Hansraj Gupta And Co. vs Union Of India (Uoi) on 5 September, 1973

Equivalent citations: AIR1973SC2724, (1973)2SCC637, 1973(5)UJ821(SC), AIR 1973 SUPREME COURT 2724, 1973 2 SCC 637, 1973 2 SCWR 509, 1973 SCD 1037

Bench: K.K. Mathew, M.H. Beg

JUDGMENT

Beg, J.

1. This is a plaintiff's appeal by special leave. The plaintiff M/s. Hansraj Gupta & Co., (hereinafter referred to as "the Company") had brought a suit on 1 2-1950 on the basis of a contract for supply of fire-wood to the Military Units at Dehradun and Clement Town from 1-4-1944 to 31-3-1945 entered into by Mahesh Chandra Gupta, defendant No. 2, (hereinafter referred to as "the contractor"), and the Government of India, acting through the Comander, U.P. Area, now represented by the Union of India, defendant No. 1. The Company claimed as the financier of the contractor and sued on the strength of an authority conferred by a power of attorney executed by the Contractor to collect moneys due for supplied made under the contract by the supplying contractor. According to the plaint, the whole supply was actually made by the Contractor.

2. The Contract (Ex. A-3), dated 15-2-1944, provided that the parties were to be governed by special conditions or stipulations contained in instructions to "tenders" which were to be a part of the contract. According to these instructions, the rates agreed upon for the supply of Common fire-wood and split fire-wood could not be varied at all for the first six months in a contract for a year like the one under consideration. But, revision of rates agreed upon could be recommended, under Clause 13 of the special conditions by referees appointed by the Government, who presumably constituted the "reviewing Tribunal", consisting of "the Deputy Commissioner of his representive, the commander, Royal Indian Army Supply Corps (C.R.I. A.S.C.) or his representative, and the local purchase officer (Military)". Three members were to constitute the quoram. The clause went on to provide that the contractor could present his case for revision which was apparently only to be recommended by the Tribunal.

3. The clause said "The final recommendation in all cases reviewed shall rest with the officer sanctioning the contract". This rather nebulous clause apparently made the referees members of the Tribunal to be appointed to revise rates conformably with the rise and fall of market rates. It is not quite clear whether the referees were also members of the Tribunal; but, presumably they were. It also appeared that the function of referees or the Tribunal was nothing more than to recommend the

matter to the sanctioning the contract could only recommend a revision. It was not specified when the right to obtain payment at revised rates was to accrue and upon whose sanction.

4. Clause No. 21 in the contract itself, which is also relevant for this case, may be set out here. It reads as follows :

> Any dispute or difference arising out of the contract, settlement of which is not hereinbefore provided for, shall be referred to the arbitration of the officer sanctioning the contract, whose decision shall be final and binding.

5. The plaintiff's case was that the contractor supplier had asked that the contract be terminated sometime after the supplies had began, but he was induced to continue delivery of the fire-wood for the whole year due to the representations of the Defence Department that the rates of payment will be revised. The terms of the contract, however, excluded any revision of rates for the first six months. Hence, no claim for revision could be made for payment at enhanced rates before 1-10-1944.

6. The plaintiff's case, at set out in the plaint, was that the rate were actually enhanced by means of an "Award" dated 31-12-1946 which was accepted by the plaintiff on 6-1-47 and that the suit was filed within three years of this award. The plaintiff relied upon the arbitration Clause 21 for the effectiveness of the enhanced rates of payment on a contract performed more than a year prior to the alleged award. It is noteworthy that there is no case found in the plaint based upon any revision of rates recommended under Clause 13 of special conditions. The concurrent findings of the Trial Court and the High Court were that a conference held in November, 1944, which is said to have been recommended a revision of the rates, did not, in fact, constitute the Tribunal of all the authorities specified or their duty appointed representatives. Another concurrent finding of fact was that recommendations of the conference held on 13-11-1944 at the forest Bungalow, Dehradun, between some forest and Military Officers, on fuel, supplies to the Army, were not shown to have been accepted by anybody authorised to increase prices to be paid on fuel already supplied or to be supplied by any contractor. As no case based on any alleged increase of rates either recommended by any body or authority, in accordance with Clause 13 of the special conditions, was either set up in the plaint or found proved on facts on record, we need not really consider this aspect any further.

7. It was, however, urged on behalf of the plaintiff-appellant, that technical defects in framing the plaint should be over-looked in the interests of justice and that the facts set out in paragraph 8 of the plaint should suffice to enable the plaintiff to succeed on the strength of Clause 13 of the special conditions. Paragraph 8 of the plaint only states that a letter containing what is described as a "decision" under the arbitration Clause 21 of the contract was sent by the Area Commander. The Union of India admitted that a letter dated 31-12-1946 was issued from the office of the Area Commander but nothing more than that is admitted. On the other hand, it is denied that the Area Commander considered or affixed his signature to its contents.

8. The plaintiff's case thus set up was based upon the terms of the contract between defendants Nos. 1 and 2. The authority of the plaintiff to sue on behalf of the supplying contractor is no longer in

dispute as it was at the earlier stages. But that authority was certainly limited, under the power of attorney in favour of the plaintiff, to realisation of all amount due or which may become due to the contractor as a result of the contractual relationship between the defendants but not other amounts due for supplies made outside this relationship or for any independent supplies by the plaintiff on its own account. The authority conferred would cover collection of the amounts due on contract between the defendants, even at enhanced rates, under either Clause 13 of the special conditions or arbitration Clause 21 of the contract. But it did not authorise the plaintiff to do anything more. The real dispute between the parties was restricted to alleged enhancement of rates from 1st October, 1944, to 31st March, 19.45. If this was proved to be covered either by Clause 13 of the special conditions or the arbitration Clause 21 of the contract, the plaintiff could certainly obtain payment at enhanced rates on behalf of the supplying contractor if the claim was not barred by time.

9. Even if a case falling under Clause 13 of the special conditions, though not specifically set up in the plaint, was to be considered on the strength of the alleged decision of 31-12-1946 supposed to give effect to the recommendations of the Conference, already mentioned, of some Forest and Military Officers held on 11th November, 1944 the initial difficulty with which the plaintiff was confronted was that the letter dated 31-12-1946 was not proved to have been signed by the Commander, U.P. Area. That letter (Ex. 67) may be set out in toto here :-

> "Regd. and A.D. Tel. No. 993 No. 8471/9/Q7. To, Mr. Khurshed Lal, M.A. LL.B. Advocate, 62, Lytton Road, Dehradun. Subject :- Fire-wood contract Dehradun 1944/45 Legal Notice under Section 80 C.P.C. Reference :- Your legal notice dated December 18, 1946, on behalf of M/s. Hansraj Gupta & Co., Delhi, financier of L. Mahesh Chandra firewood Contractor. In the view circumstances stated in your above mentioned legal notice, the Commander U.P. Area accords the following decisions : I. The contract with L. Mahesh Chandra for the supply of firewood at Dehradun (incl. Clement Town) during 44-45 to be considered as terminated w.e.f. September 30, 1944. II. Subsequent supplies of firewood made by your client from October 1, 1943 to March 21, 1945 to be treated as local purchase and paid for at the following civil market rates :- Firewood Common @ Rs. 1/8, per md. or Rs. 1/14 per 100 lbs. Firewood Spilt @ Rs. 1/11, ,, ,, or Rs. 2/1 ,, ,, ,, This decision is accorded under Clause 21 to I.A.F.I. 2120 of the contract deed. 2. Please note that no further claim from your clients for payment at market rates for supplies of firewood made by them from 1st April, 1944, to 30th September, 1944 will be entertained. This letter is issued without prejudice. Please acknowledge receipt. (Sd.) Illegible. for Major General Commander, U.P. Area.

10. The concurrent findings of the Trial Court and the High Court were that the letter was not proved to have been signed by the sanctioning authority which alone could give an award under the arbitration Clause 21, or presumably, sanction a rate revised under Clause 13 of the special conditions. On this finding, which has not been shaken which could be shown to us on behalf of the appellants, the case of the plaintiff must fail whether it is based on Clause 13 of the special conditions or the arbitration Clause 21 of the agreement. Although the assertions made on behalf of the Union of India, that the letter is a spurious document may not have been substantiated, yet, the

plaintiff had to prove that there was the signature of the required authority on some document authorising the payment at enhanced rates. The plaintiff having failed to prove this basic fact, the suit is liable to be dismissed on this ground alone so far as any claim for any enhanced rates is concerned.

11. learned Counsel for the appellant, realising that any claim based on either Clause 13 of the special conditions or the arbitration Clause 21 of the contract must fail, made two ingenious submissions: firstly, that the letter of 31-12-1946 was evidence of a fresh agreement of pay at enhanced rates and that this agreement had been out in paragraph 8 of the plaint so that the plaintiff was entitled to succeed on this basis; and, secondly, if this claim on the strength of a fresh contract of 31-12-1946. failed for want of compliance with Section 175(3) of the Govt. of India Act, the plaintiff could fall back on Section 70 of the Indian Contract Act. It was also contended, as a logical consequence of the second contention, that the claim to enforce a liability under Section 70 of the Contract Act would not be barred by limitation as it would be governed by six year's rule of limitation falling under Article 120 of the Limitation Act of 1908.

12. We think that insurmountable difficulties also lie in the path of acceptance of each of the last mentioned submissions of the plaintiff-appellant. We will take up the first submission first. We find that there was no case set up by the plaintiff that there was any privity of contract between the plaintiff and the Union of India. The mere statement in the letter of 31-12-1946 that the contract with the supplier Mahesh Chandra was deemed to be terminated with effect from 30-9-1944 and that the subsequent supplies were by the clients of Shri Khurshed Lal (that is to say the plaintiff) was useless. It contradicts the assertion made in the paragraph 6 of the plaint that the wood was actually supplied by the contractor Mahesh Chandra (defendant No. 2) upto 31-3-1945. These bare assertions of some Military Offices could not alter facts or the law or result in a fresh contract with the plaintiff. The difficulty which confronted this new case, sought to be set up by the plaintiff, is even more formidable that mere want of signature of a duly authority on the letter. The Constitutional provisions of Section 175(3) of the Govt. of India Act would bar mere assertions of this kind from operating as evidence of a contract. Again, as held by the High Court, the claim for the price of goods supplied on a fresh contract, even if assumed to have come into existence in 1946, would be beyond three years in 1950 so that it would be barred by three years rule of limitation prescribed by Article 52. Moreover, a fresh agreement in 1946 to pay for a past supply of goods from 1944 to 1945, if already covered by the contract of 1944 and fully paid for under it, as held by the Trial Court and the High Court, would fail for want of consideration. So, the whole case of a fresh contract of 1946 is also quite untenable.

13. We may now turn to the plaintiff's claim to the benefit of Section 70 of the Contract Act put forward in this Court for the first time. It was urged, on the strength of Piloo Dhunjishaw Sidhwa v. Municipal Corporation of the City of Poona , that, so long as the claim is there, this Court is not precluded from applying Section 70 of the Contract Act for the first time even on appeal by special leave. We, however, think that the conditions for the applicability of the Section must atleast be set out in the pleadings and proved. As already noticed above the plaintiff has not said anywhere in the plaint that any supplies were made by the plaintiff to the Army authorities. On the other hand, the assertion is that the supplies were made by the contractor (defendant No. 2). Section 70 of the

Contract Act enables the person who actually supplies goods or renders some services, not intending to do so gratuitiously, to claim compensation from the person who enjoyes the benefit of the supply made or services rendered. It is a liability which arises on equitable grounds even though express agreement or a contract may not be proved.

14. The plaintiff's authority to realise monies was confined to recoveries of price for supplies made by defendant No. 2 under an express agreement between the defendants. And, the plaintiff's suit too it confined to claims on behalf of defendant No. 2, the actual supplier, for supplies under the contract and not outside it. It is urged, not without force, on behalf of the Union of India, that, evidence could have been led to show that the plaintiff made no supplies whatsoever, if the plaintiff had set up even an alternative case to that effect in conflict with the case actually set up of supplies made by the proforma defendant No. 2 (i.e. the supplying contractor).

15. Another contention on behalf of the Union of India was that Section 70 of the Contract Act only applies to cases where goods are supplied or Services rendered without any payment whatsoever having been made for them. It is submitted that the supplying contractor, having been fully paid at the contracted rates, as found by the High Court and the Trial Court, no claim under Section 70 of the Contract Act was maintainable at all. Application of that Section, it is contended, would be excluded where the contract made is shown to have operated and to have been discharged as held by the High Court and the Trial Court. The learned Counsel for the Union of India was, however, not certain whether the finding was correct that the defendant contractor was actually fully paid, in accordance with the terms of the original contract, at unenhanced stipulated rates. We have not been taken through the whole evidence so as to be able to re-assess it on that question. We are not ordinarily called upon to do so on an appeal by special leave. We, therefore, prefer to rest our decision on the claim under Section 70 of the Contract Act on the ground that, on the case set up in the plaint, the plaintiff cannot fall back on any liability under Section 70 of the Contract Act when the supplies were obviously not actually made by the plaintiff.

16. If, however, it is true that the plaintiff company, which claimed payment of Rs. 1,90,042/0/5 on bills submitted, from 22-1-1947 to 30.3.1948, for unpaid for supplies at enhanced rates, with interest at 7 1/2% per annum upto 1-1-1950, so as to bring; the total claim to Rs. 2,28,397/14/5, has not received payment at all for supplies of wood at rates stipulated for in the written contract for any period covering the contract for supplies made from 1-4-1944 to 31-3-1945, because the actual rates at which the payments were to be made were disputed and remained undecided due to no fault of the supplying contractor or the plaintiff, we hope that, as suggested by the learned Counsel for the Union of India, the plaintiff will be able to obtain payment for the unpaid for supplies actually made at rates specified in the original contract although the suit for it is barred by time. Even though the plaintiff may be morally entitled to that much payment atleast, we are unable to decree the suit for a time barred claim.

17. Consequently, we dismiss this appeal. But, in the circumstances of the case, the parties will bear their own costs throughout.