

Hindustan Construction Co. Vs State of Bihar

Court: Patna High Court

Date of Decision: March 5, 1962

Acts Referred: Constitution of India, 1950 " Article 299(1)
Government of India Act, 1935 " Section 175(3)

Citation: AIR 1962 Patna 336

Hon'ble Judges: V. Ramaswami, C.J; Kanhaiya Singh, J; K. Sahai, J

Bench: Full Bench

Advocate: Balbhadra Prasad Singh, Awadh Kishore Prasad and C.B. Belwaria, for the Appellant; Government Pleader and Ramnandan Sahai Sinha, for the Respondent

Judgement

1. In the suit out of which this appeal arises the plaintiff alleged that the State of Bihar required bricks, Jhama and brickbats for the construction of

(1) Muzaffarpur-Hajipur Road, (2) Muzaffar-Border Champaran-Sagauli Road, (3) Buildings at Muzaffarpur, (4) Buildings at Darbhanga, and (5)

Buildings at Lohata (Motihar). The plaintiff offered tenders in response to the notification by the Public Works Department for supply of bricks etc.

for the execution of the aforesaid schemes. The tenders of the plaintiff were accepted and accordingly bricks were laid and the necessary process

for the supply of materials was taken in hand by the plaintiff. It is said that one of the terms of the contract between the parties was that the Public

Works Department would arrange for the supply of the proper quantity of coal for burning the bricks in various kilns. The defendant, however,

failed to fulfil this part of the contract with regard to the supply of the requisite quantity of coal.

As a result of this the bricks were not burnt and a huge quantity of imburnt bricks was damaged and destroyed by the rains which caused

considerable loss to the plaintiff. The plaintiff, therefore, brought the suit claiming damages for breach of contract. The plaintiff also made an

additional claim for the price of burnt bricks which were actually supplied to the defendant, but the price of which was not paid. The suit was

resisted by the defendant mainly on the ground that the contracts were void as they did not comply with the requirements imposed by Section

175(3) of the Government of India Act and the plaintiff cannot be granted damages For breach of such contracts. With regard to the claim of the

plaintiff for the price of the burnt bricks actually supplied to the Government, the defence was that the amount has already been paid. The suit was

dismissed by the learned Subordinate Judge of Muzaffarpur and the plaintiff preferred an appeal to the High Court against the decree and judgment

of the learned Subordinate Judge.

The appeal to the High Court was heard by Misra and Anant Singh, JJ. It was argued on behalf of the appellant that the provisions of Section

175(3) of the Government of India Act were not mandatory in character and it is open to the State Government to waive the irregularities and to

ratify the contracts. It was contended that the plaintiff was entitled to damages from the defendant for its failure to supply the requisite quantity of

coal and the consequent loss to the plaintiff with regard to the huge quantity of unburnt bricks destroyed by the rains. With regard to the claim of

the plaintiff for the price of the burnt bricks actually supplied to the Government, the argument was that the finding of the learned Subordinate

Judge was erroneous and the plaintiff has not been paid the price of the fully burnt bricks actually supplied. In support of these contentions counsel

on behalf of the plaintiff relied upon the decision of a Division Bench of the High Court in *State v. K. T. and Brothers Ltd.* ILR Pat 1067 where it

was held that non-compliance of the formalities of Section 175(3) of the Government of India Act 1935, only rendered the agreement between the

parties unenforceable and not void.

It was also held by that Bench that such a contract might be ratified by the Government, which ratification may not be in accordance with the

provisions of Section 175(3) of the Government of India Act. Reliance was also placed on behalf of the appellant on the observations of Bose, J.

in *Chatturbhuj Vithaldas Jasani Vs. Moreshwar Parashram and Others*, . On behalf of the respondent the learned Government Pleader relied upon

a decision of another Division Bench of this High Court in *Dominion of India Vs. Raj Bahadur Seth Bhikhray Jaipuria*, where it was held that the

provisions of Section 175(3) of the Government of India Act were mandatory in character and, therefore, a contract in order to be binding and

enforceable against the Union Government must be made in strict conformity with the formalities prescribed by Section 175(3) of the Government

of India Act. It was further held in that case that if these formalities were not complied with, the contracts were void and unenforceable against the

Union Government and there was no question of estoppel or ratification in such a case.

In view of these conflicting decisions the learned Judges hearing the First Appeal have formulated the following questions of law for decision by the

Full Bench:

(1) Whether a contract with the Union Government or the State Government made without complying with the formalities of Section 175(3) of the

Government of India Act, 1935, or Article 299(1) of the Constitution, of India, is void or merely unenforceable?

(2) Whether such a contract could be ratified at a subsequent stage by the Government?

(3) Whether the Government can be made liable to compensate the person delivering any goods or rendering any service in pursuance of such a

contract the benefit of which has been enjoyed by the Government"?"

2. After hearing learned counsel for both the parties we consider that the third question referred to the Full Bench should be slightly modified in the

following manner in order to bring out the real point in controversy between the parties:

If the contract is void and not merely unenforceable, is the Government liable u/s 70 of the Indian Contract Act to compensate the person

delivering any goods or rendering any service in pursuance of such a void contract the benefit of which has been enjoyed by the Government?

3. After the reference was made to the Full Bench there have been three decisions of the Supreme Court The State of Bihar Vs. Karam Chand

Thapar and Brothers Ltd., ; Seth Bikhraj Jaipuria Vs. Union of India (UOI), and State of West Bengal v. B. K. Mondal and Sons, (an unreported

decision of the Supreme Court in Civil Appeal No. 286 of 1958, D/- 5-12-1961 (now reported in State of West Bengal Vs. B.K. Mondal and

Sons,) which fully cover the questions arising for decision in the present case. It is also necessary to notice that the decision of this High Court in

Dominion of India Vs. Raj Bahadur Seth Bikhraj Jaipuria, which is a decision of Ramaswami, C. J. and Kanhaiya Singh, J., has been affirmed by

the judgment of the Supreme Court reported in Seth Bikhraj Jaipuria Vs. Union of India (UOI), . It has been held in this case that where a

contract between the Dominion of India and the private individual is not in the form required by Section 175(3) of the Government of India Act, it

is void and cannot be enforced, and, therefore, the Dominion of India cannot be sued by a private individual for compensation for breach of such a

contract.

The same principle has been reiterated by the Supreme Court in the later case, Civil Appeal No. 286 of 1958, D/- 5-12-1961: State of West

Bengal Vs. B.K. Mondal and Sons, . The principle is that the provisions of Section 175(3) of the Government of India Act 1935, or the

corresponding provisions of Article 299(1) of the Constitution of India, are mandatory in character, and the contravention of these provisions

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

Section 175(3) of the Government of India Act and the corresponding 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 Section 175(3) of the Government of India Act and Article 299(1) of 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.

If the plea of the appellant regarding estoppel or ratification is admitted, that would mean in effect the repeal of an important constitutional provision

intended for the protection of the general public. That is why the plea of estoppel or ratification cannot be permitted in such a case. But if goods

are supplied or if services are rendered in terms of the void contract, the provisions of Section 70 of the Indian Contract Act may be applicable. It

has been held by the Supreme Court in Civil Appeal No. 286 of 1958, D/- 5-12-1961: State of West Bengal Vs. B.K. Mondal and Sons, that if

the conditions imposed by Section 70 of the Indian Contract Act are satisfied, then the provisions of that section can be Invoked. It has been

pointed out by the Supreme Court in that case that three conditions should be satisfied before Section 70 of the Indian Contract Act can be

invoked. The first condition is that a person should lawfully do something for another person or deliver something to him; the second condition is

that in doing the said thing or delivering the said thing he must not intend to act gratuitously; and the third condition is that the other person for

whom something is done or to whom something is delivered must enjoy the benefit thereof.

When these conditions are satisfied, Section 70 imposes upon the latter person the liability to make compensation to the former in respect of, or to

restore, the thing so done or delivered. It was pointed out by Gajendragadkar, J. that in a case falling u/s 70 the person doing something for

another or delivering something to another cannot sue for the specific performance of the contract, nor ask for damages for the breach of the

contract, for the simple reason that there is no contract between him and the other person for whom he does something or to whom he delivers

something. So where a claim for compensation is made by any person against another u/s 70, it is not on the basis of any subsisting contract

between the parties (sic-but?) a different kind of obligation. In my opinion, the juridical basis of the Obligation in such a case is not founded upon a

contract or tort but a third category of law, namely, quasi-contract or restitution. In Fibrosa v. Fairbairn 1943 AC 32 at p. 61, Lord Wright has

stated as follows:

....any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to

prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep. Such

remedies in English Law are generically different from remedies in contract or in tort, and are now recognised to fall within a third category of the

common law which has been called quasi-contract or restitution.

In *Nelson v. Larholt* (1948) 1 KB 339 Lord Penning has stated the legal position in the following manner :

It is no longer appropriate to draw a distinction between law and equity. Principles have now to be stated in the light of their combined effect. Nor

is it necessary to canvass the niceties of the old forms of action. Remedies now depend on the substance of the right, not on whether they can be

fitted into a particular framework. The right here is not peculiar to equity or contract or tort, but falls naturally within the important category of

cases where the court orders restitution if the justice of the case so requires.

4. In view of the principles laid down by the Supreme Court we are of opinion that the questions of law referred to the Full Bench must be

answered in the following manner :

(1) A contract with the Union Government or the State Government made without complying with the formalities of Section 175(3) of the

Government of India Act, 1935 or Article 299(1) of the Constitution of India, is a void contract and not merely unenforceable.

(2) Such a void contract cannot be ratified at a subsequent stage by the Government. There is no question of estoppel or ratification with regard to

a contract of this description.

(3) If the goods have been delivered or services have been rendered to the Government in pursuance of such a void contract, then an obligation is

imposed upon the State Government u/s 70 of the Indian Contract Act to make compensation to the person delivering the goods or rendering the

services, provided the conditions imposed u/s 70 of the Indian Contract Act are satisfied, as pointed out by the Supreme Court in *State of West*

Bengal v. B. K. Mondal and Sons (Civil Appeal No. 286 of 1958, decided on the 5th December, 1961):

Let the records be placed now before the Division Bench for being dealt with in accordance with the answers given above.