

(1971) 09 AHC CK 0015

In the Allahabad High Court

Case No : Civil Misc. Writ No's. 232, 373 and 374 of 1970

Sadhoo Lal Motilal

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 02-09-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Contract Act, 1872 — Section 4, 5

Forest Act, 1927 — Section 82

Citation : AIR 1972 All 137

Hon'ble Judges : B.N. Lokur, J

Bench : Single Bench

Advocate : Gyan Prakash, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

B.N. Lokur, J.—Writ Petition No. 232 of 1970 filed by Sadhulal, Writ Petition No. 373 of 1970 filed by Abdul Shakoor and Writ Petition No. 374 of 1970 filed by Shyama Charan Gupta were heard together and are disposed of by this common judgment as all the three petitions relate to tenders for purchase of tendu leaves in the forest of Madhya Pradesh, issued by the Government of Madhya Pradesh, and raise questions of law which are more or less common to all the three petitions.

2. On the 13th February. 1969, the Forest Department of the State of Madhya Pradesh issued a Tender Notice published in the Madhya Pradesh Gazette Extraordinary dated the 16th February, 1969, inviting tenders for purchase of tendu leaves in several Units of the Government forest. Under clause 9 of the Tender Notice, sealed tenders were to be submitted by 17.00 hrs. on the 3rd March, 1969, to the Conservator of Forests in whose jurisdiction the Unit was situated; under Clause 10 (a), the tenders were to be opened by the Conservator of Forests concerned simultaneously at the specified places on the 6th March,

1969, and on subsequent specified dates. Abdul Shakoor and Shyama Charan Gupta petitioners in Writ Petition No. 373 of 1970 and 374 of 1970 submitted their tenders in respect of different Units. However, on the 31st March, 1969, i.e., sometime after the tenders were opened, both of them separately sent letters to the Government withdrawing their tenders; these letters were admittedly received by the Government on the 2nd April, 1969. Meanwhile, however, the Government accepted the tenders of both of them on the 25th March, 1969, and appointed them as purchasers of tendu leaves in the respective Units. The orders of the Government were transmitted to the concerned Conservators of Forests who addressed communications to the two tenderer regarding acceptance of their tenders and their appointment as purchasers on the 3rd April, 1969-These communications were received by the addressees on the 9th April, 1969. Thereupon, the State Government invited fresh tenders for the two Units on the 5th April, 1969. Later both Abdul Shakoor and Shyama Charan Gupta received intimations that they had committed default which landed the Government in losses and the Government claimed the difference in price offered by them and the price realised after re-sale. The two petitioners repudiated the liability on the ground that the tenders were withdrawn by them before they were accepted. Their representations were not heeded. In due course, the Government of Madhya Pradesh directed that the amounts due from them be recovered as arrears of land revenue u/s 82 of the Forest Act. The authorities of the Government of Madhya Pradesh transmitted the recovery orders to the Collector of Banda in Uttar Pradesh, opposite party No. 6, who forwarded the same to the Tahsildar. Karvi, opposite party No. 6, for execution. The petitions filed by Abdul Shakoor and Shyama Charan Gupta challenge the authority of the Collector of Banda and the Tahsildar Karvi, to recover the alleged dues as arrears of land revenue on the ground that nothing was due to the Government of Madhya Pradesh and the orders for recovery were a nullity. The State of Madhya Pradesh, the Conservator of Forests, Rewa, the Divisional Forest Officer as well as the Collector of Panna, in Madhya Pradesh, have been made parties to this petition. They appeared and contested the petitions.

3. It appears that the Tender Notice dated 13th February, 1969, did not have adequate response in respect of the Units and hence a fresh Tender Notice was issued on the 25th March, 1969, and published in the Madhya Pradesh Gazette Extraordinary dated the 26th March, 1969, in respect of the same units. This Tender Notice merely changed the last date for submission of lenders which was fixed for the 5th April. 1969, and the date of opening of tenders was stated to be the 9th April, 1969. The other conditions of the Tender Notice were declared to be the same as in the Tender Notice dated the 13th February. 1969. Sadhulal, the petitioner in Writ Petition No. 232 of 1970, submitted a tender for purchase of tendu leaves in one of the Units covered by this Tender Notice, but, according to him. he did not submit the tender in response to the Tender Notice published in the Madhya Pradesh Gazette Extraordinary but in response to the Tender

Notice which was hung on the Notice Board of the Conservator of Forests on the 5th April, 1969, a copy of which is annexed to this petition as Annexure I- He submitted his tender on the same day but on the 13th May, 1969, he sent a telegram withdrawing the tender and followed up the telegram with a letter on the next day. He too received a communication making a demand on the ground that due to his default, the Unit had to be resold and the Government suffered a loss which Sadhu Lal was called upon to meet. Attempts to realise the demand having failed, action was taken against him also under the Revenue Recovery Act and the Collector of Banda and the Tahsildar, Karvi, were requested by the Government of Madhya Pradesh to make recovery from Sadhu Lal. Sadhu Lal has contested the authority of the Collector of Banda and the Tahsildar of Karvi on the ground that the recovery order is void since nothing was due from him to the Government of Madhya Pradesh. As in the other two Writ Petitions, the State of Madhya Pradesh, the Conservator of Forests, the Divisional Forest Officer and the Collector concerned of Madhya Pradesh have been made parties and they have sought to defend the validity of the recovery orders.

4. As it turns out that the facts of Sadhu Lal's case are somewhat different from those of the cases of Abdul Shakoor and Shyama Charan Gupta, it is desirable to deal with Sadhu Lal's case separately at this stage. As already noticed, Sadhu Lal claims to have submitted his tender in response to the Tender Notice hung on the Notice Board of the Conservator of Forests; on, behalf of the opposite parties, an attempt has been made to pin down Sadhu Lal to the Tender Notice published in the Madhya Pradesh Gazette Extraordinary on the 26th March, 1969. It is, however, admitted on behalf of the opposite parties that the Tender Notice on which reliance is placed by the petitioner did exist on the Notice Board of the Conservator of Forests. No attempt has been by them to disprove the claim of Sadhu Lal that it was on seeing the Tender Notice on the Notice Board that he filed the tender. The Tender Notice on the Notice Board of the Conservator of Forests does not in anyway refer to the Tender Notice published in the Gazette; nor does the Tender itself in which a reference has been made to "Tender Notice" more than once, particularise the Tender Notice as the one published in the Gazette. I see no sufficient reason to disbelieve the statement of Sadhu Lal that he submitted the tender on the strength of the Tender Notice hung on the Notice Board of the Conservator of Forests. That being so, the opposite parties cannot fall back upon the Tender Notice published in the Gazette to defend the action taken against Sadhu Lal as the references to Tender Notice in his tender are to be construed as to the Tender Notice hung on the Notice Board of the Conservator of Forests.

5. The learned counsel for the Sadhu Lal urged that the tender submitted by Sadhulal having been withdrawn before it was accepted, there was no agreement of sale and purchase and Sadhu Lal cannot be held liable for any loss caused to the Government of Madhya Pradesh by reason of his withdrawal of the tender. The Government of Madhya Pradesh, however, has pointed out in the counter-affidavit that the tender of Sadhu Lal was accepted on the 26th April, 1969, and

later on the acceptance was despatched by post to Sadhu Lal on the 28th April, 1969 i.e., long before Sadhu Lal purported to withdraw the tender. Sadhu Lal denied the receipt of this communication and there is nothing on record to show that the communication was actually received by Sadhu Lal. However, the learned counsel for the Government of Madhya Pradesh contended that the acceptance of the tender became complete in favour of Sadhu Lal as soon as the communication was posted. u/s 4 of the Indian Contract Act, the communication of acceptance of a proposal is complete as soon as the proposal is put in the course of transmission to him so as to be out of the power of the acceptor. u/s 5, a proposal can be revoked at any time before the communication of its acceptance is completed as against the proposer. If, therefore, the communication of acceptance of the tender was posted to Sadhu Lal as alleged on the 28th April, 1969, the subsequent withdrawal thereof by the telegram of the 13th May, 1969, and the letter of the 14th May, 1969, would not be in accordance with law. The counter-affidavit filed on behalf of the Government of Madhya Pradesh has stated:

"The Conservator of Forests, Rewa Circle, sent information to the petitioner regarding his appointment as purchaser on 28-4-1969."

In the absence of any material to the contrary, I am unable to discredit the statement made on oath after perusal of the relevant record and I am proceeding on the basis that a communication was sent on 28th April, 1969 to Sadhu Lal. It was urged on behalf of the petitioner that the communication, to fall within the scope of Sections 4 and 5 of the Contract Act, should be shown to be one correctly addressed to Sadhu Lal and sent by post prepaid. When the statement made in the counter-affidavit is that it was sent to the purchaser, it would not be unreasonable to assume that in the ordinary course of business it was sent properly addressed to Sadhu Lal and duly received by him.

6. It was next urged by the learned counsel for the petitioner that mere posting the letter would not place it "out of the power of the acceptor" within the meaning of Section 4 of the Indian Contract Act -- a requirement which is obligatory to make the communication of acceptance complete as against the proposer; it was argued that the post office was merely the agent of the acceptor and the acceptor could ask the agent not to forward the letter and thus the letter remains within the power of the acceptor: in this connection it was submitted, though not with the support of any authority, that On a small payment the post office can get the letter posted to be withdrawn from the post office; my attention was drawn to the following observation of the Patna High Court in *Dhanraj Mills limited Co. Vs. Narsingh Prasad Boobna and Others*,

"The Post Office is the agent of the sender of the letter or telegram and not the agent of the addressee." This observation was made in connection with the determination of the question whether the offer was made at the place where the letter of offer is posted or at the place where that letter is delivered and whether the acceptance of offer takes place where the acceptance is communicated. It is

in the limited sense of the question for determination that the above observation was made. It is significant that the illustration to Section 5 of the Contract Act still says that where "A" proposes to sell his house by a letter sent by post to "B" and "B" accepts the proposal by a letter sent by post "A" may revoke his proposal at any time before or at the moment when "K" posts his letter of acceptance but not afterwards. Reference may be made to the more relevant and pointed observations of the Bombay High Court in *Baroda Oil Cakes Traders Vs. Parshottam Narayandas Bagulia and Another*, . *Gajendragadkar, J.*, as he then was, said:

"But so far as the making of the contract is concerned the proposer is bound as soon as the acceptance is posted and, subject to the right of the acceptor to revoke his acceptance, the contract is complete as soon as the acceptance is posted. In other words, the communication of the acceptance of the proposal cannot be said to be such an integral part of the completion of the contract as to constitute a part of the cause of action in a suit on the said contract. Even if the acceptance does not reach the proposer for the reason that it is lost or misplaced in transit a contract would be complete and for its breach the proposer would be entitled to sue in damages."

I respectfully follow the view taken by the Bombay High Court and hold that in the present case the contract was complete as between Sadhu Lal and the Government of Madhya Pradesh as soon as the letter of acceptance was posted on the 28th April, 1969, and the withdrawal of the tender made by Sadhu Lal on the 13/14th May, 1969 can be of no avail to him.

7. Since Sadhu Lal committed a breach of the contract, he is liable to reimburse to the Government of Madhya Pradesh the loss caused as a result.

8. It was argued that Section 82 of the Forest Act does not enable the Government to recover the loss incurred in such circumstances as arrears of land revenue. This argument is founded on the text of Section 82 of the Act as originally enacted and derives support from the decision of the Madhya Pradesh High Court in *State of Madhya Pradesh Vs. Nagarmal Bhagwandas Marwari*, which has followed an earlier decision of this Court in *Firm Gobardhan Das Kailasnath Vs. Collector of Mirzapur*, . But this view is of no assistance to the petitioner. The Madhya Pradesh Legislature has amended Section 82 of the Forest Act to read as follows:

"All money payable to the Government under this Act or under any rule made under this Act or on account of the price of any forest produce or of expenses incurred in the execution of this Act in respect of such produce may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land revenue."

The learned counsel for the petitioner, who was not aware of this amendment, fairly conceded that the objection taken by him cannot prevail in the form in which it has been taken but he attempted to impugn the validity of the

amendment on the! around that it was ultra vires the Madhya Pradesh Legislature. As the learned counsel for the Government of Madhya Pradesh objected to this question being raised at the hearing of the petition without its being raised in the petition and without its being given notice of to the Government of Madhya Pradesh, the learned counsel for the petitioner was not allowed to question the validity of the amendment in the circumstances.

9. The result is that the petition of Sadhu Lal has no substance and deserves to be dismissed.

10. As regards the petitions of Abdul Shakoor and Shyama Charan Gupta, there is no doubt that they had revoked their tenders before their acceptance was transmitted by post. The revocation communications were received by the State Government on the 2nd April, 1969, and the communications of acceptance were sent on the 3rd April, 1969; the fact that the Government had made an order of acceptance on the 25th March, 1969. does not alter the situation as the material date is the date on which the communication is sent to the proposers. Thus, there was no contract between the two petitioners and the Government of Madhya Pradesh and the question of any breach of contract does not arise. The question, however, which arises is what would be the consequences of the withdrawal of the tenders before they were accepted. In this connection Clause 11 of the Tender Notice dated 13th February, 1969, published in the Madhya Pradesh Gazette Extraordinary of 16th February, 1969, is relevant; it reads:

"The Tenderer whose Tender has been opened shall be bound by his offer and by the terms and conditions of this Tender Notice till orders of the competent authority accepting or rejecting his tender are passed or another person or party is appointed as the purchaser for that unit. Breach of this condition shall entail forfeiture of the Earnest Money Deposit required to be deposited under condition 6 above."

It is unnecessary to reproduce condition 6 which calls upon the tenderer to make a deposit of Rs. 1/- per standard bag of tendu leaves to be purchased. Tenders in answer to Tender Notice or advertisement are normally standing offers and they can be withdrawn at any time before they are accepted or before the period for which the tenders are stated to be standing offers by any conditions in the Tender Notice or advertisement expires. According to condition 11 reproduced above, an offer has to remain open till it is accepted or rejected or another person is appointed as purchaser in place of the tenderer. It was urged for the petitioners that if an offer is withdrawal within the period prescribed as has been done by them, the only penalty which is provided by Clause 11 is the forfeiture of the earnest money deposited and the Government would not be entitled to claim reimbursement of the entire loss caused to them. On the other hand, the learned counsel for the Government of Madhya Pradesh contended that actually the petitioners were appointed as purchasers as provided by Clause 14 and though they have failed to execute an agreement in the prescribed form, Clause 17 covers their cases and they are liable to the sum equal to the loss caused to the

Government. When the Tenders are withdrawn, there is no occasion for the Government to appoint the petitioners as purchasers and such appointments are indeed invalid; there is also no question of the petitioners executing any agreement after the Tenders had been withdrawn. In my opinion, condition 17 is irrelevant to the facts of these cases. For withdrawing the offer before the occurrence of the events mentioned in condition 11, the two petitioners merely entailed forfeiture of the earnest money deposited, as provided in the condition and are not liable to reimburse the loss caused to the Government.

11. The recovery proceedings against these two petitioners are in respect of the entire amount of loss incurred by the Government but they ought to be liable only to the amount of earnest money deposited by them. That being so, the opposite parties cannot recover more than the amount of the earnest money received in deposit from the petitioners.

12. The result is that Writ Petition No. 232 of 1970 filed by Sadhu Lal is dismissed, but writ petitions Nos. 373 of 1970 and 374 of 1970 filed by Abdul Shakoor and Shyama Charan Gupta respectively are partly allowed and it is directed that the recovery proceedings against them shall be restricted to and shall not exceed the amount of earnest money deposited by each of them. No order as to costs.