

(1986) 09 BOM CK 0042
In the Bombay High Court

Kirloskar Pneumatic Co. Ltd

APPELLANT

Vs

National Thermal Power Corporation Ltd. and another

RESPONDENT

Date of Decision : 26-09-1986

Acts Referred:

Contract Act, 1872 — Section 6

Citation : AIR 1987 Bom 308 : (1987) 2 BomCR 405 : (1990) 69 CompCas 389

Hon'ble Judges : V.V. Vaze, J

Bench : Single Bench

Advocate : I.M. Chagla and M.B. Role, for the Appellant; M.V. Paranjpe and A.R. Kini, for the Respondent

Judgement

V.V.Vaze J.

"If dictatorial England could not bring itself to recognise the sanctity of promises to the extent of making a gratuitous promise a binding contract, what a paradox it would be if we were to carry change through today after the weakening of the belief in the sanctity of promises which this past century witnessed."

1. So observed Eightieth in The Rise and Fall of Freedom of Contract, page 689. The famous dictum written by Maine way back in 1861 in his Ancient Law that the movement of progressive societies had been a movement from status to contract is being eroded in modern times by the emergence of the State and State-controlled institutions dominating the field of contract. The pre- industrial revolution era left little freedom to the employee to offer his services to anyone he pleased because the number of employers was limited and the status or class of the employer and employee was well-defined and demarcated. The industrial revolution gave an impetus to the development of a free economic society and the resultant mobility of labour afforded freedom of contract both to the employer and the servant or contractor. This gave rise to the traditional concept of contract, each term of which was individually negotiated between and agreed upon by the contracting parties. Negotiation as a prominent feature of contract formation is now relegated to the background with the State or State-controlled

employers laying down uniform sets of terms and conditions and asking the contractors to sign on the dotted line or not at all. But, as observed by Eightieth, can we recognise the sanctity of promises to the extent of making a gratuitous promise a binding contract ? This appeal throws up just that question.

2. The National Thermal Power Corporation Ltd. ("NTPC" of "the owner "), a Government of India Enterprise, carries on the business of setting up, maintenance and running of thermal power stations. The NTPC issued a notice inviting tender (NIT) by publishing the same in newspapers inviting bids for the design, engineering, manufacture, erection, testing and commissioning of air-conditioning and ventilation systems to be installed at Singrauli, korba and Ramagundam Satellite Earth Station Sites. The NIT gave the description of the work as :

"Two nos. water chilling type air-conditioning plants of capacity 82 TR for each Satellite Earth Station."

3. The scope of work was indicative only and detailed scope had been described in the bid documents. The cost of the bid documents was put at Rs. 500. The last date and time for submission of bids was 10.30 a.m. on February 26, 1985, and the bids were to be opened the same day after half an hour, i.e., at 11.00 a.m. The NIT made it clear to the bidders that the "bidder will be required to furnish a bid guarantee for an amount of 2% of the bid price along with the bid and a contract performance guarantee for 10% of the contract value at the time of award of contract." The contract documents dilated on the submissions of the bid guarantee and performance guarantee thus :

"7.2. The bid guarantee shall be made payable without any condition to the owner. The bid guarantee shall be valid for a period of seven (7) calendar months from the date set for the opening of the bids.

7.3 The bid guarantee of the successful bidder to whom a contract is awarded will be returned after the said bidder provides the contract performance guarantee as required in the contract documents.

7.4. If the successful bidder fails to submit a contract performance guarantee as specified in the contract documents within thirty (30) calendar days after the date of notice of award of the contract, then the bid guarantee amount will be forfeited by the owner.

7.5. The bid guarantee of all unsuccessful bidders except that of the successful bidder will be returned after the award of the contract.

7.6. Any bid not accompanied by a bid guarantee shall be disqualified.

7.7. No interest will be payable by the owner on the above bid guarantee.

16. Policy for bids under consideration :

Bids shall be deemed to be under consideration immediately after they are

opened and until such time official intimation of award/rejection is made by the owner to the bidders. While the bids are under consideration, bidders and/or their representatives or other interested parties are advised to refrain from contrasting by any means, the owner and/or his employees/representatives on matters related to the bids under consideration. The owner, if necessary, may obtain clarifications on the bids by requesting for such information from any or all the bidders, either in writing or thorough personal contact as may be necessary. Bidders will not be permitted to change the substance of the bid after the bid has been opened.

17.1 Effect and validity of bid :

The submission of any bid connected with these documents and specifications shall constitute an agreement that the bidder shall have no cause of action or claim against the owner for rejection of his bid.

17.2. The bid should be kept valid for a period of six (6) calendar months from the date set for opening of bids.

Award of contract :

18.2. The contract will be awarded to the best qualified and responsive bidder offering the lowest evaluated bid in conformity with the requirements of these specifications and documents and the owner shall be the sole judge in this regard and subject to the provisions of these instructions to bidders and other terms and conditions detailed in these documents and specifications. A major modification is one which affects in any way the prices, quality, quantity or delivery period of the equipment or which limits in any way the responsibilities of liabilities of the bidder or any rights of the owner as required in these specifications and documents."

4. Kirloskar Pneumatic Co. Ltd. of Pune ("Kirloskar") carries on the business, inter alia, of manufacture of air-conditioning and refrigeration units, compressors and accessories thereof. Kirloskar filled in its tender for the above works, furnished a bid guarantee as required and quoted a total price of Rs. 1,61,27,677. Their tenders along with those of others were opened on February 26, 1985, as stipulated in the NIT.

5. According to KIRLOSKAR, they had mistakenly quoted the price for one unit when the NIT specified supply of two units at each satellite earth station and as soon as the error was discovered wrote to the owner on June 15, 1985, explaining the same and revised their bid. The NTPC - the owner - replied on September 5, 1985, stating that the price cannot be increased after the bids were opened (which was done on February 26, 1985). A minuet of correspondence followed probably with a view to settling the matter across the table, which having failed, NTPC invoked the bank guarantee for Rs. 4,00,000 being the bid guarantee furnished by Kirloskar while submitting their tender on October 17, 1985. That drove Kirloskar into filling of Special Civil Suit No. 771 of

1985. That drove Kirloskar into filing of Special Civil Suit No. 771 of 1985, in the Court of the Civil Judge, Senior Division, Pune, for a declaration that NTPC are not entitled to invoke the said bank guarantee of Rs. 4,00,000. KIRLOSKAR also filed an application for temporary injunction praying that the NTPC may be restrained by a temporary injunction from invoking or enforcing or demanding the payment under the bank guarantee being No. 9/85, dated March 15, 1985, which application having been dismissed, Kirloskar have come up with the present appeal.

6. The doctrine of contract has been succinctly put in *New Zealand Shipping Co. Ltd. v. A. M. Satterthwaite & Co. Ltd.* [1975] AC 154 thus :

"....English law, having committed itself to a rather technical and schematic doctrine of contract, in application takes a practical approach, often at the cost of forcing the facts to fit uneasily into the marked slots of offer, acceptance and consideration."

7. It now remains to be analyzed whether, in the facts of the present case, there was an offer, whether the offer was accepted and whether there was a consideration which would point to a concluded contract, breach of which is being urged by NTPC as giving rise to their right to invoke the bank guarantee of Rs. 4,00,000.

8. Tender notice : Not an offer : The advertisement issued by the NTPC under the caption "invitation to bid" or a notice inviting tender of NIT as it is generally known in construction or engineering works is not an offer ; it is an invitation to treat or an offer to negotiate or an offer to receive offers or an offer to chaffer.

9. Tender of a contractor : In response to the NIT, when contractors offer their bids or tenders, the promisor is only offering a bid. This bid can ripen into a contract if it is accepted. But till such an acceptance is formally communicated to the promisor, it is open to him to withdraw his bid (See section 6, Contract Act). Williston on Contracts, 60b, says :

Effect on commercial activity : "Gazumping" : Once it is realised that an offered is entitled to withdraw the offer before it is accepted, it would follow that no contract can come into existence, because there is no offer available for acceptance. The question whether such an interpretation would operate unfavorably to the promise in the context of large scale commercial activity based on a promise came up for consideration before various law reform agencies. The early 70's witnessed a period of rapidly increasing prices and the effect of allowing the offered to withdraw his offer was thought to be unfavorable because it allowed the seller or the contractor to "gazump", i.e., to refuse to sign the formal contract unless the buyer agrees to bear the increased price. The United Kingdom Law Commission concluded that "Gazumping" was the product of a short time factor and that no change in law is called for. (Cheshire and Fifoot's Law of Contract, tenth edition, page 35).

10. Firm offers : If it is intended to bind the promisor to keep his offer open till a stipulated date, the offeror will have to be given some consideration by the offeree for that purpose upon which a separate subsidiary contract can be said to have come into existence. This consideration may not always be in terms of money, but something of value in the eye of law.

11. Does the chance of winning the contract and making profit in the venture itself constitute a consideration ? The bid documents provided :

"The contract will be awarded to the best qualified and responsive bidder offering the lowest evaluated bid."

12. Examination of the above clause shows that NTPC has hedged in their intention to accept the lowest bid by various factors regarding qualifications of the bidders and whether the bid is a responsive one. The term also stipulates that "the owner shall be the sole judge in this regard" and hence even this promise that the contract will be awarded to the bidder offering the lowest evaluated bid will also not spell a consideration for a subsidiary contract to keep the bid open.

13. In *Wilson v. Spry* [1920] 145 Ark 21, a memo of understanding was signed by the parties which read :

"Memo of understanding. Between Mr. Spry and Mr. Wilson approximately 10,000 acres in Arkansas owned by Mr. Wilson..... Mr. Spry to put estimators on at once and complete examination. Within forty-five days Mr. Spry may for \$24,000 have the right to buy the land for \$200,000 within two years from today...."

14. On the basis of the above memo of understanding, Spry made an examination of the land. But Wilson informed him his refusal to go on with the memo. Spry notified Wilson that he exercised the option to buy and then brought a suit for specific performance which was decreed, the court observing :

"It is a mistake to say that there was no consideration to Wilson for the contract because Wilson (who lived in Canada) at that time was anxious to sell his lands to Spry, and Spry would not enter into a contract to buy without the right to make a thorough cruise or examination of the land. To make such a cruise required time.... While the cruise was being made, it involved an expenditure on the part of Spry from \$25 to \$30 per day. The obligation of making a continuous cruise... was imposed upon Spry by the terms of the contract, and the obligation, as we see it, was not alone for the benefit of Spry."

15. Reliance detriment : Secondly, the courts have appreciated that even though the transaction did not contain an element of consideration as such, the absence of consideration should not be fatal to the enforcement of such a promise, if the offeree had prejudicially changed his position after placing reasonable reliance on the offer. Before proceeding to the case-law on this aspect - which expresses divergent views - it would be helpful to note the recommendations of the law reform agencies which exercise is undertaken only for the purpose of making a

comparative study of the development of law on this subject in other common law countries.

16. U. K. Law Commission : The U. K. Law Commission, in Working Paper No. 16(1975), has recommended that a builder in such a case should be relieved of the hardship of a sub-contractor withdrawing his bid when he has relied on them to his detriment and offer a bid for the main work.

17. American law : Section 90 of the Restatement of Contracts of the American Law Institute states :

"A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise."

18. To obviate such injustice in certain countries, legislation has made an offer irrevocable on the lines of the old English Law which regarded an offer under seal irrevocable, for example:

19. New York General Obligations Law S5-1109 (MC Kinney's 1964) provides :

"When an offer to enter into a contract is made in a writing signed by the offeror, or by his agent, which states that the offer is irrevocable during a period set forth or until a time fixed, the offer shall not be revocable during such period or until such time became of the absence of consideration for the assurance of irrevocability."

20. An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated, for a period of irrevocability exceeding three months ; but any such term of assurance on a form supplied by the offeree must be separately signed by the offerer."

21. Mexican law : In contrast to the common law countries, the Mexican article 1806 provides :

"When the offer is made without the stipulation of a period for acceptance to a person who is not present, the offeror remains bound during three days, in addition to the time required for the regular dispatch and return of mails by the public post office, or in addition to the time judged by the court to be sufficient in the absence of postal service, in accordance with the distance involved and the facility or difficulty of communication."

22. "It would cut up the doctrine of consideration by the roots if a promise could make a gratuitous promise binding by subsequently acting in reliance on it." Commonwealth v. Situate Save. Bank [1984] 137 Mass 301.

23. It is usual to portray the doctrine of promissory estoppels as some kind of stand-in for consideration or extension of the doctrine of consideration.

24. Policy considerations prompt the application of the doctrine of promissory estoppels to protect charitable subscriptions and analogies drawn from the law of torts focusing upon consequential losses have influenced the treatment of the gratuitous bailee. Charitable institutions have a favorable status and the traditional concepts about consideration give way to public interest.

25. In *James Baird Co. v. Gimbel Bros. Inc.* 344 (2nd) Cir 1933 judge learned hand ,a distinguished judge, held that an offer which bargains for a promise is not binding until the specific return asked for is made and that the theory of promissory estoppels is restricted to "donative" promises. In *Baird* 344 2 Cir 1933, the defendants-sub-contractor, claiming a mistake in computation of his rates in the bid revoked his offer to supply materials after the general contractor had relied by incorporating the offer in the bid for the prime contract and the claim of the principal contractor for damages was turned down.

26. However, in *Drennan v. Star Paving Co.* [1958] 51 Cal 409, the facts were similar to those in *Baird* (64F 2d 344(2d Cir 1933) but the position was just the opposite. The plaintiff, a general contractor, had solicited bids from various sub-contractors for the paving work to be done on a construction project on which the plaintiff was preparing to bid for the prime contract. The defendant submitted the lowest bid for the paving and the plaintiff, according to the custom in the trade, used the defendant's bid in computing his own bid. The plaintiff's bid, which listed the defendant as a sub, was accepted the same day it was submitted. The following day had been made. The plaintiff sued to recover the increased cost of having the paving work done by another sub. The California Supreme Court affirmed a judgment for the difference between the defendant's bid and the actual cost of the paving work.

27. Reasonable reliance resulting in foreseeable prejudicial change in position affords a compelling basis for implying a subsidiary promise not to revoke an offer for a bilateral contract. The effect of *Drennan* [1958] 51 Cal 409 is simply to keep a power of acceptance or reopens negotiations, the sub-contractor's is not obligated to keep the offer open.

28. Negotiations: The doctrine of promissory estoppel has been extended to the area of negotiations where one p[arty was induced to make a change to his detriment as a result of negotiations. A case which may sound a retreat from the common law view that breach of an agreement to agree is not actionable came from the Supreme Court of Wisconsin. *Hoffman v. Red Owl Stores, Inc.* (26 Wis 2nd 683) evolved from a proposal by the defendant to establish the plaintiff in one of its stores as a franchise operator, provided the plaintiff would invest a specified amount of capital and perform certain other conditions. The parties discussed the matter in various stages for the more than two years, with the defendant, at each stage, assuring the plaintiff that he would get his franchise upon performance of the stated conditions, some of which were added as matters progressed. The termination of negotiations apparently resulted from the

defendants, insistence that the plaintiff supply an amount of capital nearly twice the sum originally requested. By that time, as a result of the defendants' urging, the plaintiff had sold his bakery business and building, sold a small grocery operation which had been purchased in order to gain experience, made a payment on the site for the proposed finches, incurred moving expenses and arranged for a house rental. the Wisconsin court, reasoning that promissory estoppel contemplates an award of such damages "as are necessary to prevent injustice," awarded the plaintiff the amount of the actual expenses and losses he has incurred. Hoffman's case (26 Wis 2d 683) does raise certain problems. Generally, preliminary negotiations do not support a promissory estoppel and pre-agreement discussions and negotiations can at most constitute an agreement to agree which is not enforceable. a tenderer like Kirloskar would surely have to incur considerable expenditure in visiting the sites, taking measurements and preparing his estimates. So will NTPC in scrutinizing the various tenders received. But these expenses cannot be said to constitute actionable claims because men of business know that these are necessary expenses if they wish to stay in business and hope to offset the same by profit which they would make when they emerge as the successful tenderer in some venture. A contract cannot be created by estoppel, rather estoppel may operate only to deny the existence of an otherwise binding contract, that is to say, it may serve defensively, as a shield, but not as a sword. Deliberate risk-taking prior to agreement will clearly be treated differently from a change of position in response to a promise.

29. However, the American Law Institute in its section 89B(2) (Tent. Draft No. 2, 1965) of the Restatement of Contracts provides: "an offer which the offeror should reasonably expect to induce action or forbearance of a substantial character on the part of the offeree before acceptance and which does induce such action or forbearance is binding as an option contract to the extent necessary to avoid injustice". (See Promissory Estoppel and Traditional Contract Doctrine [1969] 78 YLJ 343).

30. Bait advertising: The traditional contract theory that an offerer can withdraw his offer any moment before acceptance can lead to commercial malpractice euphemistically called "sales acceptance". One such instance is of "bait advertising". Bait advertising, a widely used consumer-enticement technique is one of the most difficult or misleading promotional devices to control by the common law. a bait-seller asks to attract customers by advertising at a spectacularly low price a product which he does not intend to sell. Once contact has been made with the potential purchaser, the seller endeavors to switch the customer to another item on which the profit margin is greater and will prevent or discourage purchases of the unprofitable "bait" by disparagement or sabotage. He may make derogatory remarks about the advertised merchandise or show that the advertised item is of an inferior quality or that it is out of stock or allege that spares are not available. The "bait" advertiser then offers a "quality" model at a higher price. Once the customer is in a purchase mood, he is most likely to

go in for the higher priced item, which normally he would not have done. Under the tract theory of contract, the bait-advertiser can withdraw the offer the moment he thinks that the customer is likely to place an order. With a view to control this this practice of bait- advertising which erodes into a fair competitive market theory, certain States have enacted laws making it a misdemeanor. (See State Control of Bait Advertising [1961] 9 YLJ 930).

31. In the light of the above discussion, it is clear that as the bid given by Kirloskar wa withdrawn before it was accepted, no contract as such has come into existence between Kirloskar and consideration to Kirloskar to keep the offer open for a period of six months and even though the contract document before it was accepted. Dickinson v. Dodds [1876] 2 Ch 463. According to Kirloskar, there was a mistake in their calculations but that at best is inductive of their bona fides: nothing turns on whether the withdrawal of the offer was occasioned by the mistake in calculation or not. It could as well have been a quirk of fancy that made kirloskar withdraw their offer.

32. That brings us to the question whether NTPC had acted to their detriment after receiving the bid of Kirloskar. If an element of "reliance detriment" could be contractor filling in his consolidated tender on the basis of bids received form the sub- contractor, NTPC would be entitled to invoke the left to the court. Here again, the correspondence between the parties does not reveal that NTPC were driven to take any steps which would amounts to a detriment and hence any discussion form this angle would also not help NTPC.

33. Bid guarantee and contract performance guarantee: Co-relations: the supreme Court in Radha Sundar Dutta Vs. Mohd. Jahadur Rahim and Others,

"Now, it i a settled rule of interpretation that if there be admissible two constructions of a document, one of which will give effect to all the clause therein while the other will render one or more of them nugatory, it is the former that should be adopted on the principle expressed in the maxim "ut res magis valeat quam pereat."

"..... the sense and meaning of the parties in any particular part of an instrument may be collected ex antecedentibus et consequentibus (i.e., form what goes before and form what follows) every part of it may be brought into action unreadier in order to collect form the whole one uniform and constant sense, if that may be done."

34. Applying these principles of interpretations , it appears that according to NTPC, the question of forfeiture of the bid guarantee was to arise only when first, the contract is awarded to the bidder; secondly, the bidder is asked to furnish a contract performance guarantee and, thirdly, if the successful bidder fails to submit the contract performance guarantee after the contract is awarded. It is only when thee three contingencies take place, that the bid guarantee amount can be forfeited by the owner. the clauses enjoining upon the bidder to keep the bid guarantee valid for a period of six calendar months form the date set for

opening of bids and warning the not contain any stipulation regarding forfeiture of the bid guarantee amount. the word "forfeiture" occurs for the first time in clause 7.4 and the owner NTPC is enabled by this clause to forfeit the amount if Kirloskar were to fail to submit within 30 days after the performance guarantee/ date of notice of award of the contract.

35. The Contra Profferendum Rule of interpretation provides that if two interpretations are possible, the the one fireball to the party who had forfeited the contract and the other against him, the interpretation against that party has to be preferred. No doubt, this rule has to be applied with caution as observed by the Supreme Court in *Sahebzada Mohammad Kamgar Shah Vs. Jagdish Chandra Deo Dhabal Deo and Others*,

"It is only if the meaning is not otherwise clear that there is scope for the applicability of the rule that all deeds are to be construed strictly against the grantor and in favor of the grantee".

36. Applying these twin rules of interpretation, it is obvious that as a contract has not been awarded to Kirloskar, the question of forfeiting the bid guarantee does not arise.

37. Bank guarantee: The Supreme Court in *United Commercial Bank Vs. Bank of India and Others*, has expressed the opinion that "the courts usually refrain from granting injunction to strain the performance of the contractual obligation arising out of a letter of restrain the performance o of the the contractual obligations arising out of a letter of credit or a bank guarantee between one bank and another." and relying on those observations, the lower court has refused to grant injunction. the device known as the the irrevocable letter of credit is to finance contracts for the sale of goods between between buyers and sellers in different countries, and particular where the delay between dispatch form the place of manufacture and arrival at the destination is a considerable one. It enables short-term credit facilities to be made available, guarantees payment to the sellers, and safeguards the parties against fluctuations in the value of currency. A contract is concluded between the buyer and the seller whereby the buyer undertakes to furnish an irrevocable letter of credit in favor of the seller. He instructs his banker to pay to the provided the seller tenders the required shipping documents in compliance with the terms of the letter of credit. No doubt, the banker is under an absolute obligation to pay irrespective of any dispute there may be between the buyer and the seller. the banker can only pay if the shipping documents are tendered to him. the banker cannot investigate whether the goods to which the documents in. quam non for the seller to obtain the of the goods. (See *Forestal Mimosa Ltd. v. Oriental Credit Ltd.* [1986] 1 WLR 631; [1986] 2 All ER 400.

38. The NTPC could have invoked the bank guarantee if, and only if, Kirloskar having been awarded contract had failed to submit a contract per formance guarantee as stipulated in the contract document. The dealing between the

parties were only at the stage of offer. No contract was guarantee did not arise. the NTPC, by its letter dated October 15, 1985, wrote to the bank to say that "in terms of the of the aforesaid bank gurantee, we do hereby invoke the bank guarantee No. 9/85, dated March 15, 1985, and make demand on you to immediately pay an amount of Rs. 4 lakh." The United Commercial Bank could not question whether the invocation is "in terms of the bank guarantee". It was for the NTPC to verify whether under the terms of the contract they could invoke the bank guarantee. As observed earlier, the contract not having been awarded, the question of submitting a contract performance guarantee did not arise nor did the question of forfeiting the bid guarantee. In this view of the matter, the action of NTPC invoking the bank guarantee by their letter dated October 15, 1985, was itself unlawful though it is correct to say that the bank could not refuse the payment under the guarantee.

39. Temporaryinjunction: the upshot of the above discussion shows firstly that there was no contract between NTPC and Kirloskar to keep the bid alive, that the bid could be revoked before the acceptance as Kirlokar have done, that the NTPC did not act act to their detriment relying on the bid of Kirloskar, that the bid guarantee could only be invoked if the contract were to be awarded to Kirloskar and they had failed to pay the amount or to perform their part which stage never arose, that NTPC could not invoke the bid guaranteed in terms of the contract and hence a lear prima facie case exits of issuing an injunction restraining the bank form making the payment. The balance of converience also is clearly in favour of Kirloskar because even if I am wrong on the above findings, all that would the amount of the bid guarantee or such other sum as my be determined by the court (in the light of the principle laid down by the Supreme Court in *Maula Bux Vs. Union of India (UOI)*,), and that recovery would at the most be delayed. It is nobody's case that Kirloskar are not solvent to the extent of Rs. 4,00,000 and, hence, I find that all the conditions for issuance of temporary injunction are satisfied in this case.

40. It always open to the owner or an employer like NTPC to make sure that their officers are not cluttered with frivolous bids because even examining each bid requires time and expense in the haps of salaries to be paid to their staff. With that end in view, the NTPC were right in insisting upon a bid security. This bid security would have come in handy to them if the contract were to be awarded to Kirloskar and Kirloskar were to realise form their obligation of not furnishing the contract performance guarantee. At best, NTPC would have been right in rejecting a bid if the bidders were to withdraw there form or to make changes therein as Kirloskar has done. But to say that an offers cannot withdraw his offer before acceptance in the absence of a contract to keep the offer form and that too when the promisee has not suffered "reliance detriment" would fly in the face of the principles of contract. some excetions have been carved out in the interest principle of contract. some exceptions have been carved out in the interest of international law of sale of goods as well as by statute as in the case of company law where an application for allotment of shares cannot be

withdrawn before a stipulated period, or by common law in the case of innkeepers. In the absence of any such statutory provisions, the general principles of contract law must prevail. the Government's and the Government undertaking" contracts are drafted expertly and the Government departments generally obtain legal opinion from their advisers if a dispute arises and the department may even abandon a claim against a contractor if according to their advisers the claim is ill-founded in law. These coercions of law have to co-exist with the coercions of accountability in fiscal matters - the overseeing role of estimates committees, public account committees, committees on public undertaking, etc., - which may suggest to the executive functionary to play it safe by preferring a claim and leave the matter to the courts.

41. The appeal succeeds and it is ordered that defendant No. 2, the United Commercial bank, is restrained from making the payment of Rs. 4 lakhs or any other sum to defendant No. 1, NTPC in pursuance of the bank guarantee bearing No. 9/85, dated March 15, 1985, in spite of the invocation of the same made by NTPC by their letter dated October 15, 1985.

42. Costs, costs in the cause.