State of West Bengal

Vs

M/s. B. K. Mondal and Sons

Civil Appeal No. 286 of 1958

(CJI B. P. Sinha, P. B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo, K. C. Das Gupta JJ)

05.12.1961

JUDGMENT

GAJENDRAGADKAR, J. –

This appeal by special leave arises out of a suit field by the respondent B. K. Mondal & Sons against the appellant the State of West Bengal on the Original Side of the Calcutta High Court claiming a sum of Rs. 19,325/- for works done by it for the appellant. This claim was made out in two ways. It was alleged that the works in question had been done by the respondent in terms of a contract entered into between the parties and as such the appellant was liable to pay the amount due for the said works. In the alternative it was alleged that if the contract in question was invalid then the respondent's claim fell under s. 70 of the Indian Contract Act. The respondent had lawfully done such works not intending to act gratuitously in that behalf and the appellant had enjoyed the benefit thereof.

The respondent's case was that on February 8, 1944, it offered to put up certain temporary storage godowns at Arambagh in the District of Hooghly for the use of the Civil Supplies Department of the State of Bengal and that the said offer was accepted by the said department by a letter dated February 12, 1944. Accordingly the respondent completed the said construction and its bill for Rs. 39,476/- was duly paid in July 1944. Meanwhile, on April 7, 1944, the respondent was requested by the Sub-Divisional Officer, Arambagh, to submit its estimate for the construction of a kutcha road, guard room, office, kitchen and room for clerks at Arambagh for the Department of Civil Supplies. The respondent alleged that the Additional Deputy Director of Civil Supplies visited Arambagh on April 20, 1944, and instructed the respondent to proceed with the construction in accordance with the estimates submitted by it. Accordingly the respondent completed the said constructions and a bill for Rs. 2,322/8 was submitted in that behalf to the Assistant director of Civil Supplies on April 27, 1944. Thereafter the Sub-Divisional Officer Arambagh required the construction of certain storage sheds at Khanakul and the Assistant Director of Civil Supplies wrote to the respondent on April 18, 1944, asking it to proceed with the construction of the said storage sheds. This works also was completed by the respondent in due course and for the said work a bill for Rs. 17,003/- was submitted. In the present suit the respondent claimed that the two bills submitted by it in which the respondent had claimed Rs. 2,322/8/- and Rs. 17,003/- respectively had remained unpaid and that was the basis of the present claim.

The appellant denied all the material allegations made by the respondent in its plaint. It alleged that the requests in pursuance of which the respondent claims to have made the several constructions were invalid and unauthorised and did not constitute a valid contract binding the appellant under s. 175(3) of the Government of India Act, 1935 (hereafter called the Act). It pleaded that there was no

privity of contract between the respondent and itself and it denied its liability for the entire claim. The written statement filed by the appellant was very vague and general in terms and no specific or detailed pleas had been set out by the appellant in its pleading.

However, G. K. Mitter, J., who tried the suit, framed five material issues on the pleadings and recorded his findings on them. He held that having regard to the provisions of s. 175(3) of the Act there was no valid and binding contract between the respondent and the appellant for the construction of huts and sheds and Khanakul and Arambagh. This finding was in favour of the appellant. He held that the respondent's claim against the appellant was, however, justified under s. 70 of the Indian Contract Act, and he came to the conclusion that the said claim was not barred by limitation. He also rejected the plea of the appellant that the liability of the Province of Bengal had not devolved upon the appellant under the provisions of the Indian Independence (Rights, Property and Liabilities) Order 1947. Thus, on these three points the findings of the trial judge were against the appellant. It appears that at the trial the respondent had also relied upon s. 65 of the Indian Contract Act in support of its claim. The learned judge held that s. 65 did not apply to the facts of the case and so the finding on this point was in favour of the appellant. The result was that the respondent's claim was upheld under s. 70 of the Contract Act and a decree for the amount claimed by it was accordingly passed in its favour.

The appellant disputed the correctness and validity of the said decree by preferring an appeal to the Calcutta High Court in its civil appellate jurisdiction. The said appeal was heard by S. R. Das Gupta and Bachawat, JJ. The two learned Judges who heard the said appeal delivered separate though concurring judgments and substantially confirmed the material finding recorded by the trial court. In the result the appeal preferred by the appellant was dismissed. The appellant then applied for a certificate to come to this Court but the High Court rejected its application. Thereupon the appellant moved this Court for a special certificate and on obtaining it has come to this Court; and the principal point which has been urged before us by Mr. Sen on behalf of the appellant is that s. 70 of the Contract Act does not apply to the present case.

Before dealing wit this point it is necessary to refer briefly to the finding recorded by the Courts below that the contract on which the respondent relied is invalid under s. 175(3) of the Act. Mr. Sen argues that this finding is correct whereas Mr. Chatterjee faintly suggested that the contract cannot be said to be invalid. Section 175(3) provides, inter alia, that all contract made in the exercise of the executive authority of a province shall be expressed to be made by the Governor of a Province and all such contracts made in exercise of that authority shall be executed on behalf of the Governor by such persons and in such manner as he may direct or authorise. It is common-ground that the contracts in question were not executed by any persons duly authorised by the Governor in that behalf and the question is whether the said contracts can be said to be valid inspite of the fact that they do not comply with the mandatory requirements of s. 175(3) of the Act. In our opinion, there can be no doubt that failure to comply with the mandatory provisions of the said section makes the contracts invalid. The question as to whether mandatory provisions contained in statutes should be considered merely as directory or obligatory has often been considered in judicial decisions. In dealing with the question no general or inflexible rule can be laid down. It is always a matter of trying to determine the real intention of the Legislature in using the imperative or mandatory words, and such intention can be gathered by a careful examination of the whole scope of the statute and the object intended to be achieved by the particular provision containing the mandatory clause. If it is held that the mandatory clause is obligatory it inevitably follows that contravention of the said clause implies the nullification of the contract. There can be no doubt that in enacting the provisions of s. 175(3) the Parliament intended that the state should not be burdened with liability based on

unauthorised contracts and the plain object of the provision, therefore, is to save the State from spurious claims made on the strength of such unauthorised contracts. Thus the provision is made in the public interest and so there can be no difficulty in holding that the word "shall" used in making the provision is intended to make the provision itself obligatory and not directory. This is the view taken by this Court in Seth Bhikraj Jaipuria v. The Union of India [[1962] 2 S.C.R. 880.], and, with respect, we are in entire agreement with that view.

As in the case of Bhikraj Jaipuria [[1954] S.C.R. 817.] so in the present case too Mr. Chatterjee has attempted to argue that the conclusion about the obligatory character of the provisions of s. 175(3) is inconsistent with the decision of the this Court in Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram [[1954] S.C.R. 817.]. In that case a contract for the supply of goods had been entered into with the Central Government by the firm Moolji Scika and Company of which the candidate Chatturbhuj was a partner. The contract in question had not complied with the mandatory provisions of Art. 299(1) of the Constitution (which corresponds substantially to s. 175(3) of the Act) and the question which this Court had to consider was whether in view of the fact that the contract in question had contravened the provisions of Art. 299(1) the candidate Chatturbhuj could be said to be disqualified for being chosen as a member of Parliament by virtue of the disqualification set out in s. 7(d) of the Representation of the People Act 43 of 1951. In dealing with this question Bose, J., who spoke for the Court, observed that "s. 7(d) of the Representation of the People Act does not require that the contracts at which it strikes should be enforceable against the Government; all it requires is that the contracts should be for the supply of goods to the Government. The contracts in question are just that and so are hit by the section". It would thus be seen that in the case of Chatturbhuj [[1954] S.C.R. 817.] this Court was dealing with the narrow question as to whether the impugned contract for the supply of goods would cease to attract the provisions of s. 7(d) of the Representation of the People Act on the ground that it did not comply with the provisions of Art. 299(1), and this Court held that notwithstanding the fact that the contract could not be enforced against the Government it was a contract which fell within the mischief of s. 7(d). Mr. Chatterjee, however, contends that in considering the effect of non-compliance of Art. 299(1) Bose, J., has also observed that "the Government may not be bound by the contract but that is a very different thing form saying that the contract was void and of no effect and that it only meant that the principal (Government) could not be sued but there will be nothing to prevent ratification if it was for the benefit of the Government." Mr. Chatterjee points out that this observation shows that the contract with which the Court was dealing was not treated "as void and of no effect." It would be noticed that the observation on which Mr. Chatterjee relies has to be read in the context of the question posed for the decision of this Court and its effect must be judged in that way. All that this Court meant by the said observation was that the contract made in contravention of Art. 299(1) could be ratified by the Government if it was for its benefit and as such it could not take the case of the contractor outside the purview of s. 7(d). 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 [[1954] S.C.R. 817.] 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. Therefore, we do not think that Mr. Chatterjee can successfully challenge the finding of the Courts below that the contracts in question were invalid. It is on this basis that we have to consider the main question about the applicability of s. 70 to the facts of the present case.

Mr. Sen argues that in dealing with the question about the scope and effect of s. 70 it would be

material to remember the background of this section. He suggests that the rule laid down in the section is based on the notes in Smith's Leading Cases to Lampleigh v. Brathwaite [Smith's Leading Cases, Vol. I. 13th ed., p. 148.], and so he argues that in construing the said section it would be relevant to refer to the English decisions bearing on the point. The first decision on which Mr. Sen very strongly relies is the case of H. Young & Co. v. The Mayor and Corporation of Royal Leamington Spa [(1883) 8 App. Cas. 517.]. In that case, the House of Lords had to consider the effect of the provisions of s. 174(1) of the Public Health Act, 1875 (38 & 39 Vict c. 55). The said section enacts that "every contract made by an urban authority whereby the value or amount exceeds Pounds 50 shall be in writing and sealed with the common seal of such authority". It was held that "the provision of the said section is obligatory and not merely directory and it applies to an executed contract of which the urban authority have had the full benefit and enjoyment, and which has been effected by their agent duly appointed under their common seal." It appears that the Corporation of Leamington had entered into a contract with one Powis for the execution of certain works to supply the district with water. Before Powis could complete his contract it was terminated. Then the Council, in its capacity as urban authority, passed a resolution not under seal whereby its engineer was authorised to enter into a contract for completing the works left unfinished by Powis. The said engineer employed the plaintiff who completed the unfinished work and sued the Corporation for the sum due to him as balance in respect of the work executed by him. This claim was resisted by the Corporation on the ground that the provisions of s. 174(1) were mandatory and since the contract on which the plaintiff's claim was based had not complied with the said mandatory provision no claim could be made against the Corporation. The Queen's Bench Division upheld the defence and the decision of the Queen's Bench was confirmed by the Court of Appeal as well as by the House of Lords.

In dealing with the argument that the contract in question was not void Lord Blackburn cited with approval the observations made by Lindley L.J., in the Court of Appeal, "In a case like the present before us", observed Lindley, L.J., "if we were to hold the defendants liable to pay for what has been done under the contract, we should in effect be repealing the Act of Parliament and depriving the ratepayers of that protection which Parliament intended to secure for them". He also added "it may be said that this is a hard and narrow view of the law, but my answer is that Parliament has though expedient to require this view to be taken, and it is not for this or any other Court to decline to give effect to a clearly expressed statute because it may lead to apparent hardship" Lord Bramwell went further and in his speech added that he did not agree in the regret expressed at having to come to the said conclusion. "The Legislature has made provision", said Lord Bramwell, "for the protection of ratepayers, shareholders and others, who must act through the agency of a representative body, by requiring the observance of certain solemnities and formalities which involve deliberation and reflection. That is the importance of the seal. It is idle to say that there is no magic in a water". Mr. Sen argues that the decision in the case of H. Young & Co [(1883) 8 App. Cas. 517.]. offers us material assistance in dealing with the question about the effect of non-compliance of s. 175(3) of the Act and the applicability of s. 70 of the Indian Contract Act.

Incidentally it may be pointed out that in England the decision in Young's case [(1883) 8 App. Cas. 517.] has now become obsolete because the relevant provisions of the Public Health Act, 1875, were repealed in 1933 by the Local Government Act, 1933. Section 266 of the said Act authorises the local authority to enter into contract necessary for the discharge of their functions and provides that all contracts made by a local authority or by a committee thereof shall be made in accordance with the standing orders of the local authority, and in the case of contracts for the supply of goods or materials, or for the execution of works, the standing orders shall (a) require that, except as otherwise provided by or under the standing orders, notice of the intention of the authority or the

committee, as the case may be, to enter into the contract shall be published and tenders invited, and (b) regulate the manner in which notice shall be published and tenders invited. The proviso to this section lays down that a person entering into a contract with the local authority shall not be bound to enquire whether the standing orders of the authority which applied to the contract have been complied with, and all contracts entered into with the local authority, if otherwise valid, shall have full force and effect not withstanding that the standing orders applicable thereto have not been complied with. Subsequently in 1960 the Corporate Bodies Contract Act (8 & 9 Eliz., 2 c. 46) has been passed; and s. 1 of the Act now governs the contracts entered into by the corporate bodies wherever incorporated. The said section provides that (1)(a) a contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the body corporate in writing signed by any person acting under its authority, express or implied, and (b) a contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the body corporate by any person acting under its authority, express or implied; (2) a contract made according to this section shall be effectual in law and shall bind the body corporate and its successors and all other parties thereto. Sub-section (4) of s. 1 provides that nothing in this section shall be taken as preventing a contract under seal from being made by or on behalf of a body corporate. It will thus be seen that the technical and rigorous requirement that the contract shall be made under seal by a corporation has how become obsolete; and so the decision in Young's case [(1883) 8 App. Cas. 517.] has ceased to be a matter of any importance.

Before these legislative changes were however made a distinction used to be drawn between cases where the requirement of a seal was the result of the common law rule as to contracts by corporations and those where the said requirement was based on a statutory provision like the one under s. 174(1) of the Public Health Act, 1875. The non-observance of the statutory provision requiring that a contract of the specified type should be in writing and sealed with the common seal of the authority in question renders the contract void and as such exempts the corporation from any liability to pay compensation for the performance of the contract even where the corporation may have had the full benefit and enjoyment of the said contract. On the other hand, where the requirement so to writing and seal is based not on statutory provision but on principles of common laws, failure to comply with the said requirement would not afford a valid defence to the corporation to resist a claim made by a contractor for compensation for a work done by him if it is shown that the corporation had the benefit and enjoyment of the said work. This latter principle has been laid down by the Court of Appeal in Lawford v. The Billericay Rural District Council [(1903) 1 K.B. 772.]. In that case it was held that "where the purposes for which a corporation is created render it necessary that work should be done or goods supplied to carry those purposes into effect and orders and given by the corporation in relation to work to be done or goods to be supplied to carry into effect those purposes, if the work done or goods supplied are accepted by the corporation and the whole consideration for payment is executed, there is a contract to pay implied from the acts of the corporation, and the absence of a contract under the seal of the corporation is no answer to an action brought in respect of the work done or the goods supplied." In coming to this conclusion Vaughan Williams, L.J., followed the rule recognised by Lord Denman in Doc v. Taniere [(1848) 12 Q.B. 998, 1013.] where he said that "where the corporation have acted as upon an executed contract, it is to be presumed against them that everything has been done that was necessary to make it a binding contract upon both parties, they having had all the advantage they would have had if the contract had been regularly made. That is by no means inconsistent with the rule that, in general, a corporation can only contract by deed, it is merely raising a presumption against them, from their acts, that they have contracted in such a manner as to be binding upon them". In other words, the

decision was based on the ground that reliance may be placed on an implied contract arising from an executed consideration on an acceptance of the benefit of the contract.

Mr. Sen's argument is that in dealing with the question about the effect of the contravention of s. 175(3) of the Act and the applicability of s. 70 of the Contract Act the decision in the case of Lawford [[1903] 1 K.B. 772.] is irrelevant while that in the case of H. Young and Co. [(1883) 8 App. Cas. 517.] is relevant and material because we are concerned with the contravention of a statutory provision and not with the contravention of the provision of the rule of common law. We are not impressed by this argument. The question which the appellant has raised for our decision falls to be considered in the light of the provisions of s. 70 and has to be answered on a fair and reasonable construction of the relevant terms of the said section. In such a case, where we are dealing with the problem of construing a specific statutory provision it would be unreasonable to invoke the assistance of English decisions dealing with the statutory provisions contained in English Law. As Lord Sinha has observed in delivering the judgment of the Privy Council in Ramanandi Kuer v. Kalawati Kuer [(1927) L.R. 55 I.A. 18; (1928) I.L.R. 7 Pat. 221.] "it has often been pointed out by this Board that where there is a positive enactment of the Indian Legislature the proper course is to examine the language of that statute and to ascertain its proper meaning uninfluenced by any consideration derived from the pervious state of the law or of the English law upon which it may be founded". If the words used in the Indian statute are obscure or ambiguous perhaps it may be permissible in interpreting them to examine the background of the law or to derive assistant from English decisions bearing on the point; but where the words are clear and unambiguous it would be unreasonable to interpret them in the light of the alleged background of the statute and to attempt to see that their interpretation conforms to the said background. That is why, in dealing with the point raised before us we must primarily look to the law as embodied in s. 70 and seek to put upon it a fair and reasonable construction.

Section 70 reads thus :

> "Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

It is plain that three conditions must be satisfied before this section can be invoked. The first condition is that a person should lawfully do something for another person or deliver something to him. The second condition is that in doing the said thing or delivering the said thing he must not intend to act gratuitously; and the third is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. When these conditions are satisfied s. 70 imposes upon the latter person, the liability to make compensation to the former in respect of or to restore, the thing so done or delivered. In appreciating the scope and effect of the provisions of this section is would be useful to illustrate how this section would operate. If a person delivers something to another it would be open to the later person to refuse to accept the thing or to return it; in that case s. 70 would not come into operation. Similarly, if a person does something for another it would be open to the latter person not to accept what has been done by the former; in that case again s. 70 would not apply. In other words, the person said to be made liable under s. 70 always has the option not to accept the thing or to return it. It is only where he voluntarily accepts the thing or enjoys the work done that the liability under s. 70 arises. Taking the facts in the case before us, after the respondent constructed the warehouse, for instance, it was open to the appellant to refuse to accept the said warehouse and to have the benefit of it. It could have called upon the respondent to

demolish the said warehouse and take away the materials used by it in constructing it; but, if the appellant accepted the said warehouse and used it and enjoyed its benefit then different considerations come into play and s. 70 can be invoked. Section 70 occurs in chapter V which deals with certain relations resembling those created by contract. In other words, this chapter does not deal with the rights or liabilities accruing from the contract. It deals with the rights and liabilities accruing from relations which resemble those created by contract. That being so, reverting to the facts of the present case once again after the respondent constructed the warehouse it would not be open to the respondent to compel the appellant to accept it because what the respondent has done is not in pursuance of the terms of any valid contract and the respondent in making the construction took the risk of the rejection of the work by the appellant. Therefore, in cases falling under s. 70 the person doing something for another or delivering something to another cannot sue for the specific performance of the contract nor ask for damages for the breach of the contract for the simple reason that there is no contract between him and the other person for whom he does something or to whom be delivers something. All that s. 70 provides is that if the goods delivered are accepted or the work done is voluntarily enjoyed then the liability to pay compensation for the enjoyment of the said goods or the acceptance of the said work arises. Thus, where a claim for compensation is made by one person against another under s. 70, it is not on the basis of any subsisting contract between the parties, it is on the basis of the fact that something was done by the party for another and the said work so done has been voluntarily accepted by the other party. That broadly stated is the effect of the conditions prescribed by s. 70.

It is, however, urged by Mr. Sen that the recognition of the respondent's claim for compensation virtually permits the circumvention of the mandatory provisions of s. 175(3), because, he argues, the work done by the respondent is no more than the performance of a so-called contract which is contrary to the said provisions and that cannot be the true intent of s. 70. It is thus clear that this argument proceeds on the assumption that if a decree is passed in favour of the respondent for compensation as alternatively claimed by it, it would in substance amount to treating the invalid contract as being valid. In our opinion, this argument is not well-founded. It is true that the provisions of s. 175(3) are mandatory and if any contract is made in contravention of the said provisions the said contract would be invalid; but it must be remembered that the cause of action for the alternative claim of the respondent is not the breach of any contract by the appellant; in fact, the alternative claim is based on the assumption that the contract in pursuance of which the respondent made the constructions in question was ineffective and as such amounted to no contract at all. The respondent says that it has done some work which has been accepted and enjoyed by the appellant and it is the voluntary acceptance and enjoyment of the said work which is the cause of action for the alternative claim. Can it be said that when the respondent built the warehouse, for instance, without a valid contract between it and the appellant it was doing something contrary to s. 175(3) ? As we have already made it clear even if the respondent built the warehouse he could not have forced the appellant to accept it and the appellant may well have asked it to demolish the warehouse and take away the materials. Therefore, the mere act of constructing the warehouse on the part of the respondent cannot be said to contravene the provisions of s. 175(3). In this connection it may be relevant to consider illustration (a) to s. 70. The said illustration shows that if A a tradesman leaves goods at B's house by mistake, and B treats the goods as his own he is bound to pay A for them. Now, if we assume that B stands for the State Government, can it be said that A was contravening the provisions of s. 175(3) when by mistake he left the goods at the house of B ? The answer to this question is obviously in the negative. Therefore, if goods are delivered by A to the State Government by mistake and the State Government accepts the goods and enjoys them a claim for compensation can be made by A against the State Government, and in entertaining the said claim

the Court could not be upholding the contravention of s. 175(3) at all either directly or indirectly. Once it is realised that the cause of action for a claim for compensation under s. 70 is based not upon the delivery of the goods or the doing of any work as such but upon the acceptance and enjoyment of the said goods or the said work it would not be difficult to hold that s. 70 does not treat as valid the contravention of s. 175(3) of the Act. That being so, the principal argument urged by Mr. Sen that the respondent's construction of s. 70 nullifies the effect of s. 175(3) of the Act cannot be accepted.

It is true that s. 70 requires that a person should lawfully do something or lawfully deliver something to another. The word "lawfully" is not a surplusage and must be treated as an essential part of the requirement of s. 70. What then does the word "lawfully" in s. 70 denote ? Mr. Sen contends that the word "lawfully" in s. 70 must be read in the light of s. 23 of the said Act; and he argues that a thing cannot be said to have been done lawfully if the doing of it is forbidden by law. However, even if this test is applied it is not possible to hold that the delivery of a thing or a doing of a thing the acceptance and enjoyment of which gives rise to a claim for compensation under s. 70 is forbidden by s. 175(3) of the Act; and so the interpretation of the word "lawfully" suggested by Mr. Sen does not show that s. 70 cannot be applied to the facts in the present case.

Another argument has been placed before us on the strength of the word "lawfully" and that is based upon the observations of Mr. Justice Straight in Chedi Lal v. Bhagwan Dass [(1889) I.L.R. 11 All. 234.]. Dealing with the construction of s. 70 Straight, J., observed :

"I presume that the legislature intended something when it used the word "lawfully" and that it had in contemplation cases in which a person held such a relation to another as either directly to create or by implication reasonably to justify an inference that by some act done for another person the party doing the act was entitled to look for compensation for it to the person for whom it was done." It is urged that in the light of this test it cannot be said that the respondent held such a relation to the appellant as to be able to claim compensation from the appellant. With respect, we are not satisfied that the test laid down by Straight, J., can be said to be justified by the terms of s. 70. It is of course true that between the person claiming compensation and person against whom it is claimed some lawful relationship must subsist, for that is the implication of the use of the word "lawfully" in s. 70; but the said lawful relationship arises not because the party claiming compensation has done something for the party against whom the compensation is claimed but because what has been done by the former has been accepted and enjoyed by the latter. It is only when the latter accepts and enjoys what is done by the former that a lawful relationship arises between the two its is the existence of the said lawful relationship which gives rise to the claim for compensation. This aspect of the matter has not been properly brought into the picture when Straight, J., laid down the test on which Mr. Sen's argument is based. If the said test is literally applied then it is open to the comment that if one person is entitled by reason of the relationship as therein contemplated to receive compensation form the other s. 70 would be hardly necessary. Therefore, in our opinion, all that the word "lawfully" in the context indicates is that after something is delivered or something is done by one person for another and that thing is accepted and enjoyed by the latter, a lawful relationship is born between the two which under the provisions of s. 70 gives rise to a claim for compensation.

There is no doubt that the thing delivered or done must not be delivered or done fraudulently or dishonestly nor must it be delivered or done gratuitously. Section 70 is not intended to entertain claims for compensation made by persons who officiously interfere with the affairs of another or who impose on others services not desired by them. Section 70 deals with cases where a person does a thing for another not intending to act gratuitously and the other enjoys it. It is thus clear that when

a thing is delivered or done by one person it must be open to the other person to reject it. Therefore, the acceptance and enjoyment of the thing delivered or done which is the basis for the claim for compensation under s. 70 must be voluntary. It would thus be noticed that this requirement affords sufficient and effective safeguard against spurious claims based on unauthorised acts. If the act done by the respondent was unauthorised and spurious the appellant could have easily refused to accept the said act and then the respondent would not have been able to make a claim for compensation. It is unnecessary to repeat that in cases falling under s. 70 there is no scope for claims for specific performance or for damages for breach of contract. In the very nature of things claims for compensation are based on the footing that there has been no contract and that the conduct of the parties in relation to what is delivered or done creates a relationship resembling that arising out of contract.

In regard to the claim made against the Government of a State under s. 70 it may be that in many cases the work done or the goods delivered are the result of a request made by some officer or other on behalf of the said Government. In such a case, the request may be in effective or invalid for the reason that the officer making the request was not authorised under s. 175(3), or, if the said officer was authorised to make the said request the request becomes inoperative because it was not followed up by a contract executed in the manner prescribed by s. 175(3). In either case the thing has been delivered or the work has been done without a contract and that brings in s. 70. A request is thus not an element of s. 70 at all though the existence of an invalid request may not make s. 70 inapplicable. An invalid request is in law no request at all, and so the conduct of the parties had to be judged on the basis that there was no subsisting contract between them at the material time. Dealing with the case on the basis we have to enquire whether the requisite conditions prescribed by s. 70 have been satisfied. If they are satisfied then a claim for compensation can and must be entertained. In this connection it is necessary to emphasise that what s. 70 provides is that compensation has to be paid in respect of the goods delivered or the work done. The alternative to the compensation thus provides is the restoration of the thing so delivered or done. In the present case there had been no dispute about the amount of compensation but normally a claim for compensation made under s. 70 may not mean the same thing as a claim for damages for breach of contract if a contract was subsisting between the parties. Thus considered it would, we think, not be reasonable to suggest that in recognising the claim for compensation under s. 70 we are either directly or indirectly nullifying the effect of s. 175(3) of the Act or treating as valid a contract which is invalid. The fields covered by the two provisions are separate and distinct, s. 175(3) deals with contracts and provides how they should be made. Section 70 deals with cases where there is no valid contract and provides for compensation to be paid in a case where the three requisite conditions prescribed by it are satisfied. We are therefore, satisfied that there is no conflict between the two provisions.

It is well-known that in the functioning of the vast organisation represented by a modern State Government officers have invariably to enter into a variety of contracts which are often of a petty nature. Sometimes they may have to act in emergency, and on many occasions, in the pursuit of the welfare policy of the State Government officers may have to enter into contract orally or through correspondence without strictly complying with the provisions of s. 175(3) of the Act. If, in all these cases, what is done in pursuance of the contracts is for the benefit of the Government and for their use and enjoyment and is otherwise legitimate and proper s. 70 would step in and support a claim for compensation made by the contracting parties notwithstanding the fact that the contracts had not been made as required by s. 175(3). If it was held that s. 70 was inapplicable in regard to such dealings by government officers it would lead to extremely unreasonable consequences and may even hamper, if not wholly bring to a standstill the efficient working of the Government from day to

day. We are referring to this aspect of the matter not with a view to detract from the binding character of the provisions of s. 175(3) of the Act but to point out that like ordinary citizens even the State Government is subject to the provisions of s. 70, and if it has accepted the things delivered to it or enjoyed the work done for it, such acceptance and enjoyment would afford a valid basis for claims of compensation against it. Claims based on a contract validly made under s. 175(3) must, therefore, be distinguished from claims for compensation made under s. 70, and if that distinction is borne in mind there would be no difficulty in rejecting the argument that s. 70 treats as valid the contravention of s. 175(3) of the Act. In a sense it may be said that s. 70 should be read as supplementing the provisions of s. 175(3) of the Act.

There is one more argument which yet remains to be considered. Mr. Sen ingeniously suggested that the position of the appellant is like that of a minor in the matter of its capacity to take a contract, and he argues that just as a minor is outside the purview of s. 70 so would be the appellant. It is true as has been held by the Privy Council in Mohori Bibee v. Dhurmodas Ghose [(1903) L.R. 30 I.A. 114.] that a minor, like a lunatic, is incompetent, to contract and so where he purports to enter into a contract the alleged contract is void and neither s. 64 nor s. 65 of the Contract Act can apply to it. It is also true that s. 68 of the Contract Act specifically provides that certain claims for necessaries can be made against a minor and so a minor cannot be sued for compensation under s. 70 of the Contract Act (Vide : Bankay Behari Prasad v. Mahendra Prasad [(1940) I.L.R. 19 Pat. 739.]) Mr. Sen pressed into service the analogy of the minor and contends that the result of s. 175(3) of the Act is to make make the appellant incompetent to enter into a contract unless the contract is made as required by s. 175(3). In our opinion, this argument is not well founded. Section 175(1) provides for and recognises the power of the Province to purchase or acquire property for the purposes there specified and to make contracts. No doubt s. 175(3) provides for the making of contracts in the specified manner. We are not satisfied that on reading s. 175 as a whole it would be possible to entertain the argument that the appellant is in the position of a minor for the purpose of s. 70 of the Contract Act. Incidentally, the minor is excluded from the operation of s. 70 for the reason that his case has been specifically provided by s. 68. What s. 70 prevents is unjust enrichment and it applies as much to individuals as to corporations and Government. Therefore, we do not think it would be possible to accept the very broad argument that the State Government is outside the purview of s. 70. Besides, in the case of a minor, even the voluntary acceptance of the benefit of work done or thing delivered which is the foundation of the claim under s. 70 would not be present, and so, on principle s. 70 cannot be invoked against a minor.

The question about the scope and effect of s. 70 and its applicability to cases of invalid contracts made by the Provincial Government or by corporations has been the subject-matter of several judicial decisions in this country; and it may be stated broadly that the preponderance of opinion is in favour of the view which we are inclined to take (Vide : Mathura Mohan Saha v. Ram Kumar Saha and Chittagong District Board [(1916) I.L.R. 43 Cal. 790.]; Abaji Sitaram Modak v. The Trimbak Municipality [(1904) I.L.R. 23 Bom. 66.]; Pallonjee Eduljee & Sons, Bombay v. Lonavla City Municipality [(1937) I.L.R. Bom. 782.]; Municipal Committee, Gujranwala v. Fazal Din [(1930) I.L.R. 11 Lah. 121, 325, 387.]; Ram Nagin Singh v. Governor-General in Council [A.I.R. (39) 1952 Cal. 306.]; Union of India v. Ramnagina Singh [(1952) 89 C.L.J. 342.]; Union of India v. New Marine Coal Co. (Bengal) Ltd. [(1959) 65 C.W.N. 441.]; Damodara Mudaliar v. Secretary of State for India [(1895) I.L.R. 18 Mad. 88.]; Corporation of Madras v. M. Kothandapani-Naidu [A.I.R. 1955 Mad. 82.]; Yogambal Boyee Ammani Ammal v. Naina Pillai Markayar [(1909) I.L.R. 33 Mad. 15.]; and, Ram Das v. Ram Babu [A.I.R. 1936 Pat. 194.]. Sometimes a note of dissent from this view has no doubt been struck (Vide : Chedi Lal v. Bhagwan Das [(1889) I.L.R. 11 All. 234.]; Radha Krishna Das v. The Municipal Board of Benares [(1905) I.L.R. 27 All. 592.]; Anath Bandba

Deb v. Dominion of India [A.I.R. 1955 Cal. 626.]; Punjabhai v. Bhagwan das Kisandas [(1929) I.L.R. 53 Bom. 309.]; and G. R. Sanchuiti v. Pt. R.K. Choudhari [(1952) I.L.R. 31 Pat. 303.].

Before we part with this point we think it would be useful to refer to the observations made by Jenkins, C.J. In dealing with the scope of the provisions of s. 70 in Suchand Ghosal v. Balaram Mardana [(1911) I.L.R. 38. Cal. 1.]. "The terms of s. 70", said Jenkins, C.J., "are unquestionably wide, but applied with discretion they enable the Court to do substantial justice in cases where in would be difficult to impute to the persons concerned relations actually created by contract. It is, however, especially incumbent on final Courts of fact to be guarded and circumspect in their conclusions and not to countenance acts or payments that are really officious."

Turning to the facts of this case it is clear that both the Courts have found that the acts done by the respondent were done in fact in pursuance of the requests invalidly made by the relevant officers of the appellant, and so they must be deemed to have been done without a contract. It was not disputed in the Courts below that the acts done by the respondent have been accepted by the appellant and the buildings constructed have been used by it. In fact, both the learned judges of the Appellate Court have expressly pointed out that the appellant did not contest this part of the respondent's case. "I should mention", says S. R. Das Gupta, J., "that the appellant did not contest before us the quantum decreed in favour of the plaintiff"; and Bachawat, J., has observed that "the materials from the record also show that the Government urgently needed the work which was done by the respondent and that the Government accepted it as soon as it was done and used it for its benefit". In fact the learned judge adds that "the learned Advocate-General frankly confessed that this is a case where the Province of Bengal was under a moral obligation to pay the respondent", and has further added his comment that "an obligation of this kind which is apart from the provisions of s. 70 of Indian Contract Act a moral and natural obligation is by the provision of that section converted into a legal obligation". Therefore once we reach the conclusion that s. 70 can be invoked by the respondent against the appellant on the findings there is no doubt that the requisite conditions of the said section have been satisfied. That being so, the Courts below were right in decreeing the respondent's claim.

The result is the appeal fails and is dismissed with costs.

SARKAR, J. –

We also think that this appeal should fail.

In 1944, the respondent, a firm of contractors, had at the request of certain officers of the Government of Bengal as it then existed, done certain construction work for that Government and the latter had taken the benefit of that work. These officers, however, had not been authorised by the Government to make the request on its behalf and the respondent was aware of such lack of authority all along. These facts are not in controversy.

As the respondent did not receive payment for the work, it filed a suit in the Original Side of the High Court at Calcutta in 1949 against the Province of West Bengal for a decree for moneys in respect of the work. The High Court both in the original hearing and appeal, held that there was no contract between the respondent and the Government in respect of the work on which the suit might be decreed but the respondent was entitled to compensation under s. 70 of the Contract Act and that the liability to pay the compensation which was originally of the Government of Bengal, had under the Indian Independence (Rights, Properties and Liabilities) Order, 1947, devolved on the Province West Bengal (now the State of West Bengal) which came into existence on the partition of India. In

the result the respondent suit succeeded. The State of West Bengal has appealed against the decision of the High Court.

The only question argued in this appeal is whether the High Court was right in passing a decree under under s. 70 of the Contract Act. We think it was.

Now s. 70 is in these terms :-

> Section 70 "Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

G. K. Mitter, J., who heard the suit in the first instance, observed in regard to s. 70 that, "The requisites for entitling a person to compensation for work done are : (i) that it should be lawfully done, (ii) that it should not be intended to be done gratuitously and (iii) that the person for whom the work is done should enjoy the benefit thereof". We agree with this analysis of the section and the view of the High Court that the necessary requisites exist in the present case.

In this Court the case was argued on behalf of the appellant on the basis that the High Court was in error in holding that, relief under s. 70 can be granted where the Government has the benefit of work done under a contract with it which was not made in terms of s. 175(3) of the Government of India Act, 1935, and was, therefore, invalid. Various authorities, both English and Indian, were cited in support of this argument. We think it unnecessary to discuss them as the basis on which the present contention is advanced does not exist in this case. Nor do we think that the High Court decided the case on that basis.

It is clear from the findings of the High Court, to which we shall presently refer, that there was in fact no agreement, valid or invalid between the respondent and the Government. It follows that the work had not been done under any agreement with the Government. No question, therefore arises as to the validity or invalidity of an agreement with the Government because of a failure to comply with the terms of s. 175(3) of the Government of India Act nor as to the applicability of s. 70 of the Contract Act for granting compensation for work done under a contract with the Government which is invalid because it had not been made in the manner prescribed by s. 175(3).

The reason why we say that there was no agreement whatever between the government and the respondent is that the agreement could in the present case have been made only through the officers but these officers did not to the knowledge of the respondent possess the authority of the Government to bind it by contract. That was what the High Court held, as would appear from the observations of the learned Judges which we will now set out. G. K. Mitter, J., said, "The plaintiff never had any doubt about the fact that no agreement of any kind had been entered into between it and the province of Bengal" and "The plaintiff knew right from the beginning, that the officers who were requesting the plaintiff to proceed with the work had, no authority to enter into a binding contract with the plaintiff and that they were awaiting sanction from higher officials which they hoped to get." The learned Judges of the appellate bench also took the same view. Bachawat, J., observing, "Neither of these officers had any authority from the Province of Bengal to make the request to the plaintiff. There was no agreement either express or implied between the plaintiff and the Province of Bengal. There is, therefore, no agreement which is void or which is discovered to be void". The learned Judges no doubt referred to s. 175(3) of the Government of India Act that was

obviously because arguments based on it had been advanced before them. The distinguished the case of Union of India v. Ramnagina Singh [(1951) 89 C.L.J. 342.] in which it had been held that s. 70 of the Contract Act had no application where work was done under a request which had resulted in a void agreement, on the ground that in the present case there had been no request from the Government as the persons making the request had no authority to do so for the Government and so no question of an agreement with the Government, which was void, arose. It is wrong, to contend, as the learned advocate for the appellant did, that the learned Judges of the High Court decided the case on the basis that s. 70 is applicable where work is done for the Government under an invalid contract with it. No doubt the learned Judges dealt with certain cases dealing with the question of work done under an invalid contract but that was because those cases had been cited at the bar.

We are not, therefore, called upon in the present case to pronounce upon the question whether compensation under s. 70 of the Contract Act can be awarded where goods are delivered to, or work done for, the Government under a contract with it which is invalid for the reason, that it had not been made in the terms prescribed by s. 175(3) of the Government of India Act and we do not do so.

Now, if the work was done at the request of the officers of Government who had no authority to make the request for Government and the respondent was aware of this, it would follow that the work had been done at the request made by the officers in their personal capacity. In such a case it seems to us that if the request resulted in the contract between the officers and the respondent under which the officers were personally bound to pay the respondent reasonable remuneration for the work, the it would be a very debatable question whether the respondent would have any claim against the Government under s. 70. We say debatable because we have grave doubts if the section was intended to give a person in the position of the respondent who had a remedy against the officers personally under a contract with them, a remedy against the Government for the same thing in addition to the remedy under the contract. We, however, need say no more on this aspect of the matter for we do not think that any contact had in the present case come not existence between the officers and the respondent.

It is true that when one requests another to do work for him a tacit promise to pay reasonable remuneration for the work may be inferred in certain circumstances and that promise may result in a contract when the work is done which may be enforced. That may also be the case when the request is to do the work for another's benefit, for consideration for the promise would in either case be the detriment suffered by the promisee by doing the work. The following illustration may be given from Pollock on Contracts (13th edition) p. 9 :- "The passenger who steps into ferry-boat thereby requests the ferryman to take him over for the usual fare". We should suppose the position would be the same where a person expressly asks the ferryman to carry him or another over without saying anything about the remuneration to be paid for the carriage; in each of these cases the person making the request would be tacitly promising to pay the ferryman his usual fare.

A tacit promise of this kind may however be inferred only if the circumstances are such that from them a man of business and experience would consider it reasonable to infer. It is an inference of fact and not which any law requires to be made An interesting passage from Cheshire and Fifoot's Law of Contract (5th Edition) p. 30 may be quoted here : "It would be ludicrous to suppose that businessmen couch their communications in the form of a catechism or reduce their negotiations to such a species of interrogatory as was formulated in the Roman stipulation. The rules which the Judges have elaborated from the promise of offer and acceptance are neither the rigid deductions of logic nor the inspiration of natural justice. They are only presumption, drawn from experience, to be applied in so far as they serve the ultimate object of establishing the phenomena of agreement ..."

Now on the facts of this case we are entirely unable to infer any tacit promise by the officers to pay personally for the work done. As the High Court pointed out, the officers made it clear, of which indeed the respondent itself was fully aware, that the payment would be by the Government, and, therefore, that they themselves would have no liability. They said the respondent's "estimates have been submitted to the Deputy Director for formal sanction which when received will be communicated to them. Meanwhile they must not delay the work." The Deputy Director presumably was the officer authorised to grant the sanction. He however was not one of the officers who had made the request for the work. The respondent was fully aware that the work was needed for the Government and the officer had no personal interest in it. And what is most important is that the respondent never itself though that the officers had made any personal promise to pay. Throughout, the respondent had been requesting the Government to sanction the orders placed by the officers, submitting estimates for the work to the Government and requesting the latter for payment; not once did it look to the officers for any liability in respect of the work done under their orders. The respondent had on previous occasions done work for the Government on similar requests and had never though that the officers had thereby undertaken any personal liability. If it itself did not get that impression, no other person of experience could reasonably infer in the same circumstances a tacit promise by the officers to pay personally. It is of some interest to point out that the learned advocate for the appellant never even suggested there was such a contract. We find it impossible in such circumstances to think that there was any tacit promise by the officers personally to pay for the work or any contract between them and the respondent in respect of it.

It is also not possible to say on the materials on the record that the officers promised to the respondent that they would secure payment for the work done. We think Bachawat, J., of the appellate bench of the High Court correctly put the position when he said :- "The work was certainly done at the request of these officers but it was done under circumstances in which it is not possible to imply that the officers personally promised to pay for the work done. There is therefore, no scope for any argument that the work was done in course of performance of a contract between the plaintiff and the officers who requested him to do the work ..... The materials on the record clearly shows that the plaintiff did the work for the Province of Bengal. Credit was given to the Province of Bengal and not to the officers. It is impossible to say on the materials on the record that work was done for the officers." If the other learned Judges of the High Court did not expressly refer to this aspect of the case that was clearly because it was not argued by the advocates; it was obviously not a point which any advocate could reasonably advance on the facts of this case.

We are, however, not to be understood as saying that in no case can Government officers undertake personal liability to contractors in the position of the respondent. Each case must depend on its own facts. Circumstances may conceivably exist where it would be reasonable to infer a personal undertaking by the officers to pay a contractor doing work for the Government. All that we decide is that such is not the present case.

The position then is that the respondent had done the work for the Government without any contract with anybody. The question is, are the three requisites of s. 70, as very correctly formulated by G. K. Mitter, J., satisfied ? We think they are. There is no dispute that Government had taken the benefit of the work. We also feel no doubt that the respondent did not intend to do the work gratuitously. It submitted its estimate for the work and was very prompt in submitting its bill after the work was done. It had earlier in similar circumstances without proper contract with the Government done work for it at the request of its officers and received payment from the Government. It was a firm of contractors whose trade it was to carry out works of construction for payment and the Government was aware of this. There is no reason to think that in the present case

it did the work gratuitously. On its part the Government never thought that the work had been done gratuitously for it raised objections to the bill submitted by the respondent on grounds of bad quality of the work and that it had been done without proper sanction. The Government urgently needed the work and no sooner was it completed, it promptly put it to its use. It was plainly fully aware that the work was done for it by a party whose trade was to work for remuneration and who had previously done similar work and had been paid for it by the Government.

The request by the officers does not affect the question that arises in this case. It had no compelling effect and no effect as a promise and in fact no effect at all. Its practical use was to inform the respondent that the Government needed the work immediately and it would give a sanction in respect of it in due course and pay for it when done, an information on which the respondent readily acted as it gave it a chance to do more business. So the work was done by the respondent really out of its free choice by way of its business and with the intention of getting paid for it.

We also feel no doubt that the work was done lawfully. It was work which the Government badly needed. We will assume for the present purpose, as the learned advocate for the appellant said, that work done under a contract with the Government which is invalid in view of the provision of s. 175(3) of the Government of India Act, is work unlawfully done. The learned advocate contended that that would be because thereby section 175(3) of the Government of India Act would be evaded which is the same thing as doing that which the section forbids. Assume that is so. But that section does not say that if work is done for the Government without any contract or agreement at all and voluntarily, as was done in the present case, that work would not have been lawfully done. Government is free not to take the benefit of such work. There is no law, and none has been pointed out to us, which makes the doing of such work unlawful. No other reason was given or strikes us for saying that the work was not lawfully done. There is no law, as Bachawat, J., said that Government cannot take any work except under a contract in respect of it made in terms of s. 175(3) of the Government of India Act. That section may forbid a Government to take work under a contract which is invalid because not in terms of it, but it does not make it unlawful for the Government to take the benefit of work done for it without any contract at all. We should suppose that if the doing of the work was unlawful the Government would not have accepted the benefit of it. In the present case, the Government needed the work badly and we do not see how then the Government can say that the work was not done lawfully. We therefore think that the work was done lawfully.

It was contended that the obligation under s. 70 of the Contract Act arises only in circumstances in which English law would have created an obligation on the basis of an implied contract or a quasi-contract and that there could be no implied contract or quasi-contract with the Government because a contract could be made with it only in accordance with s. 175(3) of the Government of India Act. Now it has been repeatedly held that a resort to English law is not justified for deciding a question arising on our statue unless the statue is such that it cannot be reasonably understood without the assistance of English law, indeed, there is good authority for saying that s. 70 was framed in the form in which it appears with a view to avoid the niceties of English law on the subject, arising largely from historical reasons and to make the position simple and free from fictions of law and consequent complications : see Pollock on Contracts (13th ed.) p. 10. Furthermore, we do not see that s. 175(3) in any way prevents a contract with the Government being implied or a Government from incurring an obligation under a quasi-contract. A contract implied in law or a quasi-contract is not a real contract or, as it is called, a consensual contract and s. 175(3) is concerned only with such contracts. The section says that "all contracts made in the exercise of the executive authority of the Federation or of a Province shall be expressed" in a certain manner and "shall be executed on behalf of the Governor-General or Governor by such person and in such manner as he may direct or

authorise". It therefore applies to consensual contracts which the Government makes and not to something which is also called a contract but which the law brings into existence by a fiction irrespective of the parties having agreed to it. Now, by its terms s. 70 of the Contract Act must be applied where its requisites exist, if it is necessary to imply a contract or to contemplate the existence of a quasi-contract for applying the section that must be done and we do not think that s. 175(3) of the Government of India Act prevents that, nor are we aware of any other impediment in this regard. This argument must also fail.

We, therefore, fell that s. 70 of the Contract Act applies to this case and the decree of the High Court should be confirmed.

Appeal dismissed.

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