
(1979) 10 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1270 of 1975

Shiv Saran Lal

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 27-10-1979

Acts Referred:

Contract Act, 1872 — Section 3, 4

Citation : AIR 1980 MP 93 : (1980) JLJ 170 : (1980) MPLJ 218

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

Bench : Division Bench

Advocate : P.R. Padhye, for the Appellant; M.V. Tamaskar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Singh, C.J.

The petitioner was appointed purchaser of tendu leaves for Units 32 and 33 of Satna Range for the period ending on 31st December, 1968, On 29th January, 1969 the Divisional Forest Officer required the petitioner to deposit Rs. 28,479 for renewal of the agreement for the year 1969. The petitioner did not deposit the amount. By letter dated 11th February 1969 the Conservator of Forests informed the petitioner that the Government by order dated 21st January 1969 had renewed the agreement for the year 1969. By the same letter the petitioner was directed to execute a fresh agreement. After receipt of this letter from the Conservator of Forests, the petitioner sent a telegram on 17th February 1969 that he was not prepared to accept the renewal of the agreement. He did not execute any agreement for the year 1969. On the petitioner's refusal to accept the renewal, the Government auctioned the units for the year 1969. The Government then in August 1975 informed the petitioner that he was liable to pay Rs. 1,28,151.26 as damages to the Government for non-acceptance of the renewal. A notice of demand was thereafter issued on 16th September 1975. The petitioner then filed this petition under Article 226 of the Constitution challenging

the demand.

Clauses (1) to (3) of the Proviso to Clause 2 of the agreement contained conditions for renewal for the year 1969 which read as follows:

"Provided that :

(1) Unless earlier determined under the terms of the agreement, there will be yearly renewal of agreement by 31st January each year by issue of an order by Government in writing provided Government are satisfied that purchaser has fulfilled the following conditions each year :--

(a) The purchaser has done satisfactory pruning in the previous year as a result of which the quantity of leaves collected during the year has exceeded by 10% or more over the quantity notified and also 10% or more over the quantity collected in the unit during the preceding year.

(b) There was no serious breach of the Act and Rules made thereunder and the Agreement.

(c) The purchaser had paid all dues including penalty, fine, etc. promptly and in accordance with the provisions of the Agreement.

(2) 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 5% 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 item in the preceding year :

(i) purchase rate payable to grower.

(ii) remuneration payable to Agent.

(iii) handling charges payable to Agent.

(3) The purchaser shall execute the 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 argument of the learned counsel for the petitioner is that even if the Government passed the order of renewal on 21st January 1969, it was not communicated to the petitioner before 11th February 1969 and, therefore, it could not be said to have been issued before 31st of January within the meaning of the renewal clause as quoted above and that the order of renewal, therefore, had no effect. In our opinion, this contention must be accepted. A look at Clause (1) of the renewal clause will show that it provides for yearly renewal of the agreement by 31st of January each year by issue of an order by Government in writing.

What is the meaning of "issue of an order by Government" in the context of this sub-clause? In our opinion, in the context in which these words have been used, they mean service of the order on the purchaser by the Government. In other words, merely passing of an order by the Government before 31st of January is not enough and the order of renewal must also be communicated to or served on the purchaser by 31st of January so as to make it effective. The whole object of Clause (1) is that the purchaser must know by 31st of January whether the Government has decided to renew the agreement so that he may arrange his business accordingly. This object cannot be achieved unless the order of renewal is communicated to the purchaser by 31st of January. Our conclusion that the word "issue" used in Clause (1) means communication or service and not merely passing of an order is further supported by a look at Clause (3) which requires the purchaser to execute a fresh agreement within 15 days from the date of the issue of the order granting renewal. Now if the purchaser is to execute an agreement within 15 days from the date of passing of the order, in most of the cases it would be impossible for him to execute the agreement because the order of the Government, after it is passed, is normally sent to the Conservator of Forests and then to the Divisional Forest Officer for communication to the purchaser and the purchaser in the normal course does not receive the order before 15 days of its passing. This shows that the words "issue of the order" as used in Clause (3) also mean communication or service of the order granting renewal and not merely passing of the order by the Government. It can be presumed that the Draftsman of the Agreement used the word "issue" in Clauses (1) and (3) in the same sense. The use of the word "issue" to denote service is also not uncommon. In *Koon Wing Lau v. Calvell* 1950 All LR 97, it was held in the context of Section 4 of the Immigration Act, 1901-48 (Australia) that a certificate which is written out and signed but not delivered to the immigrant is not issued within the meaning of that section: [See Strouds Judicial Dictionary, 4th Edition, Vol. 3 p. 1433]. In *Banarasi Devi Vs. Income Tax Officer, Calcutta*, , it was pointed out by the Supreme Court that in the legislative practice of our country the expressions "issued" and "served upon" are sometimes used to convey the same idea. Our conclusion, therefore, is that in the context of the renewal clause with which we are concerned in this case, the word "issue" has been used therein to denote service. So an order of renewal which is passed before 31st of January by the Government but is communicated after 31st January to the purchaser cannot be said to have been issued by 31st January as required by the renewal clause. The order of renewal in the instant case, in our opinion, was invalid as it was not communicated to the petitioner by 31st January 1969. The State was, therefore, not entitled to claim the damages for breach of the renewal clause.

The petition is allowed. The demand notice is quashed. There shall be no order as to costs. The security amount be refunded to the petitioner.