

**(1966) 09 CAL CK 0012**  
**In the Calcutta High Court**

**Case No :** Civil Revn. Case No's. 4196 of 1961 and 5010 of 1963

Union of India (UOI)

APPELLANT

Vs

Lal Chand and Sons and Another

RESPONDENT

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**Date of Decision :** 20-09-1966

**Acts Referred:**

Constitution of India, 1950 — Article 299  
Contract Act, 1872 — Section 21, 70, 72  
Government of India Act, 1935 — Section 175(3)

**Citation :** AIR 1967 Cal 310

**Hon'ble Judges :** Bijayesh Mukherji, J

**Bench :** Single Bench

**Advocate :** Noni Coomar Chakravartti, for the Appellant; Prabodh Kumar Das Gupta and Sachindramohan Ghosh, in C.R. No. 5010 of 1963, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Bijayesh Mukherji, J.—Messrs Lal Chand and Sons and Sree Saraswaty Press Ltd., printers both, printed various forms, in execution of orders to that end by the Government of India, which had supplied the necessary materials for printing. Orders executed, Messrs Lal Chand and Sons submitted their bills, for the jobs done, between March 26, 1942, and February 26, 1943, for

Rs. 64,324 - 4 as. - 4 pies, Rs. 14,229 - 2 as. - 1 pie, and Rs. 33,997 - 9 as. - 2 pies \_\_\_\_\_ totalling Rs. 1,12,550 - 15 as. - 7 pies.

Sree Saraswaty Press Ltd. also submitted their bills, for the jobs done, between April 11, 1942, and March 10, 1943. Payment was made in full on the bills submitted by both.

2. Therefore. Messrs Lal Chand and Sons submitted three bills dated March 15, 1943, for

Rs. 1,005 - 1 anna, Rs. 222 - 5 as. - 3 pies, and Rs. 531 - 3 as. - 6 pies,

----- totalling Rs. 1.758 - 9 as. - 9 pies,

by way of sales-tax on the amount billed for and paid. So did Sree Saraswat Press Ltd., but on March 12, 1943, the date their bill bears, claiming Rs. 1,709--15 as--9 pies, on account of sales-tax, on the amount billed for and paid.

3. B. K. Roy, the Manager of the Forms and Press, Central Forms Store, Calcutta, Government of India, passed for payment of the bills presented so. What was thus passed for was paid.

4. Some twelve years later, that is to say on or about February 19, 1955, it was discovered that through mistake such payment was made on account of sales-tax. Mistake--because, amongst other things, the job work done by the two printers on the basis of materials supplied by the Government of India was no sale within the definition of sale in Section 2, Clause (g) of the Bengal Finance (Sales-Tax) Act, 6 of 1941, and, therefore, not subject to the levy of sales-tax u/s 4 thereof.

5. Result : the printers were called upon to refund the amount given them by mistake. But refund they would not. The stand they took was : "We had to, and did, pay the amount as sales-tax on demand by the sales-tax department. And we reimbursed ourselves of the amount from you, acting merely as collectors on behalf of the then Slate Government." Sree Saraswat Press Ltd. went a little more : "Should the Sales-tax Commissioner agree to refund us the money, we on our part, shall refund the amount to you gladly."

6. Such clash of views led the Union of India to institute two suits--one against each --in the Court of Small Causes of Calcutta for recovery of the amount paid to each by mistake.

7. The suit against Messrs Lal Chand and Sons was decreed by a learned judge of the Small Causes Court on February 29, 1960. And the suit against the other was decreed by another learned judge of the same Court on December 5, 1962. The foundation of each decree was payment of money by mistake within Section 72 of the Contract Act 10 of 1872 and the consequential liability of each payee to repay it

8. Section 38 of the Presidency Small Cause Courts Act, 15 of 1882, was invoked by each of the two unsuccessful printers for setting aside the decrees recorded against them. And the decrees were set aside by the Full Bench, differently constituted on each occasion,--one against Messrs Lal Chand and Sons on July 12, 1961, and the other against Sree Saraswat Press Ltd. on September 12, 1963. The ground on which such reversal rests is absence of a mistake within Section 72 of the Contract Act 1872.

9. This is why the Union of India has come up to this Court in revision.

10. That the transactions of the type these two litigations reveal were not subject to the sales-tax at the relevant time is not in the realm of controversy. Indeed,

on this basic proposition, we are all agreed--Mr. Noni Coomar Chakrayarti appearing for the petitioner. Union of India, Mr. Prabodh Kumar Das Gupta appearing for the opposite party : Sree Saraswaty Press Ltd., and I.

11. The controversy is about the contract for payment of the amount for sales-tax having been an unauthorized one, violated as such a contract has Section 175, Sub-section (3), of the Government of India Act 1935 (25 and 26 Geo. 5 Ch. 42). The controversy is also about Section 72 of the Contract Act 1872 doing any duty in all circumstances here.

12. On the question of the validity of a contract, the like of which is to be seen here, it is now firmly established that the provisions of Section 175, Sub-section (3), of the Government of India Act 1935 are mandatory, even though no consequences for non-compliance therewith are laid down. The guiding principle is the principle of public interest. The State (here the Union or India) cannot be saddled with any liability for unauthorized contracts. See Seth Bikhraj Jaipuria Vs. Union of India (UOI), , followed in State of West Bengal Vs. B.K. Mondal and Sons, . To the same effect is another case Mr. Chakravarti cites, Anath Bandhu Deb Vs. Dominion of India, , where the law laid down is :

".....any and every proposal and acceptance by any one acting on behalf of the vast administration should not be a burden on the public revenue unless the contract is in the prescribed form"

under Section 175, Sub-section (3), of the Government of India Act 1935.

13. That no doubt is true. But for the payment of the sales-tax I do not see any supplementary contract as Mr. Chakravarti does. I see the continuation of the original contract, the validity of which is beyond question and has not been questioned either. What is this payment of sales-tax but ancillary to the original contract? Such little does not go to the contract's root Nor does it change the contract's essential character. But it is to be read into the original contract and forms part and parcel thereof. Therefore, no infraction of Section 175. Sub-section (3), is seen here.

14. Say, I am wrong. And Mr. Chakravarti is right in regarding the subsequent payment of sales-tax on the basis of a supplementary contract. Even so it cannot be struck down. On demand of the sales-tax by the two printers opposite party, B.K. Roy. Manager, forms and Press, by a letter dated March 12, 1943, captioned : "Government of India. Central Forms Store, 166 Dharamtala Street. Calcutta" informed both of them :

"As it has since been decided to pay sales- tax to the contractors, you are requested to sub- suit your bill for the same . ... .":

exhibits 4(a) and A in the suit against Lal Chand and Sons and exhibit A in the suit against Saraswaty Press.

15. Decided by whom? Manager B.K. Roy was the best person to say so. But the

plaintiff petitioner, Union of India, did not examine him in any one of the two suits, though the evidence of Baidya Nath Roy, an assistant in "Government of India Forms and Stores Department. Dharamtala." bears:

"Sri B. K. Roy is still in Govt. service and is posted at Govt. of India Press, Calcutta." : vide his deposition dated January 12, 1960, in the suit against Lal Chand and Sons; and

"B.K. Roy is still in service. He is still a manager of another dept." : vide his evidence on November 23, 1962, in the suit against Saraswaty Press.

16. It is, therefore, clear that the best evidence on the point: who (he payment of sales-tax amount was decided by, has been withheld, with no explanation whatever for non-examination of B.K. Roy who was a mere conduit in informing the contractors about the decision taken for payment of the money for sales-tax. I may therefore, presume, as indeed I do, that were B.K. Roy examined, he would not have supported the plaintiff's case that payment of sales-tax amount was not decided under for authority of the then Government of India. A presumption as this is so much the more strengthened by two considerations. One is, to quote the observation of Subba Rao J. (as his Lordship then was) in *Karamshi Jethabhai Somayya Vs. The State of Bombay*, , a case Mr. Das Gupta cites :

"While it is the duty of a private party to a litigation to place all the relevant matters before the Court, a higher responsibility rests upon the Government not to withhold such documents from the Court."

The higher responsibility remains undischarged. No doubt, in *Karamshi Jethabhai Somayya Vs. The State of Bombay*, the High Court, seized of a first appeal, had had the relevant Government file produced. And it was held by the High Court as well as by the Supreme Court, on the basis, amongst others, of the file, that the contract did not comply with the requirements of Section 175, Sub-section (3), nothing being there to establish that the Superintending Engineer was legally authorised to enter into the contract on behalf of the Government. In the case in hand, what is at stake is so little. The sales-tax money does not lie with the opposite party, but with the State Government instead of with the Union of India. And then to call for, in the latter half of 1966, a file of the first half of 1943, on a petty matter as this, is to call for the impossible. (See paragraph 17 intra.) Hence, I do not think it worth the trouble to go the way the Bombay High Court did.

17. The other consideration strengthening the presumption I have drawn against the Union of India is furnished by the evidence of Baidya Nath Roy again :

"Defdt. also represented to their Delhi Office over this matter. Those letters are not in his file at present." : vide his deposition on January 12. 1960, in the suit against Lal Chand and Sons."

Where have gone the letters (and their replies too) which in the normal course

should have been in the file? Therefore, it looks so probable that B.K. Roy was a conduit of the Delhi Office by which it was decided to pay sales-tax amount to the contractors Delhi Office may mean Government of India or may not too. But let B.K. Roy come and say who payment of sales-tax was decided by and how. He knows it best. But he does not come. All the letters are not in the file, as Baidya Nath Roy says.

18. Such considerations lead to one and only one conclusion : that payment of sales-tax money was duly authorized on behalf of the then Government of India. B.K. Roy having done no more than forwarded the decision to the two opposite party and other contractors as well.

19. Union of India (UOI) Vs. A.L. Rallia Ram, , Mr. Das Gupta refers me to, turns on its own facts--much the most important of which is that the general conditions of contract, which accompanied the letter of acceptance, defined Government as meaning Governor General for India in Council. That, coupled with a fair reading of the correspondence, led to the construction of the contract having been entered into on behalf of the Governor General and having been expressed to be made in his name.

20. What is perhaps apt here is The State of Bihar Vs. Karam Chand Thapar and Brothers Ltd., , laying down the law that ad hoc authority may validly be given to officers other than those mentioned in the rules. B.K. Roy is not one such officer. He simply communicated the decision of paying the contractors the sales-tax amount. Whose decision? It is a fact within the special knowledge of the Union of India. And the Union of India does neither place the relevant matters before the Court, in order to establish who payment of sales-tax money was decided by, nor examine B.K. Roy, the best witness to say who the maker of the decision was. The presumption, must, therefore, be that the decision was by the then Government of India or, to put it very low by an ad hoc authority competent to decide so. In either case, the supplementary contract, as Mr. Chakravarti puts it cannot be hit by Section 175, Sub-section (3) of the Government of India Act 1935.

21. I now turn to the other matter in controversy. Section 70 of the Contract Act 1872 does not do any duty here. It does not, because what is seen here is a contract--be it continuation of the original contract or a supplementary contract. So soon as that is said, Section 70 goes. Because its basis is not a subsisting contract but just the opposite, absence of a contract. Its basis is something done by one for another, coupling with the work so done having been accepted by the other, as explained by the Supreme Court in State of West Bengal Vs. B.K. Mondal and Sons, . I refer to Section 70, as it has been referred to at the Bar, though I do not see its relevance in the context of facts here.

22. I now reach Section 72 of the Contract Act 1872 which, as the law now is, in view of the decisions of the highest authority, Mr. Chakravarti relies upon, such as AIR 1949 297 (Privy Council) , and Sales Tax Officer, Banaras and Others Vs.

Kanhaiya Lal Mukundlal Saraf, , makes no distinction between a mistake of law or a mistake of fact. In the two litigations in hand, what bulks large is a mistake of law. Still Section 72 cannot be attracted. It cannot be, because it occurs in Chapter 5 the heading of which bears ;

"Of certain relations resembling those created by contract.

So Section 72 appearing just there (Chapter 5) does not deal with contracts. But the very foundation of the two litigations is contract. Say if you will, the mistake of law (Sales Tax Act) led to the formation of the contract. So what? Section 41 is there, and the contract for that reason is not voidable. "If money is paid under that contract," to quote from the judgment of Lord Reid in AIR 1949 297 (Privy Council) , (as has been paid here), "it cannot be said that money was paid under mistake of law: it was paid because it was due under a valid contract and if it had not been paid, payment could have been enforced." Or to quote front the judgment of A. N. Sen J. in Jagadish Prosad v. Produce Exchange Corporation Ltd. 80 Cal LJ 170: AIR 1946 Cal 245: "a carefully reasoned judgment", as Lord Reid put it

"That Section (Section 21) deals only with mistake of law which "cause a contract" or which give birth to a contract. . . . .... If therefore a payment made under a mistake of law is not the origin of a contract, such payment would be refundable u/s 72." /P>

But here mistake of law is the origin of the con-tract. Mistake of law has given birth to the con-tract. Ergo, payment is not refundable u/s 72. Ergo, such contract is not voidable either, because of Section 21.

23. There is still another consideration. Even if Section 72 could have been called in aid, though I am clear, it cannot be, it would not have helped matters forward for the Union of India. To Lord Reid's judgment again:

"It may be well to add that their Lordships" judgment does not imply that every sum paid under mistake is recoverable no matter what the circumstances may be. There may in a particular case be circumstances which disentitle a plaintiff by estoppel or otherwise."

No estoppel do I see here, because both mistook the law and both laboured under the same mistake of law. And certainly one is not more to blame than the other; But I do see a circumstance which, in my judgment, disentitles the Union of India to have the refund it prays the Court fur. The circumstance is, not that the opposite party have "eaten up" the money. Section 72 would not have been stalled thereby. The circumstance is, that the opposite party paid the amount, they had received, to the sales-tax department of the then Government of Bengal. Why should they, therefore, be forced to refund the amount which they have not retained? It is said: let them sue the State Government for refund, as they can, on the authority of that class of cases: The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd., or K.S. Venkataraman and Co. Vs. State of

Madras, ." Certainly that is one way of looking at the problem, though this decision will not bind the State Government, not a party here. But much the better way would have been for the Union of India to implead the State Government in its suits, so that it would have been so easy for the Court to decree the suits, were they otherwise capable of being decreed, against the State Government which is retaining the money without any legal claim to retain it. Multiplicity of proceedings would have thereby been avoided. A circumstance as this does, in my judgment, stand between the Union of India and the claim it makes, even if it be held that Section 72 can govern the litigations in hands which, I am clear, it cannot.

24. In the result, the rules fail and do stand discharged

25. Upon all I see, I make no order as to costs.