

PATNA HIGH COURT

S.K. Sen

Vs

Provincial P.W.D

A.F.O. O. No. 248 of 1956

(V. Ramaswami, C.J. and R.K. Choudhary, J.)

04.09.1959

JUDGMENT

V. Ramaswami, C.J.

1. This appeal is brought on behalf of the plaintiff against the order of the Additional Subordinate Judge of Purnea, dated 18-4-1956, refusing to grant a decree on the basis of an award said to have been given by the Collector of Purnea under section 14(2) of the Arbitration Act,

2. The case of the plaintiff was that the defendant, namely, the Executive Engineer of the Public Works Department, Purnea Division through its agents collected shingles and boulders from the bed of the river Chenga belonging to the plaintiff for which the defendant was liable to pay royalty. There was disagreement between the parties about the ownership of the river bed and the right to the royalty to be allowed. There was a reference made to the Collector of Purnea for his decision on this point and on 31-5-1954. the Collector of Purnea. Mr. M. Choudhary, made an award which he filed in the Court of the Subordinate Judge as requested by the plaintiff. Accordingly the plaintiff made an application under section 14(2) of the Arbitration Act praying for a decree on the basis of the award. The suit was contested by defendant No. 1 on the ground that there was, in the first place, no agreement for referring the matter to Collector, and it was also objected that the award was illegal because it was made in the absence and behind the back of the defendant. It was also contended on behalf of the defendant that the award was vague and indefinite and no decree should be passed upon that award. Lastly, it was objected that the agreement for reference to arbitration is void and illegal because there was no compliance with the provisions of Article 299 of the Constitution. The Additional Subordinate Judge of Purnea accepted the case of the defendant on all the points and dismissed the suit.

3. Having heard learned Counsel for the appellant we are of opinion that this appeal must be dismissed on the ground that there has been a violation of Article 299 of the Constitution. It is the case of the plaintiff that the agreement for arbitration was entered into between the plaintiff and the Executive Engineer, Public Works Department, of Purnea Division. The lower Court has taken evidence on this issue and has come to the finding that the Executive Engineer, Public Works Department, of Purnea Division, was not the person vested with the authority to enter into

an arbitration agreement on behalf of the State Government. In this connection the lower Court has referred to the Judicial Department Notification No. Con-2/50-1827 J. dated 14-4-1951, published in Part II of the Bihar Gazette dated 25-4-1951. which made it manifest that the agreement for reference to arbitration could be made by the Secretary, the Additional Secretary, the Joint Secretary or the Deputy Secretary to Government in the Public Works Department, and not by the Executive Engineer of the Purnea Division.

4. The question that arises for decision in this case is concluded by the decision of this court in *Dominion of India v. Seth Bhikhranj Jaipuria*¹, It was pointed out in that case that the provisions of section 175 of the Government of India Act, which corresponds to Article 299(1) of the Constitution are mandatory in character, and therefore, a contract, in order to be binding and enforceable against the State Government must be made in strict conformity with the formalities prescribed by Article 299(1) of the Constitution or section 175 of the Government of India Act. If these formalities are not complied with, the contract is void and not enforceable against the Union Government. It was also pointed out in that case that the constitutional provisions embodied in Article 299 of the Constitution being mandatory in character, a breach of these provisions makes the contract void and unenforceable against the Union Government, and there was no question of estoppel or ratification in a case of this character. In the present case it was contended by learned Counsel on behalf of the appellant that the telegram (Exhibit 3) sent by the Secretary to the Government in the Public Works Department, asking the Collector to expedite the submission of his advice was tantamount to a kind of ratification of the agreement to refer the matter to arbitration. But we have held already that the contract for referring the matter to arbitration was void ab initio for failure to comply with the mandatory provisions of Article 299 of the Constitution. It is, therefore clear that there is no question of estoppel or ratification in a case of this description. We, therefore reject the argument of learned Counsel for the appellant on this point.

5. In our opinion, this appeal is without merit and we accordingly dismiss this appeal. There will be no order as to costs.

Appeal dismissed.

Cases Referred.

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