

Delhi High Court

H.C. Sharma vs Life Insurance Corporation Of ... on 28 August, 1972

Equivalent citations: ILR 1973 Delhi 90

Author: P Narain

Bench: T Tatachari, R Aggarwal

JUDGMENT Prakash Narain, J.

(1) On an award dated the 6th October, 1961 given by Shri G. S. Gaitonde in'a'reference of disputes to him between M/s. Hanuman Oil Mills, and the Union of India under an alleged Arbitration agreement between parties contained in the General Conditions of Contract governing A/T No. A/3/23/58 dated the 31st October, 1958, the Union of India on November 4, 1961, moved an application under sections 14 and 17 of the Arbitration Act, 1940 in the court of Shri N. C. Gupta, Sub-Judge, 1st Class, Delhi, for. the filing of the said award, making it a rule of the court and passing a decree in terms thereof. Notice of this application was issued to M/s. Hanuman Oil Mills and its three alleged partners and Shri G. S. Gaitonde was called upon to file the award in court. After the same was filed in court, notice of the filing of the award was given to the parties. M/s. Hanuman Oil Mills filed two sets of objections against the said award, one being dated the 30th April, 1962, and the other 1st May, 1962. Inter alia, M/s. Hanuman Oil Mills pleaded that there was no concluded contract between the parties in compliance with Article 299 of the Constitution of India and so, there was no arbitration agreement between the parties under which a reference could be made to an Arbitrator. It was also pleaded that the reference to Shri Gaitonde as Sole Arbitrator was a unilateral reference and so, the Sole Arbitrator had no jurisdiction to proceed with the reference and make an award therein. Several objections were also raised as to the conduct of the arbitration proceedings as well as to the maintainability of the award. The objections filed on behalf of M/s. Hanuman Oil Mills were traversed by the Union of India. On the pleadings of the parties, the trial court framed the following seven issues : 1. Whether there was a concluded arbitration agreement between the parties ? OPA. 2. Whether the Arbitrator had no jurisdiction to proceed with the reference and give the award as alleged in the objection petition? OPR. 3. Whether the arbitrator misconducted himself or the proceedings as alleged and as such the award is liable to be set aside? OPR. 4. Whether the objector respondent can file the supplementary objections without amendment the first objection petition? OPR. 5. Whether the supplementary objections are within time ? OPR. 6. If issue No. 4 & 5 are proved, whether the award is liable to be set aside as per reasons given in the supplementary objections? OPR. 7. Relief.

(2) The trial court decided the issues in favor of the Union of India and dismissed the objections filed by M/s. Hanuman Oil Mills. On there being no valid objections to the award, he made the same a rule of the court and passed a decree in terms thereof. M/s. Hanuman Oil Mills filed an appeal in this court.

(3) The appeal filed by M/s. Hanuman Oil Mills and its partners came up for hearing before M. R. A. Ansari, J. who referred the matter to a larger Bench as in the learned Judge's opinion an important question of law arose to the scope of the Bench decision of this Court in Madhusudan Limited vs. Ram Parkash and another, 1966 (2) D.L.T. 123. According to the learned Judge, it was held in the case of Madhusudan Limited that no unilateral reference was possible ; but that was a case in which

one of the parties to the arbitration agreement, who challenged the validity of an unilateral reference, abstained from taking part in the arbitration proceedings. In the present case M/s. Hanuman Oil Mills had taken part in the arbitration proceedings and in such circumstances it was doubtful whether the rule laid down in the case of Madhusudan Limited would be attracted. That is how the matter came up before us.

(4) The only point that has been seriously agitated before us is whether a contract sati

(5) As in the course of the arguments addressed before us a mention was also made of Art

(6) The facts of the case are that on 6th October, 1958, a notice was issued by the Chie

(7) It is the respondents case that a postcopy of the telegram Ex. R-5 was also sent to the appellant in which, apart from reproducing the text of the telegram, a request was made that the appellant should deposit a sum of Rs. 3,860.00 as security deposit in favor of the Pay & Accounts Officer, Ministry of Food & Agriculture, New Delhi, in any of the forms mentioned in the tender and forward the documents to the office of the Chief Director of Purchase so as to reach there by 22nd November, 1958, failing which the contract was liable to be cancelled at the appellant's risk and cost. This postcopy was signed by one S. S. Bajaj, Deputy Director of Purchase, for and on behalf of the President of India. The respondent contends that the formal acceptance of tender was sent to the appellant on 20th November, 1958, also signed by S. S. Bajaj, Deputy Director of Purchase, for and on behalf of the President of India, but by mistake in the same envelope an Acceptance of Tender addressed to another party, namely, M/s. Vijay Oil Mills Co., Damoh (M. P.), was also enclosed. The appellant's contention is that it never received any formal acceptance of tender addressed to it and only received the acceptance of tender addressed to M/s. Vijay Oil Mills Co. It is the common case of the parties that the contract between the parties has to be spelt out from all the documents starting from the notice inviting tender and that all these documents constitute the contract between the parties. Therefore, if the tender submitted by the appellant was accepted complying with the provisions of Article 299 of the Constitution of India, it has to be held that a binding contract between the parties came into existence, which included the arbitration agreement contained in one of the clauses of the contract, but if there was no valid and proper acceptance of the tender, as is contended by the appellant, then the mere tender inquiry and the submission of the tender cannot be regarded as sufficient to spell out a valid contract and an arbitration agreement between the parties.

(8) Mr. Mahinder Narain, the learned Counsel for the appellant, submitted that the law regarding the requirements of Article 299 of the Constitution is well settled and rested his contention on the rule laid down by the Supreme Court in State of Madhya Pradesh vs. Ratan Lal and another, 1967, M. P. L. J. 104. (2) In that case, following its earlier decisions, the Supreme Court laid down that in the matter of making contracts binding on the Government the intention of law is to make certain that Government is not exposed to unauthorised contracts. The provisions of Article 299 are, therefore, mandatory and not directory. The conditions, for making the contract binding on the Government are that (i) the contract must be expressed to be made by the Governor, (ii) it must be executed, and (iii) the execution should be by such person and in such manner as the Governor might authorise.

The authority need not be by a general rule, but could be by an ad hoc order. The manner of conferring authority by Governor may differ from case to case, by a rule, a notification or a special authority. On the facts of the case, where the tender was accepted by a telegram, it was held that as the telegram accepting the tender was not signed by the Director who claimed to possess authorisation from the state Government, there was not binding contract which the State Government could enforce against the defendant and the suit was liable to be dismissed. So, what has to be seen is whether in the present case the acceptance of tender was expressed to be made by the President of India, it was expressed so in writing, and the person writing had the authority and had expressed the acceptance on behalf of the President in the manner authorised by the President. It is well settled that no formality is attached to a document or documents spelling out a contract between the Government on the one hand and another party on the other. Construing the requirements of section 175 of the Government of India Act, 1935, the provisions of which were in pari materia with the provisions of Article 299 of the Constitution, a Bench of this court in *The Punjab Registered (Iron & Steel) Stockholders Association Ltd. vs. The Union of India*, 1. L. R. (1970) 2 Dslhi 809, (3), held as under: "THE requirements of section 175(3); are (a; that the contract should be expressed to be made by the Governor-General, (b) that it should be executed on behalf of the Governor General and that it should be executed by an officer duly appointed in that behalf and in such manner as the Governor General may direct or authorise. So where, as in the present case, the appellant claimed damages for breach of contract from the respondent Union of India, on the basis of its appointment by the Iron and Steel Controller as a controlled stock-holder of iron and steel subject to terms and conditions which were set out in a memorandum enclosed with the letter dated 19/21-5-1945, and it was asserted by the respondent that the contract 'which formed the basis of claim was not in accordance with Section 175(3); of the Government of India Act and was void and unenforceable, it was also held that though section 175(3); did not necessarily require execution of any formal document and that the Iron & Steel Controller, who had obtained the special sanction of the Government of India to appoint the appellant as a Controlled Stock-holder on the terms and conditions embodied in the letter and was authorised to enter into the contract, the contract itself was not expressed to be made by the Governor-General nor was the letter in question executed on behalf of the Governor General."

(9) Up to the point of the appellant receiving the telegram (Ex. R.5) there is no dispute as to the facts. There is divergence between the parties on whstharthe appellant reciiivsd the postcopy of the tslegram and the formal acceptance of tender. We will, therefore, consider the contentions of the parties from two aspects, narnsly, (i) whsther a concluded contract came into existance between the parties on the appellants receiving the telegram (Ex. R. 5): and (ii) assuming that the appellants received the postcopy of the tieigram Ext. R. 5 as well as the formal acceptance of tendsr, whether a binding contract is proved to have come into existence between the parties.

(10) The telegram, as we have noticed earlier is singned "PURFOOD" The telegraphic message thatthe appellants received only has been placed onthe record and proved.the original telegram given has neither been produced nor proved. Prima fade, therefore, this telegraphic message (Ex.R. 5) cannot be regarded as emanating from the President of India or signed by the President of India or any person authorised in this bshalf by any general or special order made by the President. Mr. R.K. Mehra,the learnsd Counssi forthe rsspondsnt, urged that Purfood is the telegraphic nams ofthe

President of India in the Ministry of Food & Agriculture, Department of Food (Army Purchase Organisation), New Delhi, and so it must be regarded as a document which complies with the requirements of Article 299 of the Constitution. There is no evidence on record to support this contention. Our attention, however, was invited to a decision of the Punjab High Court in *Messrs. Chiranji Lal Multani R.B. (Private) Ltd. vs. Union of India*, where a similar telegram came up for consideration before the court to find out whether a concluded contract in compliance of the provisions of Article 299 of the Constitution had come into existence. In that case the appellant had submitted a tender on a tender inquiry being addressed to it under the signatures of one B.R. Dhawan, Assistant Director of Purchase, for and on behalf of the President of India. In the tender inquiry it was made clear that the existence of the offer will be communicated either by telegram or by an express letter of acceptance or a formal acceptance of tender. It may be noted that a similar term exists in the tender inquiry sent in the present case also. On 16th October, 1956, the appellants' tender was telegraphically accepted and the telegraphic address of the sender of the telegram was given as "PURFOOD".

(11) A post copy of the above telegram was also sent under the signatures of P. R. Kashyap, Assistant Director of Purchase, for and on behalf of the President of India. It was proved in that case that Purfood was the telegraphic address of the Chief Director of Purchase in the Ministry of Food and Agriculture (Food,) for and on behalf of the President of India, Government of India, New Delhi, by the testimony of Niranjan Dev. Senior Clerk, Registration Branch, Central Telegraph Office, New Delhi. In the circumstances, it was held that the telegram satisfied the requirements of Article 299 of the Constitution of India. As already observed by us earlier, in the present case no evidence was led regarding the telegraphic name or address and merely because on the evidence in *Chiranji Lal's* case it was held that Purfood is the address of the Chief Director of Purchase as representing the President of India, it cannot be held in the present case that the telegraphic message (Ex. R. 5) emanated from the President of India or was signed by a person authorised to do so on behalf of the President of India or that it amounts to complying with the requirements of Article 299 of the Constitution of India. In our view, and we say this with respect, the learned single Judge of the Punjab High Court in *Messrs. Chiranji Lal* could not hold that the provisions of Article 299 of the Constitution of India were complied with merely because the telegraphic message at the end had the word "PURFOOD" printed on it. Indeed, as was observed by the Supreme Court in the case of *State of Madhya Pradesh vs. Ratan Lal and Another*, (2) in order to make this telegraphic message one complying with Article 299 of the Constitution it had to be expressed to be made by the President and the telegram had to be executed by such person and in such manner as the President might have authorised. Purfood does not amount to expressing the telegram to be in the name of the President of India, nor was there any evidence that the person who signed the telegram had the authority to do so on behalf of the President of India. In the present case, apart from the fact that there is no evidence similar to the evidence of Niranjan Dev in the case of *Messrs. Chiranji Lal*, there is no evidence at all that Shri S. S. Bajaj was an officer competent to sign on behalf of the President of India. The relevant notification or any other general or special order has neither been produced nor proved on the record.

(12) This brings us to the second contingency in which we may assume that a post copy of the telegram, Ex. R. 5, signed by S. S. Bajaj and a formal acceptance of tender signed by S. S. Bajaj was

sent to and received by the appellants. The authority of S. S. Bajaj to sign for and on behalf of the President of India has not been produced. Therefore, the conclusion is inevitable that the respondent has failed to prove that any binding contract complying with the terms of Article 299 of the Constitution of India came into existence.

(13) Mr. Mehra urged that the subsequent correspondence between the parties placed on the record and duly proved shows that both the parties regarded a concluded contract having come into existence. In support of this contention that subsequent correspondence can be seen to find out whether a binding contract came into existence, he cited two decisions, one of the Calcutta High Court and the other rendered by the Supreme Court.

(14) In *Damodar Shah vs. Union of India*, it was observed by P. C. Mallick, J. that where the existence of a contract is to be found out from correspondence, the rule is that the entire bunch of correspondence that passed between the parties has to be looked into for determining whether there was a concluded contract. The rule has no application in a case in which the contract has to be evidenced by a formal document in compliance with Article 299 of the Constitution. This was also a case in which the question arose whether the contract complied with the provisions of Article 299 of the Constitution. On the facts of the case, the learned Judge had come to the conclusion that the petitioner had accepted the acceptance of tender and the conduct of the petitioners went to show conclusively that the contract evidenced by the acceptance of tender had been accepted by the petitioner. The existence of the contract was proved by subsequent correspondence. So, the question that the court was required to decide was whether a contract came into existence as evidenced by the terms of the acceptance of tender. The Court was not concerned with whether the acceptance of tender complying with the requirements of Article 299 of the Constitution had been issued. This case, therefore, does not help the respondent.

(15) In *Jawahar Lal Burman vs. Union of India*, the court was concerned with the scope and object of sections 28, 31, 32 and 33 of the Arbitration Act, and whether the condition regarding deposit of security deposit in the letter accepting the tender was a conditional acceptance of the tender and did not bring about a concluded contract. After construing the scope of the various sections of the Arbitration Act with regard to the condition about the security deposit, it was held that the acceptance letter stating that a contract was concluded by the acceptance but it was subject to making the security deposit, did not amount to a conditional acceptance and a contract stood concluded on the issue of the letter of acceptance. This case "also, therefore, does not advance the arguments of Mr. Mehra.

(16) A reference was also made by Mr. Mehra to a Bench decision of this court in *Union of India vs. Messrs. N. K. Private Ltd. and another*, 1971 D. L. T. 406, (7) in which it was held that the issue of a formal contract was a ministerial act and was only a matter of convenience and not on which hinged the coming into existence of a concluded contract and so, when the Railway Board wrote to a party that its offer was accepted and the formal contract would be issued shortly, there was a completed contract, although the said letter from the Railway Board was not expressed to be made in the name of the President, and there was correspondence on the record to show that both the parties acted on this letter of acceptance issued by the Railway Board. This decision which, we respectfully, say, was

contrary to the rule laid down by the Supreme Court in numerous earlier decisions was over-ruled by the Supreme Court in C. A. 1067 of 1971 by a judgment dated the 11th February, 1972. It was observed that the letter of acceptance was on behalf of the Secretary, Railway Board, who was not authorised to enter into a contract on behalf of the President and otherwise also the letter did not comply with the requirements of Article 299 of the Constitution of India. So, no binding contract came into existence.

(17) In this view of the matter, it must be held that no binding contract complying with the provisions of Article 299 of the Constitution of India, was proved to have come into existence. If that be so, it follows that no arbitration agreement came into existence between the parties inasmuch as the alleged arbitration agreement is said to have been contained in one of the conditions governing the contract.

(18) An attempt was made to rely on the rules of business framed under Article 77 of the Constitution but we find that those have no relevance to the facts of the present case in which the question is about compliance with Article 299. No rules or order under this provision was brought to our notice.

(19) Having taken the above view, it is unnecessary to dilate on one of the questions on which this reference was made to a larger Bench, namely, the scope and applicability of the decision of this court in the case of Madhusudan Limited to the present proceedings.

(20) The result is that this appeal is accepted, and the order of the trial court dismissing the objections filed on behalf of the appellant and making the award a rule of the court is set aside. In the circumstances of the case, we make no order as to costs.