
(1985) 11 MP CK 0031

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 424 of 1980

Kalluram Kesharvani

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 28-11-1985

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Contract Act, 1872 — Section 10, 2, 3, 4

Forest Act, 1927 — Section 82

Citation : AIR 1986 MP 204 : (1986) ILR (MP) 307 : (1986) JLJ 372 : (1987) 32 MPLJ 102 : (1987) MPLJ 102

Hon'ble Judges : P.C. Pathak, J;C.P. Sen, J

Bench : Division Bench

Advocate : V.S. Dabir, for the Appellant; Rajendra Tiwari, Dy. A.G., for the Respondent

Final Decision : Allowed

Judgement

Pathak, J.

This petition under Article 226 of the Constitution has been filed challenging the recovery certificate Annexure F/1 whereby the respondents intended to recover Rs. 25920/- from the petitioner towards the alleged loss on account of resale of Tendu leaves of Forest unit No. 19-B. Morha and for refund to earnest money Rs. 5,000/-.

The facts are that in response to Tender Notice, published in M.P. Gazette dt 27-12-1978, inviting tender for sale of right of collection of Tendu leaves, among others, of unit No. 19-B Morha, forest division Rewa, the petitioner submitted a tender along with deposit of earnest money Rs. 5000/- on 19-1-1979 before Conservator of Forest, Jabalpur. The quantity of Tendu leaves was 1200 standard bags and the upset price was Rs. 108/-per beg. The petitioner on learning about general boycott by the prospective purchasers to persuade the government to bring down the prices, allegedly submitted an application (Ann.A) on 20-11-1979

to the Conservator of Forest withdrawing the tender, before it was opened. Meanwhile the last date for submission of tender was extended to 29th/30th Jan. 1979 by notification (Ann. B) and to 12th/13th Feb., 1979 by notification (Ann. C). Since tenders were still not received in respect of majority of the units, the Chief Conservator of Forest by order dt 10-3-1979(Ann. D), and another order dt 12-3-1979, notified reduction of upset prices by 10% and 20% respectively. Petitioner further alleges that he received no communication from the respondents accepting his tender. In spite of withdrawal of tender before its acceptance, the Divisional Forest Officer, Rewa, addressed a letter dt. 20-3-1979 (Ann. F), requesting Collector Rewa, to issue certificate of Recovery to Collector, Mirzapur U.P. to recover Rs. 25920.00 from the petitioner toward loss of unit No. 19-B Marha 1979 and in pursuance of this, Collector Rewa issued Certificate of Recovery (Ann. F/1) addressed to Collector, Mirzapur. The petitioner's submissions are :

- (i) The acceptance of his tender was never communicated;
- (ii) he withdrew the tender before acceptance;
- (iii) the condition prohibiting withdrawal of tender is invalid; and
- (iv) by the threatened recovery, the petitioner, was subjected to deprivation of property unauthorisedly.

The respondents through their common return did not dispute that the petitioner gave his tender for unit No. 19-B Morha and also deposited a sum of Rs. 5,000/-, as earnest money. They also do not dispute that the upset price as also the last date of submission of tender were changed from time to time. However, they specifically denied that the petitioner withdrew his offer before its acceptance. They further submitted that the acceptance of his tender was communicated to him by letter-Annexure Rule IV. The respondents' case is that even after acceptance of his tender and appointing him as purchaser, the petitioner did not turn up to execute agreement and thereby committed breach of the terms of the tender notice Annexure R-I. In the event of breach of any condition of tender Notice, the State Government is entitled to recover the loss u/s 82 of the Indian Forest Act. They admitted that a letter was addressed to the Collector for recovery of Rs. 25,920/- vide Recovery certificate Annexure-F/I.

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 offeror which results in a contract See *Karan Singh Chandan Singh v. Collector Chhatarpur* 1980 MPLJ 231 : (AIR 1980 M&P 89). One of the exceptions to this general rule is that when by agreement, course of conduct or 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 dispatching 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 offeror it has to be shown that the letter or telegram of acceptance was correctly addressed to the offeror otherwise it could not, although posted or dispatched, be said to have been put in a course of transmission to him. *Ramdas Chakravati v. Official Liquidator Cotton Ginning Co. Ltd.* (1887) ILR 9 All 366.

The petitioner asserted that the acceptance of his tender was never communicated to him. As against this, the respondents state that the petitioner was communicated about the acceptance of his tender by letter Annexure RIV. The respondents have nowhere pleaded, as to how this letter was sent to the petitioner, whether by messenger or through post. It is also not stated on which date, the letter was put into transmission. Bare statement in the return that the letter of acceptance, was sent to the petitioner is not enough. The date, the mode of transmission and the address on which the letter was posted or despatched or delivered through personal messenger should have been pleaded in the return and documents if any, should also have been filed. It is true that the letter (Ann. IV), is addressed to the petitioner and his address given in it tallies with his address, given in the petition. However, the letter does not bear any memo number and the date; nor does it show the date on which it was signed by the Conservator of Forest. However, the copy of this letter forwarded to the Divisional Forest Officer, Rewa, bears the endorsement No. T. P./2347, Rewa dated 5-3-1979. From this endorsement, it does appear that copy of this letter was forwarded to the Divisional Forest Officer, but such a conclusion cannot be reached in the absence of any number and date that it was also forwarded to the petitioner. No other document or material was placed on record by the respondents as may positively show, that the acceptance of offer was actually communicated to the petitioner, or that any letter to that effect was put into transmission on his address. We are, therefore, constrained to hold that it is not proved that the acceptance of petitioner's tender was communicated to him.

We have next to see whether the petitioner withdrew his offer before its acceptance. In para 4 of the petition, the petitioner stated that he submitted an application to the Conservator of Forest, on 20th Jan. 1979, withdrawing the tender submitted by him, before the opening of the tender. A copy of the said application is enclosed as Annexure-A. This document bears date 28-1-1979 under the signature of the petitioner. Thus there is variance between the plea and the proof. Therefore, it is not possible to accept that the petitioner submitted any application on 20-1-1979 withdrawing his tender. The respondents have specifically denied that the petitioner ever withdrew his offer. They have also denied receipt of any application dt. 20th Jan. 1979 or application Annexure-A. Under the circumstances, we hold that there is no material on record to show, that the petitioner withdrew the tender on 20-1-1979.

In the absence of communication of acceptance of tender, no binding contract came into existence, so as to bind the petitioner with the terms and conditions of

tender notice Annexure R-I. Even if, we assume, that the acceptance of tender was communicated to the petitioner by letter Annexure. RIV on 5-3-1979, the respondents have still to show that the petitioner was liable to make good the loss. The tender notice contains two clauses whereunder, the tenderer has to make good the loss. Clause 11 of the tender notice provides that the tenderer whose tender has been opened shall be bound by his offer and by the terms and conditions of the Tender Notice till orders of the Competent Authority accepting or rejecting his tender, are passed or another person is appointed as purchaser for that unit. In case of breach of this condition, the earnest money deposited, under Clause 6, shall be forfeited and the Government may black list him. In addition the tenderer shall have to bear the loss, suffered in the subsequent disposal of that unit which shall be recoverable as the arrears of land revenue. For calculation of loss, formula is given under the said clause. In view of our finding, that the petitioner failed to prove that he withdrew his tender on 20-9-1983, we think that Clause 11 is not attracted to the facts of the present case. Our attention was also drawn to *Dayabhai v. State of M.P.*, M.P. No. 766 of 1972 dt. 9-7-1979, wherein it was held, that the bidder or the tenderer is not entitled to withdraw his tender at any moment before its acceptance; and the condition that the offer shall not be retracted or that they shall be retracted only on certain condition, has been generally held to be invalid.

Other relevant Clause 17, of the Tender Notice, wherein the purchaser on being so appointed fails to execute agreement in the prescribed form and on such failure, his appointment has to be cancelled and on such cancellation, the amount deposited as earnest money, shall be forfeited and Government may black list the purchaser. In addition, the purchaser shall have to bear the loss, if any, suffered by the Government, in the subsequent disposal of the unit which shall be recoverable from him as arrears of land revenue. Before any order for recovery of any amount from the purchaser under this clause can be ordered, it has to be shown (i) the purchaser was appointed (ii) he failed to execute agreement, (iii) his appointment as purchaser was cancelled on account of his failure to execute agreement, (iv) the unit was disposed of subsequently resulting in loss to the Government. On fulfilment of the aforesaid conditions the loss has to be calculated as under:

"Amount of loss (in Rupees) = The sum that would have been realised had the purchaser's appointment not been cancelled i.e., originally accepted purchaser rate (--) purchase rate, if the unit is disposed of subsequently (x) Number of standard bags of Tendu leaves notified for that unit.

Note :-- If that unit is not disposed of subsequently the amount of loss recoverable from the original purchaser will be equal to original accepted purchase rate (--) collection cost (x) Number of standard bags of Tendu leaves notified for that unit (--) net revenue realised from the disposal of Tendu leaves collected departmentally.

In the present case there is no material or averment on record, stating that the

petitioner's appointment as purchaser was cancelled for his failure to execute agreement within the time stipulated in Clause 17. There is also no averment to the effect that the tendu leaves of the unit were disposed of, and if so, whether the State Government suffered any loss. In case, the unit was not disposed of, the formula detailed against "Note" requires the following data for calculation of the loss viz. (i) original accepted purchased rate (ii) collection cost; (iii) Number of standard bags of Tendu leaves notified (iv) net revenue realised from disposal of Tendu leaves collected departmentally, The respondents have also not placed any material to satisfy the requirements of latter formula to calculate the loss. It was submitted on behalf of the respondents that in the absence of a specific plea in the petition challenging the quantum of demand, the respondents had no occasion to place all these materials or plead anything to that effect in the return. In our" opinion, the submission cannot be accepted inasmuch as we find that the petitioner in para 15 of the petition pleaded as under : --

"Para 15-- That by threatening the enforcing of recovery the petitioner has been subjected to deprivation of his property unauthorisedly."

The aforesaid plea clearly shows that the petitioner is questioning the authority of the respondents to enforce recovery of the amount from him. The respondents being in possession of all necessary facts and documents were duty bound to plead and prove that they have the authority to enforce recovery of the amount which represented the loss suffered by the Government. The respondents failed to place necessary details and the documents showing their authority and justification to recover the amount in question and to forfeit the earnest money. In the circumstances, we hold that the recovery of Rs. 25920/- and forfeiture of earnest money of Rs. 5000/- were without the authority of law.

The petition is, therefore, allowed. The revenue recovery certificate Annexure F-I is quashed. The respondents are restrained from recovering Rs. 25920/- or any part thereof, under the said certificate. The respondents are further directed to refund the earnest money of Rs. 5,000/-, deposited by the petitioner. The petitioner shall be entitled to costs. Counsel fee Rs. 200/-.