
(1966) 04 MP CK 0005
In the Madhya Pradesh High Court
Case No : M.P. No. 193 of 1965

Gulabdas Agarwal

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 04-04-1966

Acts Referred:

Citation : (1966) JLJ 1180

Hon'ble Judges : P.V. Dixit, C.J.; K. L. Pandey, J

Bench : Division Bench

Advocate : A.P. Sen, for the Appellant; K.K. Dubey, Govt. Advocate for Respondents Nos. 1 to 4 and A.H. Saifi, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.—By this petition under Article 226 of the Constitution, the petitioner, who is engaged in the business of sale and purchase of Tendu leaves and of bidi-manufacture, challenges the legality of the appointment, under rule 7 (7) of the Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Niyamavali, 1965, [Rules framed under the Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964, and called the Rules], of respondent No. 5, M/s M. Ishaq M. Gulam, Bidi Manufacturers, Katni, as purchaser of Tendu leaves for Singhpur and Burhar units of Shahdol Forest Range, and seeks a direction restraining the respondents Nos. 1 to 4 from giving effect to that appointment. He also prays that a direction be issued to the said respondents for accepting his offer of being appointed under rule 7 as purchaser for the two units, Singhpur and Burhar.

2. The scheme of the M. P. Tendu Patta (Vyapir Viniyaman) Adhiniyam, 1964, and the Rules thereunder has been examined by this Court in Chhotabhai Jethabhai Patel and Co. Vs. State of Madhya Pradesh and Others, and C. J. Patel & Co. v. State of M. P. 1965 M PL J 994 where the question of the true construction of rule 7 and of the new sub-rule (7-A) inserted in rule 7 came up for consideration. It is unnecessary to repeat here all that has been said in those cases on the scheme of the Act and the Rules and about the meaning and effect of rule 7. It is

sufficient to say that in those cases, it has been held that the power given by sub-rule (7) of rule 7 to the Government to appoint any person as purchaser for a unit or units on mutually agreed upon terms can be exercised only when valid tenders are received for a unit or units but the Government finds all those tenders unacceptable on merits. It is this sub-rule of rule 7 that is relevant in the present case.

3. The material facts are that after the coming into force of the M. P. Tendu Patta (Vyapar Viniyaman) Adhiaiyan, 1964 (hereinafter called the Act) in Shahdol Forest Division, the Government divided that division into various units which included Singhpur and Burhar Units. On 9th February 1965, the Government issued a notice inviting tenders from persons or parties desirous of purchasing Tendu leaves purchased or likely to be purchased, collected or likely to be collected by Government or its officers or agents in the various Tendu Patta units, a list of which was appended to the notice. This list included Singhpur and Burhar units. When no tenders were received at all in response to this notice for the aforesaid two units and other units, the Government issued another notice on 5th March 1965 inviting sealed tenders for the purchase of Tendu leaves of undisposed units. This time the petitioner submitted tenders for the purchase of Tendu leaves from Singhpur and Burhar units. The tenders were opened on 18 /19th March 1965. No other person had submitted tenders for these two units. The petitioner's tender was, however, not accepted by the Government as the rates quoted by him for the purchase of Tendu leaves from Singhpur and Burhar were found to be low. According to the petitioner, on 20th March 1965 the Forest Minister addressed the traders and invited further offers for the units in respect of which tenders at a rate below the minimum acceptable rate had been made. The applicant says that at this meeting no tender was received, and thereupon the Forest Minister asked the petitioner to make his offer for the purchase of Tendu leaves from the two units at Bhopal on 23rd March 1965. In the return, it has been stated that not only the petitioner but others were also asked to approach the Government at Bhopal with their fresh offers for the purchase of Tendu leaves from the two units.

4. The petitioner has further averred that on 21st March 1965 the Conservator of Forests, Rewa, deputed a clerk to meet him and take from him a written offer for the purchase of Tendu leaves from Singhpur and Burhar units; and that accordingly he made his offers. On this point, it has been stated in the return that the applicant instead of proceeding to Bhopal for direct negotiations with the Government, himself handed over two sealed envelopes to the Divisional Forest Officer, Shahdol division, on 21st March 1965 containing his offers for the purchase of Tendu leaves from the aforesaid units. The grievance of the applicant is that the Government did not accept the offers made by him on 21st March 1965 and accepted at Bhopal the offer made by the respondent No. 5 for the purchase of Tendu leaves from Singhpur and Burhar units.

5. Shri Sen, learned counsel for the applicant, argued that the power under sub-

rule (7) of rule 7 of appointing purchasers on terms and conditions mutually agreed upon could be exercised by the Government only if the tenders received for the unit or units were not considered acceptable; that the respondents Nos. 1 to 4 did not take any decision in regard to the tender submitted by the applicant in response to the second notice issued on 5th March 1965; that, therefore, it could not be said that the tender received from the applicant was found to be unacceptable and consequently the power conferred by sub-rule (7) could not be exercised; and that thus the appointment of the respondent No. 5 as purchaser was invalid. There is no substance in this contention. It is true that the power conferred by sub-rule (7) can be exercised only when tenders received for a unit or units are not considered acceptable. But, here, the tender which the petitioner submitted in response to the second notice was in fact rejected as the rates quoted by him were below the minimum acceptable rates. The petitioner has no doubt said that no decision was taken by the Government on the tender submitted by him. This statement made by the applicant has been denied in the return. It is also inconsistent with the petitioner's own conduct in making a fresh offer for the purchase of Tendu leaves on 21st March 1965, that is, after the meeting addressed by the Forest Minister on 20th March 1965 at which the persons desirous of purchasing Tendu leaves were asked to come with their offers to Bhopal. The applicant would not have made this second offer if the tender given by him on 16th March 1965 had been still pending. The making of a fresh offer by him on 21st March 1965 itself shows that his earlier tender had been rejected and he knew fully that it had been rejected on merits. There is thus no force in the contention that the conditions for the exercise of the power conferred by sub-rule (7) did not exist.

6. It was next submitted that the offer made by the respondent No. 5 at Bhopal was not valid inasmuch as he had neither submitted a proper tender nor filed a Treasury Challan showing the deposit of earnest money or a certificate of personal solvency; and that the fulfilment of these requirements was essential as according to sub-rule (7) of rule 7 all the rules applicable to a successful tenderer applied mutatis mutandis to persons and parties appointed as purchasers under the said sub-rule. This contention cannot be acceded to. The rules, which have been made applicable by sub-rule (7) of rule 7 to persons appointed as purchasers under that sub-rule, are those rules which apply to a "successful tenderer" and are not those which have to be complied with by a person in making a tender in accordance with sub-rules (2), (3), (4) and (5) of Rule 7. This is clear from the use of the words "successful tenderer". Indeed in the very nature of the appointment of a purchaser on terms and conditions to be mutually agreed upon, there cannot be any room for the applicability of sub-rule (5) of rule 7 to a person desirous of being appointed as purchaser under sub-rule (7). The rules spoken of by sub-rule (7) are those which have to be complied with after a tender is accepted. Learned counsel referred us to the decision of the Supreme Court in *K.N. Guruswamy Vs. The State of Mysore and Others*, . That case is not in point here for the reason that in the appointment of the respondent

No. 5 as purchaser under sub-rule (7) and in the rejection of the petitioner's offer for being appointed as purchaser, there has not been any departure from rule 7 (7).

7. In the result, this petition fails and is dismissed. Having regard to the fact that this petition came for hearing before us only three days before the expiry of the term of appointment of the respondent No. 5 as purchaser we leave the parties to bear their own coats. The outstanding amount of security deposit shall be refunded to the petitioner.