

(1975) 12 MP CK 0010
In the Madhya Pradesh High Court
Case No : First Appeal No. 1 of 1971

Union of India (UOI) and Others

APPELLANT

Vs

Chouthmal

RESPONDENT

Date of Decision : 20-12-1975

Acts Referred:

Constitution of India, 1950 — Article 299(1)

Citation : AIR 1976 MP 199 : (1980) ILR (MP) 659

Hon'ble Judges : Raj Krishna Tankha, J;A.P. Sen, J

Bench : Division Bench

Advocate : A.R. Choubey and Rama Gupta, for the Appellant; R.S. Dabir and K.M. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

A.P. Sen, J.—This appeal, preferred by the Union of India and the Chief Administrator, Dandakaranya Project, is directed against the judgment of the First Addl. District Judge, Raipur, decreeing the plaintiff's suit for recovery of Rupees 42,500 as damages for breach of a contract.

2. The facts shortly stated are as follows. In 1964, the Dandakaranya Project was in immediate need of about 5,000 wooden poles for laying electric Transmission lines to the Mana Camp. The plaintiff had evidently approached the Chief Administrator in that connection. On 14-4-1964, while Shri F. A. Lahiri, Conservator of Forests, Dandakaranya Project, was camping at Raipur, the plaintiff made a written offer, Ex. D-3, to the Chief Administrator, Dandakaranya Project for supply of 2,000 sal Electric Transmission poles at the rate of Rs. 40 per pole F.O.R. Kurud.

The Conservator of Forests after obtaining the approval of the Chief Administrator by his memo. No. CF-64/1284, dated 18-4-1964, Ex. P-1, placed an order for the supply of the poles as per specifications given. The terms of the order stipulated, among other things, that the plaintiff would supply 1,000 poles

by 5-5-1964. By this memo the plaintiff was also required to deposit by way of security Rs. 4,000, i.e., 5% of the total value of the goods contracted for, and the deposit was, accordingly, made.

3. By his telegram dated 6-5-1964, followed by his confirmatory memo. No. III/165/W/Cf-64/1598 of even date, Ex. P-7, the Conservator of Forests, however, cancelled the order. This was done at the instance of Secretary to Dandakaranya Development Authority, Government of India, Ministry of Rehabilitation, since the Government were able to locate alternative sources of supply at much cheaper rates, i.e., from the Government of Madhya Pradesh, Forest Department. The plaintiffs case is that the unilateral cancellation of the order constitutes a breach of contract on the part of the Union of India and, therefore, it was liable to pay an amount of Rs. 42,500 as damages for the alleged breach,

4. The learned Addl. Dist. Judge has decreed the plaintiff's claim for damages in its entirety with, pendente lite and future interest thereon at 6% per annum till realization against the Union of India the defendant No. 1. As respects the Chief Administrator, Dandakaranya Project and Shri F. A. Lahiri, Conservator of Forests, Dandakaranya Project, the defendants Nos. 2 and 3, the learned Judge has held that they were not acting in their personal capacity but by virtue of their office, they could not, therefore, be made liable for the alleged contract.

5. The defendant No. 3, Shri F. A. Lahiri, died during the pendency of the appeal, and his name has been struck off from the array of respondents.

6. The short question for consideration in the appeal is whether there was a binding, valid and concluded contract between the parties. The Union of India and the Chief Administrator, the defendants Nos. 1 and 2; as well as the defendant No. 3, the Conservator of Forests, in their written statements pleaded, inter alia, that under the law the so-called order was not a contract and was not binding on the Union of India, as it was not placed for and on behalf of the President of India. They further pleaded that the Chief Administrator and the Conservator of Forests, the defendants Nos. 2 and 3, were not persons authorised to make a contract on behalf of the President of India and, therefore, the alleged contract was not binding or enforceable against the Union of India. That was obviously a plea questioning the validity of the contract because the provisions of Article 299(1) of the Constitution had not been complied with. The learned Addl. District Judge is, therefore, wrong in observing that there is no such plea in the written statements alleging the non-compliance of Article 299(1).

7. In the appeal filed by the Union of India, the principal point taken is that there was no binding contract in view of the breach of Article 299(1) of the Constitution. In the alternative, the second point taken is that, even if the requirements of Article 299 of the Constitution had been complied with, the plaintiff having himself committed a breach of the contract, his claim for damages was not maintainable. In the view that we take on the question

whether or not the provisions of Article 299(1) of the Constitution have been complied with, there is no need for us to go into the question of breach.

8. It is now well settled that where a contract between the Government and a private individual is not in the form required by Article 299(1) of the Constitution, it was void and could not be enforced and, therefore, the Government cannot be sued by a private individual for breach of such a contract. Article 299(1) lays down three conditions for the making of a contract by a Governor of a State. They are: it must be expressed to be made by the Governor; it must be executed, and the execution should be by such person and in such a manner as the Governor may direct or authorise. The principle is that provisions of Article 299(1) are mandatory in character and the contravention thereof nullifies the contracts and makes them void. There is no question of estoppel or ratification in such a case. The reason is that the provisions of Article 299(1) of the Constitution have not been enacted for the sake of mere form but they have been enacted for safeguarding the Government against unauthorised contracts. The provisions are embodied in the Constitution on the ground of public policy--on the ground of protection of general public and these formalities cannot be waived or dispensed with. That is the reason why the plea of estoppel or ratification cannot be permitted in such a case. [See, *Seth Bikhraj Jaipuria Vs. Union of India (UOI)*, ; *State of West Bengal Vs. B.K. Mondal and Sons*, ; *The State of Bihar Vs. Karam Chand Thapar and Brothers Ltd.*, *Union of India v. A. L. Rallia Ram* AIR 1963 SC 1683 ; *The New Marine Coal Co. (Bengal) Private Ltd. Vs. Union of India (UOI)*, ; *State of Madhya Pradesh v Ratanlal* 1967 MP LJ 104 (SC) ; *K.P. Chowdhary Vs. State of Madhya Pradesh and Others*, and *Mulamchand Vs. State of Madhya Pradesh*,].

9. In *The State of Bihar Vs. Karam Chand Thapar and Brothers Ltd.*, , their Lordships of the Supreme Court laid down that the authority need not be by a general but could be by an ad hoc order. The dictum laid down in that case was applied in *Seth Bikhraj Jaipuria Vs. Union of India (UOI)*, , their Lordships pointed out that the manner of conferment of authority upon persons of Government for the purpose of execution of contract may differ from case to case. Sometimes a rule, sometimes a notification and sometimes a special authority may validly issue. Nevertheless, in all the cases, their Lordships have laid down that all the three tests indicated must be satisfied and that Article 299(1) of the Constitution is mandatory. In *State of Madhya Pradesh v. Ratanlal*, (1967 MPLJ 104) (SC) (supra), their Lordships have reiterated these principles. In *State of West Bengal Vs. B.K. Mondal and Sons*, and *The New Marine Coal Co. (Bengal) Private Ltd. Vs. Union of India (UOI)*, , their Lordships said that even if the contract fails, payment may be ordered quantum meruit on the basis of Section 70 of the Contract Act. That view was reiterated in *Mulamchand Vs. State of Madhya Pradesh*, In *K.P. Chowdhary Vs. State of Madhya Pradesh and Others*, , their Lordships have held that the provisions of Article 299(1) of the Constitution do not contemplate implied contract between the Government and any other person.

10. It is now settled by their Lordships that though the words "expressed" and "executed" in Article 299(1) of the Constitution might suggest that it should be by a deed or a formal written contract, a binding contract by tender and acceptance can also come into existence, if the acceptance is by a person duly authorised on this behalf by the President of India. This was stated by me in the *The State of Madhya Pradesh Vs. Firm Gopichand Sarju Prasad and Others*, :

"There was a controversy whether the words "expressed to be made" in Article 299(1) of the Constitution required a formal deed and excluded contracts by mere correspondence. But the controversy has been set at rest by their Lordships in *Union of India (UOI) Vs. A.L. Rallia Ram*, , holding that a contract by tender and acceptance would be valid, provided the other requirements of Article 299(1) are fulfilled, their Lordships made the following pronouncement:--

"It is true that Section 175(3) uses the expression "executed" but that does not by itself contemplate execution of a formal contract by the executing parties. A tender for purchase of goods in pursuance of ,an invitation issued by or on behalf of the Governor-General of India and acceptance in writing which is expressed to be made in the name of the Governor-General and is executed on his behalf by a person authorised in that behalf would confirm to the requirements of Section 175(3)."

11. In *Union of India (UOI) and Others Vs. N.K. Private Limited and Another*, their Lordships, in somewhat similar circumstances, where the Secretary to the Railway Board, on whose behalf offer of a company for purchase of rails was accepted, was not the person authorised to enter into a contract on behalf of the President of India, held that even if the letter of acceptance written by such authority was assumed to be a concluded contract, there was no valid and binding contract brought into existence. It is pertinent to notice their observations in that connection:--

"It is now settled by this Court that though the word "expressed" in Article 299(1) might suggest that it should be by a deed or by a formal written contract, a binding contract by tender and acceptance can also come into existence if the acceptance is by a person duly authorised on this behalf by the President of India, A contract whether by a formal deed or otherwise by persons not authorised by the President cannot be binding and is absolutely void."

In that case, the only person authorised to enter into the contract on behalf of the President was the Director, Railway Stores. It was, however, urged that the Members of the Railway Board were Secretaries to the Central Government and hence the Board on whose behalf the Secretary communicated the acceptance could enter into a binding contract. In repelling the contention, their Lordships observed:--

"This submission also is without force because there is no material before us to conclude that the Board was so authorised. In these circumstances, even if the correspondence shows that the formalities necessary for a concluded contract

have been satisfied and the parties were ad idem by the time the letter of acceptance of the 15th July, 1968 was written, about which we do not wish to express any opinion, there is no valid or binding contract because the letter of acceptance, on the evidence before us, is not by a person authorised to execute the contracts for and on behalf of the President of India."

That precisely is the case here.

12. There is no material before us to conclude that Chief Administrator, Dandakaranya Project much less the Conservator of Forests, were persons authorised to enter into such a contract. The learned Addl. District Judge has, however, by his finding dated 17-2-1969 strangely enough, holds that they were so authorised. That finding is based on an alleged admission which is not there, and on a mis-reading of the relevant orders Shri Dabir, learned counsel for the respondent, frankly confessed that he would add very little beyond the finding of the learned Addl. District Judge. The learned Judge first spells out the so-called admission, stating:--

"In the present case, the copy of the Resolution placed by the defendants on record show clearly that the Government of India had set up a Central Authority to be known as Dandakaranya Development Authority and that the Chief Administrator of Dandakaranya Project (defendant No. 2 in this case) was nominated as the Chief Executive Authority. The plaintiff had in this case called upon, with the permission of the Court, to answer the following interrogatory:

"Under what authority or power did the defendant No. 2 ask the defendant No. 3 to make the contract with the plaintiff and to place an order for supply of the contracted goods with the plaintiff?"

All the three defendants, including the Union of India, have answered the above interrogatory in the following manner :

"As per resolution of the Government of India, Ministry of Rehabilitation, dated 12-9-58, the Chief Administrator, Dandakaranya Project, is the Chief Executive Officer of the Dandakaranya Development Authority. Defendant No. 3 as Conservator of Forests, in the Dandakaranya Project, was directly subordinate to the Chief Administrator (defendant No. 2) in all matters and in duty bound to carry out all orders received from him time to time. The Chief Administrator (defendant No. 2) is also "Head of Department" as defined in Rule 2 (10) of the Supplementary Rules issued by the Govt. of India.

2. That it was under the above authority and power that defendant No. 2 (Chief Administrator) asked defendant No. 3 to make purchase of poles of electric lines at Mana. Accordingly defendant No. 3 placed orders for supply of electric transmission poles with the plaintiff."

13. It is pertinent here to observe that upon the trial of issue No. (1) as a preliminary issue under Order 14, Rule 1 of the Code of Civil Procedure, the plaintiff sought leave to deliver three interrogatories to the defendants under

Order 11, Rule 1 of the Code by his application dated 7-11-1968. The learned Judge, however, by order dated 8-11-1968, permitted only interrogatory No. (2) to be served on the defendants Nos. 2 and 3. There was no leave granted to serve interrogatory No. (1), namely;

"Whether there is any written authorisation from the President of India or a person authorised by him in favour of the defendant No. 2 and/or the defendant No. 3 for making contracts on behalf of the defendant No. 1."

That was the material interrogatory, and since it was not served, there is no question of admission on the part of the Union of India,

14. By making a wrongful assumption, that there is such an admission, the learned Judge has held that the order placed by Shri F. A. Lahiri, Conservator of Forests, the defendant No. 3, acting under the orders of the Chief Administrator, Dandakaranya Project, the defendant No. 2, amounts to a contract expressed to be made in the name of, and for and on behalf of the President of India and, therefore, a valid and concluded contract between the parties. This is what the learned Judge observes:--

"It is hence not denied that the defendant No. 2 acting through the defendant No. 3 was duly authorised by the Union of India to make the contract. It is also not contended that the defendant No. 2 or the defendant No. 3 had not acted on behalf of the Union of India. The letter, by which the order was placed (Ex. P-1) is titled as coming from Govt of India. It was signed by the defendant No. 3 in his official designation. It is also clear from the document Ex. D-4, a letter written by the defendant No. 3, to the defendant No. 2, that the letter approved the said order. The goods were being purchased for a Project of the Govt. of India. No rules have been placed before me to show that the President of India has made any rules that in executing a contract for the said Project the officer authorised in that behalf must describe himself as signing on behalf of the President. Hence, the facts of our case clearly show that the order placed by the defendant No. 3 acting under the orders of the defendant No. 2, amounts to a contract expressed to be made by the President of India and executed on behalf of the President of India. Hence, in answer to issue No. 1, I find that the agreement relied upon by the plaintiff is a valid and legal contract, and the issue is answered in the affirmative."

This finding is wholly unwarranted and proceeds on a deliberate mis-construction of the relevant orders.

15. It is rather strange that the learned Addl. District Judge should have rejected the application made by the Union of India for examining Shri V. Natrajan, Secretary to the Dandakaranya Development Authority, Government of India, Ministry of Rehabilitation, on commission to prove the relevant order for delegation of powers, though he allowed the document to be filed, under Order 13, Rule 1 of the CPC by order dated 4-3-1970. Curiously enough, the learned Judge has made use of the document, and yet treated it as an unproved

document. The document is an authenticated copy of the order, and is on record. The reasons for rejecting it are neither sound nor sufficient. The document is above suspicion and of an unimpeachable character. The Union of India contends that the document is a certified copy of the public document and, therefore, needs no proof. There is no necessity for us to go into the question as the Union of India has since produced the original order, and also copies of the relevant Resolutions of the Government of India, Ministry of Rehabilitation, signed by the Secretary. These documents have been admitted by the respondent and, therefore, there is no need for us to remit the case for formal proof of the documents.

16. The interpretation placed by the learned trial Judge on the documents is patently wrong. The Government of India, Ministry of Rehabilitation has created an authority called the "Dandakaranya Development Authority" for the effective and expeditious execution of Refugee Re-settlement in the Dandakaranya area and for the areas integrated development vide its Resolution dated 12th September, 1958 published in the Gazette of India dated 20th September 1958. According to this Resolution, the Chief Administrator of the Dandakaranya Project shall be the Chief Executive Officer of the Authority. The Authority has been vested with vast powers to create posts, appoint officers, sanction schemes and make direct purchase etc. The Authority also can delegate to the Chief Administrator, Dandakaranya Project, such of its powers as it may deem necessary for the speedy execution of the scheme. As per this Resolution, the Chief Administrator can, in turn, re-delegate with the concurrence of the Financial Advisor and the Chief Accounts Officer any of his powers to his subordinate officers in order to have smooth and efficient running of administration.

17. According to the above Resolution, the Chief Administrator re-delegated purchase powers for purchase of materials on single tender basis including proprietary article upto Rs. 500 (in emergent cases, upto Rs. 1,000) to the Superintending Engineers, Director of Reclamation, and Store Purchase Officer (Hq.) This was the document relied upon in the lower Court by the defendants. The Chief Administrator himself has got powers only upto Rs. 1,000 in this case and hence he had no authority or powers to order purchases more than this amount. The learned Judge, however, has linked the matter with an item in which the purchase power of the Chief Administrator is upto Rs. 15 lakhs. This is only for purchase after invitation of tenders and on negotiation. This has, therefore, no relevance at all in this case, as neither tenders were called for nor the letter was signed on behalf of the President of India. The Conservator of Forests, Dandakaranya Project, who signed the letter, Ex. P-1, had also not been empowered to do so, as only Superintending Engineers, Director of Reclamation and the Store Purchase Officer were authorised.

18. It, therefore, follows that the offer of the plaintiff to supply 2,000 sal electric transmission poles, Ex. D-3, was not in pursuance of an invitation issued by or

on behalf of the President of India; nor was there any acceptance in writing which was expressed to be made in the name of the President and executed on his behalf by a person authorised in that connection. The Conservator of Forests' memo. No. CF-64/1284, dated 18-4-1964, Ex. P-1, placing an order for the supply of poles would not be sufficient compliance of the requirements of Article 299(1) of the Constitution. As a result, no binding contract came into existence and the Union of India could not be made liable for damages for any breach thereof.

19. In view of the discussion aforesaid, there is no need for us to deal with the other questions. We would, however, like to mention that there was a breach of contract on the part of the plaintiff himself, by reason of his failure to supply 1,000 poles by 5-5-1964. The question of such breach is, however, immaterial, as the plaintiff must fail for the reasons already stated. There being no binding, valid and concluded contract between the parties, the so-called order was not a contract and not binding on the Union of India, as it was not placed for and on behalf of the President of India. The plaintiff is, therefore, not entitled to recover any damages for breach of contract.

20. The result, therefore, is that the appeal must succeed and is allowed. The plaintiff's suit is, accordingly, dismissed with costs throughout.