

Pannalal

Vs

Dy. Commissioner, Bhandara and Another etc.

Civil Appeals Nos. 1071-1073 of 1967

(C.A. Vaidialingam, I.D. Dua, A. Alagiriswami JJ)

23.02.1973

JUDGMENT

ALAGIRISWAMI, J. -

1. These three appeals have come to this Court a second time by way of a certificate granted by the High Court of Bombay. The appellant filed three suits, Civil Suit No. 1-B of 1948 for Rs. 12,000/-, Civil Suit No. 2-B of 1948 for Rs. 31,028/- and Civil Suit No. 3-B of 1948 for Rs. 21,381/- for the work of additions and alterations to three hospitals, Kunwar Tilak Singh Hospital at Gondia, Bai Gangabai Hospital at the same town and Twynam Hospital at Tumsar, all in Bhandara District, then in the State of Madhya Pradesh and now in the State of Maharashtra. In December 1943 he entered into three contracts in relation to the above three hospitals with Mr. Tiwari, the then Deputy Commissioner of Bhandara District. He was paid various amounts in respect of the work done for these three hospitals and dispute having arisen in respect of the appellant's claim for the balance of the amounts due in respect of these three contracts, the appellant filed the above three suits. In two of these suits he made the Government of Madhya Pradesh as well as the Deputy Commissioner parties. The Deputy Commissioner, Mr. Tiwari, was also made a party in his personal capacity. He also made the Dispensary Fund Committee another defendant in each of the suits and as the Committee was not a statutory body he impleaded all its members as parties. In respect of Bai Gangabai Hospital the State Government, the Deputy Commissioner, the Municipal Committee of Gondia, which owned the hospital, as also Mr. Tiwari in his personal capacity were made parties. The trial court decreed the suits against the State Government alone. The amounts decreed were Rs. 8,214/- in C.S. No. 1-B, Rs. 19,298/- in C.S. 2-B and Rs. 12,765-15-0 in C.S. No. 3-B. These were to carry interest, past and future. The State Government took the matter on appeal to the High Court of Judicature at Nagpur. The appellant did not file any cross-objections in spite of the failure of the trial court to pass decrees against the other defendants. By the time the appeals came up for hearing Bhandara District became a part of the State of Maharashtra. The High Court of Bombay allowed the appeals filed by the State. The High Court also declined to exercise its powers under Order 41, Rule 33 of the Code of Civil Procedure against the other defendants. On appeal this Court set aside the order of the High Court refusing to consider the claim against the other defendants under Order 41, Rule 33 and remanded the case back to the High Court. This Court, however, confirmed the judgment of the High Court as far as the dismissal of the suit against the State was concerned. The High Court again dismissed the suits and the matter has again come before this Court by way of leave granted by the High Court of Bombay. It appears that since then the State of Maharashtra has taken over the Kunwar Tilak Singh Hospital and the Twynam Hospital and, therefore, the only question to be decided in two of these three appeals is the liability of the State of Maharashtra for any sums that may be found due to the appellant in respect of these two hospitals. The Bai Gangabai Hospital is even now owned by the Municipal Committee, Gondia and its liability also is to be

determined.

2. The exact status of the Dispensary Fund Committee is not very clear. It does not appear to be a statutory body nor does it appear to be a permanent body. It seems to be something of an ad hoc body appointed by the Deputy Commissioner and consisted of a number of officials and a few non-officials. The Deputy Commissioner himself was not a member of the body. It appears, however, as we would show later, that the Deputy Commissioner was acting on behalf on this body with the tacit approval of the Committee itself. The contracts were signed by the Deputy Commissioner as Deputy Commissioner but not on behalf of the State; nor did they say that they were on behalf of the Dispensary Fund Committee or the Municipal Committee. But in his evidence Mr. Tiwari stated that he entered into the agreement on behalf of the Gondia Municipal Committee and the Dispensary Fund Committee, and not in his personal capacity or in his capacity as Deputy Commissioner and that the idea was that the funds will be forthcoming if he signed the agreement and the work will be more readily done. There being no dispute that the work in respect of all these three hospitals was done by the appellant and the ownership of the hospitals vests in one case with the Gondia Municipal Committee and in the other two cases with the Government of Maharashtra, only two questions arise for decision, (i) what is the amount due, and (ii) are the Municipal Committee of Gondia and the State of Maharashtra liable either on the basis of the contracts or under Section 70 of the Contract Act.

3. As regards the amount due, the contract itself provided that the rates were to be increased subject to increases in the PWD schedule of rates. The contracts were in standard PWD form and the rates were also the PWD schedule of rates. There had been an increase of 50 per cent. in August 1943 over the PWD schedule of rates. That was before the contracts in question were entered into. Subsequently on January 22, 1944 the PWD rates were again raised by 20 per cent. The Deputy Commissioner had also sanctioned the increased rates and extended the time for work as is seen from Exts. P-8 and P-9 in C.S. No. 1-B of 1948. The letter of the Deputy Commissioner, Bhandara, dated October 6, 1945, in reply to the letter of the appellant's advocate, found at pages 428-430 of the paper book, shows that the appellant claimed Rs. 76,456-2-6 for Tumsar Hospital. The total cost calculated according to the agreement rates worked out to Rs. 53,820-0-0, out of which he had already been paid Rs. 53,641-8-0. It also shows that the appellant claimed Rs. 28,906-8-0 for Kunwar Tilak Singh Hospital and that the total cost worked out on the basis of the agreement came to Rs. 20,798/- out of which the appellant has already been paid Rs. 20,058-4-0. In respect of the Gangabai Hospital the appellant's demand was Rs. 59,598/- but the total cost calculated according to the agreement rates was Rs. 44,099/- and the appellant had actually been paid Rs. 45,477/-. Mr. Santaram, the engineer who supervised this work, had admitted that there was really no quarrel regarding measurements and the only dispute was with regard to the rates. In view of the stipulation in the contract, already referred to, there is no doubt that the appellant would be entitled to a 20 per cent. increase in the PWD rates which came into force on January 22, 1944 by Slip No. 4 of the Mahanadi Circle Superintending Engineer's memo. The trial court has made elaborate calculations and arrived at the figures for which the appellant was entitled to a decree. As the appellant can succeed in this case on the basis of Section 70 of the Contract Act we think it would be a fair way of assessing the benefit obtained by the defendants to award the appellant 20 per cent. of amount calculated according to the agreement. These figures have already been mentioned. The appellant would, therefore, be entitled to 20 per cent. of Rs. 53,820 plus the balance of the amount due even according to the contract rate i.e. Rs. 53,820 - 53,641-8-0 in respect of the Twynam Hospital, Tumsar in Civil Appeal No. 1073/67, that is Rs. 10,942-50. He would be entitled to 20 per cent. of Rs. 20,798 plus the balance which was due to him even according to the contract rate i.e. Rs. 20,798 - 20,058-4-0 in Civil Appeal No. 1072/67 for Kunwar Tilak Singh Hospital, that is Rs. 4,899-35. In

respect of the Gangabai Hospital, Gondia he would be entitled to 20 per cent. of Rs. 44,099 and from this will be deducted what has been overpaid to him i.e. Rs. 45,477 - 44,099 in Civil Appeal No. 1071/67, that is Rs. 7,441-80. The decree in this case will be against the Municipal Committee, Gondia whereas in the two earlier cases it will be against the State of Maharashtra.

4. It may be useful at this stage to consider the grounds on which the High Court of Bombay considered that there was no room for granting any relief to the appellant. It is not necessary to discuss at length the liability of any one except the State of Maharashtra and the Gondia Municipal Committee as the appellant has stated that he would be content with a decree against the State in two cases and the Municipal Committee in one case. As regards the capacity in which the Deputy Commissioner entered into the contract on behalf of the Dispensary Fund Committees it appears that the Deputy Commissioner as the principal District Officer under instructions from the Government took interest in collecting funds and helping in building hospitals and dispensaries. The capacity in which he acts in these matters is not the official capacity but a sort of paternal interest in fostering welfare institutions. Evidence in this case show that the amounts collected were kept in the Treasury though it did not come from Government funds. The Twynam Hospital at Tumsar and Kunwar Tilak Singh Hospital at Gondia are Dispensary Fund Hospitals. The Madhya Pradesh Medical Manual Part IV, Chapter XXVII relates to classification of hospitals and dispensaries. Clause 365 classifies the hospitals under six categories :

- (1) Government;
- (2) Municipal (including Notified Area Committee);
- (3) District Council;
- (4) Dispensary Fund;
- (5) Private; and
- (6) Missionary.

Clause 370 lays down that the financial control of these hospitals and dispensaries is vested in Dispensary Fund Committees and their management in the Civil Surgeon. Clause 385 relates to the constitution of the committee of management of dispensaries under the management of the Dispensary Fund Committees. This committee is composed of representatives of the following classes :

- (a) The Civil Surgeon, ex-officio, or in his absence the medical officer-in-charge;
- (b) Government officials;
- (c) Representatives of the local bodies which contribute towards the funds;
- (d) Representatives of the subscribers;
- (e) Nominated non-officials.

The precise constitution of the committee was to be laid down by the Deputy Commissioner and he was no nominate members of classes (b) and (e), and the local bodies of class (c) and members of

class (d) were to be elected in the manner prescribed by the Deputy Commissioner. Though the contracts themselves do not show that they were on behalf of the Dispensary Fund Committee and Deputy Commissioner was acting on behalf of the Dispensary Fund Committee, the evidence of Mr. Tiwari taken along with the general circumstances of this case leave us in no doubt that Mr. Tiwari was acting on behalf of the Dispensary Fund Committee with their tacit consent. It was he who entered into the contract, got the work supervised, sanctioned increases in rates and the extension of time, the Committee itself taking no active part. But they must have been aware of what was being done in their name and on their behalf. Apparently, as is well known to everybody in matters of this kind, even the collection of subscription is mainly due to the influence and efforts of the Deputy Commissioner. No wonder the whole matter was left to his discretion and action. We do not attach much importance to the fact that the Dispensary Fund Committees have denied that Mr. Tiwari had entered into contracts on their behalf or that the Committees did not pass any resolution authorizing the Deputy Commissioner to enter into agreement. We consider that the evidence of Mr. Tiwari is in consonance with circumstances of this case. This position is also clear from the evidence of Dr. Kalay, Civil Surgeon, Bhandara to the effect that the Deputy Commissioner is the administrative head of all the departments of the district, and in his capacity as such is the person looking after the affairs of these hospitals as well, and that the Dispensary Fund Committee becomes the owner of the hospital after it is constructed and handed over We are unable to agree with the High Court that no reliance can be placed on Mr. Tiwari's statement on the ground that he was interested in safeguarding the interest of the Government by saying that he did not enter into the agreements on behalf of the Government. The interest of the Government is very well safeguarded as the contracts do not purport to have been entered into on behalf of the Government. Nor has the Deputy Commissioner been authorised under Section 175 of the Government of India Act to enter into contracts of this character on behalf of the Government. The High Court itself has remarked that it is conceivable that the Deputy Commissioner took the entire responsibility on his own shoulder and went on with the work in an informal way. It would be fair to hold that Mr. Tiwari entered into the contracts on behalf of the Dispensary Fund Committees. As regards the Municipal Committee of Gondia, Statutes usually lay down the formalities to be observed in entering into contracts on their behalf and there is nothing to show that these formalities were observed. The contract may not, therefore, be binding on it qua contract.

5. But even apart from contract we have no hesitation in holding that in all the three cases liability under Section 70 of the Contract Act clearly arises. We do not understand why the High Court thinks that the Dispensary Fund Committees cannot be regarded as the owners or beneficiaries of the buildings of the hospitals. And more curiously the High Court has said that it is the public that are the beneficiaries. The buildings on construction belong to the Dispensary Fund Committees and the Municipal Committee and they have received benefit in so far as they are the owners.

6. It is hardly necessary to refer to the authorities in support of this position. But we may refer to the decision of this Court in *State of West Bengal v. B. K. Mondal*. (1962 Supp 1 SCR 876 : AIR 1962 SC 779) There a contract to put up certain godowns for the use of the Civil Supplies Department of the State of Bengal was held unenforceable. The godowns were accepted and used by the department concerned. It was held that merely because the contract was illegal it does not follow that the contractor has done something which is not lawful. This Court pointed out that the real basis of the liability under Section 70 is the fact that the person for whom the work has been done, has accepted the work and has received the benefit thereunder, and that what Section 70 prevents is unjust enrichment and it applies as much to individuals as to corporations and Government. There is no doubt that in this case the Dispensary Fund Committees have accepted the buildings and they have also been accepted by the State of Maharashtra when they took over the hospitals with their

buildings which the appellant had constructed. Thus, the Dispensary Fund Committee in two cases and the Municipal Committee of Gondia in the third have received the benefit and the State of Maharashtra, having taken over the two hospitals became liable to pay the suit amount as successors-in-interest of the Dispensary Fund Committees.

7. It is true, as the learned Judges of the High Court pointed out that real basis for a claim under Section 70 is not the terms of the contract but the quantum of the benefit actually derived. In the absence of any other material the contract between the parties provides a useful basis for calculating that benefit. It has not been alleged on behalf of the defendants that the rates agreed upon and later enhanced were not fair rates or that anybody else would have undertaken the work cheaper. The only reasonable way of arriving at the value of the benefit derived by the Government is on the basis of the rates agreed upon (including future increases in rates by P.W.D.) and that would be a fair indication of the value of the work. We may in this connection refer to the decision of this Court in *Piloo Sidhwa v. Municipal Corporation* ((1970) 3 SCR 415 : (1970) 3 SCC 213) where the market price was taken as a proper indication of compensation under Section 70 and interest also was awarded.

8. Mr. Phadke appearing on behalf of the appellant did not want any relief against defendants other than the State of Maharashtra in Appeals Nos. 1072/67 and 1073/67 and the Municipal Committee of Gondia in Appeal No. 1071/67. The amount mentioned by us earlier would have had to carry interest at the rate of 6 per cent. from the date of plaint but Mr. Phadke appearing on behalf of the appellant has stated that he would be satisfied with a decree for Rs. 8,214/- in Civil Suit No. 1-B i.e. Appeal No. 1072/67, for Rs. 19,298/- in Appeal No. 1073/67, and Rs. 12,765 in Appeal No. 1071/67. There will be decrees accordingly. These amounts are far less than what the appellant is entitled to as indicated above, and he would, therefore, get his full costs in all the courts. They would, of course, carry interest at 6 per cent. from this date till date of realisation.

</html