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**(1996) 07 MP CK 0062**  
**In the Madhya Pradesh High Court**  
**Case No : M.P. No. 1678 of 1994**

J.K. Enterprises

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

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**Date of Decision :** 23-07-1996

**Acts Referred:**

Constitution of India, 1950 — Article 14, 19  
Contract Act, 1872 — Section 3, 4, 6, 73

**Citation :** AIR 1997 MP 68 : (1996) ILR (MP) 313 : (1997) 2 MPLJ 31

**Hon'ble Judges :** C.K. Prasad, J

**Bench :** Single Bench

**Advocate :** A.G. Dhande, for the Appellant; S.L. Sexena, for the Respondent

**Final Decision :** Partly Allowed

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## Judgement

C.K. Prasad, J.

By this writ application, the petitioner challenges the order dt. 14-5-1993 passed by respondent No. 3, the Conservator of Forest Kanker, whereby, the petitioner has been black listed as a Contractor for a period of 3 years as also the order forfeiting the earnest Money.

According to the petitioner in pursuance of invitation of the respondents, the petitioner offered to purchase Tendu Leave of lot No. 1095 at the rate of Rs. 30/- per standard bag. It is the stand of the petitioner that he was never informed that his offer has been accepted. In fact it is the stand of the petitioner that the acceptance of offer was sent under registered cover which did not contain full address of the petitioner and consequently not delivered to him.

According to the petitioner, he made the offer on 11-1-1993 and when he did not get the acceptance till 3-3-1993, by a fax message sent on 3-3-1993 he withdrew its offer. Case of the petitioner further is that as he has withdrawn his offer even before its acceptance, the action of respondents in forfeiting the earnest money is clearly illegal and arbitrary. It has been further contended that

the action of respondents in black listing the petitioner visits it with civil consequences. However, no notice or opportunity of hearing was given before passing the said order. In the aforesaid premises it has been submitted that the action of the respondents in black listing the petitioner for 3 years is in violation of well known principle of natural justice. Further stand of the petitioner is that the respondents were not put to any loss by non-acceptance of the offer by the petitioner and therefore, the earnest money cannot be forfeited.

In the return filed on behalf of respondents Nos. 1 and 2 it has been stated that the offer of the petitioner dt. 11-1-1993 was accepted and communication under registered cover on the address disclosed by the petitioner itself, was sent by letter dt. 12-2-1993, which was returned. The stand of the respondents further is that the petitioner cannot be permitted to take advantage of its own wrong by not giving the complete address. In case the address given to the respondents was incomplete, the petitioner has to suffer for the same. The stand of the respondents further is that the registered cover was sent on the address given by the petitioner and when it was returned the same was served on him through the Managing Director posted at Indore and the same was served on the petitioner on 10-3-1993 (Annexure R/6). Respondents further slated in their return that the alleged fax message dt. 3-3-1993 withdrawing the offer was not sent on incorrect fax number and the same was not received by the respondents. As such the petitioner cannot derive benefit from the same and claim that he has withdrawn the offer.

Mr. Dhande appearing on behalf of the petitioner submits that communication pertaining to the acceptance of the offer of the petitioner having not received by him, and the petitioner having withdrawn the offer, the action of the respondents in forfeiting the earnest money is illegal.

In support of the aforesaid submission Shri Dhande has placed reliance on a Judgment of this Court in the case of Kalluram Kesharvani Vs. State of Madhya Pradesh and Others, wherein it has been held (Para 4) :--

"We have therefore to see whether the tender submitted by the petitioner was accepted, whether the said acceptance was communicated to the petitioner and whether the petitioner withdrew his offer before communication of acceptance. The general rule is that it is the acceptance of offer by the offeree and intimation of that acceptance to the offerer which results in a contract. See Karan Singh Vs. The Collector, Chhatarpur and Others, . One of the exceptions to this general rule is that when by agreement, course of conduct of usage of trade, acceptance by post or telegram is authorised, the bargain is struck and the contract is complete when the acceptance is put into a course of transmission by the offeree by posting a letter or despatching a telegram. Bhagwandas Goverdhandas Kedia Vs. Girdharilal Parshottamdas and Co. and Others, . But even in such case, where the intimation of acceptance does not reach the offerer it has to be shown that the letter or telegram of acceptance was correctly addressed to the offerer otherwise it could not, although posted or despatched, be said to have been put

in a course of transmission to him."

The address given by the petitioner in bid sheet is as follows :--

"M/s. J. K. Enterprises Tendu Patta Vayapari Indore, M.P."

The respondents have sent the communication of the acceptance of the offer on the said address but the same was returned. As the respondents have sent the acceptance by registered cover dt. 12-2-1993 on an address given by the petitioner, the same shall be deemed to have been accepted, notwithstanding the fact that it was not delivered to the petitioner.

In my opinion, the obligation on the part of the respondents shall be complete the moment, the communication is put in transit on the address of the petitioner. The address given on the registered cover was given by the petitioner itself. As such I have no hesitation in holding that the offer of the petitioner was in fact accepted.

In ray considered opinion Kalluram Kesharvani Vs. State of Madhya Pradesh and Others, instead of supporting the case of the petitioner goes against him. Here in the present case the communication was put in transit on an address given by the petitioner himself, and in that view of the matter offer of the petitioner shall be deemed to have been accepted. This finding supports from the aforesaid paragraph of the Judgment.

The story put forth by the petitioner regarding withdrawal of offer by fax message also does not inspire confidence. The respondents have clearly stated in their return that the fax message was sent on Fax No. 554880 where as fax number of the answering respondents in 5522628. Consequently it has been stated that the same was not received in the office of the answering respondents. The petitioner has not controverted the aforesaid Tact. Thus the fax message was not sent on a correct address.

Another limb of Shri Dhande's submission is that respondents was not put to any loss and as such they cannot be permitted to forfeit the earnest money. In the return the respondents have clearly stated that the lot in question was put to reduction and the same was sold at the rate of Rs. 5.50 per standard bag where as the offer of the petitioner was Rs. 30/- per standard bag. Thus there is nothing on the record brought by the petitioner to controvert, the aforesaid statement made by the respondent in their return. In that view of the matter, I have no option than to hold that the respondents suffered a loss. Consequently, their action cannot be faulted on the ground of "no loss" urged on behalf of the petitioner. Thus, I do not find any merit in the submission of the learned counsel for the petitioner.

As stated earlier by the impugned order not only the petitioner's earnest money has been forfeited but he has also been black listed for 3 years. It is asserted by the petitioner that the same has been done without giving any notice or opportunity of hearing and as such, the said part of the order cannot be

sustained.

Mr. Saxena appearing on behalf of the answering respondents fairly concedes that black listing a contractor ensues civil consequences and that is not permissible without following the principle of natural justice. The order of black listing having been passed without any notice or opportunity of hearing, I am of the view that this portion of the order cannot be sustained.

In the result, this petition is partly allowed and the impugned order, so far as it black lists the petitioner for 3 years, is quashed. However, the order of forfeiture of the earliest money is maintained. In the facts and circumstances of the case, there shall be no order as to costs.