

Timber Kashmir Pvt. Ltd. Etc. Etc vs Conservator Of Forests, Jammu & Ors. Etc on 26 October, 1976

Equivalent citations: 1977 AIR 151, 1977 SCR (1) 937, AIR 1977 SUPREME COURT 151, 1976 4 SCC 497, 1977 (1) SCWR 533, 1977 (1) SCR 937

Author: M. Hameedullah Beg

Bench: M. Hameedullah Beg, A.N. Ray, P.N. Shingal

PETITIONER:

TIMBER KASHMIR PVT. LTD. ETC. ETC.

Vs.

RESPONDENT:

CONSERVATOR OF FORESTS, JAMMU & ORS. ETC.

DATE OF JUDGMENT 26/10/1976

BENCH:

BEG, M. HAMEEDULLAH

BENCH:

BEG, M. HAMEEDULLAH

RAY, A.N. (CJ)

SHINGAL, P.N.

CITATION:

1977 AIR 151 1977 SCR (1) 937

1976 SCC (4) 498

CITATOR INFO :

R 1988 SC2149 (13)

ACT:

Delegation of Powers to officers for execution of contracts under section 122 (1) of Jammu & Kashmir Constitution--Contracts containing arbitration clause validly executed on behalf of the Government cannot be questioned on the plea of violation of Section 122(1).

HEADNOTE:

All the three applications filed by the respondent state for a reference to an arbitrator under section 20 of the Jammu & Kashmir Arbitration Act, 2002 were dismissed by a single judge of the Jammu & Kashmir High Court on the ground that the arbitration clause was, in each case, a part of an

agreement which was not duly exercised in accordance with the provisions of section 122(1) of the J&K constitution which correspond to Article 299(1) of the Constitution of India. But the Division Bench allowed the appeals holding that if contracts were signed by the Conservator of Forests in compliance with an order of the Government, the provisions of Section 122(1) of J&K constitution could not be said to have been infringed."

Dismissing the appeals of the appellant company by certificates the Court.

HELD : It is true that the contract could not be executed without the sanction. Nevertheless, if the sanction could be either expressly or impliedly given by or on behalf of the Government, as it could, and, if some acts of the Government could fasten some obligations upon the Government, the lessee could also be estopped from questioning the terms of the grant of the sanction even where there is no written contract executed to bind the lessee. [938 G-H, 939 A]

But, once there had been a valid execution of lessee by duly authorised officers, the documents would be the best evidence of sanction also. That was one of the objects of prescribing a formal mode of execution of instruments on behalf of the Government apart from the need to protect its interest against mala fide and other unauthorised acts of its servants or agents. [940 G-H]

Mulamchand v. State of Madhya Pradesh, [1968] 3 S.C.R. 214, applied.

In this case the contracts were executed by duly authorised officials under Government's orders.

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 313-315 1974.

From the Judgment and Order dated 8-8-1972 of the Jammu and Kashmir High Court in Civil First Appeals Nos. 46 to 48 of 1972.

Naunit Lal, for the Appellant.

V.C. Mahajan and R.N. Sachthey, for the Respondent. The Judgment of the Court was delivered by BEG, J.--These are three appeals by certification against the judgment of a Division Bench of the High Court of Jammu & Kashmir, allowing appeals from the judgment of a learned single Judge.

Jammu and Kashmir Government had filed three applications under section 20 of the Jammu & Kashmir Arbitration Act, 2002, to refer disputes arising out of three agreements between it and the appellant Company to arbitration under the arbitration clauses of agreements between the parties. The applications had been dismissed by the learned single Judge on the ground that the arbitration

clause was, in each case, a part of an agreement which was not duly executed in accordance with the provisions of Section 122(1) of the Constitution of Jammu & Kashmir which correspond to those of Article 199(1) of the Constitution of India. The Division Bench had allowed the appeals of the Conservator of Forests, Jammu Circle, after holding that the provisions of section 122(1) of the Constitution of Jammu & Kashmir could not be said to have been infringed if contracts were signed by the Conservator of Forests in compliance with an order of the Government.

The main-stay of the case of the appellant company was an instruction or rule contained in "The book of the Finan- cial Powers" which reads as follows:

"S. 13. The power to sanction or cancel the terms of instruments, leases, agreements is delegated in the follow- ing cases:

S. Nature of power To whom delgated. Extent No. 1 2 3 4 X X X X X X

9. To sell forest produce Chief Conser- Upto Rs. 7000/-

and to enter into con- vator of forest in value in tract for the same each case provided the highest tender conservators of upto Rs.3000/ in forests each case provided the highest tender is accepted.

Divisional upto Rs.1000/in each forest case provided the officer highest tender is accepted.

The Division Bench observed that this rule existed prior to the coming into force of the Constitution of Jammu and Kashmir. It may also be pointed out that this rule deals with the power to "sanction or cancel" leases, agreements and other instruments which was delegated to the officers mentioned there with limitation on their powers specified there. But, the Constitutional provision, relied upon on behalf of the appellant, relates to the manner of the execu- tion of the formal document containing the contract after its sanction. It is true that the contract could not be executed without the sanction. Nevertheless, if the sanction could be either expressly or impliedly given by or on behalf of the Govern- ment, as we think it could, and, if some acts of the Govern- ment could fasten some obligations upon the Government, the lessee could also be estopped from questioning the terms of the grant of the sanction even where there is no written contract executed to bind the lessee.

In the case before us, we have agreements from which the appellant company has derived benefits. And, there are contracts validly executed on behalf of the Government of Jammu & Kashmir by the Conservator of Forests. It is true that, if the appellant could take up the legal plea that the contracts were not duly executed, in accordance with section 122(1) of the Constitution of Jammu & Kashmir, it could urge that they did not have any effect at all as contracts whatever other legal consequences its acts or conduct may have had. But, this does not mean that, if a party obtains benefits on the understanding that it would abide by certain conditions, as the appellant company had done, it could not be compelled to observe those conditions, such as the condi- tion to refer disputes to arbitration. However, in the instant case, we need not go into that question because the plea of a violation of Section 122(1) of the Jammu & Kashmir Constitution is itself not sustainable for the

reasons indicated below.

As the Division Bench of the High Court had pointed out, there was a Government order and notification of 23rd February, 1957 which reads as follows:

In exercise of the powers conferred by sub-section (1) of Section 122 of the Constitution, the Sadar-i-Riyasat is pleased to direct that the under-mentioned contracts and assurances of property made in the exercise of the executive powers of the State may be executed on his behalf by various Officers subject to any limit fixed by Government rules and orders as follows:

VI. In the Department of Development: (1) Agreements relating to Forest Leases and appropriation of forest products:

By the secretary to Government, Chief Conservator, Conservators of Forests and Divisional Forest Officers".

The three leases, containing the arbitration clauses which the appellant wants to avoid, were executed on 27th February, 1963, and 28th February, 1963, and 19th March, 1963, after the notification mentioned above. The leases were duly signed by Conservators of Forests, who were expressly authorised, without any limits imposed on the valuation of the leases, to sign and execute them on behalf of the Government. The delegation of power made prior to the Jammu 10 --1338SCI/76 and Kashmir Constitution related to grants of sanction and their cancellation. It did not expressly refer to powers to execute leases which is a separate matter. The notification of 1957, however, is specifically related to the execution of formal documents including leases. Hence, it will cover the three leases before us even if the former rules relating to the limits of the authority of Forest Officers to give or cancel certain sanctions could be said to be in existence at all after the enactment of the new Constitution of Jammu & Kashmir and the notification of 23rd February, 1957, cited above.

We may mention that, as has been indicated in the separate judgment of the learned Chief Justice of the High Court, the Jammu & Kashmir Government had tried to remove the doubts it entertained about the validity of past leases executed by the Conservator of Forests. It, therefore, passed two orders: one of 14th April, 1965, and the other of 29th April, 1971. The order of 14th April, 1965, ran as follows:

"In supersession of previous orders regarding signing of lease agreement it is ordered that the Conservator of Forests will sign agreements relating to all cases of Forests leases and appropriation of forest products and Chief Conservator of Forests will act as the arbitrator as provided under C1. 44 of the Agreement.

By order of the Government of Jammu & Kashmir. Sd/- Bharat Bhushan Secre-

tary to Govt. Forests Department".

The order of 29th April, 1971, runs as follows:

"Government Order No. FST-31 dated 14-4-65 shall be deemed to have taken effect from 29-1-63 and all actions taken by the Conservators of Forests in executing the lease agreements by virtue of the said order are hereby regularised.

By order of the Government of Jammu & Kashmir. Sd/- R.C. Bhargava, Secretary to Government, Agricultural Department".

The learned Chief Justice had observed that these orders, purporting to ratify the leases which were valid, did not have any legal effect whatsoever and were unnecessary. If there had been any question to be decided as to whether the Government had sanctioned the leases, its actions, apart from the execution of leases, could be considered. But, once there has been a valid execution of leases by duly authorised officers, the documents would be the best evidence of sanction also. That was one of the objects of prescribing a formal mode of execution of instruments on behalf of the Government apart from the need to protect its interests against mala-fide and other unauthorised acts of its servants or agents as indicated by this Court in *Mulam Chand v. State of Madhya Pradesh*(1)

1) [1968] 3S.C.R. 214.

In the cases before us the only question which needed decision was whether formal execution of the leases by duly authorised officers had been proved. We are of opinion that the Conservator of Forests was, for the reasons given by us, duly authorised to execute the leases. Accordingly, we affirm the orders of the Division Bench so that matters in dispute between the parties could be validly referred to Arbitration under the appropriate clauses of the agreements. These appeals are, therefore, dismissed with costs. Civil Miscellaneous Petition No. 8573 of 1975 for interim orders is also dismissed as infructuous.

S.R.
dismissed.

Appeals