

CASE NO.:

appointed in even a lower grade if sufficient number of vacancies are not available in the grade for which he may be found fit. In other words, even between candidates found fit for a particular grade, the recommendation may be for an appointment to a lower grade. As between those found fit for a particular grade, the preferences had to be and were, presumably, determined by fair and honest appraisements of their merit. Such, preferences due to honest assessments, which are not above possibilities of error, have never been held to cast any reflection which, could be equated with punishment. If the view of the Division Bench of the Delhi High Court is correct, as we think it is, that the rules had the effect of constituting a new service, with a fair and reasonable procedure for entry into it, the procedure could not be characterized as a device to defeat the provisions of Art. 311 or a fraud upon the Constitution simply because the results, of subjection to the process of appraisal of the merits of each, candidate may not meet the expectation of some candidates.

Article 311 affords reasonable opportunity to defend against threatened punishment to those already in a Government service. Rule 5 provides a method of recruitment or entry into a new service of persons who, even though they may have been serving the Government, had no right to enter the newly constituted service before going through the procedure prescribed by the Rule. If the petitioner had already been appointed a permanent Government servant, there may have been some justification for

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contending that Rule 5 could not be so applied as to deprive him of a Permanent Post without complying with Article 311 as such deprivation would have been per se a punishment. The mere possibility of misuse of Rule 5 could not involve either its conflict with or attract the application of Art. 311. The fields, of operation of Rule 5 and Art. 311 of the Constitution are quite different and distinct so that the two do not collide with each other.

The learned Counsel for the Appellant then contended that each person placed in the category of Departmental candidates by Rule 2 had to be treated alike, but Rule 5 enables the Selection Committee to treat them differently by assigning different grades to them. In other words, the contention was that Rule 5 gives too wide a power of selection to the Selection Committee. It was also submitted, though not quite so clearly, that Rule 5 must itself be so interpreted as to operate automatically and place all persons falling within the definition of Departmental candidate" in a single class if Rule 5 is to be upheld as valid. It was urged that the interpretation placed on Rule 5 by the Division Bench involved not merely its conflict with the definition of a "departmental candidate" in Rule 2(b) but also with Articles 14 and 16 of the Constitution, as it meant that those treated equally by Rule 2(b) could be treated unequally by the Selection Committee. This argument rests on a misconstruction of Rule 2(b).

The definition of a Departmental candidate given by Rule 8 (b) is :

2 (b) "departmental candidate" means-

(i) a person in the Ministry of Information & Broadcasting or any of its attached and subordinate offices who was holding or would have held, but for his absence on deputation, a duty post, on the 1st November, 1957, and

who is holding, or has a lien on a duty post in a substantive capacity at the commencement of these rules; or
who has been declared quasi-permanent in a duty post, on, or prior to, the 1st July 1957; or
who was eligible to be declared quasi-permanent in a duty post, on, or on any date prior to, the 1st July 1957; or
who was appointed to a duty post on the basis of selection by the Commission or whose appointment thereto was approved by the Commission, before the commencement of these rules;

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(ii) any other person in the Ministry of Information and Broadcasting or any of its attached and subordinate offices whom the Government may declare as such on the basis of his qualification and experience";

It is clear that this definition of a "departmental candidate" is meant only as an aid in interpreting Rule 5 and was not intended to operate as a fetter on the functions and powers of the Selection Committee. We may add that the validity of Rule 5 does not appear to us to have been assailed in arguments before the High Court. And, in any case, the attack on it must fail on merits.

Fifthly and lastly, it was urged that the action against the Petitioner was visited by mala fides. We find no such ground taken either in the Writ Petition or argued at any stage in the High Court or mentioned in the grounds of appeal taken in the application for certifying the case as fit for appeal to this Court. It was, however, a ground taken by the Petitioner Appellant in his Rejoinder affidavit in attempting to reply to the affidavit filed in, opposition to the Writ Petition.

It had been stated in the affidavit filed on behalf of the Union of India that the Appellant's work was not found to be up to the mark even during the period of his probation which had to be extended thrice by two months on each occasion before the probationary period was at last terminated. It had also been pointed out that the Appellant had been given a warning that he should improve his work. Furthermore, it was stated that all the facts of the Appellant's case were carefully examined, from the point of view of his merit, by the Selection Committee. The case of the Union of India was that the post actually held by the Appellant before his selection for appointment to the newly constituted service did not automatically or wholly determine the position of a departmental candidate who offered himself to the process of appraisal of his merits by the Selection Committee to be made on the totality of relevant facts. That Committee had to be presided over either by the Chairman or a Member of the Union Public Service Commission and had officials of the Department on it who must have been in a position to correctly evaluate the petitioner's merit and to know the weight to be attached to such entries as the Appellant's confidential records contained.

In reply to the case of the Union of India, that the Appellant's merits were duly considered by the Selection Committee, the Appellant had characterized what had happened as an 'attempt to create prejudice against the Petitioner and to justify its

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mala fide reduction of rank of the Petitioner". He also said that, this amounted to "raking up the past" which had no relevance to "the admitted case of the Appellant" that he was holding the temporary substantive rank of Editor when he was reduced to the rank of an Assistant Editor. This assertion was incorrect if it implied, as it seemed to, that it was admitted that the petitioner was being punished. The Appellant had also referred to assertions made by him, in his representation dated 5-4-57 (Annexure 'B' to the, Rejoinder) to the Minister of Information and Broadcasting against the termination of his service by notice, -dated 23-3-57, and also to those contained in another representation dated 11-3-1960 (Annexure 'E' to the Rejoinder Affidavit) against the impugned order. In these representations, the petitioner had complained that he was a victim of the prejudice and machinations of an Officer in the Transport Ministry (not named by him) whose mistakes, in the publications of the Transport Ministry, had been pointed out by the Appellant. He had also referred to a number of his own publications. Thus, the Appellant's case on mala fides rests on allegations which had been examined by the Department and may also have been considered by the Selection Committee. The petitioner had assumed that there were some malicious reports against him which, according to him, he had no chance to meet and on which he thinks that the recommendations of the Selection Committee about him were based. The reply of the Union of India to this case of mala fides was that it was an after thought and that the assessment of the Selection Committee was based on the results of the interview given to the Appellant and a total assessment of all the facts concerning the Appellant which were before the Selection Committee.

Even if we were to assume that the Appellant had thus taken up a case of action vitiated by mala fides at its foundations and had supported it with necessary particulars and averments, it is evident that such a case could not be properly tried upon the materials on the record before us, without even impleading the official who was alleged to, be the architect of his misfortunes. it could not, as it has been, argued seriously for the first time before us.

The fatal weakness in the Appellant's case arises from the fact that he was holding only a temporary post so that he could have no right to continue in it after it had ceased to exist. We think that the necessary effect of setting up of the Central Information Service, together with the determination of its classes and grades and their strengths was that the temporary posts in the Department which were not shown to have been continued, automatically came to an end. The Appellant was offered a new

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Post altogether after going through the process of selection in accordance with Rule 5 to which he subjected himself. Indeed, the Appellant had no option, if he wanted to continue in the service of the Department, except to go through the procedure provided by the rules. We are unable to hold that the procedure contemplated by Rule 5 either automatically fixed the Appellant in any particular grade or post or could be held to be void for any reason whatsoever. Therefore, if the Appellant was selected for a particular post, by a process which, for the purposes of the case before us, must be assumed to have been fair, honest, and legal, he cannot complain that he was entitled to a better one.

We, therefore, dismiss this appeal. But, in the

circumstances of the case, we leave the parties to bear their own costs throughout.

V.P.S.

Appeal dismissed.

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PETITIONER:

UNION OF INDIA & OTHERS

Vs.

RESPONDENT:

N.K. PRIVATE LIMITED & ANOTHER

DATE OF JUDGMENT 11/02/1972

BENCH:

REDDY, P. JAGANMOHAN

BENCH:

REDDY, P. JAGANMOHAN

HEGDE, K.S.

MATHEW, KUTTYIL KURIEN

CITATION:

1972 AIR 915

1972 SCR (3) 437

ACT:

Constitution of India, Art. 299--Whether the Secretary to the Railway Board can enter into a contract on behalf of the President of India represented by the Ministry of Railways.

HEADNOTE:

A global tender to sell surplus serviceable and scrap rails was issued to established buyers by the Government of India and pursuant to this tender notice, the respondents by their letter dated 21-5-68 offered to buy the rails at a particular price and Shri P. C. Oak, Deputy Director, Railway Stores, Railway Board, on behalf of the Secretary, Railway Board,, accepted the respondents' offer with the terms and conditions mentioned in the letters sent by the respondent on 15-7-68. Negotiations for the final contract, however, took place between the parties and on 15-7-68, the respondents complained that some of the Railways who were holding stocks are selling the steel rails which they have no right to sell in view of the concluded contract; but Shri P. C. Oak for Secretary, Railway Board, replied that subsequent to 15-7-68, there were negotiations for the vital terms and conditions of the contract and so the question of the existence of a concluded contract did not arise. At this, the respondents filed a petition in Court under s. 20 of the Arbitration Act, after setting out the relevant correspondence leading upto the letter of acceptance of 15th July 1968 and it was stated that, the letter was a definite acceptance of the offer and constitute a valid and binding contract between the parties.

In the written statement, the appellants raised a preliminary objection that the petition was misconceived as there was no arbitration agreement between the parties and so the question of enforcing the arbitration clause in the alleged contract did not arise. Further, it was contended by the appellants that the letter of acceptance and the

subsequent letters were not by the Director of Railway Stores, but by the Secretary to the Railway Board, who was not a person authorized to enter into the agreement between the President of India represented by the Ministry of Railways and the respondents as required under Art. 299 of the Constitution. Allowing the appeal.

BELD : The Secretary to the Railway Board, on whose behalf the offer of the respondents was accepted, was not the person authorized to enter into a contract on behalf of the President of India, as required under Art. 299, and therefore, the contract, if any, was not binding on the appellants. Further, it was not correct to say that Clause 43 of Part XVIII and Part XLI empowered the Secretary, Railway Board to enter into such contracts; because Clause 9 specifically provided for the contracts connected with the sale of scrap; ashes coal, dust, empty containers and stores; and repayable rails, being part of the stores, it was covered by Clause 9 and the Secretary, Railway Board, was not empowered by the President to enter into a contract on his behalf. [445 B]

Seth Bikhraj Jaipuria vs. Union of India, [1962] 2 S.C.R. 880, referred to.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: C.A. No. 1067 of 1971.

Appeal by special leave from the judgment and order dated October 30, 1970 of the:-Delhi High Court in F.A.O. (O.S.) No. 40 of 1970.

N. A. Palkhivala, D. Mukherjee, R. H. Dhebar and A. J. Rane, for the appellants.

V. M. Tarkunde, G. L. Sanghi, B. R. Agarwala and Janendra Lal, for respondent No. 1.

A. K. Sen, G. L. Sanghi and B. R. Agarwala, for respondent No. 2.

The Judgment of the Court was delivered by

P. Jagammohan Reddy, J. This appeal is by special leave.

The question for consideration is whether there is a binding, valid and concluded contract between the appellants and the respondents. On an application filed by the respondents under section 20 of the Arbitration Act a single Judge of the Delhi High Court directed the appellants to file the arbitration agreement to refer the disputes between the parties arising under the contract to arbitrators. An appeal against that order to a Division Bench was dismissed. In order to understand the scope of the controversy, a few facts may be stated. On the 21st March 1968, a notice of Global Tender No. 1 of 1968 was issued by the President of India, therein referred to as the Government of India, Ministry of Railways

(Railway Board) proposing to sell 80,000 tones of surplus released serviceable and scrap rails, as per details given in the schedule thereto, to established buyers abroad or their accredited agents. It invited offers in respect thereof to be addressed to the President of India and sent to Shri R. No. Mubayi, Director, Railway Stores, Railway Board. With this notice were enclosed the general conditions of tender, special conditions of tender, instructions to tenderers, including proforma for performance guarantee and deed bonds as in clauses 4A and 4B, shipping terms and schedule of stocks available as on 1st March 1968. In the general conditions the seller was defined to mean the President of India acting through the

Director, Railway Stores, Railway Board, unless the context otherwise provided. The delivery F.O.B. (Free on Board /F.A.S. (Free Alongside Ship) invoices and freight were dealt with in clause 9. The default clause in clause 11 provided that where a buyer fails to execute the contract the seller was to have power under the hand of the Director, Railway Stores, Railway Board, to declare the contract at an end

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at the risk and cost of the buyer. The special conditions of tender dealt with prices, quotations, payments, terms of shipment, weightment, basis of sales and handling at ports, force majeure, arbitration, legal jurisdiction, acceptance of offers and title and risk. In the instructions to tenderers, the tenderers were requested to quote their highest offer indicating the price per metric tonne inclusive of export incentive of 5% of F.O.B. value currently applicable as guarantee by the Government of India which will always be to, the sellers benefit for handing over of the rails F.O.B. docks/F.A.S./F.O.B. Indian Port or C.I.F. destination port. The tenderer was required to offer comments clause by clause on the 'general conditions of tender' and the 'special conditions of tender' either confirming acceptance of the clauses or indicating deviation therefrom, if any. It was further provided that the contract will come into force from the date the buyers' letter of credit is accepted by- the sellers' nominee. In 4A of these instructions the proforma deed bond was given which was to be signed by the tenderer and the acceptance was to be signed for and on behalf of the President of India by the person designated for that purpose. Similarly, para 4B. gave the proforma performance guarantee bond to be addressed to the President of India executed by the tenderer and accepted for and on behalf of the President of India by the ,person so designated. The terms and conditions also set out the shipping terms in detail, though a few of them were also mentioned in the special conditions under the headings Shipment, Terms of Shipping and Receiving Notice. It appears that the terms and conditions enclosed with the tender notice annexed to the petition filed in court were not full and complete. Consequently the appellant has annexed a true copy of the enclosures with the special leave petition and prayed that this may be admitted in evidence. As there was no dispute in respect of the contents thereof, we have allowed this prayer because without them it is not possible to arrive at a just conclusion.

Pursuant to this tender notice, the respondents, by their letter, Ex. 'B', dated 21-5-1968, offered to buy 80,000 tonnes of rails at \$45.1 per tonne F.O.B. Indian Ports on the term and conditions set out therein. In reply thereto, by a letter dated 25-5-1968, the Dy. Director, Railway Stores, Railway Board, P.C. Oak in para 1 (6) categorically. stated by reference to para 14 of the conditions of the letter of the respondents that as shipping terms have financial implications they were requested to indicate with reference to the tender which particular clauses they desire to re-negotiate and settle. In para 2 it was stated that the offer of the respondents was not addressed to the President of India as required under clause 1(3) of the Instructions to the Tenderers and, therefore, the Respondents were required to confirm that their offer was deemed to 'have been addressed to the President of India and' is

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open for acceptance on behalf of the President, it was

further stated in para 4 that they should send the reply addressed to the President of India through the Director of Railway Stores, Railway Board covering all the points indicated therein, to reach them not later than 28-5-1968. No reply was, however, received by the time indicated in the letter of the appellants and while so stating another letter was addressed to the Respondents on 3-6-68 by C. Parasuraman for Secretary, Railway Board, seeking further clarification in respect of items Nos. 26 and 27 of the offer contained in the aforesaid letter of the Respondents dated 21-5-1968. There were also two other clarifications in respect of the weight of the tonne for which \$45.1 was quoted and the option to transfer the contract in the name of the foreign principles which it was stated, could not be agreed to straightaway unless and until they knew the names of the foreign principles and their willingness to enter into a legal binding guarantee of all the terms and conditions of the contract. The Respondents wrote subsequently to the Director, Railway Stores on the 15th June, 29th June, 8th July and the three letters on 10th July and one on the 15th July 1968, some of which were written after a discussion with the Director of Railway Stores in the presence of the Director of Finance, Mr. Datta. On the same day as the letter of 15th July was sent by the Respondents, P. C. Oak signing for the Secretary of the Railway Board, addressed the following letter of acceptance, No. 68/RS(G)/709/10 to the Respondents

"Subject:-Tender No. 1 of 1968 for Export sale of used re-rollable and repayable steel rails.
Reference:-Your letter Nos. Nil dated 21-5-68, 15-6-68, 29-6-68, 8-7-68, 10-7-68 and 15-7-68.

Kindly be advised that your offer (at \$39 per long ton F.O.B. Indian Port for export and Rs. 458/- per long ton for indigenous consumption) with terms and conditions referred to in your above letters is hereby accepted. Formal contract will be issued shortly.

2. Kindly acknowledge receipt.

Yours faithfully,
Sd./- P. C. Oak,
for Secretary,
Railway Board".

Thereafter, it is alleged that several draft agreements were exchanged regarding which there is a dispute but ultimately be, fore us it is not contested that a draft agreement, which the appellants say is the 5th draft, but according to the Respondents is

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the final draft, was handed-over to the Respondents by P. C. Oak on 27-8-68 but this, however, was not signed. Clause 2 of this draft agreement states. that the contract has been concluded by the issue of seller's letter No. 68/RS(G)/709/10 dated 15-7-68 to the buyers; that the term of the contract shall be three years from 1-11-1968 to 31-10-1971; that the buyers reserve the right to act upon the contract any time before 1-11-68 and start inspection and take delivery of the goods but this will not in any manner effect the terms of the contract. Even thereafter there was further correspondence between the parties. By letter dated 18-9-68 the Respondents wrote to the Director, Railway Stores, agreeing to several other matters to be included in the final draft and requested him to issue the 'final. contract' without delay. On the 21st September 1968 the Respondents again wrote to the Director, Railway Stores,

complaining that the information provided by the various Railways was not complete and requested him to contact the various Railways and obtain the required information as soon as possible. After the receipt of this letter the Joint Director, Railway Stores (G), wrote to the general Manager (S), All Indian Railways with a copy to the respondents calling for the required information. In that letter the Joint Director stated thus :-

".. the Board have finalized an export-cum-internal sale contract with M/s. N. K. (p) Ltd., New Delhi for a period of 3 years, entitling them to export stock of such surplus rails available with the Railways. The detailed terms and conditions of the contract will be apprised to you when finalized".

On the 23rd October 1968, C. Parasuraman, for Secretary., Railway Board, replied to the letter of the Respondents of the 21st September 1968, stating that it was not correct that their office has assured them that it would arrange to get the missing details from the concerned C.O.Ss. After this letter two other letters were written by the Respondents to the Director, Railway Stores, dated 7th and 23rd November 1968. In the first letter it was stated thus

"In pursuance of your invitation we submitted our tender for purchase of used relayable and re-rollable steel rails on 21-5-68. After some negotiations the terms of the contract were finalized and the Secretary, Railway Board by his letter No. 68/RS(G)70910 dated 15-7-68, accepted our offer and concluded the contract. We were informed that the formal contract will be issued shortly. A draft of the formal contract was handed over to us on 27-8-68. In our letter of 18-9-68, some agreed terms were set out which had to be incorporated in the formal contract. Since the acceptance of our-

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offer we have made all arrangement for the sale of the material- We beg to inform you that out of the total quantity of 88,936 tonnes of Rails already offered to us for our approval we approve and shall take delivery of 53,807 Tonnes as per list enclosed herewith. The above quantity may kindly be reserved for us and arrangement be made for their delivery in terms of the contract. . . . "

In the second letter, the respondents complained that though the contract for sale of used rerollable and relayable steel rails was concluded on 15-7-68 they regretted that they had not received the formal contract so far and requested that it should be sent without any further delay. In the last paragraph of that letter, the Respondents complained that they came to know that some of the Railways who were holding stocks are selling the steel rails which they have no right to do and requested them to stop such sales. To this, P. C. Oak for Secretary, Railway Board, replied

"Kindly refer to correspondence resting with your letters dated July 26, 1968, 18th September 1968 and No. RB/Rails/68/1/114, dated 2nd December 1968. Your contention contained in your letter No. RB/Rails/ 68/1 dated 23-11-68 that the Railway Board is not authorized to sell rails' to other parties because of their having concluded a contract

with you is factually incorrect. No doubt, letter No. 68/RS(G)/709/10 dated 15-7-68 indicated an intention to enter into a contract with you, but subsequent to this, discussions had been held with you over a number of sittings on 20-7-68, 12-8-68, 26-8-68, 27-8-67 culminating in your letter dated 18-9-68. This would amply indicate that no agreement had been reached on vital terms and conditions, and the question of the existence of a concluded contract does not arise'"

The Respondents replied to this letter by their letter dated 25-1-1969 expressing surprise and contesting the stand taken by the Railway Board. In the petition of the Respondents filed in Court after setting out the relevant correspondence leading upto the letter of acceptance of P. C. Oak dated 15th July 1968, 'it was stated that that letter was a definite acceptance of the offer and constitutes a binding and valid contract between the parties. With respect to the draft agreement of the 27th August 1968 handed over to the Respondents embodying the agreement between the parties, the averment was that the then Acting Director of Railway Stores desired certain additional terms to be embodied in the terms that were agreed to. The additional terms were agreed to by the plaintiffs (Respondents) by their letter to the

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Director, Railway Stores, dated 18-9-1968. In para 16 it was further alleged that after the letter of acceptance by the appellants the then Acting Director of Railway Stores and the Director of Finance proposed to the plaintiffs that the price offered by them should be increased or in the alternative certain alterations be made in the agreed terms, but the plaintiffs having justly refused to do so, the 2nd defendant (C. Parasuraman) falsely wrote to the plaintiffs on 15-1-1969 that no concluded contract had taken place and that the Railway Board was, therefore, not precluded from selling rails to other parties.

The appellants in their written statement, raised a preliminary objection, namely, that the petition was misconceived as there was no arbitration agreement between the parties and so the question of enforcing the arbitration clause in the alleged contract did not arise. It also reiterated its stand earlier taken that the letter dated 15-7-68 written by Oak on behalf of the Secretary, Railway Board, was not a letter of acceptance of the offer of the Respondents so as to amount to a concluded contract binding on the Union of India nor could it be construed as such in view of the mandatory provisions of Article 299 of the Constitution of India. The contention was that unless and until a formal instrument of contract was executed in the manner required by Article 299 of the Constitution and by the relevant notifications, there would not be a contract binding on the Union of India and at any rate no such agreement was entered into as it was. alleged that though interviews had taken place at various times between the plaintiffs and the several officers of the Railway Board, no agreement had been reached on vital terms and conditions.

Two submissions were urged on behalf of the appellants, namely :

- (1) that apart from the contention relating to Art. 299 of the Constitution, there was no concluded contract between the parties, because (a) the essential terms were not agreed to between them on the date when the

acceptance letter was issued by P. C. Oak on 15-7-68, and (b) even if there was an acceptance as alleged, that acceptance was conditional upon a formal contract being executed by the appellants;

(2) that the three mandatory requirements of Art. 299 of the Constitution for a valid and binding contract made in exercise of the executive power of the Union have not been complied with namely, (a) that the contract was not expressed to be in the name of the President, nor (b) was

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it executed on behalf of the President, or (c) by a person authorized to execute it on his behalf.

The crucial question which arises for determination is whether there was a concluded contract, and if there was one, whether the mandatory requirements of Article 299 of the Constitution for entering into a valid and binding contract have been satisfied? It is now settled by this Court that though the words 'expressed' and 'executed' in Article 299(1) might suggest that it should be by a deed or by a formal written contract, a binding contract by tender and acceptance can also come into existence if the acceptance is by a person duly authorized on this behalf by the President of India. A contract whether by a formal deed or otherwise by persons not authorized by the President cannot be binding and is absolutely void.

We do not for the present consider it necessary to go into the question whether and to what extent the requirements of Art. 299 have been complied with in this case. What we have to first ascertain is whether apart from the contention relating to Article 299, a concluded contract has come into existence as alleged by the Respondents. Before us detailed arguments were addressed on behalf of the appellants to show that notwithstanding the letter of acceptance of 15th July 1968, no concluded contract had in fact come into existence and though that letter accepted certain terms, there were other essential terms of the contract which had to be agreed to and were the subject matter of further negotiations between the parties; that it was the intention of the parties that all those terms were to be embodied in a formal contract to be executed which contract alone was to be binding between the parties; and that in any case the letter of acceptance and the subsequent letters were not by the Director of Railway Stores but by the Secretary to the Railway Board who was not a person authorized to enter into the agreement between the President of India represented by the Ministry of Railways and the Respondents. On the other hand, the stand taken by the Respondents was that all the essential terms of the contract were agreed to and the contract was concluded on 15th July 1968, though at the instance of the Director, Railway Stores further terms with respect to the execution of the contract were the subject-matter of negotiations between the parties and in any case these did not pertain to the essential terms and could not on that account detract from the binding nature of a concluded contract. It was also contended that the letter of acceptance by P. C. Oak though signed on behalf of the Secretary, Railway Board was in fact on behalf of the said Board which was authorized to enter into such a contract. It is in our view unnecessary to consider the several contentions as to whether all the essential terms of the contract had been agreed to or that the contract was

concluded by the acceptance

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letter of 15th July 1968 or whether the parties intended it to be a term of the contract that a formal contract should be entered into between them in order to bind the parties. In this case, we are of the view that the Secretary to the Railway Board, on whose behalf the offer of the Respondents was accepted, was not the person authorized to enter into a contract on behalf of the President of India. As can be seen from the various documents already extracted that the tender notice invited offers to be addressed to the President of India through the Director of Railway Stores, Railway Board. Under the general conditions the seller was defined to mean the President of India acting through the Director, Railway Stores and in the default clause it was provided that where the buyer fails to execute the contract, the seller shall have power under the hand of the Director, Railway Stores, Railway Board, to declare the contract at an end. In the letter written by Oak on 25-5-68, as earlier noticed, it was pointed out to the Respondents that their offer was not addressed to the President of India as required under clause 1(3) of the Instructions to the Tenderers and, therefore, the Respondents were required to confirm that their offer can be deemed to have been addressed to the President and is open for acceptance on behalf of the President and their reply should be addressed to the President of India, through the Director of Railway Stores, Railway Board. Even the draft contract dated 27-8-68 in terms of which the Respondents were insisting on a final contract to be issued to them by the appellants was to be executed by the Respondents as buyers on the one part and the President of India acting through the Director, Railway Stores, Ministry of Railways (Railway Board) as the sellers, on the other. There is little doubt that the only person authorized to enter into the contract on behalf of the President is the Director, Railway Stores. It is true that the notification of the Ministry of Law issued in exercise of the powers under clause 1 of Article 299 of the Constitution shows that the President directed the 'authorities named therein to execute on his behalf the contracts and assurances of property specified therein. But notwithstanding this, the President is fully empowered to direct the execution of any specified contract or class of contracts on ad hoc basis by authorities other than those specified in the said notification. This Court had in Seth Bikhraj Jaipuria v. Union of India, (1) earlier held that the authority to execute contracts may be conferred on a person not only by rules expressly framed and by formal notifications issued in this behalf but may also be specifically conferred. In this case the letter of acceptance dated 15-7-1968 was on behalf of the Secretary, Railway Board, who is not authorized to enter into a contract on behalf of the President.

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

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It is contended that clause 43 of part XVIII and Part XII empower the Secretary, Railway Board to enter into such contracts. Clause 43 of Part XVIII provides that all deeds and instruments other than those specified in that part may be executed by the Secretary or the Joint Secretary or the Deputy-Secretary or the Under-Secretary in the Railway Board or a Director, Joint Director, Deputy Director or Assistant Director in the Railway Board. It is submitted that as nothing has been specified in Part XVIII relating to the contract of the type we are considering, the Secretary,

Railway Board is authorized to enter into a contract on behalf of the President. This submission is untenable because clause 9 specifically provides for the contracts connected with the sale of scrap, ashes, coal, dust, empty containers and stores. The tender, it will be observed, is for rails which are scrap as well as rerollable and relayable but it is urged that relayable rails are not stores nor can they be considered as scrap and as these are not covered by clause 9, the Secretary, Railway Board is fully empowered by the President to enter into a contract on his behalf. We cannot accept this argument because in our view relayable rails are part of the stores. It may be that some of these rails which are part of the stores may be considered to be in a condition which the authorities concerned think should be disposed of. The contracts relating to the goods of the nature specified in the tender notice are, therefore, dealt with by clause 9, as such clause 43 will have no application. Part XLI empowers the Secretaries to the Central Government in the appropriate Ministries or Departments to execute any contract or assurances of property relating to any matter whatsoever and is in these terms :-

"Notwithstanding anything hereinbefore contained any contract or assurance of property relating to any matter whatsoever may be executed by the Secretary or the Special Secretary or the Additional Secretary or a Joint Secretary or a Director or where there is no Additional Secretary or a Joint Secretary or a Director, a Deputy Secretary to the Central Government in the appropriate Ministry or Department and in the case of. . ."

The contention on behalf of the Respondents is that since Railway Board is a Department of the Government, the Secretary to the Department is authorized to enter into a contract under the above provision. This submission in our view, is equally misconceived because reading the above requirement carefully it will appear that the persons there mentioned should be Secretary, Special Secretary etc., to the Central Government in the appropriate Ministry or Department and not that the Secretary to any Department or office of the Government of India is empowered thereunder. It is however contended that the Secretary to the

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Railway Board is a Joint Secretary to the Government of India and as such under the above Provision the acceptance letter should be considered to have been executed on behalf of the president Even this submission lacks validity because as pointed out on behalf of the appellant, at the relevant time the Secretary to the Railway Board did not have any status as Secretary to the Central Government. The status of a Joint Secretary was only conferred on him by a notification by the Government of India in the Ministry of Railways for the first time on 15-9-1969 with effect from that date. An affidavit of the Deputy Secretary to the Railway Board (Ministry of Railways) has been filed before us setting out the above fact and enclosing the said notification. Then again it was urged that the members of the Railway Board were Secretaries to the Central Government and hence the Board on whose behalf the Secretary communicated the acceptance could enter into a binding contract. This submission also is without force because there is no material before us to conclude that the Board was so authorized. In these circumstances, even if the correspondence shows that the formalities necessary for a

concluded contract have been satisfied and the parties were ad item by the time the letter of acceptance of the 15th July 1968 was written, about which we do not wish to express any opinion, there is no valid or binding contract because the letter of acceptance, on the evidence before us, is not by a person authorized to execute the contracts for and on behalf of the President of India.

On the evening before the day the judgment in the case was due to be delivered, an application dated 7-2-72 was filed enclosing an affidavit of R. N. Mubayi who was Director, Railway Stores, between 18-12-1965 to 30-9-1969 as also an affidavit of R. B. Lal, Managing Director of the Respondent No. 1 to take them in evidence and consider the facts stated therein before judgment is delivered, and if necessary, to call for the file and give a re-hearing. The affidavit of Mubayi states that only after he recorded on the relevant file and issued instructions to his Deputy Director, Shri P. C. Oak to convey the acceptance of the offer of M/s. N. K. Private Limited, that the acceptance was conveyed by Shri P. C. Oak to the said company. The affidavit of R. B. Lal says that though the affidavit filed by P. Lal, Deputy Secretary, Railway Board stating that the Secretary, Railway Board, did not have the status of Secretary, Special Secretary, Additional Secretary, Joint Secretary or Deputy Secretary to the Government of India in the Ministry of Railway, he has not denied that the Secretary did not have the status of a Director. It is further submitted in that affidavit that the Secretary of the Board had the status of a Director at the relevant time and as mentioned in Part XLI of the Notification of the Ministry of Law, 'a Director' is authorized to accept offers.

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Apart from the question whether we should admit additional evidence at this stage in this case and though we had rejected an earlier submission to call for the files, having regard to the facts stated by R. N. Mubayi, Director of Railway Stores during the relevant period that it was he who had asked P.C. Oak to accept the offer and had so endorsed it on the file, as also the affidavit of R. B. Lal that the Secretary to the Board was the Director of Railway Stores, we withheld the judgment and called for the file to satisfy ourselves. The file has been submitted to us by the appellants along with an affidavit of R. Srinivasan, Joint Director, Railway Board in which it is categorically averred that at the relevant time, namely, 15-7-68, the Secretary Railway Board did not have the status of the Director under Para XLI of the Notification of the Ministry of Law or at all. A perusal of the relevant file relating to the letter of acceptance would show that on 15-7-68, Shri Oak made the following endorsement: "Reference to Board's orders at page 38/N, draft letter accepting M/s. N.K. (P) Ltd., offer is being issued today. D.R.S. may kindly see before issue", and this endorsement was merely signed by R.N. Mubayi. We are not here referring to the other proceedings on the file as to whether the execution of a formal contract was a condition precedent and as one of the terms of the contract but even the above endorsement does not show that the letter of acceptance of 15-7-68 was issued on the orders and directions of Mubayi as alleged by him in the affidavit. What it in fact shows is that it is the Board that issued the orders of acceptance and that the acceptance letter was only to be seen by him. Even the draft letter issued does not contain his initials or his signature in token of his having seen or approved it. The letter of acceptance not having been issued on the orders of the Director, Railway

Stores, there was no concluded contract as on that date, by a person authorized to enter into a contract. There is also nothing to show that the Secretary to the Board was the Director, Railway Board as further alleged in the affidavit of R. B. Lal.

In this view the appeal is allowed and the application under section 20 of the Arbitration Act is dismissed but there will be no order as to costs of the appellants. On the other hand, we direct the appellants to pay the costs of the Respondents because special leave was granted on condition that the petitioner will pay the costs of the Respondents in this appeal in any event.

S.C.

Appeal allowed.

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JUDIS