

(2002) 10 MAD CK 0196

In the Madras High Court

Case No : Writ Petition No. 11261 of 2000 and W.M.P. No. 16144 of 2000

Jiwan International

APPELLANT

Vs

Tamil Nadu Forest Plantation Corporation Limited (A
Government of Tamilnadu Undertaking)

RESPONDENT

Date of Decision : 25-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 10 MAD CK 0196

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : Nalini Chidambaram, for S. Silambanan, for the Appellant; V.S. Sethuraman, Special Govt. Pleader, for the Respondent

Final Decision : Partly Allowed

Judgement

P.K. Misra, J.—The petitioner has prayed for quashing the order dated 31.1.1999 passed by the respondent Corporation in Ref. No. 7129/98/A2 and to direct the respondent to deliver 900 kgs of Sandalwood Oil at the rate fixed with Certificate of Origin / Legal Procurement Certificate.

2. The respondent is Tamil Nadu Forest Plantation Corporation Limited, a Government of Tamil Nadu undertaking. Such Corporation issued a notice calling for tenders from prospective buyers quoting the rate for the sale of Sandalwood Oil (ISI Specification) produced by the respondent in its factory at Tamil Nadu. Pursuant to the aforesaid notice, the present petitioner submitted his sealed tender for 900 kgs of sandalwood oil at Rs. 10,700/- per kilogram. The respondent accepted the tender of the petitioner vide letter dated 22.7.1998 and enclosed a copy of the agreement to be signed by the petitioner for taking further action. In the said letter, it was indicated that it

" . . . had been informed at the time of opening of the Tender, that the sale is only for internal consumptions and the Respondent will not give any documents

such as Certificate of Origin or Legal Procurement Certificate if any demanded subsequently by the petitioner."

Subsequently, the petitioner was informed by letter dated 4.8.1998 to send the agreement duly signed within a week. the petitioner was further intimated

" . . . If you fail to lift oil within 60 days as stated, we will be forced to cancel our offer at your risk forfeiting the Earnest Money Deposit."

In the reply to the letter dated 22.7.1998, it was stated on behalf of the petitioner

" . . . We may mention that the tender notice does not state any pre-condition that the corporation will not issue any certificate of origin or legal procurement certificate. . ."

After receiving the aforesaid letter, the respondent again reiterated by letter 18.8.98 that the Corporation is not in a position to issue certificate of origin/legal procurement certificate. The petitioner was again called upon to execute the agreement within 10 days. It was further indicated

" . . . If you fail to execute the agreement, the Earnest Money Deposit amount will be forfeited as per agreement Clause No. 2, and as per our letter dated 04.08.98. . ."

Subsequently another letter dated 28.8.1998 was sent by the Corporation to the petitioner to :

" . . . show cause why the Earnest Money Deposit remitted by you shall be forfeited. "

On receipt of the aforesaid letter, the petitioner gave reply dated 31.8.98 to the following effect :-

" . . . Our is a 100% EOU firm and we cannot make local sales in the firm. So to sort ought the problems we can take delivery in the name of our sister concern, we are prepared to give any undertaking and letter as may be required by you to transfer the bid/order in the name of sister concern."

In reply to the aforesaid letter, the Corporation gave the following reply by letter dated 14.9.1998 :-

" . . . Eventhough, we have clearly informed to you that the tender conducted on 20.07.98 is meant only for local sales you are still asking for certificate of origin, etc., for your offer for 900 kgs. of Sandalwood oil. If you remit the full payment for 900 kgs. of Sandalwood oil @ Rs. 10,700/- + taxes etc., we will issue necessary cash bill, which will enough to show that oil originate from Tamil Nadu. We wish to add that no other certificate could be issued by us on the quantity offered at the time of tender held on 20.07.1998. Please note further, the Corporation has no authority to issue certificate of origin. . . "

and a further letter was issued on 18.9.98 indicating willingness to deliver sandalwood oil to the sister concern of the petitioner and called upon the petitioner to sign an agreement to that effect. Since no reply was received, the Corporation wrote letter dated 22.10.1998 calling upon the petitioner to show cause as to why " . . . the Earnest Money Deposit lodged by you should not be forfeited, for your default in not having executed the agreement and failure to lift 900 kgs. of Sandalwood oil as per your tender."

On receiving the aforesaid letter, the petitioner gave a reply dated 24.11.1998 to the following effect :-

" . . . Please note that the tender was for sale of sandalwood oil Agmark Standard but the test report of your oil is not Agmark Standard. We are still prepared to lift the oil if the same is Agmarked with report. So, please kindly arrange to supply Agmarked Sandalwood oil with report and inform us accordingly otherwise refund our EMD. . ."

Subsequently another letter dated 10.12.1998 was sent by the petitioner indicating its willingness to take delivery of Agmark Quality oil only. Thereafter by letter dated 31.1.1999 the Managing Director of the respondent Corporation declared the petitioner as defaulter and forfeited the Earnest Money Deposit. After receipt of the aforesaid letter, the petitioner by letter dated 5.2.1999 wrote back stating

" . . . The tender was for sale of sandalwood oil agmark standard but the test of your oil is not agmark standard. We are still prepared to lift the oil if the same is agmarked with report. So please kindly arrange to supply agmarked sandalwood oil with report and inform us accordingly otherwise refund our EMD."

Thereafter the petitioner issued legal notice dated 15.2.1999 calling upon the respondent to cancel the forfeiture order and to convey his willingness to deliver sandalwood oil with Agmark standard. After receipt of the Advocate's notice, the respondent gave a reply through Advocate stating that there was a typographical error in the letter dated 22-10-1998 and the last date for receipt of the reply as per letter dated 22-10-1998 should be read as 31.10.1998 and not 31.10.1999. Thereafter the present writ petition has been filed for quashing the order of forfeiture of earnest money deposit and for a further direction to the respondent to deliver 900 kgs of sandalwood oil at the stipulated price.

3. In the writ petition, it has been contended that since time had been given till 31.10.1999, the order of forfeiture should not have been passed without waiting till 31.10.1999. It has been further indicated that the petitioner was all along willing to lift the sandalwood oil, provided it was certified to be as ISI quality or Agmark standard and in such circumstances, there was no question of forfeiting the earnest money deposit. It has been further stated that the petitioner is 100% Export oriented unit and not allowed to trade locally and therefore the Corporation should have issued Origin Certificate / Legal procurement certificate, which is a pre-requisite condition for obtaining export license.

4. A counter affidavit was filed on behalf of the respondent. In the counter affidavit it has been indicated that

"the tender was held on 20.7.1998 and before opening the tenders it was clearly announced to the tenderers who were present that the Corporation would encourage sandalwood consumer industry and also it was informed to them that the tender held on 20.7.1998 was not for export and no documents required for export purpose would be supplied by the Corporation, and this fact was reduced in writing in the comparative statement prepared by the Corporation at the time of opening the tender and the signatures of the tenderers were also obtained including the petitioner. The petitioner was present at the time of opening of the tender held on 20.7.1998 and had agreed that the Corporation would not give any documents required for export purposes."

It has been further stated

". . . The Corporation once again by letter dated 18.8.98 reiterated its stands by stating that the tender was meant only for local consumption and not for global sale, and that we cannot issue the certificate of origin, or legal procurement certificate as requested by them and that the products are manufactured by the Corporation and when sold, the Corporation raises invoices and given to purchasers and this is the practice which the Corporation is following. The petitioner was asked to execute the agreement and lift the material and it was further informed to the petitioner that the invoice/cash bill issued by the Corporation will be enough to show that the oil originate from Tamilnadu in Lr. No. 7129/98/A2, dated 14.9.1998."

It was further stated while referring to the letter dated 22.10.1998 that

". . . In this letter the date has been wrongly typed as 31.10.99 instead of 31.10.98. Hence a clarification to the petitioner mentioning about the typographical error crept in the show cause notice dated 22.10.98 and the petitioner was only asked to submit their explanation on or before 31.10.98. . . ."

5. In the background of the aforesaid facts and circumstances as apparent from the correspondences, which have been extracted in extenso, two questions crop up for consideration.

6. First question relates to the validity of the forfeiture of earnest money deposit. In the tender call notice itself, nothing had been indicated as to whether goods were to be sold internally and particularly whether any certificate of origin would be granted or not. However, it appears from the letter of acceptance itself issued by the Corporation that such an announcement had been made at the time of opening of tenders. Therefore, the petitioner could not have subsequently insisted upon the issuance of certificate of origin, even though the Corporation was repeatedly indicating in its correspondence that no such certificate would be issued.

7. In the notice relating to forfeiture, however, the respondent has indicated that

reply should be given by 31.10.1999. It is quite of course true that possibly it was a typographical mistake as it was subsequently pointed out by the Corporation. However, forfeiture was effected in January/February 1999 and by then no such corrigendum had been issued by the Corporation. Since an order of forfeiture entails civil consequences, notice relating to forfeiture is required to be construed strictly. When in the notice it was indicated that the petitioner was required to reply by 31.10.1999, ordinarily one would expect that no order of forfeiture would be issued before October 1999. Notwithstanding such previous correspondence if the Corporation would have issued a subsequent corrigendum or subsequent notice indicating that the date 31.10.99 was a typographical mistake and proceeded to take action, one could not have faulted such action of forfeiture. However, as already indicated, in the present case, the forfeiture order was issued in January, 1999 and the correction relating to date was made only long after and in fact only after Advocate's notice was issued on behalf of the petitioner. In such peculiar circumstances, the order of forfeiture cannot be sustained.

8. The next question is relating to the prayer of the petitioner regarding direction to the respondent to deliver the goods at the price accepted by the respondent. Such acceptance was communicated in August, 1998. At that stage the petitioner was insisting upon the certificate of origin and the respondent had made it clear that it was not in a position to give any certificate of origin. The petitioner had written that the goods may be delivered at the price quoted to the sister concern of the petitioner. Thereafter the petitioner raised the question relating to quality of the sandalwood oil and indicated that the earnest money deposit may be refunded. Even after the order of forfeiture was passed in January, 1999, the petitioner had rested content by merely issuing Advocate notice in February, 1999 but remained quiet for a period of about one year and six months and the writ petition was filed only in July, 2000. After lapse of such a long period, the petitioner's prayer for giving a direction to the respondent to deliver oil at the rate already indicated may not be fair so far as the Corporation is concerned because of fluctuation in price in the meantime. Since the petitioner had kept quiet for a pretty long period, it would not be appropriate to issue any direction in this matter. However, it is made clear that refusal to issue a direction would not stand on the way of the parties to arrive at a negotiated settlement and it would be open to the petitioner and the Corporation to sort out this matter by mutual discussion.

9. For the aforesaid reasons, the writ petition is allowed in part and the order of forfeiture is quashed. It is made clear that it would be open to the parties to complete the transaction on the basis of amicable settlement. The earnest money deposit made by the petitioner may be refunded to him within a period of three months from to-day, if the parties do not agree upon any other arrangement in the meantime. There would be no order as to costs. Consequently, W.M.P. No. 16144 of 2000 is closed.