

CONTRACTUAL VALIDITY OF THE AGREEMENT UNDER RATIFICATION

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ABSTRACT

Principal has the authority to ratify or reject the acts which are done by the agent acting out of the authority but it should be done for principal only. Ratification can be express or implied so it put forth when there will be express or implied ratification. The main aim of the paper is to discuss the conditions necessary to make the ratification valid and effective in the eyes of Law. He should be competent and should have existence when act has been committed. Knowledge of material facts is an essential criteria for valid ratification. The third party interest should not be hampered by the ratification done by principal of unauthorized acts. These conditions are discuss in detail in paper. It also gives the idea about the power and liability of the principal when he is ratifying the act. It also put forth the effects of ratification.

INTRODUCTION-

The base of relationship between principal and agent is consent and agent should act on behalf of the principal. It creates obligations and liabilities on both principal and agent. Section 182 of the Indian Contract Act 1872 defines both principal and agent where agent is the person who is employed by another to do acts for him and also represents another person in dealings done with third parties. The person for whom the acts are done or to whom agent represent in dealings is known as principal.

RATIFICATION-

Ratification is defined under Section 196 of the Indian Contract Act 1872 where it is upon principal discretion to affirm about the act which is done out of excess authority or no authority at all by the person acting as an agent. Thus, making it effective in the way it is previously authorized. Also, the principal has the authority to reject that act of agent completely.

Ratification is concerned with the voidable contracts not with void contracts as void contracts don't have the capacity to be legally enacted. As an act of person can be retrospectively ratified which implies that act of person who is acting as an agent is voidable not void. So, the acts which are void ab initio cannot be ratified¹.

Acts which are done when there was excess of authority has equal footing with the acts which are done without any knowledge or authority². Communication of ratification to the other party is essential or the contract is ratified can be shown by subsequent transactions³. Subsequent ratifications relate back to the date of the act ratified. The act which is ratified till that extent only agency is created. There is no new contract in place of old contract when contract is ratified by principal on whose behalf it is done. An agent whose act has been ratified doesn't give him any power to repeat that act in future without ratifying it with principal.

There is a difference between consent and ratification as consent enables the parties to complete the transaction on its basis by preceding and giving strength to it whereas ratification is subsequent in point of fact and time to the other transaction which is voidable. Also, consent is where the act which is to be ratified is still in process but in ratification the act is already completed when ratification was made⁴.

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¹Mulamchand v. State of Madhya Pradesh, AIR 1968 SC 1218

²Secretary of State in council of India v. Kamachee Boye Sahaba, (1859) 7 MIA 476, 539.

³Ganpat Rao v. Iswar Singh, AIR 138, nag 482; AIR 1954 Nag. 357.

⁴Ghasia v. Thakur ram Singh, AIR 1927 Nag 180.

Ratification can be express or implied which is explicitly mentioned in section 197 of the Indian Contract Act 1872. An express ratification should be visible either by clear adoptive acts or by equivalent acquiescence⁵. It is essential that express ratification should be communicated to the other party⁶. The question is not about what principal intention of doing something what matter is what he actually did and that will reflect his intention⁷. Implied ratification comes from principal silence and acceptance through conduct can be inferred that he has ratified the act⁸. Implied ratification need not be communicated to the other party⁹. If principal is taking advantage of the transactions entered into by the agent such conduct is considered as implied ratification¹⁰. If principal is aware that agent has acted out of his authority but he doesn't conveyed within reasonable time his desire of not to be bound by it then it will be considered as implied ratification¹¹.

Acts which are done by public servants can be ratified in the same way as private transactions¹², by simple declarations or by conduct¹³ but officer should be acting in accordance with discharge of duty¹⁴. There exists only one difference between private agents and public officers, in private agents principal is liable to the extent of power it has apparently given to his agent whereas state will be liable only to the extent of power it has actually given to its officers.

An agreement entered into by minor is void-ab-initio. But Minor has to ratify the acts which are done by his guardian on his behalf when he will become major with full nature and effect of the transaction. But if that person is not a legal guardian then no liability arises of minor to ratify that act on becoming major¹⁵.

ESSENTIAL CONDITIONS FOR THE RATIFICATION TO BE VALID

1- Ratification must be by the person for whom the agent profess to act-

Brown L.J. said that a man can ratify the acts which appear to be done for him but not the acts which are done for somebody else¹⁶. Principal cannot ratify the act which is done by an agent for himself¹⁷. The principal can ratify only that act which is done by another but on his behalf¹⁸. It is essential that person on whose behalf act is done ratifies it as the purpose of ratification is to indulge in every persons who has involved the same rights and liabilities as if it has been done with previous authority.

2- Ratification must be by a person who is competent enough to authorized the transaction-

It is essential that when the transaction is taken place principal must be competent enough to authorize the transaction and it will not be permissible to ratify the act but it should not happen that later he validate the transaction when he has the competency to do so. Principal at its inception should have competency to authorize the transaction as main characteristics of transaction is equivalent to prior authority¹⁹. If the agent acted on behalf of alien enemy then it doesn't matter whether the principal is competent or not as it doesn't come under ratification²⁰. Ratification and acceptance cannot be made for the transaction which is void or illegal²¹. Also, if a contract is formed when it was legally not possible to do so, it cannot be enforced when it has become legally possible²².

⁵Smith v. Baker, (1873), LR 8 CP 350.

⁶Ganpatro Madhorao Potdar v. Ishwarsingh Gangaramsingh, AIR 1938 Nag. 482.

⁷Kadiresan Chettiar v. Ramanathan Chetti, AIR 1927 Mad 478.

⁸Sultan Mahmud v. Md. Esuf, AIR 1930 Mad 476: 122 IC 501.

⁹Shell Co. of Australia Ltd. v. Nat Shipping Bagging Services Ltd., (1988) 2 Lloyd's Rep 1, 8, 11, 14.

¹⁰Hukum Chand Insurance Co. Ltd. v. Bank of Baroda, AIR 1977 Karn 204: ILR (1977) 2 Karn. 980.

¹¹Sultan Mahmud v. Md. Esuf, AIR 1930 Mad 476: 122 IC 501.

¹²Secretary of State in Council of India v. Kamachee Boye Sahaba, (1859) 7 MIA 476, 539.

¹³Secretary of State of India v. Bai Rajbai AIR 1915 PC 59.

¹⁴Collector of Masulipatnam v. Cavalry Vancata Narrainapah, (1861) 8 MIA 529.

¹⁵Suresh Chandra Saha Chowdhury v. Govind Nath Saha Chowdhury, AIR 1927 Cal 796.

¹⁶Falcke v. Scottish Imperial Insurance Co., (1886) 34 Ch. D. 234 (250).

¹⁷Keighly, Maxsted & Co. v. Durant, (1901) AC 240.

¹⁸Spiro v. Lintern, (1973) 3 ALL ER. 319.

¹⁹Harper v. Vigers, (1909) 2 KB 549.

²⁰Boston Deep Sea Fishin & Ice Co. Ltd v. Farnham, (1957) 3 ALL. ER 204.

²¹Gauri Shankar v. Jawala Prasad, AIR 1930.

²²Gaya Prasad v. Durga, AIR 1928 ALL 112: 108 IC 136.

- 3- Ratification must be by a person existing at the date of the act ratified-
 Willies J. said “person who is ascertained at the time the act is done can only do ratification. Such person can exist in actual or in contemplation of law²³”.
 In the case of Natal and Colonization Co. Ltd. v. Pauline Collery Syndicate²⁴, lord Davey said that company cannot obtain benefit with the help of ratification of the contract which is made on his behalf even before its existence but new contract can be formed on the old contract terms after the company has come into existence.
 To overcome this problem, there is inclusion of clause by promoters who act on company’s behalf which is not in existence that when the company after coming into existence will be liable instead of agent. So instead of ratification, the concept of novation is used²⁵.
- 4- Full knowledge of material facts or with the intention to take the risk of any irregularity-
 Section 198 of Indian Contract Act 1872 that full knowledge of material facts is an essential criteria for ratification to be in accordance with law. But if there is no knowledge of illegality then even if illegal act is ratified it is not considered as valid ratification²⁶. Principal is bound to all the irregularities if his conduct clearly reflects that irrespective he has knowledge of agent’s act or not he is supporting all the acts of the agent²⁷. If there is no intention to ratify then no ratification can take place and no one will have intention to ratify an illegal act if the principal doesn’t have knowledge of illegality²⁸. Ratification must relate to a transaction to which effect can be given. Knowledge of the legal effect of the ratified act is not necessary²⁹. This point is criticized by the law commission report as they believed that it is not necessary that principal has knowledge of legal effect of the act and thus creating an inception to allow ratification where irrespective of circumstances rectifier has taken a risk³⁰.
- 5- Ratification of unauthorized act cannot injure third person-
 Principal can ratify the act which would otherwise be wrongful when he has done the act lawfully by himself³¹. An act cannot be ratified if it is subjecting third person to damages³². In the case of Sucharita Pradhan v. U.P Twiga fiberglass Ltd.³³, where one of many co-owners gave notice terminating a tenancy it was invalid and ratification by other co-owners in an affidavit in the suit filed for eviction didn’t validate it.
- 6- Ratification must be of the entire transaction and cannot be limited to one portion of it-
 Principal cannot ratify one portion of the act and rejecting the other portion of the same act³⁴. Qui sentit commodum, sentire debet et onus implies here as it means that who deserves the advantage ought to sustain the burden. He must take the benefit to be derived from the transaction cum onere³⁵. Principal cannot operate according to his benefit by ratifying certain provisions and refusal of accepting the remainder one so if act is adopted it is adopted throughout.

EFFECTS OF RATIFICATION

- 1- Relationship of principal and agent has been established between the person who is ratifying and person doing the act to the extent of the act ratified is concerned
- 2- There is an establishment of relationship of contract between the principal and the third party.

²³Kelner v. Baxter, (1866) LR 2 CP 174.

²⁴Natal and Colonization Co. Ltd. v. Pauline Collery Syndicate , (1904) AC 120(126).

²⁵Howard v. Patent Ivory M/g Co., (1888) 38 Ch. D 156.

²⁶Marsh v. Joseph, (1897) 1 Ch. 213.

²⁷Haselen v. Lemayne, (1858) 28 LJ CP 103.

²⁸U.P. Govt. v. Church Missionery Trust Association Ltd. London & Allahabad, AIR 1948 Oudh 54: ILR 22 Luck 93

²⁹Powell v. Smith, (1872) LR 14 Eq 85.

³⁰Law Commission of India, 13th Report, 1958.

³¹Bird v. Brown, (1850) 4 Exch, 786: 80 RR 775.

³²Kidderminster Corpn v. Hardwich,(1873) LR 9 Exch 89.

³³Sucharita Pradhan v. U.P Twiga fiberglass Ltd , AIR 2002 Del 1.

³⁴Bank of Australia v. Mc.Clintock (1922) 1AC 240.

³⁵EIR v. Firm Sukeodeodas, AIR 1924 Pat 25: 74 IC 831.

DOCTRINE OF RELATION BACK

Doctrine of Relation Back is a principle that something done today will be treated as if it were done earlier. This doctrine implies that there is a contract between the principal and the third party not from the date of ratification but from the date when the agent first contracted.

In the case of *Boltan Partners v. Lambert*³⁶, the court held that the third party cannot revoke the offer even before the ratification has been made as the plaintiff ratification related back to the date on which offer was first accepted by the managing director who was the agent.

But it was criticized as it makes the position of third party worse as he neither has a contract until ratified nor he can withdraw from it. Therefore in the case of *Watson v. Davis*,³⁷ it was held by the court that if offer is withdrawn before the ratification has been made then it is valid revocation. So, doctrine of relation back doesn't come into picture when the contract made by agent says it is "subject to approval or ratification". Party can withdraw until ratification has been done³⁸. Therefore, it has now put both the parties on equal power in the concept of revocation which is essential for the justice to prevail.

CONCLUSION

The researcher came to the conclusion that agent can do acts out of authority but the real power is vested with the principal as he is the one who will approve or disapprove it. If he will ratify it then it will be treated as agent has acted under the authority of principal but the act should be for the principal only. Contract will definitely lose the validity if it is not ratified but principal also has certain limitations while accepting the acts of the agent. He should be competent and should have existence when act has been committed. Knowledge of material facts is an essential criteria for valid ratification. The third party interest should not be hampered by the ratification done by principal of unauthorized acts. The change made in the concept which now protects the right of third party to revoke the offer before ratification has been made is a commendable one.

³⁶*Boltan Partners v. Lambert*, (1889) 41 Ch D 295.

³⁷*Watson v. Davis*, (1931) 1 Ch 455.

³⁸*Warehousing and Forwarding Co. of East Africa Ltd. v. Jafferli & Sons Ltd.*, 1964 AC 1 (1963) 3 WLR 489; (1963) 3 ALL ER 571 (PC).