be covered by a number of contracts. If the municipal authorities choose to split up the contract, it is their discretion to do it and the Bengal Municipal Act does not contain any prohibition against such splitting up. In that view of the matter it follows that there has not been a violation on the part of the Municipality to split up a work into Seven small works even if it is assumed that a single work had to be done. There being no statutory prohibition against splitting up of one work into several small ones the contracts in suit are perfectly valid in law and are not hit by-section 23 of the Indian Contract Act.

4. Mr. Roy argued that this is a fraud on the statute. His allegation is that both the Chairman and the Vice-Chairman and the contractor were parties to the

fraud. The Courts below came to the definite finding that there was not an iota of evidence of fraud as against the contractor and we are in complete agreement with the Courts below on this finding. Neither has any evidence been led as to the fraud of any other party. No doubt in the written statement there is an allegation that the Chairman and the Vice-Chairman were responsible for this fraudulent conduct. But the evidence that has been adduced in this case does not establish any fraudulent conduct on the part of the Chairman or the Vice-Chairman. It appears that the seven estimates were prepared by the Overseer of the Municipality and they were sanctioned first by the Executive Engineer of the Municipality and then by the Vice-Chairman. No suggestion was made that in fact there was one work and that this one work was split up into seven works at the instance of the Chairman or Vice-Chairman. From the mere fact that the seven works could have been combined into a single work, it does not follow that a single work has been split up into several works and that such splitting up has been done at the instance of the Chairman or Vice-Chairman. It might have been done by the Executive Engineer or his subordinates. There is no evidence to connect the Chairman or Vice-Chairman with this so-called splitting up. Again assuming there is a splitting up it has not been shown that by such splitting up the Municipality has suffered in any way. It is to be noted that the Municipality does not make any grievance that by reason of such splitting up more money has been given to the contractor or that the Municipality has suffered loss in any way. That being so, it is difficult to understand the case of fraud sought to be set up by the Municipality. Be that as it may, as we have already held that there has been no violation of sub-section (2) of section 103 of the Act, the contract cannot be impugned in any way. That being so, the case of the appellant fails and the claim of the plaintiff cannot be resisted. The Courts below further found that even if the contract is held to be illegal, having regard to the fact that the contract was executed and the Municipality got the benefit of the works done by the contractor the Municipality was liable all the same on the basis of quantum meruit obviously u/s 70 of the Indian Contract Act. As we have already held that there has not been any violation of the Statute it is not necessary for us to consider the validity of this contention.

5. In this litigation we do not find any merit in the case of the Municipality. The contractor did the job. No allegation has been made against the contract that he has done it improperly. Not an iota of evidence has been given to establish that the contractor was a party to this irregular act, if any, on the part of the Municipal authorities. That being so, there is no point on the part of the Municipality in refusing to pay the claim of the contractor. Had there been any irregularity in the conduct of the Chairman or the Vice-Chairman, the proper thing for the Municipality to do was to make payment to the contractor and then to proceed against the Chairman or the Vice-Chairman, as the case may be u/s 104 of the Bengal Municipal Act. In any event the contractor ought not to have been harassed, as he has been harassed in this particular case. In the result, we dismiss this appeal with costs.

S.R. Das Gupta, J.

I agree.