

1954

Present : Gratiaen J. and Gunasekara J.

H. K. J. APPUHAMY, Appellant, and THE ATTORNEY-GENERAL,
Respondent

S. C. 371—D. C. Ratnapuru, 8,638M

Contract—Tender—Execution of a further agreement—Point of time when contract becomes binding.

Plaintiff had been invited to make a tender for certain work on the understanding that, if the tender was accepted, he would be required within a fixed period of time to sign an agreement for the due performance of the work. He accordingly signed an agreement whereby he undertook to complete the work within a certain period.

Held, that the contract automatically became operative as soon as the plaintiff signed the agreement. It was not open to the other party thereafter to change his mind on the ground that he had not signed the agreement himself.

APPPEAL from a judgment of the District Court, Ratnapura.

Sir Ukwatte Jayasundera, Q.C., with *V. T. de Zoysa* and *G. T. Samarawickreme*, for the plaintiff appellant.

B. C. F. Jayaratne, Crown Counsel, for the Crown.

Cur. adv. vult.

¹ (1938) *S. A. A. D.* 584.

April 5, 1954. GRATIEN J.—

This is an action against the Crown for breach of contract.

In December 1946 tenders were invited for the construction of two abutments for a bridge at Pellakada across the Heenganga. The notices stated that the tenders should reach the Chairman of the Village Committee of Palle Pattu, Kukul Korale, not later than the afternoon of 20th February, 1947, and that the successful tenderer " must be prepared to enter into an agreement with the Government Agent for the due performance of the work within 7 days of the notification of acceptance and to furnish cash security in a sum of not less than 10% of the amount of the tender ". It is common ground that the printed words " Government Agent " appearing in this clause should have read, and were understood to mean, " Assistant Commissioner of Local Government ".

The Village Committee recommended to the Assistant Commissioner that the plaintiff's tender for Rs. 4,795 should be accepted, and the Assistant Commissioner's acceptance of that tender was in due course notified to the plaintiff. He thereupon deposited at the Ratnapura Kachcheri on 23th April, 1947, a sum of Rs. 480, and he contemporaneously signed in triplicate a printed agreement which was placed before him for signature by the Superintendent of Village Works attached to the Office of the Assistant Commissioner of Local Government. In this document (marked P3) :

1. he bound himself, *inter alia*, to execute the works as set forth in the relative plans, specifications and schedule of rates ;
2. he hypothecated in favour of the Assistant Commissioner the sum of Rs. 480 as security for the due performance of his contractual obligations ;
3. he undertook to complete the work " *within 6 months from date hereof* " and, in default thereof, to pay liquidated damages to the Assistant Commissioner at a specified rate.

After the plaintiff had signed this agreement, the Superintendent of Village Works (whose function it was to supervise contracts of this nature) showed the plaintiff where the work had to be done, and on 16th May, 1947, the plaintiff commenced building operations which the learned Judge assessed at Rs. 2,087.50. On 10th July, 1947, however, he received from the Assistant Commissioner a letter bearing the date 30th June, 1947, instructing him " not to commence work until you hear from me and receive a signed copy of the agreement form ".

The Assistant Commissioner sought to explain his attitude in writing this letter by stating that, shortly after the plaintiff had signed the agreement and deposited his security as required by the notice calling for tenders, departmental consideration was for the first time given to the question whether it would be " more expedient " to call for fresh tenders for the entire work to be undertaken by a single contractor. This new development was not however communicated to the plaintiff until July, 1947, and the authorities should have realised that, having already accepted a tender from the plaintiff for the execution of a part of the work, it was impossible for them to call for fresh tenders on this new basis without committing a breach of contract. Be that as it may,

other complications followed, and the plaintiff was prevented from proceeding with the work entrusted to him. He therefore instituted this action against the Crown for the recovery of a sum of Rs. 3,067·50 made up as follows :

- (a) Rs. 2,087·50 being the cost of work already performed under the contract, and which was admittedly of no independent value to the plaintiff ;
- (b) Rs. 480 being the amount deposited on 20th April, 1947 ;
- (c) Rs. 500 representing the nett profit which the plaintiff would have earned if the contract had not been broken.

The learned judge dismissed the plaintiff's action because in his opinion :

- (a) there was no concluded contract between the parties, as' the Assistant Commissioner had not yet signed the agreement P3;
- (b) in any event, the contract, even if concluded, was entered into by the Assistant Commissioner as agent of the Village Committee and not of the Crown.

In my opinion there was no merit in either of these defences.

As for the second line of defence relied on by the Crown, it is quite obvious that the Assistant Commissioner was throughout the transaction acting as an agent of the Crown. He himself explained that the cost of construction of the proposed bridge was to be met from funds belonging to the Central Government and exclusively administered and controlled by the Department of the Commissioner of Local Government (which is a Government Department). Before that Department was established under the provisions of Ordinance No. 57 of 1946, the proper authority for controlling such funds and entering into contracts in connection with expenditure of this kind was the Government Agent. The Village Committee, on the other hand, (beyond making recommendations for the acceptance of tenders by an officer of the Crown) could not and did not enter into contracts of this nature on its own account except in cases where the necessary funds were (by an entirely different procedure) placed under their direct control. The forms of the notices calling for tenders, and also the terms of the printed agreement P3, could not but have been intended to make it clear to the tenderer that he was being invited to negotiate with the Government (which controlled the relative funds) and not with the Village Committee (which had no funds from which payments under the proposed contract could be met).

The question remains whether the omission of the Assistant Commissioner to sign the agreement which the plaintiff had duly signed had the effect of leaving the parties still in the stage of "negotiations", so that there was no concluded contract in force when the plaintiff commenced work under the honest and (according to the evidence) the induced belief that there was.

Let us analyse the position. The plaintiff had been invited to make a tender on the understanding that, if it was accepted, he would be required within a fixed period of time to (1) enter into an agreement for the due performance of the work and (2) furnish cash security in a sum not less than 10% of the tender. The acceptance of his tender would

(but for these stipulated conditions) have automatically brought the parties into contractual relationship with one another. But in this case, the incidence of contractual rights and obligations was postponed until the plaintiff duly complied with both these conditions—*U. C. Matala v. Weerasinghe*¹. As soon as that was done, nothing further was required to be done by the Assistant Commissioner to make the bargain binding on the Crown on whose behalf he was acting.

It is important to note that the terms of the formal agreement P3 expressly imposed very onerous obligations on the plaintiff and none (except by implication) on the other party. Moreover, by signing the agreement the plaintiff immediately became bound to complete the work *within six months from that date*. This clause strongly supports the argument that the contract automatically became operative as soon as the plaintiff signed the document. In other words, the unqualified acceptance by the Assistant Commissioner of the plaintiff's offer to complete the work for Rs. 4,795, subject only to the latter's due compliance with the unilateral conditions stipulated in the "notice calling for tenders", left the former no *locus poenitentiae* to withdraw his acceptance after these conditions had been duly satisfied. The language of the agreement shows conclusively that the security was deposited and hypothecated on the basis that a contract had been entered into, not on the assumption that the other party was still free to change his mind.

I would allow the appeal with costs in both Courts, and enter judgment in favour of the plaintiff for Rs. 3,967.50 together with legal interest on the sum of Rs. 480 from date of action until date of decree and on the aggregate amount of the decree in full.

GUNASEKARA J.—I agree.

Appeal allowed.
