

STATE OF WEST BENGAL v. B.K. MONDAL & SONS

Anushmita Dutta***CASE DETAILS**

Civil Appellate Jurisdiction: Civil Appeal No. 286 of 1958.

Appeal by special leave petition from the judgment and decree dated 4th January of 1957, of the Calcutta High Court in Civil Appeal from Original Decree No. 155 of the year 1953.

A decision by the Supreme Court of India

Citations: 1962 AIR 779, 1962 SCR Supl. (1) 876

Appellant: the State of West Bengal

Counsel for the Appellant: B. Sen, P. K. Chatterjee and P. K. Bose

Respondent: M/S. B.K. Mondal & sons

Counsel for the Respondent: N. C. Chatterjee, P. K. Mukherjee and A.N. Sinha

Date of judgement: 5th December, 1961

Bench:

- Hon'ble Justice B.P. Gajendragadkar (CJ)
- Hon'ble Justice K. Sarkar
- Hon'ble Justice N. Wanchoo
- Hon'ble Justice C. Das Gupta
- Hon'ble Justice Rajagopala Ayyanga

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BRIEF FACTS

This case was a Special Leave Petition arising out of the original case filed by respondent B.K. Mondal & sons against the appellant, in this case, i.e., the State of West Bengal, originally in the Calcutta High Court. The respondent's original case was that on the 8th of February in the year 1944, it proposed to set up temporary storage godowns for the Civil Supplies Department of the State of Bengal at a place known as Arambagh, located in the District of Hooghly and that the offer was accepted by the department via a letter dated 12th February, 1944. As a result, the respondent completed the construction and received a payment in the month of July in 1944 of Rs. 39,476/-. In the meantime, the Sub-divisional Officer of Arambagh requested the respondent to submit its estimates of the construction of a kutchra road, a guard room, an office, a kitchen, and a room for clerks at Arambagh for the Department of Civil Supplies, on the date 7th April of 1944 to be precise. The respondent claimed that the Additional Deputy Director of Civil Supplies toured Arambagh on 20th April 1944 and eventually then, directed the respondent to commence the construction in accordance with the very estimates that were submitted by it. Correspondingly, the respondent proceeded with the aforementioned construction and completed it, and submitted the bill of Rs. 2,322/- to Assistant Director of Civil Supplies on 27th April, 1944.

Subsequently, the Sub-Divisional Officer of Arambagh demanded the construction of some storage sheds at Khanakul under Arambagh subdivision, and on 18th April, 1944 the Assistant Director of Civil Supplies wrote a letter to the respondent, requesting that the storage sheds be constructed. The respondent completed this assignment as well in the due course of time and a bill for Rs. 17,003/ was submitted for this particular work. The respondent claimed in the current suit that the respondent's two bills, of claiming Rs. 2,322/- and Rs. 17,003/- respectively for the aforementioned constructions, had remained unpaid, and that this was the foundation of the original claim. Thus, the respondent claimed the sum of Rs. 19,325/- for works done by it for the appellant, i.e., the State of West Bengal, since the Department of Civil Supplies is a government authority.

SECTIONS INVOLVED

The two primary Sections involved in this case are:

Section 70 of the Indian Contract Act, 1872

It reads, “*Obligation of person enjoying the benefit of non-gratuitous act.—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*”¹.

So basically, Section 70 of ICA imposes a contractual liability to reimburse for the gains of an act done by one party that was not done gratuitously for another party. On deeper analysis, we shall surmise that there are three essential components of this section:-

- A lawful activity or delivery to another
- No intention for the act of delivery to be gratuitous in nature
- The other party enjoys the benefit of such act or delivery

Only on account of fulfillment of these three ingredients should a party claim their case to be applicable under this section.

Section 175(3) of the Government of India Act of 1935

It reads, “*Subject to the provisions of this Act with respect to the Federal Railway Authority, all contracts made in the exercise of the executive authority of the Federation or of a Province shall be expressed to be made by the Governor-General, or by the Governor of the Province, as the case may be, and all such contracts and all assurances of property made in the exercise of that authority shall be executed on behalf of the Governor-General or Governor by such persons and in such manner as he may direct or authorize*”²

So basically, this pre-independence or rather colonial section mentions that the government contracts should always be signed in the name of the *de jure* head of the province or state. It can be conjectured that even though a government official (like the Assistant Director of

¹ Indian Contract Act § 70 (1872).

² Government of India Act § 175(3) (1935).

Civil Supplies or the Sub-Divisional Officer of Arambagh) with authority from the government makes a contract, such contract is not enforceable if it is not made on behalf of the governor of that province (*de jure* head, in instances of the contemporary scenario).³

THE PROCEDURAL HISTORY OF THIS ISSUE

The issue was first tried in the trial court by Justice G.K. Mitter, who held that although there was no valid contract as according to Section 175(3) of the GoI Act, yet the claim is valid under Section 70 of ICA. The verdict of the trial court was against the appellant State. Upon this, the State filed an appeal to the Calcutta High Court under its civil appellate jurisdiction.

Justice S.R. Das Gupta and Justice Bachawat heard this appeal and declared the trial court's verdict to be valid and the appeal by the State was dismissed. Thereinafter, the State appealed this case to the Supreme Courts as a Special Leave to Appeal and this is the exact case at hand.

CLAIMS AND ARGUMENTS BY THE PARTIES

The Respondent

The Respondent M/S. B.K. Mondal and sons claimed a total amount of Rs. 19,325 for the constructions that they had discharged for the Department of Civil Services. It argued basically on two grounds:

- The first ground was that the respondent performed the services in question under the terms of a contract that it believed was concluded between both the parties and as a result, the appellant became obligated to compensate the amounts payable for that same works.
- The second ground is an alternative to the first one because it delves into the aspect of a quasi-contract in the case where the actual contract might not have concluded. It was maintained that if in case the contract in the issue was invalid, then the respondent's claim will come under **Section 70⁴** of the **Indian Contract Act of 1872**

³ Swarnendu Chatterjee, "Governor versus Speaker: A Constitutional Conundrum and Tussle for Power, The SCC Online Blog", SCC Online (May 13, 2020). <https://www.scconline.com/blog/post/2020/05/13/governor-versus-speaker-a-constitutional-conundrum-and-tussle-for-power/>

⁴ *Supra I.*

(hereinafter ICA). It was claimed that the respondent company did not intend to do those constructions gratuitously and hence their claim should fall under S.70 and remuneration for those works should be rightfully awarded.

The Appellant

The appellant State of West Bengal denied all the claims made by the respondent. It was argued that what the respondent alleges to be contracts were just requests made by the appellant that were invalid in nature and there was no valid contract concluded that should bind the Government to pay under **Section 175(3)**⁵ of the **Government of India Act of 1935** (hereinafter GoI Act). Also, it was maintained that there was no privity of contract between the respondent and the state.

The learned counsel of the appellant argued that the background of S.70 owes its origins to cases like *Lampleigh v. Brathwaite*⁶. These are the cases of implied assumpsit similar to the subject matter of S.70. The case *H. Young & Co. v. The Mayor and Corporation of Royal Leamington Spa*⁷ was mentioned to find out the effect of non-compliance of S.175 (3) of the GoI Act and applicability of S.70 of ICA. It was hence argued that the s. 175(3) prevents a contract with the Government from incurring an obligation under a quasi-contract.

It was also argued that the capacity of the appellant, in this case, is that of a minor and is out of scope for S.70 of ICA. As it was held in *Mohiree Bibi v. Dharmodas Ghosh*⁸ that a minor is incompetent to enter into a contract, and so minor (appellant) should not be sued under S.70. So, basically, it was claimed that the state government is outside the purview of S.70.

ISSUES INVOLVED

- Was there any contract concluded between the State of West Bengal and B.K, Mondal & sons?
- Whether the respondent can claim reimbursement as under S.70 of ICA?
- Is the State out of the ambit of S.70 of ICA?

⁵ *Supra* 2.

⁶ [1615] EWHC KB J 17, (1615) Hobart 105, 80 ER 255.

⁷ (1883) 8 AC 517

⁸ (1903) ILR 30 Cal 539 (PC).

JUDGEMENT

There were two sets of judgements delivered but with the same outcome. The first judgement by Justices Gajendragadkar, Wanchoo, and Ayyagar was delivered by Justice Gajendragadkar and the second one was delivered by Justice Sarkar on behalf of Justice C. Das Gupta and him.

Justice Gajendragadkar's statement:

- Section 70 of the Indian Contract Act is applicable in the respondents' case perfectly as all the three conditions of the section are abided by, i.e., the works were lawful and not done gratuitously and the fact that the appellant had the complete choice to refuse to accept the kutchra road, the warehouse, the shed, etc and the appellant had the complete freedom to ask the respondent to demolish the constructions, yet the Civil Supplies Department chose to utilize those, proves exactly the third requisite of S.70 of ICA.
- There was no existence of any contract as according to S.175 (3) of the GoI Act for the officers who requested the respondents to carry out the constructions were not authorized to make such requests as under the province of West Bengal as such requests weren't followed by a contract executed in the name of the *de jure* head, that is, the governor.
- The non-compliance with S.175 (3) of the GoI Act does not prevent entering into a contract with the government because the cases like that of H. Young as it would not be reasonable to take the assistance of English provisions as the words in both these sections are clear and unambiguous hence, they do not require interpretation by the means of English law and cases.
- The state or government is not out of the ambit of S.70 of ICA on the argument of the minority. It is true that the minor is excluded from the purview of S.70 but for a different reason that a separate section exists for minors, i.e., Section 68 of ICA - Claim for necessaries supplied to person incapable of contracting, or on his account.⁹ But, here, the state cannot be considered as a minor as the state does not lack volition or is in no manner incompetent.

⁹ Indian Contract Act § 68 (1872).

Justice Sarkar's statement:

- There was no contract formed between the two parties because of the reason that the contract may have been established by only the authorities in this situation, but these officers did not have the authority of the Government to request the respondent to contract.
- The respondent can surely claim reimbursement under S.70 as all the three requisites of this section are fulfilled as those were lawful constructions as per the request of the officers, the respondent obviously did not construct gratuitously and those constructions were promptly put to use by the government.
- The state is not out of the ambit of S.70 by the contention made by the appellant that S.175(3) of the GoI Act prevents the government's obligation under quasi-contracts because quasi-contracts aren't real contracts whereas S.175(3) deals with only the real ones.

Hence, the appeal by the State of West Bengal was dismissed.

COMMENTS

Primarily, the appellant State of West Bengal's contention was fundamentally not to provide for how there was no existence of a contract between the State and B.S. Mondal and sons but to assert and reason that the contract between the state and the company was invalid in nature as it was against the ingredients of S.175 (3) of the Government of India Act of 1935 and for that reason, this case should not fall under S.70 and the State should not be made liable to remunerate as well. But these contentions by the appellant were vitiated by the very aspect that since neither the officers had the authority to contract under the name of the government nor were the company aware of the fact that they had any sort of authority, no contract came into existence in the first place and thus, its validity stays out of question. Since there was no contract per se, the issue cannot be hindered to benefit out of S.70 of the Indian Contract Act.

Subsequently, the appeal was filed with the assertion that the government, or the province of West Bengal in the current scenario, were in the capacity of a minor and resultantly, should be barred from being sued under S.70 of ICA. But this assertion was not provided with proper reasoning and failed to impress the judges as a separate Section 68 already exists for minors, dealing with quasi-contractual obligations, and the fact the state was in no manner

incompetent in the present case as it had a complete authority and freedom not to benefit out of the construction work completed and handed over to it by the company. Since these paramount arguments presented in the appeal were invalidated by reason, the appeal was unanimously dismissed.

