

Davecos Garments Factory And Anr. vs State Of Rajasthan on 31 August, 1970

Equivalent citations: AIR1971SC141, (1970)3SCC874, 1970(3)WLN27, AIR 1971 SUPREME COURT 141

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Bench: A.N. Grover, K.S. Hegde

JUDGMENT

A.N. Grover, J.

1. This is an appeal from a judgment of the Rajasthan High Court in which the sole question for determination is whether the agreements which were executed between the appellant and the respondent fulfil the requirements of Article 299 of the Constitution.
2. In a suit filed by the respondent against the appellant for recovery of Rs. 86,000 as damages for breach of contract on the basis of agreements which, were executed by the Inspector-General of Police Rajasthan a preliminary issue was framed to the following effect:

Whether the agreements are not in accordance with Article 299 of the Constitution of India and hence the suit is not maintainable?

The trial court held that the agreements complied with the provisions of the aforesaid Article. Its decision was upheld by the High Court where the matter was taken on the revisional side.

3. Para. 1 of the main agreement which was executed on March 22, 1960 was as follows:

An agreement made on 22nd day of March, 1960 between Messrs. Daveco's Garments, Jaipur (hereinafter called the approved Contractor which expression shall, where the context so admits, be deemed to include his heirs, successors, executors and administrators) of the one part and the Governor of the State of Rajasthan (hereinafter called the Government which expression shall, where the context so admits be deemed to include his successors in office and assigns) of the other part." In Clause 4(1) it was clearly provided that the payment was to be made by the Government through the Inspector-General of Police, Rajasthan, at the rate set forth in the schedule. In Clause 3(a) the Government agreed that if the contractor duly

fabricated the contracted articles and complied with the terms and conditions of the contract the Government, through the Inspector General of Police, would pay to the contractor the amount payable for each and every consignment.

The concluding portion of the agreement was as follows:

In witness whereof the parties hereto have set their hand on 22nd day of March, 1960. Signature of the approved contractor. Accepted. Witness: 1 Witness: 2 Sd. L G. of Police, Rajasthan, Jaipur.

4. Article 299(1) of the Constitution provides that all contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such person and in such manner as he may direct or authorise. It is common ground that the agreement Annexure B was expressed to be made by the Governor of the State of Rajasthan who was to be called the "Government" in its other clauses and that the Inspector General of Police had been duly authorised to execute the same on his behalf. The sole objection taken was to the form of execution inasmuch as it was not stated in so many words that the Inspector General of Police had signed the agreement on behalf of the Governor. This gave rise to the contention which was pressed in the courts below and before us that all the requirements of Article 299 of the Constitution were not satisfied.

5. The present appeal stands concluded by the judgment of this Court in *Union of India v. A. L. Rallia Ram*, in which it was held that the letter of acceptance of the tender signed by the Chief Director of Purchases fulfilled all the requirements of Section 175(3) of the Government of India Act, 1935. That section employed the same language as is to be found in Article 299(1) of the Constitution. The Chief Director of Purchases had subscribed his signature in his official designation and had not stated in the description that the contract was executed on behalf of the Governor-General but the court found that on a fair reading of the contents of the letter in the light of the obligations undertaken there under it would be reasonable to hold that the contract was executed on behalf of the Governor-General. It was added that no rule made by the Governor-General had been placed before the court showing that in executing a contract for the sale of "war disposal goods" the officer authorised in that behalf must describe himself as signing on behalf of the Governor-General of India. There can be no manner of doubt that in the present case on a reading of Annexure B and in particular Clauses 1 and 4, the agreement was expressed to be made by the Governor and was also executed on his behalf.

6. The learned Additional District Judge and the High Court referred to Rule 255 of the General Finance and Account Rules which deal with the purchase of stores for use in the public service but it was rightly held that they did not govern the execution of contracts for the fabrication of garments. In the absence of any properly framed rule requiring the specific mention of the words "on behalf of the Governor" at the place where the authority authorised by the Governor to enter into the contract has to append his signature it is not possible to hold that the agreements in the present case did not

fully comply with the requirement of Article 299(1) of the Constitution. The appeal fails and it is dismissed with costs.

7. It is unfortunate that the suit has remained stayed on account of the pendency of the proceedings arising out of the interlocutory order disposing of the preliminary issue. It is hoped that the trial court will now proceed to dispose of the suit expeditiously.