(1979) 10 MP CK 0014

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 283 of 1974

Sharad Trading Co., Rajegaon APPELLANT

Vs

State of Madhya Pradesh and Others RESPONDENT

Date of Decision : 11-10-1979

Acts Referred:
Contract Act, 1872 — Section 2, 25

Citation : AIR 1980 MP 91 : (1980) JLJ 513 : (1980) MPLJ 227

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

Bench : Division Bench

Advocate : V.S. Dabir, for the Appellant; K.K. Adhikari, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Singh, C.J.

By notification issued in Madhya Pradesh Gazette dated 29th December 1972 tenders were invited from persons or parties desirous of purchasing Tendu leaves in various Tendu Patta units of Madhya Pradesh. This invitation of tenders for purchase of Tendu leaves was for the season ending on 31st December 1973. The petitioner submitted its tender for Unit No. 38-Kosmi. The tender of the petitioner was accepted and an agreement was executed between the petitioner and the Govt. under which the petitioner became purchaser of tendu leaves of the aforesaid unit for the season ending on 31st December 1973. Sub-clauses (2) to (5) of Clause 2 of the agreement contained conditions for renewal of the agreement for the next season. These clauses read as follows;

"(2) The Government may in its discretion renew this Agreement for a further period of one year only provided the following conditions are satisfied :--

(i) The purchaser has done pruning during the period covered by this Agreement to the satisfaction of the Government;

(ii) the purchaser has committed no breach whatsoever at any of the provisions of the Act and the Rules made thereunder and any of the terms of this Agreement;

(iii) the purchaser has submitted application for renewal by the 15th September 1973 in the prescribed form and to the prescribed authority;

(iv) the accepted rate of purchase of Tendu leaves of this year is more than the rate to be decided by the Government for each unit or class of Units;

(v) the purchaser has paid all dues (including penalty and fine), payable in accordance with the provisions of this Agreement and in time,

(3) (i) The application for renewal will be submitted to the Dy. Chief Conservator of Forests (Nationalisation), Tendn Leaves, M. P. Bhopal, in original, and copies marked to the concerned Conservator of Forests and Divisional Forest Officer in the form as appended to the lender notice. This form can be obtained from any of the Divisional Forest Officers on payment of Rs. 25 for each form,

(ii) There shall be separate application for each unit.

(4) Purchase rate per standard bag applicable for every renewed year shall be the rate calculated by increasing the purchase rate applicable to the preceding year by 10 per cent and adding to it the total increase in rates of all the following items during the renewed year as compared to rates fixed for the same items in the preceding years :--

"(i) Purchase rate payable to grower [subject to the limit of Rs. 20 (twenty) per standard bag].

(ii) remuneration payable to Agent.

(iii) handling charges payable to Agent,

(5) The purchaser who has submitted an application for the renewal of the purchaser''s agreement for the unit shall be bound by his offer and by the terms and conditions of the Agreement, till orders of the Government accepting or rejecting his offer are passed. Breach of this condition shall entail forfeiture of security deposit, and Government may also black-list the purchaser for a period not exceeding 3 years. In addition, the purchaser who has withdrawn his offer shall bear the loss, if any, suffered by the Government in the subsequent disposal of that unit and this loss, unless paid within 15 days from the date of issue of notice of demand, shall be recoverable from him as arrears of land revenue. For calculation of loss, the following formula be used:--Amount of loss (in Rupees) = [The rate offered this year by the purchaser increased by 10% (--) purchase rate obtained in subsequent disposal] (x) Number of Standard bags notified for that unit.

Note :-- If that unit is not disposed at subsequently, the amount of loss recoverable from the original purchaser will be equal to the rate offered last year by the purchaser increased by 10 per cent (x) number of standard bags notified for that unit.

(6) The purchaser shall execute a fresh Agreement within 15 days from the date of the issue of the order granting renewal, after completing all formalities required under conditions of tender notice for executing Agreement, failing which the Agreement shall be liable to be terminated by Government and all consequences of termination given in the Agreement shall be binding and applicable. Loss to Government, if any, in subsequent sale of leaves in the unit shall be recoverable from the previous purchaser."

The petitioner submitted an application for renewal as required by Sub-clause (3) of Clause 2 of the agreement. The petitioner, however, withdrew that application by telegram dated 23rd October, 1973, before the Government could accept or reject the offer for renewal contained in the application. The Government acting under Sub-clause (5) of Clause 2 of the agreement forfeited the security deposit. The security deposit was in the shape of a bank guarantee furnished by the State Bank of Indore. The Divisional Forest Officer by letter dated 15th March 1974 called upon the bank to pay the amount guaranteed by bank draft. By this petition under Article 226 of the Constitution the petitioner seeks issuance of a writ restraining the Government and the other respondents from enforcing the forfeiture of security deposit furnished by the petitioner,

The only point urged by the learned counsel for the petitioner is that in spite of the provision made in Sub-clause (5) of Clause 2 of the agreement that the purchaser who has submitted an application for renewal of the purchaser''s agreement for the unit shall be bound by his offer till the orders of the Government accepting or rejecting his offer are passed, the petitioner was entitled to withdraw its offer for renewal before it was accepted by the Government. Learned counsel for the petitioner strongly relies upon a Division Bench decision of this Court in Dayabhai v. State of M. P., M. P. No. 765 of 1972, D/-9-7-1979.

It may be taken to be well settled that subject to statutory exceptions found in the case of The Secretary of State for India Vs. Bhaskar Krishnaji Samant, , an offer made containing a promise not to revoke it and to keep it open does not prevent the offerer from revoking the offer, for normally such a promise is unsupported by any consideration. But if a promise to keep the offer open is supported by consideration, the offerer is bound by the promise and cannot revoke the offer: [See Chitty on Contracts, Vol. I, 24th edition, paragraph 209l It is on this principle that a condition in a notice inviting offers or tenders that a bid or tender cannot be withdrawn before it is accepted is invalid and does not prevent a bidder or tenderer to withdraw his bid or tender before its acceptances: See Rajendra Kumar v. State of M. P. 1972 MPLJ 648 ; Somasundaram Pillai Vs. The Provincial Government of Madras, and Raghunandhan Reddy Vs. State of Hyderabad, . Dayabhai''s case, relied upon by the learned counsel for the petitioner, was a case of this nature. The tender notice in that case contained a condition that the tenderer may be allowed to withdraw his tender of any unit before the commencement of the opening of the tenders provided that on opening the remaining tenders there should be at least one valid tender complete in all respects available for consideration for that particular unit. It was held that the condition was not supported by any consideration and the tenderer was entitled to withdraw his tender and the acceptance of his tender by the Government after withdrawal, although it was the only valid tender, did not bring about any enforceable contract. The position in the instant case is, however, different. The condition that an application containing an offer for renewal cannot be withdrawn formed part of the agreement of purchase of tendu leaves for the 1973 season. By this agreement the petitioner got virtual monopoly of purchasing tendu leaves within the unit for 1973 season. The Government undertook to sell tendu leaves of the unit to the petitioner who undertook to purchase the same on the conditions mentioned in the agreement. One of the conditions was that the petitioner could apply for renewal, but once he made an application for renewal be could not withdraw the same till the Government took a decision to accept or reject the offer of renewal. The condition so contained in the agreement cannot be said to be unsupported by any consideration because it formed part of the agreement which was supported by consideration. Every term or condition or promise contained in an agreement is not a separate agreement and consideration for each term or condition or promise is not to be separately found for holding it to be valid when the agreement taken as a whole is supported by consideration. The Government''s promise to sell the tendu leaves to the petitioner for the 1973 season in the unit concerned was sufficient consideration to support all the terms and conditions of the agreement including the promise not to withdraw an application for renewal of the agreement. In our opinion, therefore, it is not correct to say that the petitioner was entitled to withdraw the offer of renewal contained in his application before it was accepted, and the Government was not entitled to forfeit the security deposit in terms of Sub-clause (5) of Clause 2 of the agreement.

The petition fails and is dismissed, but without any order as to costs. The security amount be refunded to the petitioner.