

M/S. Timber Kashmir Private Ltd.

Vs

The Conservator of Forests, Jammu

Civil Appeal No. 313-315 of 1973

(CJI A.N. Ray, M.H. Beg, P.N. Shinghal JJ)

26.10.1976

JUDGMENT

BEG, J. -

1. These are three appeals by certification against the judgment of a Division Bench of the High Court of Jammu and Kashmir, allowing appeals from the judgment of a learned single Judge. The Jammu and Kashmir Government had filed three applications under Section 20 of the Jammu and Kashmir Arbitration Act, 2002, to refer disputes arising out of three agreements between it and the appellant company to arbitration under the arbitration clause of agreements between the parties. The applications had been dismissed by the learned single Judge on the ground that the arbitration clause was, in each case, a part of an agreement which was not duly executed in accordance with the provisions of Section 122 (1) of the Constitution of Jammu and Kashmir which correspond to those of Article 299(1) of the Constitution of India. The Division Bench had allowed the appeals of the Conservator of Forests, Jammu Circle, after holding that the provisions of Section 122(1) of the Constitution of Jammu and Kashmir could be said to have been infringed if contracts were signed by the Conservator of Forests in compliance with an order of the Government.

2. The mainstay of the case of the appellant company was an instruction or rule contained in "The Book of Financial Powers" which reads as follows :

5.13. The power to sanction or cancel the terms of instruments, leases, agreements is delegated in the following cases :

#-----S. Nature of power To
whom ExtentNo. delegated-----
1 2 3 4-----* * * *9. To sell
forest produces Chief Conservator of Upto s.7000 in value and to enter into Forests.
in each case provided contract for the same. the highest tender is accepted.
Conservator of Upto s.3000 each case Forests. provided the highest tender is
accepted. Divisional Forest Upto Rs. 1000 each case Officer. provided the highest
tender is accepted.-----##

3. The Division Bench observed that this rule existed prior to the coming into force of the Constitution of Jammu and Kashmir. It may also be pointed out that this rule deals with the powers to "sanction or cancel" leases, agreements, and other instruments which was delegated to the officers mentioned there with limitations on their powers specified there. But, the constitutional provision, relied upon on behalf of the appellant, relates to the manner of the execution of the formal document

containing the contract after it sanction. It is true that the contract could not be executed without the sanction. Nevertheless, if the sanction could be either expressly or impliedly given by or on behalf of the Government, as we think it could, and if some acts of the Government could fasten some obligations upon the Government the lessee could also be estopped from questioning the terms of the grant of the sanction even where there is no written contract executed to bind the lessee.

4. In the case before us, we have agreements from which the appellant company has derived benefits. And, there are contracts validly executed on behalf of the Government of Jammu and Kashmir by the Conservator of Forests. It is true that, if the appellant could take up the legal plea that the contracts were not duly executed, in accordance with Section 122(1) of the Constitution of Jammu and Kashmir, it could urge that they did not have any effect at all as contracts whatever other legal consequences its acts or conduct may have had. But, this does not mean that, if a party obtains benefits on the understanding that it would abide by certain conditions, as the appellant company had done, it could not be compelled to observe those conditions, such as the condition to refer disputes to arbitration. However, in the instant case, we need not go into that question because the pleas of a violation of Section 122(1) of the Jammu and Kashmir Constitution is itself not sustainable for the reasons indicated below.

5. As the Division Bench of the High Court had pointed out, there was a government order and notification of February 23, 1957, which reads as follows :

In exercise of the powers conferred by sub-section (1) of the Constitution, the Sadar-i-Riyasat is pleased to direct that the undermentioned contracts and assurances of property made in the exercise of the executive powers of the State may be executed on his behalf by various officers subject to any limit fixed by Government rules and orders as follows :

* * * * *

VI. In the Department of Development :

(1) Agreements relating to Forest Leases and appropriation of forest products : By the Secretary to Government, Chief Conservator; Conservators or Forest and Divisional Forest Officers.

The three leases, containing the arbitration clauses which the appellant wants to avoid, were executed on February 27, 1963, and February 28, 1963, and March 19, 1963, after the notification mentioned above. The leases were duly signed by Conservator of Forests, who were expressly authorised, without any limits imposed on the valuation of the leases, to sign and execute them on behalf of the Government. The delegation of power made prior to the Jammu and Kashmir Constitution related to grants of sanction and their cancellation. It did not expressly refer to powers to execute leases which is a separate matter. The notification of 1957, however, is specially related to the execution of formal documents including leases. Hence, it will cover the three leases before us even if the former rules relating to the limits of the authority of Forest Officers to give or cancel certain sanctions could be said to be in existence at all the after the enactment of the new Constitution of Jammu and Kashmir and the notification of February 23, 1957, cited above.

6. We may mention that, as has been indicated in the separate judgment of the learned Chief Justice of the High Court, the Jammu and Kashmir Government had tried to remove the doubts it

entertained about the validity of past leases executed by the Conservator of Forests. It, therefore, passed two orders : one of April 14, 1965, and the other of April 29, 1971. The order of April 14, 1965, ran as follows :

In supersession of previous orders regarding signing of lease agreement it is ordered that the Conservator of Forests will sign agreements relating to all cases of forests leases and appropriation of forest products and Chief Conservator of Forests will act as the arbitrator as provided under Clause 44 of the Agreement.

By order of the Government of Jammu and Kashmir.

Sd/- Bharat Bhushan Secretary to Govt. Forest Department.##

The order of April 29, 1971 runs as follows :

Government Order No. FST-31 dated 14.4.65 shall be deemed to have taken effect from 29.1.63 and all actions taken by the Conservators of Forests in executing the lease agreements by virtue of the said order are hereby regularized.

By order of the Government of Jammu and Kashmir.

Sd/- R. C. Bhargava, Secretary to Government, Agricultural Department.##

7. The learned Chief Justice had observed that these orders, purporting to ratify the leases which were valid, did not have any legal effect whatsoever and were unnecessary. If there had been any question to be decided as to whether the Government had sanctioned the leases, its actions, apart from the execution of leases, could be considered. But, once there has been a valid execution of leases by duly authorised officers, the documents would be the best evidence of sanction also. That was one of the objects of prescribing a formal mode of execution of instruments on behalf of the Government apart from the need to protect its interests against mala fide and other unauthorised acts of its servants or agents as indicated by this Court in *Mulamchand v. State of Madhya Pradesh* ((1968) 3 SCR 214 : AIR 1968 SC 1218).

8. In the cases before us the only question which needed decision was whether formal execution of the leases by duly authorised officers had been proved. We are of opinion that the Conservator of Forests was, for the reasons given by us, duly authorised to execute the leases. Accordingly, we affirm the orders of the Division Bench so that matters in dispute between the parties could be validly referred to arbitration under the appropriate clauses of agreements.

9. These appeals are, therefore, dismissed with costs. Civil Miscellaneous Petition 8573 of 1975 for interim orders is also dismissed as infructuous.

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