

(1993) 07 DEL CK 0032
In the Delhi High Court
Case No : Suit No. 1462 of 1983

Govind Narain and Brothers

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 26-07-1993

Acts Referred:

Citation : (1993) 27 DRJ 134

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : Daljit Singh, M.S. Vinayak, Kavita Gill and Rajeev Chopra, for the Appellant;

Judgement

Sat Pal, J.

(1) This is a suit for declaration, damages and permanent injunction. In this suit the plaintiff has prayed to this Court to grant a declaration to -the effect that A/T No. TP-3/101/801/8.3.80/Z3/PAOD/247 dated 11-11-1980 did not create a valid, binding and concluded contract. In the alternative it has been prayed for a declaration that the letter of cancellation dated 9.4.83 and the letter of demand dated 20.8.1981 making the demand of Rs.7,80,933.76 are arbitrary, unilateral, ineffective, inoperative and void. The plaintiff has further prayed for passing a decree for Rs. 1.00 lac as damages against the defendant.

(2) Briefly stated the facts of the case are that pursuant to a tender inquiry NO.TP/ 101/801/8.3.80/Z-3/TEC-1407 issued by the defendant, the plaintiff submitted a tender offering to supply 23,292 Pole Line Construction Wood @ Rs.66.00 per number. The offer was open till 23.7.1980 which was later extended up to 23.10.1980.

(3) It has been averred in the plaint that the plaintiff withdrew its offer by sending a telegram on 23.10.1980. The said telegram is alleged to have been received by the defendant on 24.10.1980.

(4) In the plaint it has also been averred that the alleged acceptance of tender which purported to be the acceptance of the offer made by the plaintiff firm, was not an absolute and unconditional acceptance of the offer of the plaintiff and did not, in law, conclude a valid and binding contract between the parties as before the issuance of the acceptance of tender on 1.1.1980, the plaintiff firm had already revised its price from Rs.66.00 to Rs.76.00 per number.

(5) It has further been alleged in the plaint that though there was no valid and binding contract ever concluded between the parties, the defendant arbitrarily and illegally proceeded to cancel the alleged contract by its letter of cancellation No.TP-3/101/801/ 8.3.80/Z-3/PAOD/246/1124 dated 9.4.1981 stating that the plaintiff had committed breach of contract and thereafter, in pursuance of the alleged cancellation, the defendant issued a risk purchase tender. It is further alleged that the plaintiff through its advocate served a notice dated 3.7.1981 u/s 80 of the CPC on the defendant stating therein that the aforesaid cancellation letter was arbitrary, illegal and unconstitutional and called upon the defendant to immediately cancel and withdraw the cancellation letter. The defendant, however, did not comply with the terms of the said notice. It has further been alleged that the defendant thus prevented the defendant from carrying its lawful business of entering into contract with the defendant and for this the defendant was liable to pay a sum of Rs. 1.00 lac by way of damages. It has also been alleged that in spite of issuance of the notice mentioned herein above, the defendant by its letter of demand dated 20.8.1981 made a claim in the sum of Rs-7,80,933.76 towards extra expenditure incurred in the risk purchase and alternatively as general damages which demand is absolutely unjustified, unwarranted and unauthorised.

(6) The defendant in its written statement has controverted the allegations made in the plaint and it has been stated in the written statement that the contract between the plaintiff and the defendant was complete on 23.10.1980 itself when the advance acceptance of the tender was issued by the defendant to the plaintiff which was followed by A/T No.TP-3/101/801/8.3.80/Z-3/PAOD/247 dated 11.11.1980. It was further averred in the written statement that since the plaintiff failed to fulfill the terms and conditions and committed the breach of contract, the defendant had to cancel the contract, the defendant had to cancel the contract concluded with the plaintiff, vide letter of cancellation dated 9.4.1981 at the risk and cost of the plaintiff. It has also been alleged that the defendant had to incur a sum of Rs-7,80,933.76 towards extra expenditure in the risk purchase of the Pole Line Construction Work and as such the defendant was entitled to recover the aforesaid amount from the plaintiff.

(7) The following issues were framed on 24.4.1985 :-

1. Is plaintiff-firm registered under the Partnership Act and partner signing and verifying the plaint shown as such in the registration?
2. Had plaintiff withdrawn their tender before its acceptance by the defendant? If

so, to what effect?

3.If issue No.2 is proved, was there a binding contract between the parties?

4.To what damages, if any, is the plaintiff entitled?

5.Is plaintiff entitled to relief of injunction against the defendant?

6.In case there was a concluded contract between the parties, did defendant cancel the same during the period it was in operation?

7.If preceding issue is proved, was the cancellation valid?

8.Relief.

(8) The plaintiff has examined one witness, namely, Shri Satya Narain Garg, Public Witness .1 in support of its case. The defendant also has examined one witness namely, Shri K.S.P.S. Tomar, Assistance Director of Supplies in the office of Director General Supply and Disposal, New Delhi.

(9) I have heard the learned counsel for the parties and have given my thoughtful consideration to the submissions made by the learned counsel for the parties and have perused the records. My Findings on various issues are as follows :-

(10) Issue NO.1. Mr. Daljit Singh, the learned Sr. counsel for the plaintiff drew my attention to the evidence of Public Witness . 1 who has stated that he was a partner of the plaintiff firm and has proved the certified copy of the registration of certificate of the plaintiff firm which is exhibit Public Witness 1/ 1. No question has been put in cross examination on this aspect of the matter by the learned counsel for the defendant. Accordingly, this issue is decided in favor of the plaintiff.

(11) Issue NO.2 The learned counsel appearing on behalf of the plaintiff drew my attention to interrogatories No. 1 to 3 and the reply of the defendant to the aforesaid interrogatories. In reply to interrogatory No. 1 .defendant has admitted that the plaintiffs telegram of 23.10.1980 which is exhibit D-3 was received in the office of Director General Supply & Disposal, New Delhi on 24.10.1980. In reply to interrogatory No.2 the defendant has stated that the validity of the original offer given by the plaintiff was extended up to 23.10.1980 and in reply to interrogatory No.3 defendant has stated that advance acceptance of tender which is exhibit D-2 was issued and posted on 23.10.1980. Relying on these replies to the interrogatories, the learned counsel submitted that the offer of the plaintiff firm was valid only up to 23.10.1980 and the said offer was withdrawn vide telegram dated 23.10.1980 (Ex.D-3) which was admittedly received by the defendant on 24.10.1980. He, Therefore, contended that on the facts and circumstances of the case no concluded contract could be said to have been arrived between the plaintiff and the defendant. As regards the contention of the defendant that before the receipt of the telegram dated 23.10.1980, the advance acceptance of tender (Ex.D-2) had already been issued and posted by the

defendant on 23.10.1980, the learned counsel drew my attention to the statement of the defendant's witness Shri Tomar. In reply to a court question this witness has stated that in the register of acceptance of tender, there is an entry dated 23.10.1980 about the dispatch of a letter to the plaintiff firm. He, however, admitted that the aforesaid entry was in respect of tender No.243 and not tender No.247 which is the subject matter of the present suit. The learned counsel submitted that the defendant has failed to prove that the advance acceptance in respect of the tender in question was issued and posted on 23.10.1980. He, Therefore, contended that in view of the aforesaid evidence, it is clearly proved that the plaintiff had withdrawn their tender before its acceptance by the defendant and there was no concluded contract in terms of Section 4 of the Indian Contract Act, 1872. In support of his contention the learned counsel placed reliance on a judgment of Allahabad High Court reported in the case of Ram Das Chakarbaty Vs The Official Liquidator, 2nd (1887) 60 336 and a judgment of Madhya Pradesh High Court in the case of Kalluram Kesharvani Vs. State of Madhya Pradesh and Others, .

(12) Mr. Chopra. learned counsel appearing on behalf of the defendant drew my attention to para 5 of the plaint wherein it has been stated that the plaintiff had submitted a revised offer vide its letter dated 22.10.80 and telegram dated 23.10.80 revising their price to Rs.76.00 per number and contended that by revising the price from Rs.66.00 per number to Rs.76.00 per number it cannot be said that the earlier offer has been revoked. He also drew my attention to the cross examination of PW-1 wherein he has stated that the advance acceptance of telegram (Exhibit D-2) was received by the plaintiff on 27th October, 1980 and submitted that since the Exhibit D-2 is dated 23rd October, 1980, it must have been posted on 23rd October, 1980 itself.

(13) From the facts mentioned hereinabove, it is clear that the plaintiff firm had withdrawn its offer vide telegram dated 23rd October, 1980 which was admittedly received by the defendant on 24th October, 1980. The only question which remains to be examined is as to whether the advance acceptance of the tender in question which is dated 23rd October, 1980 was in fact posted by the defendant on 23rd October, 1980 and this fact could be proved only by the defendant. The defendant have examined only one witness, namely, Shri K.P.S. Tomar who has clearly stated that though there is an entry dated 23rd October, 1980 about dispatch of a letter to the plaintiff firm but this entry is in respect of the tender No.243 and not about tender No.247. Ex. D-6 shows that in the present case, the tender in question is tender No.247 and not tender No.243. From this it becomes evident that the defendant has failed to prove that the advance acceptance in respect of tender No.247 was issued and posted on 23rd October, 1980. The learned counsel for the defendant could not point out any other evidence from records to prove that the advance acceptance in respect of tender No. 247 was posted on 23rd October, 1980. In view of this it is clearly proved that the plaintiff firm had withdrawn its tender on 24.10.80 and by that date there was no acceptance of the tender of the plaintiff by the defendant. The contention

of the learned counsel for the defendant that the revision of the price from Rs.66.00 per number to Rs.76.00 per number does not amount to the revocation of the earlier offer is without any merit. Revision of price is totally a new condition and unless the revised price is accepted by the defendant, no valid contract comes into existence .

(14) In view of the above discussion I hold that the plaintiff firm had withdrawn their tender before its acceptance by the defendants and accordingly issue No.2 is decided in favor of the plaintiff firm.

(15) Issue NO.3 Since under issue No.2, I have held that the plaintiff firm had withdrawn its tender before its acceptance by the defendant, no concluded contract could be said to have been arrived at between the plaintiff firm and the defendant. Accordingly, it is held that there was no binding contract between the parties.

(16) Issues NO.5, 6 & 7. Since I have held that there was not a concluded contract between the plaintiff firm and the defendant, these issues have become redundant.

(17) Issue NO.4 In respect of Issue No.4, the learned counsel for the plaintiff drew my attention to paras 13 to 15 of the plaint wherein it has been alleged that plaintiff's annual turn over in the business had always been to the extent of Rs.20.00 lacs but by making a huge claim coupled with withholding of the payment against other contracts, the defendant prevented the plaintiff from carrying on the business with the Government and in consequence the turn over of the plaintiff in its business with the Government had been adversely affected. For the said reduction in business the plaintiff has claimed a sum of Rs. 1.00 lac from the defendant by way of damages. I, however, find no merit in these allegations. Firstly, the allegations are vague and indefinite. Secondly, learned counsel for the plaintiff could not bring to my notice any satisfactory evidence to prove that business of the plaintiff firm was affected because of the demand of the alleged huge amount by the defendant. It is not the case of the plaintiff that the defendant had black listed the plaintiff firm and as such the plaintiff was prevented from carrying on the business with the Government. Infact PW- 1 has stated in his statement that their business with Director General Supply and Disposal continued though the turn over of the business fell down. In view of this discussion Issue No.4 is decided against the plaintiff.

(18) In the result it is held that At No.TP-3/101/801/8.3.80/Z3/PAOD/247 dated 11.11.80 did not create a valid binding and concluded contract between the parties. It is further held that the letter of demand dated 20th August, 1981 issued by the defendant making a demand of Rs-7,80,933.76 from the plaintiff is illegal, ineffective and inoperative and as such the defendant is not entitled to recover any amount pursuant to this demand. The plaintiffs claim for a decree for Rs. 1.00 lac as damages against the defendant is also rejected. In the aforesaid terms the suit is disposed of. The parties are, however, left to bear their own

costs. The decree sheet may be drawn accordingly.