Karamshi Jethabhai Somayya vs The State Of Bombay on 3 March, 1964

Equivalent citations: 1964 AIR 1714, 1964 SCR (6) 984, AIR 1964 SUPREME COURT 1714

Bench: K.C. Das Gupta, Raghubar Dayal

PETITIONER:
KARAMSHI JETHABHAI SOMAYYA

Vs.

RESPONDENT:
THE STATE OF BOMBAY

DATE OF JUDGMENT:
03/03/1964

BENCH:
SUBBARAO, K.
BENCH:
SUBBARAO, K.
GUPTA, K.C. DAS
DAYAL, RAGHUBAR

CITATION:
1964 AIR 1714 1964 SCR (6) 984
CITATOR INFO :
RF 1980 SC1285 (10)

ACT:
Agreement-Concluded by Superintending Engineer-If hit by s. 175(3) of Government of India Act -Supply of Irrigation water-Transfer of right-If permission needed-Government of India Act, 1935 (26 Geo. v. Ch. 2), s. 175(3). Bombay Irrigation Act, 1879 (Bom. of 1879), ss. 3(6), 4, 27-30.

HEADNOTE:
One K had obtained sanction to irrigate certain lands from a canal. The same year the Government proposed to reserve certain area along the canal as factory area. According to the appellant after some correspondence between the Government and K, the Superintending Engineer agreed to exclude K's land from the factory area and also to give water perpetually on the condition that he concentrated all his holding on the tail outlet of the canal and to take the

supply of water on volumetric basis. Pursuant to that arrangement, K concentrated his holdings and shifted his operations to that area and he was supplied water on the agreed basis. Later the appellant and K entered into a partnership in respect of exploiting this area. Disputes arose between the appellant and K which culminated in a consent decree whereunder the appellant became the full owner of the land including the right to use this canal water. When the appellant applied for the recognition of the transfer the canal officer refused to do so. On appeal be was informed that his request for supply of the canal water could not be granted. The supply was stopped. After giving them statutory notice under s. 80 of the Code of Civil Procedure, the appellant filed a suit against the State for a declaration of his right to water from the canal and for consequential reliefs. The State contested the suit contending, inter alia, that there was no concluded agreement between the Government and K. that even so, the agreement was void inasmuch as it 'did not comply with the provisions of s. 175(3) of the Government of India Act, 1935 and in any view the appellant could not legally get the benefit of the agreement under s. 30 of the Bombay Irrigation Act. The Civil Judge held that there was a concluded agreement between the Government and K, but the transfer by K of the said right in favour of the appellant was in violation of the provisions of the Bombay Tenancy and Agricultural Lands Act and dismissed the suit. On appeal, the High Court held that there was neither a concluded agreement between K and the Government nor did it comply with the requirements of law, and the appeal was dismissed.
On appeal by special leave:
Held- (i) The documents in the instant case record a concluded agreement between the Superintendent Engineer, acting on the order of

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the Minister of Public Works Department, on the one hand and K on the other agreeing to supply water so long as K had cane cultivation in the concentrated area.
(ii) The provisions of Bombay Irrigation Act establishes that every person desiring to have supply of water from a canal shall apply in the prescribed manner to the Canal Officer and that person to whom water is supplied cannot transfer his right to another without the permission of the Canal Officer. But if the land in respect whereof the water is supplied is transferred, the agreement for the supply of water also shall be presumed to have been transferred along with it.
(iii) The conduct on the part of the Government as well as that on the part of K and the appellant also establishes that the agreement was not under the Bombay Irrigation Act , but between the Government and K.
(iv) The agreement is void, as it has not complied with the provisions of s. 175(3) of the Government of India Act. The

contract was not either entered into by the person legally authorised by the Government to do so or expressed to be made in the name of Governor.
Seth Bikhraj Jaipurja v. Union of India, [1962] 2 S.C.R. 860 and New Marine Coal Co. v. Union of India, [1964] 2 S.C.R. 859, referred to.
Union of India v. Rallia Ram, A.I.R. 1963 S.C. 1685, referred to.
Semble: 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 document from the Court.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 552 of 1962. Appeal by special leave from the judgment and decree dated August 22, 1960 of the former Bombay High Court in appeal No. 432 of 1954 from Original Decree.

M. K. Nambiar, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the appellant.

D. R. Prem, B. R. G. K. Achar and R. H. Dhebar, for the respondent.

March 3, 1964. The Judgment of the Court was delivered by SUBBA RAO, J.-This appeal by special leave is directed against the judgment and decree of the High Court of Bombay confirming those of the Civil Judge, Senior Division, Ahmednagar, Jr,, Special Civil Suit No. 6 of 1953 filed by the appellant against the State of Bombay for a declaration of his right to water from a particular source, and for consequential reliefs.

The appellant is the owner of Shankar Tukaram Karale Rampur Farm, situated at the tail-outlet of the Godavari Right Bank Canal Distributary No. 17, The lands comprised in the said Farm originally belonged to Shankar Tukaram Karale, hereinafter called Karale. In the year 1935 the said Karale had a farm for raising sugarcane consisting of 35 acres owned by him and about 65 acres of land taken on lease by him in Ahmednagar District. He obtained sanction to irrigate his lands on the outlet No. 17 of the Godavari Right Bank Canal. In or about the same year the Government of Bombay proposed to reserve certain area along the said Distributary Canal as "factory area". After some correspondence between the said karale and the Government of Bombay, it was the appellant's case, the Superintending Engineer agreed on July 14, 1939, to exclude Karale's lands from the factory area and also to give him water perpetually on condition that he concentrated all his holdings on the tail outlet of Distributary No. 17 and to take the supply of water on volumetric basis. Pursuant to that arrangement, Karale, by purchase or otherwise, concentrated his holdings and shifted his operations to that area and he was supplied water on the agreed basis. In or about April 1948, the appellant and Karale entered into a partnership for exporting the said area whereunder the appellant had three-fourths share and the said Karale had one-fourth share. Later on disputes arose between the appellant and Karale in respect of the partnership which culminated in a consent decree dated

February 7, 1951, whereunder the appellant became the full owner of the partnership business with all its assets and liabilities, including the lands and the compact block and the right to use the canal water. When the appellant applied for the recognition of the transfer, the Canal Officer refused to do so. On appeal, he was informed that his request for supply of canal water could not be granted. From April 1952 the supply was stopped. After giving the statutory notice under s. 80 of the Code of Civil Procedure, the appellant filed Special Civil Suit No. 6 of 1953 in the Court of the Civil Judge, Senior Division, Ahmednagar, against the State of Bombay for a declaration that the plaintiff was entitled to the supply and use of water from the tail outlet of Distri- butary No. 17 of the Canal to irrigate 100 acres of basic cane land in the concentrated area described in Schedule 11 at the rates prescribed by the Government under the Irrigation Act on a volumetric basis, for specific performance of the aforesaid agreement between Karale and the Government, for recovery of damages, and for other incidental reliefs. The State of Bombay filed a written- statement contending, inter alia, that there was no concluded agreement between the Government and Karale embodying the alleged terms stated in the plaint, that even if there was such an agreement, it was void inasmuch as it did not comply with the provisions of s. 175(3) of the Government of India Act, 1935, and that, in any view, the appellant could not legally get the benefit of the agreement under s. 30 of the Bombay Irrigation Act, 1879. On the pleadings as many as seven issues were framed reflecting the contentions of the parties. The learned Civil Judge held that there was a concluded agreement between the Government and Karale on the, terms alleged by the appellant, but the transfer by Karale of the said right in favour of the appellant was in violation of the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, and, therefore, there was no legal transfer of Karale's right of water in favour of the appellant. In that view, he dismissed the suit. On appeal, the High Court held that there was neither a concluded agreement between Karale and the Government nor did it comply with the requirements of law. In the result the appeal was dismissed. Hence the present appeal. The arguments of Mr. M. K. Nambiar, learned counsel for the appellant, may be summarized under the following heads : (1) There was a concluded agreement between Karale and the statutory authority, the Canal Officer, whereunder the said Karale was entitled 'to get water to his compact block permanently from the tail outlet of Distributary No. 17 of the Godavari Right Bank Canal so long as he was willing to pay the rates for such supply on volu- metric basis. (2) As under the compromise decree between Karale and the appellant the said block of land was trans- ferred to the appellant, the right under the agreement for the supply of canal water was also transferred to him under s. 30 of the Bombay Irrigation Act, 1879 (Bombay Act No. 7 of 1879), hereinafter called the Act. (3) Section 175(3) of the Government of India Act, 1935, does not apply to the agreement in question for the following reasons : (i) once the Legislature covers any matter by the enactment of any statute, any functional power assigned to the Government or any other authority under the said statute is exercisable only under that statute and in virtue of the statutory authority and not in the exercise of the executive authority of the Province within the meaning of s. 175(3) of the Government of India Act, 1935; (ii) the agreement contemplated by s. 30 of the Act is an agreement entered into under the Act by a statutory authority in pursuance of a statutory power with the statutory consequences and, therefore, such an agreement is outside the provisions of s. 175(3) of the Government of India Act, 1935; and (iii) that apart, the expression "agreement" in s. 30 of the Act does not mean a formal contract, but only a sanction, permission or consent given by the Canal Officer pursuant to the authority given to him under the Act, and, therefore, such sanction, permission or consent is not a contract within the meaning of s. 175(3) of the (Government of India Act, 1935. This appeal raises a

question a far-reaching importance as regards the scope of the executive authority exercised by the Governor under the Government of India Act, 1935; but, we are relieved of the duty to express our opinion on that question in this appeal in view of our finding that the agreement in question was arrived at outside the provisions of the Act and, therefore, it squarely falls within the scope of s. 175(3) of the Government of India Act, 1935. We shall at the outset address ourselves to the said agreement, namely, (i) who are the parties to the said agreement; and (ii) what are the terms thereof?

When the suit was pending decision of the Civil Court, the appellant filed an application therein for directing the Government to produce, among others, the applications made to the Government from time to time by Karale in respect of supply of water to his farm in the year 1935 and subsequent thereto and the office copies of the replies sent to the said applications, the Government documents and papers, water-bills and the records in respect _of the supply of water to the land belonging to Karale from the year 1935. and the correspondence that passed between karale and' the Government between 1935 and 1939 in respect of consolidation of his lands. Obviously these papers were required by the appellant for establishing the case that there was a concluded agreement between Karale and the Government or the Canal-officer. But, unfortunately, the said documents were not produced. It is not clear from the record why and under what circumstances the Government withheld the documents from the court, but in appeal the High Court in its judgment remarked: "In the trial Court no attempt was made to have this endorsement produced in Court which could have been done if the plaintiffs Counsel had so desired by a proper application to the Court". But the High Court felt that it was absolutely necessary in the interests of justice to call upon the learned Government Pleader to produce the file with reference to that particular endorsement, namely, Endorsement No. 3033/36-1 dated 28th April 1939, and directed him to do so. It disposed of the appeal after receiving the said relevant document. Though the High Court threw the blame for this lapse on the appellant, we do not think there was any justification for it. Apart from the fact that the appellant asked for the production of all the relevant documents, the Government, being the defendant in this case, should have produced the documents relevant to the question raised. 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. Be that at it may, the documents were finally produced before the court, and the High Court considered the same in arriving at its conclusion. Though Mr. Nambiar suggested that the said documents related to some other party, as we will indicate in the course of the judgment, the said file dealt also with the agreement alleged to have been entered into between Karale and the Government.

Exhibits Nos. D-67 and D-68 are the documents on which strong reliance is placed on behalf of the appellant. Exhibit D-67 reads thus :

> Below Government endorsement No. 3033/36-1 dated the 28th April 1939:
>
> Poona, 14th July, 1939.
>
> Returned with compliments.

2. The applicant has already been allowed to continue his present cane irrigation of 93 acres on outlets 2 and Tail of Distributary 17 of the Godavari Right Bank Canal for one year from 15-2-1939 pending consideration of his case in detail, in relation to the demand of the Sugar Company formed by Messrs. Jagtap & Khilari on this canal and lately named the "Changdeo Sugar Factory".

3. In view however of the orders issued verbally by the Hon'ble Minister, Public Works Department on 12-7-1939 the applicant is being allowed to concentrate all his cane irrigation to the extent of 100 acres on the tail outlet of Dy 17 of the Godavari Right Bank Canal by 15-2- 1940 and to continue it permanently there if he so wishes provided he agrees to take water by measurement on volumetric basis of 112" at the outlet head and pay the water rates that may hereafter be sanctioned by Government in this respect. The applicant has since signified his willingness to these conditions. He will be charged, till then on the area basis as is done at present.

4. The area thus allowed to the applicant will be excluded from the Sugar Factory area while fixing the boundaries of the allotted factory area of the "Changdeo Sugar Factory" on this canal. D.A. Marathi petition.

(Sd.) W. H. E. GARROD, Superintending Engineer, D.I.C. Copy, with compliments, to the Executive Engineer, Nasik Irrigation Division, for information and guidance with reference to the correspondence ending with this office No. 3686 dated 22-6-1939.

Exhibit D-68 is a letter written by the Superintending Engineer to Karale. It reads :

> No. 4224 of 1939 Poona, 14th July 1939.
>
> TO Shankar Tukaram Karale, Esquire, at Belapur. Continuation of cane irrigation on Distributary No. 17 of the Godavari Right Bank Canal.
>
> Dear Sir, In continuation of this office No. 3686 dated 23rd June 1939, I have to inform you that under orders of the Honourable Minister, Public Works Department, you will be allowed to irrigate came to the extent of 100 acres on the tail outlet of Distributory No. 17 of the Godavari Right Bank Canal permanently, so long as you may wish to do so, on condition that you agree to take canal water by measurement on volumetric basis of 112" depth at the outlet head at the rate which may be sanctioned by Government hereafter. (2) This will apply to new cane plantation from 15-2-1940 onwards. Till then, you may continue your cane irrigation on outlets 2 and tail as at present.

Yours faithfully, (Sd.) W. H. E. Garrod, Superintending Engineer, Deccan Irrigation Circle.

Copy, with compliments, to the Executive Engineer, Nasik Irrigation Division, for information.

A fair reading of these two documents leaves no room for doubt that a firm agreement was entered into between the Government and Karale in respect of the supply of water to his land to the extent of

100 acres on the tail outlet of Distributary No. 17 of the Godavari Right Bank Canal. These two letters show that there was previous correspondence between the Engineering Department and Karale and that the Minister of Public Works Department intervened and settled the terms of the agreement, and that the terms were communicated to Karale, who accepted the same. The terms of the agreement were, (i) Karale was allowed to concentrate all his cane irrigation to the extent of 100 acres on the tail outlet of Distributary No. 17 of the Godavari Right Bank Canal by February 15, 1940, and to continue it permanently, if he so wished; (ii) Karale agreed to take water by measurement on volumetric basis of 112" at the outlet head and to pay water rates that might thereafter be sanctioned by the Government in that respect; (iii) the said area will be excluded from the sugar factory area while fixing the boundaries of the allotted sugar factory area of Changdeo Sugar Factory; and (iv) the terms will apply to new cane plantation from February 15, 1940 onwards. It is said that the word "permanently" refers to cultivation, but not to supply of water. This interpretation makes the entire contract meaningless. Sugar cultivation can be done only with the permission of the department, for sugarcane crop cannot be raised without supply of water from the canal. When the Superintending Engineer allowed Karale to concentrate all, his cane irrigation in the said area permanently on condition he paid the prescribed rates, it was necessarily implied in the said agreement that he would supply water permanently, if the said rates were paid. Cultivation and supply of water are so inextricably connect- ed that one cannot be separated from the other. The permission to have cane irrigation permanently on the basis of a particular rate implies that the supply for irrigation is co-terminous with irrigation. In this view we must hold that Exs. D-67 and D-68, read together, record a concluded agreement between the Superintending Engineer, acting on the orders of the Minister of Public Works Department, on the one hand and Karale on the other, agreeing to supply water so long as Karale had cane cultivation in the con- s centrated area. The other documents, read along with the documents filed for the first time in the High Court, also do not detract from this conclusion. Exhibit D-78. which is not dated, was the application filed by Karale to the Chief Minister, P.W.D. and Irrigation Department, Bombay. Therein Karale represented to the Chief Engineer that Distributary No. 17 was permanently closed prior to 1935, that he was responsible for starting the said Distributary by commencing plantation. that the "Prime Minister's" consent gave him an assurance that while declaring the factory area, the area of the previous gardeners would be excluded from the said area, that he had invested a capital of about Rs. 75,000/- for raising the plantation and that in the circumstances he prayed that while declaring the factory area, his land should be excluded therefrom. This application was considered by the concerned office under G.L. No. 3033/36 dated April 27, 1939. In the note put up by the office the contents of the ;said application are summarized. Thereafter the following note is found :

> "With reference to the H.M.R.D.'s note dated 3-4-1939 it may be observed that Government has already accepted the principle that no ordinary irrigators should be allowed to operate in the sugar factory area. Under the general orders issued on the subject owner irrigators are to be allowed to continue irrigation, on yearly basis. It is for consideration whether this fact may be brought to the notice of the H.M.R.D. If it is decided to do so the papers may be submitted to the H.M., P.W.D. and the H.M.R.D. after the drafts put up are issued."

The Revenue Minister accepted the endorsement. This is only an office note and the suggestion that the irrigators should be allowed to continue on the yearly basis was only to prevent further applications after the factory area was declared. This endorsement had nothing to do with the 134-159 S.C.-63 exclusion of any particular area from the sugar factory area. The endorsement "should see" below the endorsement made by the Revenue Minister perhaps meant that the papers, should be submitted to the Minister concerned. Exhibit D-79 is a letter written by the Deputy Secretary to the Government of Bombay to Changdeo Sugar Mills. This letter also refers to the office endorsement No. 3033/36-1. Though we are not directly concerned with this letter, it may be mentioned that the application of Karale is connected with the proposal to declare certain area as factory area and to give water to Changdeo Sugar Factory in respect of the lands in that area, for his application was to exclude his area from the factory area. Both the matters obviously were dealt together. Exhibit D-79A is again part of the file relevant to the factory area. But a reference is made again to the office No. 3033/36-1 and in the same file Karale's letter is also noticed. Exhibit D-81 is an endorsement at page 133 of the same file, which also deals with the subject'sugar factories". It contains a copy of the letter written to the Superintending Engineer requesting him to submit at a very early date a draft agreement for the supply of water to the company's area on the Godavari Right Bank Canal on the terms embodied in the margin thereof. Exhibit D-82 is also another endorsement on the same file. The endorsement reads thus :

> Endorsement at 191.
>
> Discussed with the Secy.
>
> In addition to his written requests, Mr. Karale had also interviewed the late H.M.R.D. During the discussions, H.M. had made it clear that Mr. Karale can only be allowed to continue if he was willing to consolidate his holdings in an independent block so that the Co.'s cultivation be carried on undisturbed.
>
> This is not recorded on this file as H.M. did not pass any orders in Bombay or at the Secretariat but instructed (Presumably after discussion with Mr. Sule) the S.E.D.I.C. in the matter.
>
> Please see P. 107 ante. That Mr. Karale's cane has to be shifted to one block is clear from the wordings of the S.E.S. letter. "The applicant is allowed to concentrate all his cane..... on the tail outlet of D. 17". This is the only record of the orders passed.
>
> Moreover Mr. Karale is to have his supply on a volumetric basis as soon as that can be arranged for. This would necessitate the concentration of his cane areas." This endorsement notices the contents of Ex. D-67 and, therefore, it must have been made only after April 28, 1939. The said documents do not carry the matter further. They only show what we have already noticed, namely, the Govern- ment wanted to create a factory area and that Karale filed an application to have his area excluded therefrom. The notings of the department are not in any way inconsistent either with Ex. D-67 or with Ex. D-68. Exhibits D-67 and D-68 refer to Office No. 3686 dated

June 23, 1939, and that letter must have been in some other file and that file was not produced and, if produced, it might have thrown some more light. In the circumstances we must proceed on the basis that Exhibits D-67 and D-68 embodied the terms of the agreement entered into between the Government and Karale pursuant to the application, Ex. D-78, made by him to the Chief Engineer, P.W.D. We have already held that the said documents record the completed agreement between the Government and Karale in respect of supply of water to his and.

Even so, the question arises whether the said agreement is enforceable, if it has not complied with the provisions of s. 175(3) of the Government of India Act, 1935. The premises on which Mr. Nambiar built his argument is that the said agreement was entered into between the parties under the provisions of the Act. If it was not made under the provisions of the Act, but outside the Act, the foundation for this argument would disappear. We would, therefore. proceed to consider now whether the said agreement was under

the provision of the Act.

The relevant provisions of the Act may now be read. Section 3(6) defines "Canal-Officer" to mean any officer lawfully appointed or invested with powers under section 4. Under s. 4, such officer can exercise powers and discharge duties that may be assigned to him by the State Government. It is said that the Superintending Engineer was one of the officers so appointed by the Government and that the powers under ss. 27 to 30 of the Act were assigned to him. Under s. 27, "Every person desiring to have a supply of water from a canal shall submit a written application to that effect to a Canal-Officer duly empowered to receive such applications, in such terms as shall from time to time be prescribed by the State Government in this behalf". Under s. 29, "When canal-water is supplied for the irrigation of one or more crops only the permission to use such water shall be held to continue only until such crop or crops shall come to maturity, and to apply only to such crop or crops". Under s. 30, "Every agreement for the supply of canal-water to any land, building or other immovable property shall be transferable therewith, and shall be presumed to have been so transferred whenever a transfer of such land, building or the other immovable property takes place." But under the second limb of the section, "except in the case of any such agreement as aforesaid, no person entitled to use the water of any canal, shall sell or sub-let, or otherwise transfer, this right to such use without the permission of a Canal- Officer duly empowered to grant such permission". A combined reading of these provisions establishes that every person desiring to have supply of water from a canal shall apply in the prescribed manner to the Canal-Officer and that the per--,on to whom water is supplied cannot transfer his right to another without the permission of the Canal- Officer. But if the land in respect whereof the water is supplied is transferred, the agreement for the supply of water also shall be presumed to have been transferred along with it. The expression "agreement" in s. 30 of the Act, it is contended, does not connote a contract as

understood in law, but only a convenient mode of expression to indicate the sanction or permission given by the Canal-Officer. This meaning of the expression "agreement" is sought to be supported by a reference to the Bombay Canal Rules, 1934, made in exercise of the powers conferred on the State Government under s. 70(e) of the Act. Part 11 of the Rules deals with supply of water. It provides for the filing of applications, the manner of their disposal and. the persons entitled to dispose of the same, and also the mode of supply of water for cultivation of different crops. The forms prescribed columns under different heads for giving the necessary particulars. The forms contain the instructions as well as conditions on which permission will be granted. Rule 7 says that an application for supply of water for the irrigation of land for any period may be sanctioned, indicating thereby that there is no maximum period fixed for which application for supply of water can be made. Assuming without deciding that "agreement" under s. 30 of the Act means only sanction, the Act and the Rules provide for an application to be made to the Executive Engineer, who, subject to. the Rules, can give the sanction. Rule 36 provides for an appeal from the order of the Executive Engineer to the Superintending Engineer, and from that of the Executive Engineer's order under r. 18 or r. 19 to the Collector. But there is no provision either in the Act or in the Rules made thereunder enabling any party to make an application to the Chief Engineer to exclude his land from factory area, and to give him supply of water for irrigating the said land permanently, or a power to the Government to enter into an agreement or make an order in respect of such an application. Such an order or agreement is entirely outside the scope of the Act or the Rules made thereunder. We are not called upon in this case to decide whether the Government has any such power outside the Act; but, we shall assume for the purpose of this case that it has such power and to proceed to consider the legal arguments on that basis.

The documentary evidence adduced in this case, which we have already considered, discloses that the application was made to the Chief Engineer; that the Government, through the relevant ministry, considered the application and that on the instructions given by the concerned Minister, the Superintending Engineer wrote the letter Ex. D-68 to Karale. It was, therefore, in effect and substance, an agreement entered into between the Government and Karale.

Such an agreement fell outside the provisions of the Act. The parties to the agreement also understood that it was an agreement made between the Government and Karale. The Government in or about February 1942 sent a draft agreement to Karale for execution regarding the supply of canal water to his farm, but the said Karale did not execute the agreement. The parties did not agree in regard to some of the conditions found in the draft, but Karale did not contest the position of the Government that a formal agree- ment in compliance with the provisions of law was necessary. Again during the continuance of the partnership between Karale and the appellant, in or about 1950, the Government of Bombay sent another draft agreement to the said Karale for execution. Though Karale signed the agreement, he insisted upon a proviso

that the agreement should be without prejudice to the permission already granted to him. The Bombay Government did not execute the said agreement. So too, Karale and the appellant were making yearly applications under the Act and getting supply of water to their plantation. That procedure was presumably followed because, though there was an agreement between Karale and the Government, for one reason or other, a formal document, though intended to be executed, was not executed. This conduct on the part of the Government as well as that on the part of Karale and the appellant also establishes that the agreement was not under the Act, but between the Government of Bombay and Karale. If so, it follows that the contract entered into between the Government and Karale was a contract made in the exercise of the executive authority of the Province within the meaning of s. 175(3) of the Government of India Act, 1935. The relevant part of s. 175(3) of the Government of India Act, 1935, read :

"All contracts made in the exercise of the executive authority of a Province shall be expressed to be made by the Governor of the Province ..... and all such contracts and all assurances of property made in the exercise of that authority shall be executed on behalf of the Governor by such persons and in such manner as he may direct or authorise.

This section laid down two conditions for the validity of such a contract, namely, (i) it should be expressed to be made by the Governor of the Province, and (ii) it should be executed on behalf of the Governor by such persons and in such manner as he might direct or authorize. We have nothing on the record to disclose whether the Superintending Engineer, though he acted under oral instructions of the Minister, was authorized by the Governor or under relevant rules to enter into such a contract. That apart, even if Exs. D-67 and D-68 together were treated as forming part of a contract entered into between the Government and Karale, can it be said that the said contract was expressed to be made in the name of the Governor? Ex facie it cannot be said so. But it is contended that on a liberal construc- tion, which we should adopt in a case where the Government is trying to go back on its solemn promise, such a formality can easily be read into the said documents. Before we construe the said two documents in order to ascertain whether such a formality has been complied with or not, it would be convenient to notice some of the decisions of this Court. The question of construction of s. 175(3) of the Government of India Act, 1935, directly arose for decision in Seth Bikhraj Jaipuria v. Union of India(1). There, the Divisional Superintendent, East Indian Railway, placed certain orders with the appellant for the supply of foodgrains for the employees of the said Railway. The orders were not expressed to be made in the name of the Governor -General and was not executed on behalf of the Governor General as required by s. 175(3) of the Government of India Act, 1935. They were signed by the Divisional Superintendent either in his own hand or in the hand of his Personal Assistant. This Court held that the contracts, not having been expressed to be entered into by the ,Governor- General and not having been executed on his behalf, were void. This Court held that the provisions of s.

175(3) of the Government of India Act, 1935, were mandatory and, therefore, the contracts were void. This decision was followed by this Court in New Marine Coal Co. v. The Union of India(2). Reliance is placed by the (1) [1962] 2 C.R. 880. (2) [1964] 2 S.C.R. 859.

learned counsel for the appellant on the decision of this Court in Union of India v. Rallia Ram (1) in support of his contention that though ex facie Exs. D-67 and D-68 do not show that the contract was expressed to be made in the name of the Governor, the said fact could be inferred from the recitals. There, the goods offered to be sold belonged to the Government of India. A tender notice was issued by the Government of India, Department of Food (Division 111), in the name of the Chief Director of Purchases. The Chief Director of Purchases agreed to sell the goods on certain conditions to the respondent and incorporated them in the acceptance note, which was also headed "Government of India, Department of Food (Division III), New Delhi". The general conditions of contract, which accompanied the letter of acceptance, defined Government as meaning the Governor- General for India in Council. On the said facts this Court held that the correspondence between the parties ultimately resulting in the acceptance note amounted to a contract expressed to be made by the Government and, therefore, by the Governor-General, "because it was the Governor-General who invited tenders through the Chief Director of Purchases and it was the Governor-General who, through the Chief Director of Purchases, accepted the tender of the respondent subject to the conditions prescribed therein". Though in the acceptance note it was not expressly stated that the contract was executed on behalf of the Governor-General, on a fair reading of the contents of the letter in the light of the obligations undertaken thereunder, it was held that the contract was executed on behalf of the Governor-General. This decision does not depart from the principle accepted in Seth Bikhraj Jaipuria's case(2). On a fair reading of the correspondence this Court construed that the contract was entered into on behalf of the Governor-General and expressed to be made in his name. Can it be said that in the present case Exs. D-67 and D-68 disclose that the Superintending Engineer was authorized to enter into a contract of the nature mentioned therein on behalf of the Provincial Government and that the contract was expressed to be made in the name of the Governor?

(1) [1964] 3 S.C.R. 164. (2) [1962] 2 S.C.R. 880.

Nothing has been placed before us to establish that the Superintending Engineer was legally authorized to enter into such a contract on behalf of the Government; nor do the documents ex jacie show that the agreement was expressed to be made in the name of the Provincial Government. The letters mentioned the name of the Minister of the Public Works Department and also the Government, in the context of the rates that might be fixed thereafter, but the said documents did not purport to emanate from the Governor. At best they were issued under the directions of the Minister. We find it difficult to stretch the point further, as such a construction will make the provisions of s. 175(3) of the Government of India Act, 1935, nugatory. We cannot, therefore, hold that either the contract was entered into by the person legally authorized by the Government to do so or expressed to be made in the name of the Governor. The agreement is void, as it has not complied with the provisions of s. 175(3) of the Government of India Act, 1935.

In this view, it is not necessary to express our opinion on other interesting questions raised in this case. In the result, the appeal fails and is dismissed, but in the circumstances, without costs.

Appeal dismissed.