

## **Zodiac Electricals Pvt. Ltd. vs Union Of India (Uoi) And Ors. on 1 May, 1985**

**Equivalent citations: AIR 1986 SC 1918, 1986(2) ARBLR 228(SC), 1986(1) SCALE 1360, (1986) 3 SCC 522, 1986(2) UJ 576(SC), AIR 1986 SUPREME COURT 1918, 1986 2 ARBI LR 228, 1986 2 UJ (SC) 576, 1986 (3) SCC 522**

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**Bench: A.N. Sen, P.N. Bhagwati**

### **JUDGMENT**

P.N. Bhagwati, J.

1. This appeal by special leave raises a very short question of construction of certain correspondence between the appellants and the Directorate General of Supplies & Disposals (hereinafter referred to as DGS&D). The question is whether as a result of this correspondence a concluded contract came into being between the appellant and the Govt. of India acting through the DGS&D.

2. The DGS&D invited tenders for ACSR Conductors. The tender forms were issued by the DGS&D along with the Schedule, which set out the terms and conditions, on which the tenders were invited. Clause 4 of the Schedule dealt with the question of delivery while Clause 8 provided for giving of security deposit. The appellants by their letter dt. 9th June, 1979 submitted their tender to the DGS&D for certain quantity of ACSR Conductors on the terms and conditions set out in the Schedule which was submitted by them along with the tender. The appellants stipulated in Clause 4 of the Schedule that delivery would commence after 30 days from the date of receipt of commercially and technically clear detailed order from the DGS&D and the ACSR Conductors will be supplied at the rate of 30M/ tonnes to 35M/ tonnes aluminium content per month or 1/6th of the ordered quantity per month whichever was less and under Clause 8 of the Schedule the appellants made it clear that since they were registered with DGS&D and National Small Industries Corporation, they should not be required to furnish any security deposit. It is clear from this tender and the Schedule accompanying it that the offer made by the appellants for supply of ACSR Conductors was on the condition that they would not furnish any security deposit and this offer was kept open for acceptance upto 15.8.79. The DGS&D addressed two letters to the appellants both dt. 13th August, 1979. It does not appear clear from the record as to which of the two letters was addressed first in point of time. But nothing turns upon it and we need not, therefore, try to ascertain as to which letter was addressed first and which letter was written subsequently on the same day. In one of the two letters dt. 13th August, 1979, the DGS&D pointed out that it may not be possible for DGS&D to take a final decision by 15th August, 1979 upto which the offer was kept open

by the appellants and therefore the DGS&D requested the appellants to keep the offer open until 15th September, 1979 and added that this request for extension of the offer was being made without prejudice to the purchaser's right of acceptance of the offer of the appellants upto 15th August, 1979. This letter showed that the DGS&D wanted the appellants to keep their offer open till 15th September, 1979, but they reserved their right to accept the offer upto 15th August, 1979. The offer here referred to was obviously the offer as made by the appellants which included a condition that no security deposit shall be required to be made by them. The DGS&D by the other letter dt. 13th August, 1979 informed the appellants that the offer made by the appellants in the tender submitted by them was accepted on the terms and conditions specified in the Schedule to the tender form. This Schedule contained a term in Clause 8 that security deposit shall be required to be made by the tenderer. It was also made clear in Clause 9 of the Note set out at the foot of this letter dt. 13.8.79 that in terms of Clause 7 of the General Conditions of the Contract, under which the appellants had tendered, the appellants were required to deposit by 15.9.79 a sum of Rs. 75,000/- as security deposit for due performance of the contract. It is, therefore, obvious that though in the opening part of this letter dt. 13.8.79 the DGS&D appeared to accept the offer contained in the tender of the appellants, they did not unconditionally accept this offer, because they insisted that the appellants should deposit by 15.9.79 a sum of Rs. 75,000/- as security deposit. The DGS&D thus added a condition which was contrary to the stipulation made in the offer of the appellants. This letter dt. 13.8.79 could not possibly, therefore, be regarded as unconditional acceptance of the offer of the appellants and in the circumstances it could not be possibly contended that a concluded contract had been arrived at between the parties by reason of this letter dt. 13.8.79. This letter dated 13.8.79 was really in the nature of a counter-offer made by the DGS&D to the appellants. The question is whether this counteroffer was accepted by the appellants.

3. The respondent contended, and this contention found favour with the High Court, that the counter-offer made by the DGS&D by their letter dt. 13.8.79 was unconditionally accepted by the appellants by sending a telegram to the DGS&D on 21.8.79 and addressing a letter to DGS&D confirming the telegram. Since the entire controversy between the parties has arisen on the question whether this telegram and confirmatory letter could be treated as constituting unconditional acceptance of the center-offer made by the DGS&D, it is necessary to reproduce these two documents in extenso. It will be enough to reproduce only the confirmatory letter because it contains the telegram as well. The confirmatory letter reads as follows:

We confirm having sent a telegram as under:

PUORTNIP NEW DELHI We accept your advance order No.ES-4/201/661 & 801/34/072/PAOS dt. 13.8.79. Further in reference to your letter No. ES-4/201/661 & 801/34/9-10 dt. 13.8.79 ' we extend the validity of our offer upto 15.9.79 from 15.8.79.

Zodiac We hope you must have received above telegram and found the same in order and as required by you.

We request you to kindly issue the detailed order at your earliest so that we can plan the delivery accordingly.

Mr. Talukdar learned Counsel appearing on behalf of the respondents contended that the first part of this telegram made it clear that the appellants were accepting the advance order contained in the letter dt. 13.8.79 and since there was nothing to show that this acceptance was in any manner qualified, it must be read as constituting unconditional acceptance of the counter-offer made by the DGS&D resulting in a concluded contract between the parties. This contention, though it found acceptance with the High Court, is in our opinion not well founded, because it ignores the second part of the telegram by which the appellants extended the period for acceptance of the original offer made by them from 15th August, 1979 to 15 September, 1979. If the acceptance of the counter-offer made by the DGS&D was unconditional it is difficult to imagine why the appellants should have extended the period for acceptance of the original offer made by them. The original offer made by the appellants clearly contained the term that no security deposit would be made by the appellants while the counter-offer made by the DGS&D stipulated in so many terms that a sum of Rs. 75,000/- will be deposited by the appellants as security deposit. If the condition that the security deposit of Rs. 75,000/- shall be made by the appellants as stipulated in the counter-offer of the PGS&D was accepted by the appellants by sending the telegram, we fail to understand what was the earthly reason for which the appellants extended the period for acceptance of their original offer which provided in so many terms that no security deposit shall be made. The second part of the telegram extending the period for acceptance of the original offer made by the appellants clearly shows that the appellants never intended to send an unqualified acceptance of the counter-offer made by the DGS&D. It is undoubtedly true that in the first place of the telegram the appellants used the expression, "we accept your advance order", but in the context of the second part of the telegram this expression can only mean that the appellants were acknowledging receipt of the advance order which contained the counter-offer. The telegram could not therefore be construed as amounting to unconditional acceptance of the counter-offer made by the DGS&D.

4. Mr. Talukdar then relied upon that part of the letter dt. 21.8.79 which, following upon the confirmation of the telegram, contained a request by the appellants to the DGS&D to issue a detailed order at their earliest so that the appellants could plan the delivery accordingly. But this statement in the letter, far from supporting the contention of Mr. Talukdar, goes against it, because it clearly indicates that the matter was still under negotiation between the parties. This statement in the letter cannot possibly help the respondent, because it is in line with what has been stated in the telegram and it clearly shows that when the appellants extended the period for acceptance of the original offer made by them, they requested the DGS&D to accept their original offer and issue the detailed order at their earliest, so that the appellants could plan the delivery in time. We are, therefore, of the view that the original offer contained in the tender submitted by the appellants, the two letters dt. 13.8.79 addressed by the DGS&D to the appellants and the telegram and the confirmatory letter dt. 21.8.79 sent by the appellants to the DGS&D, did not constitute any concluded contract between the parties.

5. If there was no concluded contract between the parties, then obviously the arbitration clause said to be contained in the contract could have no existence and in that event the appellants must succeed in the petition filed by them in the High Court under Section 33 of the Arbitration Act challenging the existence of the arbitration agreement. We accordingly allow the appeal, set aside the judgment of the High Court and hold that there was no concluded contract between the parties and hence no arbitration agreement binding upon them. There will be no order as to costs throughout.