

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 74 of 2018****Reserved on 22.09.2020****Pronounced on 05.10.2020**

- M/s Ashok Kumar Mittal Through Power Of Attorney Holder, R. Murgesh, S/o Late Raju Acharya, Aged About 57 Years, R/o Shubham Vihar, Mungeli Road Bilaspur, Tehsil And District Bilaspur, Chhattisgarh.

---- Applicant**Versus**

1. State Of Chhattisgarh Through The Principal Secretary, Water Resource Department, D.K.S. Bhawan, Raipur, Chhattisgarh.
2. The Executive Engineer Kelo Project, Water Resource Department, Lakha, P.O. Kharasia, District Raigarh, Chhattisgarh.

---- Non-applicants

For Applicant:	Shri B. N. Mishra, Advocate.
For State/Non-applicants:	Shri Vikram Sharma, Deputy Govt. Advocate.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**CAV Order/Judgment**

1. This Revision Petition has been preferred by the Applicant-M/s Ashok Kumar Mittal under Section 19 of the Chhattisgarh Madhyasthan Adhikaran Adhiniyam, 1983 (hereinafter referred to as the 'Adhiniyam, 1983') questioning the legality and propriety of the order dated 13.12.2017 passed by the Chhattisgarh State Arbitration Tribunal, Raipur (hereinafter referred to as the 'Tribunal') in Reference Case No.13/2014, whereby the Tribunal has dismissed the Applicant's claim preferred under Section 7A of the Adhiniyam, 1983. The parties to this petition shall be referred hereinafter as per their description in the Tribunal.

2. Briefly stated the facts of the case are that a work contract of "Construction of earth work and 24 numbers structures from new R.D.

10310 M. to 20700M. of Kelo Project Main Canal under Mini Mata Bango Dam Circle District Raigarh” valuing Rs.701.64 lacs was awarded to the Applicant-M/s Ashok Kumar Mittal and an agreement bearing No. 05/DL/2007-2008 was accordingly executed on 12.03.2008. In pursuance thereof, the work order was issued on 17.03.2008 and the stipulated period for completion of the alleged work was 12 months including the rainy season. According to the Applicant, the uninterrupted encumbrance free site was not provided to him as the land was not acquired properly from the land owners as no amount of compensation was distributed to the affected villagers. As a result of which, they have started creating obstruction from the execution of the alleged contract work in planned and phased manner. The stipulated period for completion of alleged work was, therefore, extended from time to time by the Respondents/Non-applicants and in the meantime, they have also changed the drawing and designs of the culverts, which led to invitation of protests from the villagers, compelling them for the institution of the civil suit before the competent court of law. It is pleaded further in the Reference Petition that the extension of time has attracted the payment towards escalation, and therefore, after exhausting in house mechanism of dispute redressal as provided under the agreement, the Reference Petition has been filed before the Tribunal claiming a total sum of Rs.160.18 Lacs and interest thereupon amounting to Rs.9,39,803/-.

3. While denying the aforesaid claim, it is pleaded by the Respondents that the special Power of Attorney Holder of the Applicant, namely, Mr. R. Murgesh, was authorised only to look after the alleged contract work and was not empowered to sub delegate his power to anyone else to represent

the claim on behalf of the Applicant. The Reference Petition as referred is, therefore, not maintainable and liable to be rejected.

4. Both the parties have submitted their documentary evidence and led oral evidence in support of their claims and despite affording opportunity of hearing, neither the Applicant nor his alleged attorney has advanced his submissions and after hearing the counsel for the Respondents, the Tribunal upon examination of the alleged power of attorneys, i.e., Ex.P.16 and Ex. P.17, held that Mr. R. Murgesh, the Power of Attorney Holder, was neither authorised by the Applicant to present and prosecute the Reference Petition nor was authorised to sub delegate his power. It held further that since power of attorney (Ex.P.19) authorising the said Power of Attorney Holder to prosecute the claim was executed during the pendency of the Reference Petition and was not in existence at the time of its filing, therefore, while disbelieving the same, dismissed the Reference Petition vide its award dated 13.12.2017. This is the order/award, which has been impugned by way of this revision petition.

5. According to Shri B. N. Mishra, learned counsel appearing for the Applicant, the Tribunal has committed a serious illegality in dismissing the Reference Petition on finding that Mr. R. Murgesh, the Power of Attorney Holder of the Applicant was not authroised to prosecute the said Reference Petition. While inviting attention to the provision prescribed under Section 197 of the Indian Contract Act (for short 'the Contract Act'), it is contended that since the defect, if any, in the said power of attorney (Ex.P.16) was ratified and/or cured by the principal by issuing another power of attorney (Ex.P.19) authorising him to prosecute the Reference Petition, therefore, under such circumstances, it cannot be held that he

(Mr. R. Murgesh) was not authorised to prosecute the said Reference Petition as observed by the Tribunal.

6. On the other hand, Shri Vikram Sharma, learned Dy. Govt. Advocate appearing for the State/Non-applicants, while supporting the award impugned, submits that the Tribunal upon due consideration of power of attorneys marked as Ex.P.16 and Ex.P.17 rightly arrived at a conclusion that said Power of Attorney Holder (Mr. R. Murgesh) was not competent enough to prosecute the Reference Petition on behalf of the Applicant. It is contended further that since the alleged power of attorney (Ex.P.19) was not in existence at the time of filing the Reference Petition, therefore, it was rightly turned down by the Tribunal.

7. In view of the aforesaid submissions, the questions that fall for considerations are:

- a) whether the said Power of Attorney Holder, Mr. R. Murgesh was competent to present and prosecute the Reference Petition under Section 7A of the Adhiniyam, 1983 on behalf of the Applicant-M/s Ashok Kumar Mittal?
- b) What would be the effect of said ratification?

8. From perusal of the power of attorneys, marked as Ex.P.16 and Ex.P.17, it is evident that Mr. R. Murgesh, the Special Power of Attorney Holder of the Applicant /Contractor was not authorised to present the said Reference Petition and up to this, I do not find any infirmity in the observation made by the Tribunal. However, in so far as the finding disbelieving the power of attorney (Ex.P.19) executed by the Applicant/Contractor during the pendency of the Reference Petition ratifying the act of the said Power of Attorney Holder cannot be held to be sustainable in the eye of law. The said ratification (Ex.P.19) and/or, the

power of attorney made during the pendency of the Reference Petition reads as under:

POWER OF ATTORNEY

BY THIS POWER OF ATTORNEY I, Ashok Kumar Mittal S/o Late Piroji Lal Mittal being applicant/claimant in arbitration application, filed before the Chhattisgarh Madhyastham Adhikaran, Raipur, do hereby appoint Sri R. Murgesh, Bilaspur who has already been issued a power of attorney by me for execution of work and receipt of cheques for the work of Construction of Earth work and 24 number structures from new R.D. 10310n M. to 20700 M. of Kelo Project Main Canal, for execution of this arbitration application too as my attorney in the name of my organization M/s Ashok Kumar Mittal and on my behalf to do or execute all or any of the following acts or things in connection with the said application:-

1. To represent my organization severally or jointly before the said Madhyastham Adhikaran.
2. To sign, verify and file documents/rejoinder, affidavit etc.
3. To plead, argue, submit written synopsis of argument etc.
4. To produce or summon or receive documentary evidence.
5. To deposit and withdraw money for the purpose of any proceeding.
6. To apply for inspection and peruse of documents and records.
7. To obtain copies of documents and papers.
8. To engage or appoint any person or legal practitioner or advocate to appear for my organization in the conduct of arbitration.
9. Generally to do all other lawful acts necessary for the conduct of the said arbitration.

AND hereby agree that all acts, deeds and things lawfully already done or to be done by the said attorney shall be construed as acts, deeds and things done by me and I undertake to ratify and confirm all or whatsoever that my said attorney shall lawfully do or cause to be done for me by the virtue of power hereby delegated.

IN WITNESS HEREOF I have signed this deed on day of September 2015.

Sd/- illegible
(Ashok Kumar Mittal)

Signature of R. Murgesh
Sd/- illegible
Witness

9. It, thus, appears from a bare perusal of the above mentioned deed that the act of Mr. R. Murgesh, the Special Power of Attorney holder, has been ratified by the Applicant/Contractor.

10. Now, in order to consider the effect of the said ratification, it would be useful at this stage to consider the provision prescribed under Section 196 of the Contract Act, which reads as under:-

“196. Right of person as to acts done for him without his authority. Effect of ratification.—Where

acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.”

11. According to the aforesaid provision, it is crystal clear that if any act is done by a person on behalf of another without his knowledge or authority, the said person on whose behalf the act was done as such without his knowledge or authority, may elect either to ratify the same or may disown such act of a person. It provides further that if he ratifies the acts which were done without his knowledge or authority, it would then follow the same effects as if it had been done by his authority. There could be, thus, no manner of doubt in view of the language used in the said provision that if the act of the Agent is ratified by his Principal, it would then have its effect that the act had been done and/or performed by him (Agent) with his (Principal) authority from its inception. The ratification would, thus, become effective retrospectively and the act becomes validated from the day the act was done.

12. At this juncture, it would be profitable to note down the principles laid down in the matter of ***Surendra Nath Roy v. Kedar Nath Bose and others*** reported in **AIR 1936 Calcutta 87**, wherein it was observed in a suit for specific performance of contract while considering the letter written by vendor (Kedar Nath Bose) that he had ratified the act of his son (Felu) who had, on his (father) behalf, entered into an agreement to sale agreeing to alienate the property in question in favour of the purchaser, i.e., the plaintiff Surendra Nath Roy and observed further that it (ratification) would have its effect from its inception in following words (see page 92 bottom)

“.....Then again ratification relates back to the time of the inception of the transaction and has a complete retroactive efficacy.....”

13. In the matter of ***T. R. Bhavani Shankar Joshi and another v. Gordhandas Jamnadas and another*** reported in **AIR (30) 1943 Privy Council 66**, where a question has arisen as to “whether ratification would in law validate an assignment of a decree executed by an agent who was not authorised at the time of execution to assign the decree as such”, which was considered and answered while considering the provisions prescribed under Section 196 to 200 of the Contract Act in following words:
(see p. 68 left column)

“.....The question must depend on the exact language of the enactment to be construed, and must in India be examined in the light of Ss.196 to 200, Indian Contract Act, which contain the general law of India upon the point. On these sections their Lordships hold that it was open to the Dutch company to ratify the act of Shantilal who had purported to act on the company's behalf in assigning the decree to Gordhandas Jamnadas. Ratification is in law equivalent to previous authority; it may be express or it may be effected impliedly by conduct.....”

14. In the matter of ***Shankar Das Rup Lal v. Governor-General in Council (now Dominion of India)*** reported in **AIR 1952 Punjab 234**, where one of the partners of the firm, namely, Brij Lal had authority to refer the matter to arbitration which he did and his said authority was not questioned by other partners of the firm. In that factual scenario, it was held at paragraphs 9 & 10 as under:-

“(9)At no stage did any of the other partners come forward to say that the appointment of the sole arbitrator was bad. Then conduct of the case shows that Brij Lal was the

person who was in charge of litigation and he had authority to refer the matter to arbitration which he did. But even if it was to be held that Brij Lal had not this authority the conduct of the other partners appears to me to be clear and it, in my opinion, amounts to ratification. At no stage has any of the other partners come forward to raise any objection either to the authority of Mr. Shiv Charan Singh to arbitrate or to the authority of Brij Lal or Ram Lal to refer the matter to arbitration. As was remarked by the learned Judge, which has not been challenged before me, the reference to Mr. Shiv Charan Singh was by Brij Lal and Ram Lal. Even after the award the other partners have not come forward to raise any objection. The whole of the proceedings, beginning from the objections right upto today, have been carried on by Ram Lal. This conduct of the partners, in my opinion, amounts to ratification. In somewhat similar circumstances Achhru Ram, J., in 'HANUMAN CHAMBER OF COMMERCE LIMITED, DELHI v. JASSA RAM-HIRANAND', AIR 1949 E P 46, held that ratification need not be by any express act or declaration and might be implied from conduct. It might be inferred from mere acquiescence or silence or inaction on the part of such other partners.

(10) I am in respectful agreement with this judgment and hold that (1) Brij Lal had authority on behalf of his co-partners to enter into arbitration which is clear from the fact that no objection has been taken to the arbitration of P. D. Bhargava and Tara Chand Malik, (2) even if there was no express authority implied authority is clear from the conduct of the parties and (3) at any rate, the conduct of the other partners shows that they have ratified what was done by Brij Lal."

15. Yet, in the matter of ***Sri Parmeshwari Prasad Gupta v. The Union of India*** reported in (1973) 2 SCC 543, where the law of ratification was applied by the Supreme Court. In the said matter, the Chairman of the Board of Directors had terminated the services of the General Manager of a company pursuant to a resolution taken by the Board at a meeting. It was not in dispute that the meeting had been improperly held and

consequently the resolution passed in the said meeting terminating the services of the General Manager was invalid. However, the Board of Directors then convened subsequent meeting and in this meeting affirmed the earlier resolution, which had been passed in an improper meeting. In that factual scenario, it was held at paragraph 14 as under:-

“14.Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance to the invalid resolution of the Board of Directors passed on December 16, 1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorised to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorised, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on December 17, 1953.....”

16. The aforesaid principle of law of ratification was again applied by the Supreme Court in the matter of ***Maharashtra State Mining Corpn. v. Sunil, S/o Pundikarao Pathak***, reported in **(2006) 5 SCC 96**. In the said matter, the Respondent was an employee of the Appellant Corporation. Consequent to departmental enquiry, he was dismissed by the Managing Director of the Appellant. The Respondent then filed a writ petition before the High Court. During the pendency of the writ petition, the Board of Directors of the Appellant Corporation passed a resolution ratifying the impugned action of the Managing Director and empowering him to take decisions in respect of the officers and staff in the grade of pay the

maximum of which he did not exceed Rs.4700/- per month. Earlier, the Managing Director had power only in respect of those posts where the maximum pay did not exceed Rs.1900/- per month. The Respondent at the relevant time was drawing more than Rs.1900/- per month. Therefore, at the relevant time, the Managing Director was incompetent to dismiss the Respondent. Accordingly, the High Court held the order of dismissal to be invalid. The High Court further held that the said defect could not be rectified subsequently by the resolution of the Board of Directors. The High Court set aside the dismissal order and granted consequential relief. The appellant then filed the appeal by way of special leave petition where it was held by setting aside the order of the High Court while observing at paragraphs 7 & 10 as under:-

“7. The High Court was right when it held that an act by a legally incompetent authority is invalid. But it was entirely wrong in holding that such an invalid act cannot be subsequently “rectified” by ratification of the competent authority. Ratification by definition means the making valid of an act already done. The principle is derived from the Latin maxim *Ratihabitio mandato aequiparatur*, namely, “a subsequent ratification of an act is equivalent to a prior authority to perform such act”. Therefore ratification assumes an invalid act which is retrospectively validated.

xxxx xxxxx xxxxx xxxxx xxxxx

10. In the present case, the Managing Director's order dismissing the respondent from the service was admittedly ratified by the Board of Directors on 20-2-1991 and the Board of Directors unquestionably had the power to terminate the services of the respondent. On the basis of the authorities noted, it must follow that since the order of the Managing Director had been ratified by the Board of Directors such ratification related back to the date of the order and validated it.”

17. In the present case, the act of Power of Attorney Holder Mr. R. Murgesh, as observed herein above, was ratified. Therefore, in the light of the principles laid down as above, the act of said attorney is accordingly held to be competent to prosecute the said Reference Petition as his act, though was not proper in earlier occasion was, however, ratified by way of execution of another power of attorney (Ex.P.19).

18. Consequently, the revision succeeds and is hereby allowed. The award impugned passed by the Tribunal in Reference Case No.13/2014 is set aside and the matter is accordingly remitted back to the concerned Tribunal with a direction to decide the same on merits in accordance with law by providing sufficient and reasonable opportunity of hearing to the parties. The parties are directed to remain present before the Arbitration Tribunal and/or concerned Tribunal on 02.11.2020

19. Registry is directed to transmit the entire record to the concerned Tribunal forthwith. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE