

(2011) 07 UK CK 0021

In the Uttarakhand High Court

Case No : Writ Petition No. 1010 of 2007 (MS)

Smt. Sarita Karnwal

APPELLANT

Vs

Meerut Mandal Vikas Nigam and Others

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Citation : AIR 2012 Utt 30

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : M.C. Kandpal, assisted by Mrs. Kamakshi Tripathi, for the Appellant; J.C. Pandey, Mrs. Beena Pandey and Subhash Upadhaya, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—Heard Mr. M.C. Kandpal the learned senior counsel assisted by Mrs. Kamakshi Tripathi, the learned counsel for the petitioner and Mr. J.C. Pandey, the learned counsel for the respondent Nos. 1 & 2. Mrs. Beena Pandey, the learned Standing Counsel for the State of U.P. (respondent No. 5) and Mr. Subhash Upadhaya, the learned brief holder for the State of Uttarakhand (respondent Nos. 8 & 9). No one is present for the respondent Nos. 6 & 7. Meerut Mandal Vikas Nigam Ltd. is a company registered under the Indian Companies Act and is a company wholly owned by the Government of Uttar Pradesh. This company has a rice mill at village Rohalgi, Pargana Jwalapur, Tehsil in District Haridwar, which is now located in the State of Uttarakhand. This rice mill ran into losses and, from the record, it reveals that it was closed down in the year 1988-89. The respondents assessed its book value as per the valuer's report at Rs. 10.27 lakhs in the late 1980's. The Board of Directors took a decision initially to lease out the said mill, but did not receive any response and accordingly took a decision on 24th February, 1988 to sell the property. Some efforts were made, but, appropriate offers were not received. The present controversy starts on the basis of the advertisement issued on 22nd May, 1992 in which the petitioner gave a tender of Rs. 12.52 lakhs which was the highest offer.

2. From the record, it transpires that some negotiations took place and the offer was increased to Rs. 12.62 lakhs. The Board of Directors appointed a Committee to look into the matter, who submitted a report dated 9th June, 1992 alleging that in the circumstances, the offer of the petitioner should be accepted in the interest of the State. The record further reveals that the Board of Directors approved the recommendation of the Committee and forwarded the matter to the State Government of Uttar Pradesh for its approval. The record further reveals that the State Government of Uttar Pradesh by its order of 25th July, 1990 approved the sale in favour of the petitioner. However, no further action was taken by the respondent company.

3. It is alleged that the petitioner approached the authorities to accept the offer of the petitioner and permit him to deposit the amount and to complete the other formalities. While the decision process was going on, it is alleged that respondent No. 7 Smt. Deepa Singhal submitted a letter dated 30th October, 1992 giving an offer of Rs. 15.11 lakhs for the purchase of the rice mill. It is alleged that a token amount of Rs. 5,000/- was also given. The record reveals that this offer was not accepted, but, the notings in the file of the respondents indicate that in view of the letter of Smt. Deepa Singhal giving a higher offer, it was indicated that a fresh tender should be invited so that the best offer is received and the interest of the State Government is protected. The notings on the file also indicate that the letter was to be sent to the State Government for necessary information and action. It is at that stage that the present writ petition was filed praying that the respondents should be directed to complete the necessary formalities for the transfer of the rice mill in favour of the petitioner.

4. The learned senior counsel for the petitioner submitted that the petitioner's offer was the highest and, upon negotiation, it was increased which was duly accepted by the Board of Directors pursuant to the recommendation of the Committee. The learned senior counsel for the petitioner submitted that the Government of Uttar Pradesh also approved the offer of the petitioner and, consequently, a binding contract came into existence which was required to be executed and since the respondent was dilly-dallying in the execution of the sale deed, the present writ petition was filed seeking a writ of mandamus commanding the respondent company to execute the sale deed and complete the formalities for the transfer of the property.

5. The respondents have opposed and submitted that no concluded contract came into existence and that the offer of the petitioner was never accepted by the respondents nor the decision of the Board of Directors or of the Government of U.P. was issued or communicated to the petitioner nor a formal acceptance letter was issued. The learned counsel appearing for the respondents submitted that unless and until, an offer is accepted, no binding contract comes into existence. It was alleged that under the terms of the tender agreement, the respondent is the final authority to accept or not to accept the contract and that the petitioner could only pay the amount pursuant to the acceptance of a

contract, which in the present case had never been accepted nor any formal acceptance letter was ever issued to the petitioner.

6. In rejoinder, the petitioner admitted that no formal acceptance letter was issued to the petitioner, but submitted that the chain of events clearly indicate that the offer of the petitioner was accepted by the Board of Directors and approved by the Government of U.P. which was sufficient to indicate a binding contract between the parties.

7. Having heard the learned counsel for the parties at some length, the Court finds that no concluded contract came into existence between the parties. The petitioner preempted the matter by rushing to the Court and, on account of the interim order granted by this Court, no further action could be taken by the respondent. As a result, as on date, the respondents have neither accepted the contract nor have rejected it.

8. The question which arises for consideration is "whether on the basis of the material which is available on record of the respondents, could there be a concluded contract between the parties or not?" Admittedly, the petitioner's offer is the highest. The offer was increased through negotiation and the Board of Directors of the respondent company accepted the recommendation of the Committee and forwarded it to the Government of U.P. for its approval. The State Government has also approved the offer made by the petitioner. However, the Court finds that there is no formal letter of acceptance given by the respondent to the petitioner indicating that the offer of the petitioner has been accepted.

9. A further question now arises as to whether such formal acceptance was required to be given when the record of the respondents speaks or indicates that the offer was approved by the State Government. For this purpose, it is necessary to consider the terms and conditions of the tender agreement. Condition No. 5 of the contract indicates that upon acceptance of the tender, the company will provide an acceptance letter and only thereafter the tenderer would be required to deposit the requisite amount. Condition No. 6 indicates that the Managing Directors has the power either to accept or reject a tender without recording any reason. Condition No. 7 indicates that upon intimating the tenderer about the acceptance of his tender, the tenderer would be required to deposit 50% of the amount within 3 days from the date of intimation and the balance amount would be deposited within three months.

10. In the light of the aforesaid, the Court finds that these conditions remained incomplete and have not been complied with by the opposite party. There has been no issuance of the acceptance letter by the respondent which is a necessary ingredient for a binding contract. It is settled law that in order to have a contract which is binding inter se between the parties, there has to be an offer and an acceptance. In the present case, an offer has been made, but, there is no formal acceptance by the respondents and until and unless the acceptance is given and communicated no concluded contract comes into existence. In the light of the

aforesaid, the Court is of the opinion that the Court could not force a party to accept the contract. The acceptance of the contract is within the domain of the parties and the Court is loath to interfere in such matters.

11. In so far as the notings made in the files of the respondents are concerned, it can at best be contended that a legitimate expectation had arisen for the petitioner, but such legitimate expectation could not override a half baked contract, that is to say, until and unless a concluded contract comes into existence the question of legitimate expectation could not arise. The legitimate expectation, if any, can only occur pursuant to a concluded contract.

12. Much water has flown since the tender was given and the filing of the writ petition. More than 20 years have elapsed. The price of the land on which the rice mill is standing must have increased hundred folds and, consequently, as on date, the offer of the petitioner by no stretch of imagination could be accepted by the respondents and.: consequently, it would be futile for the Court to direct the respondents to consider the offer of the petitioner at this belated stage. In the light of the aforesaid, the Court is of the opinion that the petitioner is not entitled to any relief since no concluded contract came into existence between the parties. The writ petition fails and is dismissed.