(1997) 01 AP CK 0029

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8585 of 1991

G. Dayanand APPELLANT

Vs

Chief Conservator of Forests, State Trading Circle and Others RESPONDENT

Date of Decision : 21-01-1997

Acts Referred:

Citation : (1997) 2 ALT 380 : (1997) 1 APLJ 334

Hon'ble Judges : P. Venkatarama Reddi, J;K.B. Siddappa, J

Bench : Division Bench

Advocate : P. Sitarama Raju, for the Appellant; Government Pleader for Respondent Nos. 1 to 3 and S. Kondala Rao, for the Respondent

Final Decision : Allowed

Judgement

P. Venkatarama Reddi, J.—The petitioner challenges in this Writ Petition the action of the Respondent- Forest Officials in invoking the Bank guarantees dt. 9-1-1990 bearing Nos. 24/90 and 31/90 issued by the Indian Overseas Bank, Hanamkonda, Warangal District for Rs. 4,74,474/-. The petitioner seeks direction to return the said Bank guarantees. Pursuant to the acceptance of the Tender submitted by the petitioner, he was awarded the contract for the purchase of Abnus leaves collected in Unit No. 67 of Narsampet Forest Range, Warangal South Division. The tender rate was Rs. 43.45 ps. per Kg. and the estimated sale quantity was 1,09,200 Kgs. By virtue of the contract, the petitioner was entitled to purchase the collected, cured, bagged and stored Abnus leaves. The sale is governed by the Andhra Pradesh Minor Forest Produce (Regulation of Trade) Act, 1971 read with the Andhra Pradesh Minor Forest Produce (Regulation of Trade in Abnus Leaves) Rules. The Andhra Pradesh Forest Development Corporation (2nd respondent) was appointed as the agent to the Government for collection and disposal of Abnus leaves.

2. As per the conditions of Tender Notice, the purchaser, before execution of the Agreement is required to deposit a sum equal to 10% of the sale amount arrived at by multiplying the accepted tendered rate of the notified quantity. Another

10% was required to be paid as Security Deposit on or before 31-3-1990. For this, the period was extended upto 15-5-1990 by the Forest Department. It appears that the season for the collection of Abnus leaves ended by May/June, 1990. Accordingly, the petitioner furnished Bank guarantees for Rs. 4,74,474/- representing 10% of the Security Deposit at the time of entering into the Agreement on 19-2-1990. It is not in dispute that the Forest Development Corporation could collect only 74,390 kgs. by May, 1990 and further quantity could not be collected for the reasons beyond the control of the Corporation. The 3rd respondent issued Notice dated 15-3-1990 to the petitioner to remit the 2nd instalment of security deposit amount of Rs. 4,74,474/- in the form of Bank guarantee or Demand Draft on or before 31-3-1990. As already stated, time for paying the security deposit was extended upto 15-5-1990. The 2nd instalment of the security deposit was not arranged by the petitioner even by the extended date. The contract was cancelled on 20-5-1990 for the failure to pay the balance of security deposit in terms of the conditions of the Tender Notice. Whereas the petitioner contends that the factum of the termination of the contract was intimated to him only on 8-8-1990, the learned Government Pleader contends that it might have been intimated to the petitioner even earlier. However, we need not go into the question. But, we may notice the fact that on 8-8-1990, the petitioner was informed by the Divisional Forest Officer, Warangal (3rd respondent) that on account of failure to furnish the 2nd instalment of 10% security deposit amount, the agreement was terminated on 20-5-1990 and it was decided to put up ''unit material'' for re-sale on 18-8-90. The re-sale took place on 18-8-1990. In the meanwhile, one significant thing had taken place. The petitioner represented to the Chief Conservator of Forests (hereinafter referred as to ''C.C.F.'') on 13-8-1990 offering to pay balance of security deposit of Rs. 1,71,971/- instead of Rs. 4,74,474/- in view of the appreciable reduction in the quantum of Abnus leaves collected by the end of the season. It appears that similar representations were made by various other purchasers. The C.C.F by a telegraphic communication dated 16-8-1990 addressed the Divisional Forest Officers of Warangal and Khammam districts communicated his decision to "adjust the amount paid towards 10% security deposit on the notified contract" and directed the subordinate officials to collect the difference security deposit amount on the basis of the actual collected quantity. It was further directed that cancellation of the contracts pertaining to the units concerned shall be revoked subject to payment of balance of security deposit at 10% on the actual collected quantity. It appears that the telegram was received on 17-8-1990. However, on 18-8-1990, re-sale had taken place as per the schedule and Abnus leaves were sold to a third party. Thereafter, the petitioner made a further representation to the C.C.F., but there was no response. While so, the 3rd respondent tried to invoke the bank guarantees by sending intimation to the 4th respondent-Bank. At that stage, the present Writ Petition was filed on 5-7-1991.

3. We are not concerned with the question whether the 3rd respondent is justified in cancelling the contract on the ground of non-fulfilment of the

condition in the Agreement and Tender Notice as regards the payment of 2nd instalment of 10% security deposit in as much as the legality or otherwise of the cancellation has not been challenged before us.

4. The main contention advanced on behalf of the petitioner is that the 3rd respondent failed to give effect to the orders passed by the C.C.F. and proceeded with re-sale without giving an opportunity to the petitioner to pay the security deposit at 10% of the actual collected quantity i.e., for Rs. 1,71,474/-. It is also contended that the petitioner was not aware of the orders passed by the C.C.F. and the petitioner was not called upon to furnish the security deposit as per the orders of the C.C.F. It is pointed out that the re-sale which was notified in respect of other units was withdrawn pursuant to the orders of the C.C.F. whereas in the case of the petitioner, re-sale was proceeded with. It is submitted that there was no justification whatsoever in not revoking the cancellation of the contract despite the orders of the C.C.F. The averment made in the counter-affidavit that the petitioner was present on the date of re-sale has been denied by the petitioner in the affidavit filed by way of re-joinder. The learned Government Pleader while not disputing the position that the orders of C.C.F are binding on the subordinate officials and were in fact implemented in the case of the other units, has contended that the petitioner failed to avail of the opportunity given by C.C.F by remitting the security deposit amount of 10% on the actual collected quantity before the re-sale. It is submitted by the learned Government Pleader that other similarly situated contractors to whom orders passed by the C.C.F. were equally applicable, immediately made arrangements for payment of the balance amount towards second instalment-of the security deposit and, therefore, the re-sale was stopped in their cases. It is pointed out that there was no similar response on the part of the petitioner, who according to the Government Pleader, must have had knowledge of the order of C.C.F. on the date of re-sale.

5. We are of the view that the 3rd respondent acted arbitrarily and in virtual defiance of the order of CCF in proceeding with the re-sale of Abnus leaves collected from the unit that was allotted to the petitioner and in not revoking the cancellation of the contract. We cannot accept the argument of the learned Government Pleader that the petitioner should have made arrangements for the remittance of the balance security deposit as per the orders of the C.C.F. in the face of the stand taken by the petitioner that he was not aware of the orders of C.C.F. It is not the case of the 3rd respondent that the petitioner was made known of the order passed by the C.C.F. on 17-8-1990 or 18-8-1990 and that the petitioner-still neglected to pay the balance security deposit amount despite the oral communication, if not written communication. It might be that other similarly situated persons paid the security deposit amount on 18-8-1990 itself and were able to stop the re-sale scheduled on that date. But, this fact, even if assumed to be correct, does not lead to the necessary inference that the petitioner was also aware of C.C.F''s order. Even if it is assumed that the petitioner was aware of the orders passed by the C.C.F. on the date or one day

before the date of re-sale, it cannot be reasonably expected that he should make necessary arrangements for payment of the balance security deposit amount to the tune of Rs. 1,71,474/- within 24 hours or less. It cannot be said that the petitioner failed to avail of the opportunity to pay the balance security deposit amount as per the orders of C.C.F unless such an opportunity was really afforded to the petitioner. Such opportunity necessarily implies that the petitioner should be apprised of the orders passed by the C.C.F. with reference to his representation and he must be allowed a reasonable time to comply with the order. Giving notice of 24 hours or less cannot reasonably be construed as giving an opportunity, even assuming that the petitioner must be imputed with the knowledge of the order of C.C.F. We are, therefore, of the view that the 3rd respondent failed to give effect to the order of C.C.F. and failed to exercise the power of revocation of cancellation of contract which is vested in him specifically under Clause 7(h) 4(a) of the Agreement.

6. As regards the contention advanced by the learned Government Pleader relying on the decision reported in Ansal Engineering Projects Ltd. Vs. Tehri Hydro Development Corporation Ltd. and Another, that the Court cannot restrain the beneficiary from encashing the Bank guarantee and that the Bank is bound to honour the Bank guarantee despite the pendency of the dispute between the beneficiary and the person at whose instance the guarantee was furnished, we do not think that the said principle can be pressed into service in the present case. The very decision in which the said principle was reiterated has recognised two exceptions i.e,, a case of fraud or special equity, so as to prevent irretrievable injustice to the parties. In the latest decision in U.P. State Sugar Corporation v. M/s. Sumac International Ltd, 1996 (8) Supreme 530, while reiterating that the existence of dispute between the parties to the contract is not a ground for issuing an injunction to restrain the enforcement of Bank guarantee, the Supreme Court observed that the second exception to the rule comes into play in cases where allowing the unconditional Bank guarantees would result in irretrievable harm or injustice to one of the parties concerned. Allowing the Bank guarantee to be encashed despite holding that the 3rd respondent ought to have revoked the cancellation of the contract after giving reasonable opportunity to the petitioner to pay the balance amount as per the order of C.C.F. and stopped the proposed re-sale would tantamount to placing a premium on the laches or unreasonable conduct of the 3rd respondent. It is one of those extraordinary circumstances falling within the second exception laid by their Lordships of the Supreme Court. That apart, if we choose the course of action of allowing Bank guarantee to be encashed while at the same time directing the refund of the amount as per the express provisions contained in sub-clause (c) of Clause 7(h)(4) of the Agreement, it would be nothing but an empty formality. Sub-clause (c) of Clause 7(h){4) says that:

"Whenever the cancellation of the agreement is revoked, the security deposit forfeited due to cancellation, shall stand revoked automatically"

7. As already held by us, the 3rd respondent ought to have revoked the cancellation of the agreement, in which event forfeiture of security deposit on account of anterior cancellation of contract does not arise. If the security deposit amount could be realised from the Bank, a simultaneous direction should also be given to refund that amount to the petitioner. Practically, it amounts to an empty formality, as already observed.

8. For the aforesaid reasons, we allow the Writ Petition. We make no order as to cost.

