

PETITIONER:
STATE OF UTTAR PRADESH & ANR.

Vs.

RESPONDENT:
MURARI LAL & BROTHERS LTD.

DATE OF JUDGMENT 03/08/1971

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
HEGDE, K.S.

CITATION:
1971 AIR 2210 1972 SCR (1) 1

ACT:
Constitution of India, Art. 299(1)-Contract Act, 1872. s. 230(3)-Purported contract between Government and private party not complying with requirements of Art. 299(1)-Whether enforceable-Liability of agent of Government.

HEADNOTE:
The respondent company had a cold storage. It filed a suit against the Government of Uttar Pradesh and three of its officials claiming rent or damages on the allegation that under an agreement negotiated by Defendant No. 3 under instructions from Defendants Nos. 2 and 4 on behalf of the State Government (defendant No. (1) space had been reserved in its cold storage by the company for the storage of Government potatoes but no potatoes had been sent for storage. On behalf of the State Government it was pleaded that no contract was entered into in accordance with Art. 299(1) of the Constitution. The trial court upheld the objection of the State and dismissed the suit against it, but it held the other defendants liable for the storage charges. The High Court on appeal by the defendants set aside the decree against defendants Nos. 2 and 4 but maintained it against defendant No. 3. According to the High Court the entire transaction had been entered into by the defendant No. 3 on behalf of the Government and since the State Government was not liable by virtue of Art. 299 of the Constitution the said defendant would be liable under s. 230(3) of the Contract Act. In appeal to this Court by certificate,

HELD : Except in Chaturbhuj's case which lent some support to the High Court's view, this Court has taken the view that the provisions of Art. 299(1) are mandatory and contain a prohibition against a contract being entered into otherwise than in the manner prescribed by the aforesaid provisions. The observations in Chaturbhuj's case have been regarded in subsequent decisions as either not laying down the law correctly or as being confined to the facts of that case. The consensus of opinion is that a contract entered into without complying, with the conditions laid down in Art. 299(1) is void. If there is no contract in the eye of the law it is difficult to see how s. 230(3) of the, Contract Act would become applicable. (5 D]
The appeal must accordingly be allowed.

Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram & Ors, [1954] S.C.R. 817, not followed.

State of West Bengal v. M/s. B. K. Mondal & Sons. [1962] Supp. 1 S.C.R. 876, and Mulamchand v. State of Madhya Pradesh, [1968] 3, S.C.R. 214, applied.

[For the reasons stated in the judgment the court did not give any final opinion on the question of applicability of s. 235 of the Contract

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Act to cases when the contract suffers from the infirmity that the requirements of Art. 299(1) of the Constitution have not been complied with]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 15 of 1968.

Appeal from the judgment and decree dated August 11, 1964 of the Allahabad High Court in first Appeal No. 11 of 1957.

C. B. Agrawala, O. P. Rana and R. Bana, for the appellants.

S. P. Sinha, O. P. Gupta and M. L. Khawaja, for the respondent

The Judgment of the Court was delivered by.

Grover, J.-This is an appeal by certificate from the judgment of the Allahabad High Court decreeing the suit filed by the respondent company for recovery of a sum of Rs. 21,000/- on account of rent or damages in respect of storage charges for 4,000 Maunds of potatoes for which space had been reserved in the cold storage by the company. The plaintiff respondent brought a suit against the State of Uttar Pradesh and impleaded three other defendants who were, at the material time, in the service of the State. Defendant No. 3 was a Horticulturist in the Department of Agriculture. He negotiated with the plaintiff for storing Government potatoes in a cold storage which belonged to the plaintiff. It was agreed that the Government potatoes would be sent for storage and the plaintiff would be entitled to charge at a certain rate per maund. It was understood that 4,000 maunds of potatoes would be sent for storage. However, no potatoes were sent although the plaintiff had reserved the requisite space in the storage which remained unoccupied during the season. It appears that defendant No. 3 A. P. Gupta was acting on behalf of Srivastava defendant No. 2 who was Deputy Director, Horticulture. Both these defendants were acting upon instructions from Sri Ram Krishna defendant No. 4 who was Assistant Development Commissioner, Planning Lucknow. The suit was therefore filed against the State and the other three defendants to recover the storage charges amounting to Rs. 21,000/-.

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Although, all the defendants raised a common plea that there was no contract between the parties for the storage of potatoes and that the entire matter remained at the stage of negotiations the real plea taken on behalf of the State was that no contract had been entered into in accordance with Art. 299 (1) of the Constitution. The trial court upheld the objection of the State and dismissed the suit against it but it held the other defendants jointly liable for the storage charges. The High Court on appeal by the defendants set aside the decree against defendants Nos. 2 and 4 but maintained it against defendant No. 3. No appeal, however, was filed by the plaintiff against the State. As the judgment of the High Court proceeded mainly on the provisions of sub-s. (3) of S. 230 of the Contract Act the

whole of that section may be set out :-

S. 230. "In the absence of any contract to that effect an agent cannot personally enforce contracts entered into by him on behalf of his principal, now is he personally bound by them. Such a contract shall be presumed to exist in the following cases:-

- (1) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;
- (2) Where the agent does not disclose the name, of his principal;
- (3) where the principal, though disclosed, cannot be, sued.

According to the High Court the entire transaction had been entered into by the defendant on behalf of the, Government. As the State Government was not liable by virtue of Art. 299 of the Constitution S. 230 (3) would be applicable and defendant No. 3, who was apparently acting as an agent of the State Government, would become personally liable under the contract. Certain observations in *Chatturbhuj Vithaldas Jasani v.. Moreswar Parshrain & Others* (1) appear to lend support to this view. In that case also no formal contract had been.

(1) [1954] S.C.R. 817.

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entered into as required by Art. 299 (1) of the Constitution. The court observed that the Chairman of the Board of Administration had acted on behalf of the Union Government and his authority to contract in that capacity had not been questioned. Both sides, acted in the belief and on the assumption that the goods were intended for Government purposes. The only flaw was that the contracts were not in proper form and because of this technical difficulty the principal could not have been sued. But that was just the kind of case that S. 230 (3) of the Indian Contract Act was designed to meet. The Government might not be bound by the contract but it was very difficult to say that such contracts were void and of no effect. There would be nothing to prevent ratification especially if that was for the benefit of the Government. However, in a subsequent decision in *State of West Bengal v. M/s B. K. Mondal and sons*, (1) Gajendragadkar J., delivering the majority judgment of Bench said at page 885 with reference as he then was, the Constitution to the above observation:

"The contract which is void may not be capable of ratification, but, since according to the Court the contract in question could have been ratified it was not void in that technical sense. That is all that was intended by the observation in question. We are not prepared to read the said observation or the final decision in the case of *Chatturbhuj* as supporting the proposition that notwithstanding the failure of the parties to comply with Art. 299 (1) the contract would not be invalid. Indeed, Bose, J., has expressly stated that such a contract cannot be enforced against the Government and is not binding on it."

The effect of the reference to S. 230 (3) of the Contract Act in *Chatturbhui's* case (2) was not directly considered 'but in a large number of Subsequent decisions this Court has taken the view that the provisions of Art. 299 (1) (corresponding to S. 175 (3) of the Government of India' Act

(1935) are mandatory and contain a prohibition against a contract being entered into

(1) [1962] Supp. 1 S.C.R. 876.

(2) [1954] S. C. R. 817,

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except in the manner prescribed by the aforesaid provisions. We need only refer to the recent judgment in *Mulamchand v. State of Madhya Pradesh* (1). After referring to the earlier decisions *Ramaswami, J.* observed at page 221 :-

"The principle is that the provisions of S. 175 (3) of the Government of India Act, 1935 or the corresponding provisions of Art. 299 (1) of the Constitution of India are mandatory in character and the contravention of these provisions nullifies the contracts and makes them void. There is no question of estoppel or ratification in such a case."

It is clear that the observations in *Chatturbhuj's case*(2) have been regarded either as not laying down the law correctly or as being confined to facts of that case. The consensus of opinion is that a contract entered into without complying with the conditions laid down in Art. 299 (1) is void. If there is no contract in the eye of the law it is difficult to see how S. 230 (3) of the Contract Act would become applicable.

Although the High Court did not rely on S. 235 of the Contract Act the trial court had held that the defendants had no authority to enter into a contract on behalf of the State Government but still they purported to do so. There was an implied warranty of authority which had to be presumed and the plaintiff was entitled to receive compensation for breach of that warranty under s. 235 of the Contract Act. Section 235 provides that a person untruly representing himself to be the authorised agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation, to the other in respect of any loss or damage which he has incurred by so dealing. The High Court did not base its decision on the above section. But it seems that s. 235 also can become applicable only if there is a valid contract in existence. This appears to follow from the words "if his alleged employer does not ratify his acts." The contract should thus be such that it is

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

(2) [1954] S.C.R. 817.

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capable of ratification. ;In the present case where the contract was entered into 'Without complying with the requirements of Art. 299 (1) of the Constitution the question of ratification could not arise because on the view which has already been followed such a contract is void and is not capable of ratification. However, we do not wish to express any final opinion on the applicability of S. 235 of the Contract Act to cases where the contract suffers from the infirmity that the requirements of Art. 299 (1) of the Constitution have not been complied with. The reason is that before the High Court no contention appears to have been advanced on behalf of the plaintiff based on S. 235 of the Contract Act nor has the plaintiff's counsel chosen to satisfy us that even if S. 230 (3) was not applicable the decree should be sustained on the ground that relief could be granted by virtue of S. 235 of the Contract Act.

The appeal thus succeeds and the judgment and decree of the courts below are hereby set aside and the suit of the

plaintiff is dismissed. In the circumstances of the case
the parties are left to bear their own costs throughout.

G.C.

Appeal allowed

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JUDIS