
(1974) 06 OHC CK 0010
In the Orissa High Court
Case No : O.J.C. No. 77 of 1974

Nilgiri Contractors' Society

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 10-06-1974

Acts Referred:

Contract Act, 1872 — Section 2

Citation : AIR 1975 Ori 38

Hon'ble Judges : G.K. Misra, C.J.;B.K. Patra, J

Bench : Division Bench

Advocate : P. Palit, J. Patnaik, S.K. Biswal, L. Patnaik and R. Mohanty, for the Appellant; Adv.-General, for the Respondent

Final Decision : Dismissed

Judgement

G.K. Misra, C.J.—The averments in the writ application may be stated in short. The petitioner is a forest contractor in respect of lot No. 291 of the Bari-pada Forest Division. There was a public auction on 28-8-73. The upset price was fixed at Rs. 73,000. The petitioner with five others participated in the public auction. The petitioner was the highest bidder for an amount of Rs. 80,500. The sale was finally knocked at that amount. After the acceptance of the highest bid of the petitioner he was directed by the Divisional Forest Officer opposite party No. 3) to sign the bid-sheet. The D.F.O. also signed the bid-sheet in token of his acceptance of the bid. Immediately after the bid-sheet was signed the petitioner deposited Rs. 3,050 which was 10 per cent of the bid amount. The security deposit was in the form of Government Promissory Notes and National Defence Certificates. The agreement was signed by the petitioner and the D.F.O. The period of lease was nine working months starting from October, 1973 and the petitioner was all along waiting for the direction of the Divisional Forest Officer to work out the coupe. The petitioner made an investment of more than Rs. 11,000 to be ready for working out the coupe the moment the order was received. He ultimately gathered that in respect of the impugned lot the Government entered

into a negotiation with the Orissa Forest Corporation and granted the same in its favour. He accordingly prayed for issue of a writ of mandamus directing the Government to lease out the impugned lot in his favour after cancelling the lease in favour of the Orissa Forest Corporation and to issue a writ of certiorari to quash the order of the State Government in that respect.

Facts are not very much in dispute in the counter filed by the opposite parties. It is, however, asserted that there was no acceptance of the highest bid given by the petitioner which was merely an offer. The competent authority to accept the offer is the Chief Conservator of Forests. Reliance for the purpose was placed on Clause 1 of the General Condition of Sale under which the lot was put to auction. It may be extracted:

"(1) The right to take contract for exploiting forest produce in the lots advertised for sale in Part I of the sale notice will be granted to the bidder whose bid is conditionally accepted by the D.F.O. subject to the approval of the competent authority and the latter authority so approves it. No sale shall be binding on the Government until such approval has been obtained and communicated to the bidder and the formal agreement is executed on behalf of the Government. No bidder, shall be eligible to rescind the contract between the date of bidding and the date of approval of the competent authority."

The D.F.O. who conducted the auction had no authority to accept the offer. His financial power to accept any contract is up to Rs. 20,000 only. In this case the acceptance of the bid by the D.F.O. is subject to acceptance and ratification by the competent authority who is the Chief Conservator of Forests, the amount being above Rs. 50,000 and less than one Lakh. Moreover, in accordance with Article 299 of the Constitution no rights can accrue to the petitioner unless a formal agreement is executed by the Chief Conservator of Forests.

In regard to the coupe in question, the State Government had taken a decision as early as in July 1973 that it would be allotted to the Forest Corporation from the year 1973-74. As a matter of routine, however, notice was given for sale of the impugned forest coupe. As the coupe was to be allotted to the Forest Corporation, the offer of the petitioner at the auction sale was not accepted. Such a decision had been taken in a meeting held on 9-7-73, the proceeding of which is to be found in Annexure A. By an order (Annexure B) dated 18-12-73 the Orissa Forest Corporation Ltd. was directed to work out the coupe. In the circumstances the writ application is liable to be dismissed.

2. Mr. Palit contended that as the highest bid given by the petitioner was accepted by the D.F.O. it was no longer open to the Government not to accept the offer and to settle the coupe on the Corporation. The contention is not well founded. Clause 1 of the General Condition of Sale clearly shows that the bid was conditionally accepted by the D.F.O. subject to the approval of the competent authority who was the Chief Conservator of Forests. Until such approval had been obtained and a formal agreement executed on behalf of the Government the sale

shall not be binding on the Government. On the other hand, no bidder is eligible to rescind the contract between the date of bidding and the date of approval of the competent authority. Admittedly, no approval had been given by the Chief Conservator of Forests and no formal agreement was executed. Consequently no rights have been created in favour of the petitioner on the basis of the highest bid given by him which was provisionally accepted by the D.F.O. The highest bid at the auction not having culminated into a binding contract between the parties the petitioner has no enforceable right to challenge the settlement made in favour of the Corporation. It is quite open to the Government not to accept the highest bid and settle the coupe on the Corporation in any manner it chose.

3. Reliance was placed by Mr. Palit on a Division Bench decision in (1970) 1 AnWR 342 (S. Raman Goud v. The Govt. of Andhra Pradesh). The facts of that case are very similar to the facts of the present case. The facts of that case may be noticed in short. The appellant therein was the highest bidder for a particular coupe which had been notified for auction sale. In accordance with the conditions for auction sale he deposited one-third of the amount soon after the auction. Condition No. 9 of General Sale Conditions required that the sale had to be confirmed by the Conservator of Forests as the bid amount was above Rupees 20,000. The confirmation is usually done within 30 days after the sale. No such confirmation was, however, made. On enquiry the appellant came to know that the Bamboo Co-operative Society had applied before the Minister for Forests for that particular coupe even before the auctions were held, but after the notification for auction sale. The Government order was issued in favour of the Cooperative Society in furtherance of the policy encouraging Co-operative Societies in proper utilisation of forest wealth of the State. A writ application was filed by the appellant in the case for quashing the settlement in favour of the Co-operative Society. The writ application was dismissed by the learned Single Judge on the view that no legal right vested in the appellant to insist upon the confirmation of the auction sale. The Division Bench, in appeal, however issued a writ to the Government for consideration of the question of acceptance of the auction sale on the theory that the Government having led the appellant and other citizens to believe that the conditions of sale would be observed in holding the auction, and also in making the bidders to act to their prejudice by making deposits, cannot be permitted to give a go-by to the conditions of sale. Their Lordships held that the Court had the necessary power in proper cases, to compel observance of the rules issued by the departmental authorities.

In support of the aforesaid conclusion the Division Bench placed reliance on AIR 1988 SC 718 (Union of India v. Anglo Afghan Agencies). With respect, we must say that the Division Bench decision of the Andhra Pradesh High Court is contrary to law and cannot be supported by the dictum in AIR 1968 SC 718. Our view requires a close examination of the principles determined in the aforesaid Supreme Court decision.

4. The facts and the principles decided in AIR 1968 SC 718 may now be noticed.

The Textile Commissioner published on Oct. 10. 1962 a scheme called the Export Promotion Scheme providing incentives to exporters of woollen goods. By the Scheme as extended to exports to Afghanistan, the exporters were invited to get themselves registered with the Textile Commissioner for exporting woollen goods, and it was represented that the exporters will be entitled to import raw materials of the total amount equal to 100 per cent of the f.o.b. value of the exports. Under Clause 10 of the Scheme the Textile Commissioner had authority to reduce the import certificate if it was found that a fraudulent attempt was made to secure an import certificate in excess of the true value of the goods exported. There was some controversy in the case whether the order was legislative or executive in character. Their Lordships discussed the matter on the assumption that the order was executive in character. On the aforesaid facts their Lordships concluded thus :--

Where a person had acted upon representations made in an Export Promotion Scheme that import licences upto the value of the goods exported will be issued, and had exported goods, his claim for import licence for the maximum value permissible by the Scheme could not be arbitrarily rejected. Reduction in the amount of import certificate may be justified on the ground of misconduct of the exporter in relation to the goods exported, or on special considerations such as difficult foreign exchange position or other matters which have a bearing on the general interests of the State. The Scheme provided for grant of import entitlement of the value, and not upto the value, of the goods exported. The Textile Commissioner was, therefore, in the ordinary course required to grant import certificate for the full value of the goods exported. He could only reduce that amount after enquiry contemplated by Clause 10 of the Scheme. The authority vested in the Textile Commissioner by the rules even though executive in character was from its nature an authority to deal with the matter in a manner consonant with the basic concept of justice and fair-play. If he made an order which was not consonant with the basic concept of justice and fair-play his proceeding was open to scrutiny and rectification by the Courts. Their Lordships further held that even though the case did not fall within the terms of Section 115 of the Evidence Act it was still open to a party who had acted under representation made by the Government to claim that the Government shall be bound to carry out the promise made by it even though the promise was not recorded in the form of a formal contract as required by Article 299 of the Constitution.

Facts of this case show that on the representation made by the Government that exporters would get import certificates corresponding to the export made the opposite parties had exported woollen goods. The case was decided on the principles of estoppel which did not come strictly within the terms of Section 115 of the Evidence Act.

The aforesaid principle has no application to the case of a forest contract referred to in the Andhra Pradesh decision. Here, under the very conditions of sale the

petitioner is not to make any investment in respect of the coupe until the bid was finally accepted by the competent authority and a formal agreement drawn. The deposit of the security money is a preliminary condition for the highest bid being accepted. If the security money had not been deposited the question of acceptance of the bid would not arise. Thus, no right at all was created in favour of the petitioner and the principle of estoppel whether under Sec. 115 of the Evidence Act or otherwise had no application to this case. In the Supreme Court decision the exporters acted upon the representation of the Government. Once there was acting upon by one party the other party was estopped from not acting upon its promises. No such principle is applicable to facts arising out of a forest contract. If the Government had not settled the coupe on the Co-operative Society it was open to the High Court to give a direction to the Government to consider the question of acceptance of the bid; but where the Government had taken a subsequent decision not to proceed with the auction sale of the forest coupe but to settle on the Co-operative Society there is no question of estoppel. It is open to the Government to resile from its earlier decision of putting the coupe to auction sale. It had the freedom of choice of settling the coupe by negotiation unless prior to that by contract it had been settled on the appellant.

5. This case is concluded by Haridwar Singh Vs. Bagun Sumbrui and Others, where in similar circumstances their Lordships held that the coupe could be settled with some other authority despite an auction sale having taken place and the highest bid is obtained. This option is open to the Government until the highest bid is finally accepted.

Reliance was also placed by the State on State of Orissa and Others Vs. Harinarayan Jaiswal and Others, which relates to a case of excise. In paragraph 19 their Lordships observed that once the Government declined to accept the highest bid the auction held became useless. Similar is the effect when the Government refused to accept the highest tender. The Government is free to have recourse to other methods of settlement. The principles so laid down under the provisions of the Bihar and Orissa Excise Act, 1915 have full application to the case of acceptance of the highest bid in respect of a forest coupe. (Also see paras 11 and 12 of Purxotoma Ramanata Quenim Vs. Makan Kalyan Tandel and Others, .

6. On the aforesaid analysis, we are clearly of opinion that despite the highest bid given by the petitioner Government was free to settle the coupe on the Forest Corporation. The petitioner had no right created in his favour until the highest bid was accepted by the competent authority and a formal agreement was drawn to that effect.

7. We find no merit in the writ application. It is accordingly dismissed with costs. Hearing fee of Rs. 200.

B.K. Patra, J.

8. I agree.