# Bakhtawar Singh Bal Kishan vs Union Of India (Uoi) And Ors. on 10 February, 1988

## Equivalent citations: AIR1988SC1003, 1988(2)ARBLR155(SC), JT1988(1)SC467, 1988(1)SCALE527, (1988)2SCC293, 1988(1)UJ556(SC)

## Bench: M.P. Thakkar, N.D. Ojha

JUDGMENT

1. The appellant is a contractor who entered into a construction contract with the M.E.S. (Military Engineering Services) for making some additional construction in the ordnance factory at Muradnagar in the State of Uttar Pradesh. The contract was entered into at Barelly in Uttar Pradesh. A dispute arose in regard to the execution of the contract between the contractor and the respondent, Union of India. An Arbitrator was appointed who in due course rendered an award in favour of the contractor. The contractor instead of instituting an appropriate proceeding in Uttar Pradesh where the contract was executed and the work was carried out, instituted a proceeding on the original side of the Delhi High Court. By this proceeding the contractor prayed for making the award a rule of the Court under sections 14 and 17 of the Indian Arbitration Act, 1940. The respondent raised a plea to the effect that the Delhi High Court had no Jurisdiction inasmuch as the cause of action had arisen at a place in Uttar Pradesh and that the contract was also executed at Bareilly in Uttar Pradesh. The learned Single Judge negatived this plea. The respondent Union of India preferred a letters patent appeal to the Division Bench of Delhi High Court which allowed the appeal and set aside the order of the learned Single Judge upon reaching the conclusion that the Delhi High Court had no jurisdiction. This view was taken having regard to the fact that in the opinion of the Division Bench of the High Court the Union of India was not carrying on any "business" in Delhi so as to attract Section 20 of the CPC which inter alia provides that a suit may be instituted where the defendant "carries on business or works for gain", as contended by the appellant contractor. Informing this opinion the High Court placed reliance on its earlier decision in Binani Bros. Ltd. v. Union of India .

2. Learned counsel for the appellant has contended that the view taken in Binani Bros.' case is not correct. Having given our anxious consideration to the submission urged on behalf of the appellant, and having perused carefully the judgment in Binani Bros, case, we are of the view that the Delhi High Court was perfectly justified in reaching this conclusion. We do not propose to reiterate the same reasoning in our own words. More so as Delhi High Court has discussed the matter in an admirable manner and the reasoning which has appealed to the High Court is unexceptionable. Under the circumstance we can do no better than to quote from the Judgment of the Delhi High Court the relevant passages :

> The next question is whether the Union of India carried on business or worked for gain through the Director of Supplies and Disposals, New Delhi to confer jurisdiction on the courts at Delhi. The answer has to be in the negative. The expression

"voluntarily resides" in Section 20 is significant. It necessarily refers to natural persons and not to legal entities. Likewise, the expressions "carries on business" or "personally works for gain" do not refer to functions carried on by the Union of India in discharge of its executive powers conferred by Article 298 of the constitution. While Article 299 of the Constitution provides that all contracts made in the exercise of the executive power of the Union shall be expressed to be made by the President Clause (2) of this Article states that the President shall not be personally liable in respect of any contract or assurance made or executed on his behalf. The President, therefore, cannot be said to be personally working for gain within the meaning of Section 20 of the CPC. Mr. Justice. Prithvi Raj in suit No. 394 of 1967. Insortex Pvt. Ltd. v. Union of India; decided on 4th May, 1971 (1), relying on R.J. Wyllie and Co. v. Secretary of State A.I.R. 1930 Lahore 818 (2) Dominion of India v. R.C.K.C. Nath and Co Khulna (3) and Azizuddin and Company by Managing Partner, P.M. Azizuddin v. Union of India (4) has taken the same view.

Reference in this connection may also be made to the observations in Badrinarayan v. Excise Commissioner Hyderabad and Ors.

A.I.R. 1962 Andhra Pradesh 382 (5) with which we respectfully agree in so far as they go in relation to suits other than suits against Railway. On page 383 of the report, the Bench observed :

Section 20 C.P.C. has in contemplation people dwelling within the territorial limits of a court and persons indulging in commercial activities within that area even if they do not dwell therein. This section in plain and unmistakable language conveys that idea. The words "actually and voluntarily" cannot reasonably apply to legal entities. That being so, it is difficult to bring the Government within the import of the expression "the defendant"... . actually and voluntarly resides.

In this case the appellant was an 'abkari' contractor for certain villages in the district of Nalgonda. A penalty of Rs. 9,767/8- was imposed on him by the Excise Superintendent for the alleged tapping of 145 toddy and 500 Sindhi trees without paying the excise duty. After he failed in his appeal to the Collector and the Excise Commissioner and his representation to the Minister, he filed a suit at Hyderabad impugning the levy of penalty as ultra vires, illegal and void. It was urged that as the Government enjoyed monopoly in regard to 'abkar' business it should be deemed to be carrying on business at Hyderabad within the sweep of Section 20 C.P.C. The contention was rejected. The Court said:

We consider that in gathering the revenues from various sources, the Government acts in its sovereign capacity and not as a commercial body. The collection of Abkari revenue is not undertaken by a private corporation and much less by private individuals. Therefore, the concept of carrying on business cannot be imported into activities of this description.

Shri G.R. Chopra, placed strong reliance on Union of India and Anr. v. Sri Laddu Lai Jain (6). This appeal arose out of a suit filed against the Railway for nondelivery of goods. In Para 7 on page 1683 of the report, the court observed that "the expression 'voluntarily resides or personally works for gain' cannot be appropriately applied to the case of the Government" but having regard to the fact (as stated in para 11 on the same page of the report) that "private companies and individuals carried on the business of running railways, prior to the State taking them over" it was held that the running of railways would not cease to be a business when they were run by Government and so the court within whose jurisdiction the headquarters of one of the railways run by the Union was situated had the jurisdiction to try the suit. In the instant case, we find that there is nothing on the record to show that the Director of Supplies and Disposals, New Delhi carried on business at Delhi. It is relevant in this context to refer to the observations of the Supreme Court in Director of Rationing and Distribution v. The Corporation of Calcutta; and Other (7). In this case at the instance of the Corporation of Calcutta, summons under Section 488 of Bengal Act III of 1923 as substituted by the later Act XXXIII of 1951 were issued by the Director of Rationing and Distribution representing the Food Department of the Government of West Bengal. The offence complained of was the "using or permitting to be used" certain premises for purposes of storing rice without a licence. By way of preliminary objection the contention raised was that the prosecution was not maintainable in law. An argument was raised on behalf of the Corporation that the State as recognised by Article 300 of the Constitution was a legal person and was capable of having rights and was subject to obligations, and therefore, the complaint was competent. In answer to the claim of immunity for the State as a sovereign power it was urged that this immunity could not be claimed when it embarked on a business and in that capacity was subject to penal provisions of the statute equally with the other citizens. On page 1360 the Court said:

The question was not raised below and has not been gone into by the High Court, nor is it clear on the record, as it stands, that the Food Department of the Government of West Bengal, which undertook rationing and distribution of food on a rational basis had embarked upon any trade or business. In the absence of any indication to the contrary, apparently this Department of the Government was discharging the elementary duty of a sovereign to ensure proper and equitable distribution of available food-stuffs with a view to maintaining peace and good Government.

This case was specifically noticed in Union of India and Anr. v. Laddu Lal Jain (6) in para 15 of the report but was distinguished primarily on the ground that it concerned the sovereign activities of the State. We do not read the cited case, : therefore, to be laying down the rule that the courts at Delhi will have jurisdiction in regard to all disputes relating to all contracts executed by Union of India simply because the Union has its 'office' at Delhi.

3. We are in full agreement with the reasoning and conclusion of the Delhi High Court reflected in the aforesaid passages. Learned counsel for the appellant has urged that the Delhi High Court has not properly appreciated the ratio of the decision of this Court in Union of India v. Laddu Lal Jain A.I.R. 1964 (3) SCR 624. We are unable to accede to this argument. We concur with the view of the High Court that the decision in Laddu Lal Jain's case is inapplicable in the back drop of the facts of the present matter. In Laddu Lal Jain's case the Court was concerned with the activity carried on by the Railway Administration which was held to be "business" activity. The Supreme Court has drawn a distinction between the commercial activities of the State on the one hand and the discharge of the sovereign functions of the State on the other. The decision in that matter has been rendered in the context of business activity carried on by the Union of India namely running of the Railways and not in the context of a sovereign activity carried on by the Union of India. In the present case the contract pertained to construction of an ordnance factory for the Military Engineering Services of the Armed Forces (Moderanisation and augmentation of the ordnance factory). Maintaining the armed forces is part of the sovereign activity of the State. It is an activity which is undertaken by the Central Government for ensuring the security of India which is a sovereign function of the State, it is spacious to contend that it is a 'business activity' with an eye on profits. Under the circumstances the view taken by the Delhi High Court cannot be taken exception to. The appeal must accordingly fail. It will be open to the appellant to institute a fresh petition for making the award a rule of the Court in an appropriate court in Uttar Pradesh within ninety days from today. In case such an application is instituted it will be treated as having been instituted within time. The appeal is disposed of accordingly. There will no order regarding costs.

20. Other suits to be instituted where defendants reside or cause of action arises--Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction

(a) the defendant, or each of the defendants where there are more than one, at the time of commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.