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(1994) 04 AP CK 0042

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3538 of 1994

K. Narasimha Rao APPELLANT

Vs

The Conservator of Forests and Others RESPONDENT

Date of Decision : 06-04-1994

Acts Referred:

Andhra Pradesh Forest Contract (Disposal of Forest Produce) Rules, 1977 — Rule 14
Andhra Pradesh General Clauses Act, 1891 — Section 5, 9
Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 9

Citation : (1994) 2 ALT 81

Hon'ble Judges : S. Parvatha Rao, J

Bench : Single Bench

Advocate : J. Prabhakar, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

S. Parvatha Rao, J.—Heard the learned Counsel for the petitioner and the learned Government Pleader for Forests.

2. The petitioner questions the proceedings bearing Rc.No.3846/93/S3, dated 21-2-1994 of the 2nd respondent herein i.e., the Divisional Forest Officer, Khammam, cancelling the sale of Cashew usufructs for 1994 season of 1964 Rajerla plantation which was confirmed for Rs. 31,700/- in favour of the petitioner on the ground that he violated sale condition No. 13(ii), and forfeiting the amount paid towards 1/4th sale amount. In the said proceedings, it is also stated that the 1st respondent herein i.e., the Conservator of Forests, Khammam also ordered to cancel the said sale in his Rc.No.112/94/M4, dated 7-2-1994.

3. It is not in dispute that the petitioner is the highest bidder and has paid 1 /4th of the sale amount i.e., Rs. 8,000/- on the day when the open auction was conducted i.e., on 6-1-1994. The said sale was confirmed in the proceedings of the 2nd respondent bearing Rc.No.3846/S3/93, dated 7-1-1994. It is not in dispute that the said order of confirmation was communicated to the 3rd

respondent herein on 8-1-1994 and the same was received by the petitioner through the 3rd respondent on the same day i.e., on 8-1-1994. It is stated therein that the sale of the said forest produce was confirmed in the name of the petitioner for Rs. 31,700/- and that the petitioner paid Rs. 8,000/- and that the contract period was upto 30-6-1994. It is also stated therein that the petitioner paid Rs. 8,000/- and that "the balance amount is payable within 10 days of issue of this order" and that "he should furnish security deposit of 1/4th of sale i.e., Rs. 2,000/- in favour of the Divisional Forest Officer, Khammam in the shape of Term Deposit/Bank Guarantee and also execute the Forest Contract Agreement (Rule No. 29) as per sale condition".

4. The petitioner states that he deposited the balance amount as well as the sales tax on 15-1-1994 and that he paid the Income Tax amount on 18-1-1994. The petitioner states that he was given to understand that he would have to deposit the balance sale amount within 10 days from the actual date of receipt of communication of acceptance and that he was under the bona fide impression that he would have to deposit the balance amount on or before 18-1-1994 i.e., 10 days from the actual date of receipt of the confirmation order. He states that though the order of confirmation bears the date 7-1-1994, he actually received a copy of it only on 8-1-1994 and thus became aware of it only on 8-1-1994 and that therefore, the ten days period would start running from the day after 8-1-1994. The petitioner states that after he received the impugned order dated 21-2-1994, he also made a petition to the 2nd respondent herein to revoke the said order of cancellation by accepting 5% penalty amount on the amount deposited on 18-1-1994 and also to stay the reauction proceedings till the disposal of the said petition. That petition was made by him on 25-2-1994 under Rule 12(iv) of the Andhra Pradesh Forest Contract (Disposal of Forest Produce) Rules, 1977 (hereinafter referred to as ''the Rules''). As he did not hear anything from the 2nd respondent, he approached this Court by way of the present Writ Petition on 3-3-1994.

5. Notice before admission was directed in the Writ Petition on 4-3-1994. The 2nd respondent gave his counter affidavit dated 7-3-1994 and also produced the records through the learned Government Pleader for Forests. He states that the order of confirmation dated 7-1-1994 was despatched on 7-1-1994 itself to the petitioner. He further states that as per the Rules, the date of sending the order of confirmation through normal channel shall be deemed to be the date of confirmation order and that the date of sending of confirmation order is the date to be reckoned with for completing the other formalities. He also states that the balance sale amount has to be paid along with sales tax, Income Tax and surcharge on Income Tax within 10 days from the date of confirmation order passed and that this was clearly mentioned in the sale notice dated 20-12-1993 issued by him. According to him, the date of receipt of confirmation order cannot be taken into consideration and the last date for payment of the entire balance sale amount in the present case was 16-1-1994 and thus there was a delay of two days in paying the balance amount and therefore, the sale was cancelled as

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per Condition No. 12(ii) of General Sale Conditions which was wrongly shown as 13(ii) in his cancellation order dated 21-2-1994. He therefore, submits that the cancellation order was proper.

6. The 2nd respondent has also filed along with his counter affidavit a copy of the revised sale notice conditions for timber, fuel and bamboo dt.31-7-1989. Condition No. 12(ii) of the said revised conditions is as follows:-

"He (the successful bidder) shall pay sales tax at the rate in force on the date of sale on the total sale amount.

He shall also pay Income Tax on the purchase price at the rates in force on the date of sale, unless exempted in writing by the assessing authority. For this purpose the purchase price shall be the sale value of the commodities, inclusive of all levies.

Unless Sales Tax and Income Tax are paid in full, the sale amount shall be deemed to have not been paid."

It is to this condition that the 2nd respondent refers in his counter affidavit which he states was wrongly mentioned as 13(ii) in the cancellation order dated 21-2-1994. But these conditions are applicable only to sale of timber, fuel and bamboo and have no application to sale of Cashew usufructs. This has been conceded by the learned Government Pleader for Forests.

7. The learned Government Pleader relies on Condition No. 4 in the auction notice bearing R.C. No. 3846/S3/93, dated 20-12-1993 governing the present auction which was held on 6-1-1994. It is in Telugu. Translated, it reads thus:-

"The highest bidder has to pay 1/4th of the bid amount immediately. The balance amount and Income Tax and other taxes has to be paid within 10 days time from the date of issue of "Jaree Chesina" (Telugu matter) confirmation order. If it is not so paid, the entire amount paid by the bidder will be taken over by the Government. The said amount will not be returned. Further, at the risk and cost of first auction purchaser there will be reauction on 16-1-1994 at Sattupalli Government depot at 3-00 p.m. If the Government sustains loss in the reauction, the original successful purchaser shall be liable as per law."

He contends that as per this condition, the petitioner was bound to pay the balance amount and Income Tax and other taxes within 10 days from the date of issue of the confirmation order. But reading this condition as a whole in the context that the auction itself was held on 6-1-1994, it is not possible to understand how a reauction could be held on 16-1-1994 if 10 days time was given to the highest bidder to pay the balance amount. Even assuming that the confirmation order was issued on 6-1-1994 itself, the 10th day from 6-1-1994 would be 16-1-1994 and the highest bidder would have time till 16-1-1994 and therefore reauction could be held only after 16-1-1994 in case of default. The auction notice does not stipulate that the confirmation order should be issued on 6-1-1994 itself- for that matter it does not stipulate any period within which it

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should be issued. Under Rule 14 of the Rules, 30 days time is provided for confirmation.

8. I am of the view that the stipulation that the balance amount has to be paid within 10 days from the date of issue of confirmation order has to be interpreted in a reasonable and fair manner keeping in view that the consequence stipulated for non-compliance is rather drastic: it is forfeiture of the entire amount paid by the bidder. Firstly, the general rule (see Section 9 of the General Clauses Act, 1897 and Section 5 of the Andhra Pradesh (Telangana Area) General Clauses Act, 1308 F and Section 9(b) of the Andhra Pradesh (Andhra Area) General Clauses Act, 1891) is exclusion of the first day in counting the number of days allowed. Thus the date of issue of the confirmation order has to be excluded in counting the 10 days time given to the highest bidder. Secondly, I am of the view that time has to be reckoned from the date of service of the confirmation order - otherwise it would lead to unreasonable, unfair and arbitrary consequences: the 10 days time given to the highest bidder would not be effective or real 10 days, and delay in communicating the order can work havoc. Confirmation order may be effective so far as confirmation is concerned, on the date when it was made; but from the point of view of time for making payment by the bidder, he can act upon it only when he is issued the said order or made known of it. If the order was made in his presence or in the presence of his agent, he is made known of it directly. If it is published in any stipulated manner, he could be presumed to know of it. The only other way he can be made known of it is by service. In the present case, admittedly the confirmation order was not made in the presence of the petitioner or his agent, nor was it published because there was no stipulation or provision for publishing it. It is not in dispute that it was served on the petitioner on 8-1-1994. If the 10 days time given to the petitioner is to be effective and real, the petitioner should have had 10 days from 8-1-1994. Applying the general rule of exclusion of the first day i.e., the day when the order was received by the petitioner, he would have time till 18-1-1994 for payment of the balance amount and Income Tax and other taxes. The petitioner paid the balance bid amount on 15-1-1994 itself. He paid the Income Tax amount on 18-1-1994 and with that there was nothing more for him to pay and he had complied with all the conditions of the auction. I am therefore, of the view that the 2nd respondent was clearly wrong in cancelling the sale confirmed in favour of the petitioner on the ground that there was delay in making payment.

9. However, the facts of this case establish beyond doubt that the 2nd respondent would have cancelled the said sale even otherwise. This is obvious from the record which was placed before me. As already stated above, the cashew usufruct of 1994 season purchased by the petitioner is of 1964 Rajerla plantation which was auctioned on 6-1-1994. On the same day the cashew usufruct of three other plantations i.e., 1963 Naramvarigudem plantation, 1964 Gattugudem plantation, and 1964 Papataguda plantation, were also auctioned. The highest bidders of Papataguda and Gattugudem plantation also paid the Income Tax on 18-1-1994 and the sales in their favour were also cancelled just

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as in the case of the petitioner. But the highest bidder of Naramvarigudem plantation paid the entire sale amount of Rs. 300/- and sales tax and Income Tax on 6-1-1994 itself and that sale was confirmed on 7-1-1994 and there was nothing due to be paid by him; but even the sale in his favour was also cancelled by the 2nd respondent in his Rc.No.3846/93/S3, dated 21-2-1994 stating as follows:-

"As per the orders of the Conservator of Forests, Khammam, the sale is cancelled and the amount is forfeited to State. The unit may be kept for resale at the risk and loss of the original purchaser,"

for no fault of his what so ever. This clearly discloses that the real reason for cancelling the sales is the orders of the Conservator of Forests, Khammam in his letter No.Rc.112/94/M4, dated 7-2-1994 addressed to the 2nd respondent, directing him to cancel the sale of units put up on 6-1-1994 on the ground that the upset price submitted by the 2nd respondent in his reference dated 3-1-1994 was not correct. I asked the learned Government Pleader whether the Rules provide for cancellation of a sale which was already confirmed and in respect of which the entire sale amount was deposited. He was unable to show me any provision in the Rules which empowers the 1st respondent to do that. Rule 14 of the Rules provides for the confirmation of the bid. Clauses (i) and (v) of Rule 14 are relevant and they are as follows:-

"(i) Any bid made in the sale is subject to confirmation by the competent authority in token of acceptance of the bid and the fact of such confirmation shall be communicated in Form IV to the party by the Divisional Forest Officer or by the Range Officer as the case may be acting for and on behalf of Governor of Andhra Pradesh.

xxxxx xxxx xxxx (v) Even if any bid is within the competence of the authorities specified either for confirmation or rejection, it shall be incumbent on the concerned authority either to refer to a higher authority seeking confirmation, rejection or advice as administrative instructions may specify in that behalf for a specific case or a class of cases or to act in conformity with such instructions as may be in force.

The competent authority shall confirm or reject the bid within thirty days from the date of sale and once it is confirmed a concluded contract is deemed to have been effected between the Governor of Andhra Pradesh and the bidder whose bid is confirmed in token of acceptance.

Provided that the bid may be revoked by specific notice to the competent authority if it is not confirmed within the period of thirty days.

Explanation:- For the purpose of this sub-rule the date of sending the orders of conformation through normal channel shall be deemed to be the date of communication of the confirmation order."

The learned Government Pleader relies on Clause (v) but he is unable to show

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any administrative instructions in force requiring the 2nd respondent to refer the matter to the 1st respondent before confirmation. It has to be noted that the said Cluase (v) does not provide for cancellation of a confirmation already made by the competent authority. It is interesting to note that in the present case, the 1st respondent himself did not cancel the sales but only directed the 2nd respondent to cancel them. Therefore, I am of the view that the cancellation of the confirmation of the sale in favour of the petitioner at the instance of the 1st respondent is bad especially in view of the clarification made in the Rule that "once it (sale) is confirmed aconcluded contract is deemed to have been effected between the Governor of Andhra Pradesh and the bidder whose bid is confirmed in token of acceptance".

10. Incidentally, it is significant that the explanation to Rule 14 provides that for the purpose of the sub-rule the date of sending the orders of confirmation through normal channel shall be deemed to be the date of communication of the confirmation order, which means that for other purposes it does not necessarily follow that it is so. The Form prescribed for confirmation also supports my view that the receipt of the order is the relevant date for the purpose of counting the 10 days. Form IV referred to in Clause (i) of Rule 14 states that the 1st instalment (excluding the sale amount already paid) of Rs......is payable "within 10 days of receipt of this order...." i.e., the confirmation order.

11. For the reasons stated above, the Writ Petition is allowed as prayed for with costs. Advocate''s fee Rs. 500/-. In view of the delay occasioned by the cancellation, which has been set aside now, the period of the contract in favour of the petitioner shall be extended beyond 30-6-1994 to the extent of the period lost

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