

(1981) 01 DEL CK 0025

In the Delhi High Court

Case No : Suit No. 626A of 1978 and Interim Application No. 719 of 1980

Union of India

APPELLANT

Vs

M.S. Rana

RESPONDENT

Date of Decision : 16-01-1981

Acts Referred:

Citation : (1981) RLR 283

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : U.L. Watwani and P.N. Kumar, for the Appellant;

Judgement

Avadh Behari, J.

(1) One Harbhajan Singh was a Govt. Contractor doing work for the Govt. Union of India had a dispute with him. In terms of Cl. 25 of the agreement between them, dispute was referred to sole arbitrator, Mr. N.C. Gupta of the Ministry of works and Housing. The arbitrator made an award in favor of Union of India.

(2) At the time matter was referred, Harbhajan Singh had died leaving behind 4 sons, 2 daughters & a widow. Heirs appeared before arbitrator. He heard them. He came to the conclusion that a sum was due to the Union of India from the deceased Harbhajan Singh. In his award he said : "in view of my findings on the foregoing claim/counterclaims, I hereby award that the claimant (Union of India) is entitled to a sum of Rs.20,958.59 to be recovered from the estate of the deceased Shri Harbhajan Singh in the hands of the present respondents in full and final settlement of the above claims and counter-claims." This was his award dated 28.3.1978. The arbitrator filed the award in court. The respondents, namely, sons, daughters and widow of Harbhajan Singh have filed objections to the award for its setting aside.

(3) Now the legal representatives of Harbhajan Singh who are respondents herein have made an application to this court u/s 41(b) read with schedule 2 of the Arbitration Act and O. 39 rules 1 & 2 and sec. 151, Code of Civil Procedure.

They complain of an office memorandum dated 8.2.1980 issued by the C.P.W.D. of the Govt. of India. The memorandum reads as under :

"ON account of arbitration awards in the favor of Union of India against Shri Harbhajan Singh (deceased) Contractor (through his legal heirs) and also due to minus final bill, an amount of Rs 20,958,59 plus Rs. 63,373 55 P. and Rs 50,969.34 P. i.e., Rs 1,35,301.48 P. (Rupees one lac thirty five thousand three hundred one and paise forty eight only) as per details of the works given below, have become due from the party. The Divisional Officers are, therefore, requested to withhold the said amount whatever may be available with them as payable to the above contractor, and his legal heirs as per statement attached, or due for payment to them on account of any award for any works made in their favor and to very kindly intimate this office the amount so withheld."

(4) Sampuran Singh, respondent No. 2 is one of the sons of Harbhajan Singh. He has made an affidavit that he is a registered Government contractor in his own right and in his personal capacity he has entered into several contracts of various works with the Union of India. Various amounts under these contracts, he says, are due to him from the Union of India But by reason of the office memorandum the Government is refusing to pay the money under the running bills which have fallen due to him. This is his complaint. In other words, what is challenged is the validity of the above office memorandum. He prays that the court should restrain the Union of India from giving effect to the office memorandum dated 8,2.1980. Clause 29(a) of the conditions of contract provides : 285 "Any sum of money due and payable to the Contractor (including security deposit returnable to him) under this contract, may be appropriated by the Government and set off against claim of the Government for the payment of a sum of money arising out of or under any other contract made by the contractor with the Government.

(5) Apparently it is on the strength of this clause that the Government is refusing to pay the running bills of Sampuran Singh. What does this clause mean ? What is its precise scope ? This clause has been productive of much litigation in our courts It has again and again been interpreted by various judges. It was the subject of direct decision by the Supreme Court in Union of India v. Air Foam Industries (P) Ltd, Air 1974 SC. 1263. But the question that now arises for decision has not been considered in any of the cases. The question is whether the Government has a right to refuse payment to Sampuran Singh of money due to him on account of work done by him for the Government in his individual capacity."

(6) Sampuran Singh says that he is a contractor in his own right. He has been a contractor for many years. He started working for the Government in 1965 when his father was alive and has been in this business since then. If there is any claim of the Government against his father Harbhajan Singh the same can be recovered from him (Sampuran Singh) only if he has inherited the estate of his father and to the extent of the assets in his hands. But from money that is due to him in personal capacity the amount due from Harbhajan Singh cannot be

recovered. The clause does not authorise the Government to appropriate and adjust an amount due to Sampuran Singh for the work done by him towards what is due to the Government from Harbhajan Singh. The office memorandum says that from the legal representatives of Harbhajan Singh the amount may be recovered even though the amount may be due to them for the work done by them for the Government. This office memorandum obviously goes beyond the terms of clause 29(a). If any money is due to Harbhajan Singh the Government can certainly recover its claims from that amount, The Government may refuse to pay that amount to the heirs of Harbhajan Singh on the ground that Government has a claim against Harbhajan Singh. But it has no such right if the money is due to Sampuran Singh in his personal capacity for the work done by him which has nothing to do with Harbhajan Singh or with his estate.

(7) Counsel for the Union of India referred me to the definition of the term "contractor" in clause 2(c). The definition says :

"THE contractor shall mean the individual or firm or company, whether incorporated or not, undertaking the works and shall include the legal personal representatives of such individual or the persons composing such firm or company, or the successors of such firm or company and the permitted assigns of such individual or firm or company." This definition does not enlarge the scope of section 29(a) which I have set out above. The term "contractor" certainly includes his legal representatives. But if the legal representative is doing work as an independent contractor, in his own right, in his own individual capacity, then he is not a legal representative of the deceased ("in the sense in which the term defines it. He is a different man altogether. He has a different legal capacity. The clause does not authorise the Government to recover the amount owing by X from Y. Y may be the son of X. But if he is doing work in his personal capacity the money due to him can neither be withheld nor adjusted nor appropriated on the ground that money is due from X. If any estate has come into the hands of Y from X the Government will have a separate remedy in a court of law.

(8) The arbitrator Mr. Gupta was clearly conscious of the legal position. He made it abundantly clear at the end of the award that the respondents, namely, the sons, daughters and widow are liable for Rs. 20,958.49 only as legal representatives to the extent of "the estate of the deceased Shri Harbhajan Singh in the hands of the present respondents." The amount due to Sampuran Singh under contracts which he is executing or has executed cannot be said to be part of the estate of the deceased in his hands. That is his own money. It has nothing to do with his father. It cannot Therefore be withheld or appropriated or adjusted. This is how I read clause 29-A. The office memorandum must Therefore be held to be bad as ultra virus of clause 29. Not only this. It also goes against the award of Mr. Gupta.

(9) Counsel for the Union of India referred me to an order of J.D Jain J. in another case. Suit No. 1080-A of 1978, between the parties where in his order dated 9.9.80 he said that "there cannot be an injunction against withholding of

amounts due to the respondents under various contracts as such, but the Union of India cannot legitimately appropriate or adjust amount due to the respondents in various contracts against their claims under the contract in dispute." Counsel says that this order operates as resjudicata u/s 11, CPC I do not agree. The matter in dispute before Jain J. was different from what is in dispute before me. Another award was in question before him. This award of Rs. 20,958.59 of Mr. Gupta was not in question before Jain J The principle of res judicata will not apply. Jain J. has not said that you recover from Peter what is due from Paul. No one can say this. The clause does not say this. The award does not say this. The award limits the liability to Harbhajan Singh and his estate in the hands of the legal representatives. This is the meaning of the clause read with the definition of the term "contractor". In view of the explicit direction in the award of the arbitrator the Government cannot recover money from Sampuran Singh due to him in his individual capacity and not as the legal representative of Harbhajan Singh. The offending direction in the office memo. is that the divisional officers have been asked to withhold the amounts payable to "legal heirs or due for payment to them on account of any award for any works made in their favor" regardless of the fact whether they have inherited any estate from the deceased or not. In so far as the memo. directs that the amounts "payable to the above contractor" (Harbhajan Singh) or due to him under the awards be withheld there can be no "objection. This is the correct legal position

(10) So the true legal issue is : What is the width of the clause ? The contract restricts the freedom of action. The parties must walk in the narrow way. No Government official in the hierarchy, high or low, can overstep the limits of agreement. Under clause 29-A the contractor says to the Government "You can have your claims against me, my estate and my legal representatives provided they inherit my estate." The clause goes thus far and no further.

(11) For these reasons I restrain the Union of India from giving effect to the office memorandum dated 8.2.1.980 I make it clear that if there is any amount due to Harbhajan Singh the Government may withhold that amount But if any amount is due to Sampuran Singh in his individual right and in his personal capacity that cannot be withheld under the office memorandum. If there is any dispute between the Government and Sampuran Singh the Government may withhold the amount on that account, but they will not adjust the same till the matter is decided by the arbitrator.