

(1999) 06 MP CK 0003
In the Madhya Pradesh High Court
Case No : M.P. No. 1045 of 1998

Vijay Kumar Gupta

APPELLANT

Vs

M.P. Rajya Laghu Vanopaj (Vyapar Avam Vikas) Sahakari
Sangh Maryadit and others

RESPONDENT

Date of Decision : 25-06-1999

Acts Referred:

Citation : (2000) 2 MPJR 381 : (2001) 1 MPLJ 496

Hon'ble Judges : D.S.P. Chauhan, J

Bench : Single Bench

Advocate : V. S. Dabir with A.G. Dhande, for the Appellant; S.L. Saxena with M.L. Choubey, for the Respondent

Final Decision : Allowed

Judgement

D.S.P. Chauhan, J.

By means of this petition, the petitioner has approached this Court seeking relief for quashing the orders dated 16-10-1987 - Annexures - G-I and G-2 passed by the Conservator of Forest and Annexure -1 dated 2-3-1988.

The brief facts are:

that the State Government, for the purpose of trade and monopoly on behalf of the State Government, appointed respondent No. 1 i.e. M.P. Rajya Laghu Vanopaj (Vyapar Avam Vikas) Sahakari Sangh Maryadit as agent in respect of certain units; and it, on the behalf of the State Government in its capacity as agent, invited tender for disposal of Tendu leave collected from different Units in terms of Tender Notice dated 6-7-1987 - Annexure- A to the petition. The tender was invited lot-wise and not Unit-wise. The petitioner was one of the persons who gave tender and the controversy in the present petition is confined to Lot Nos. 77 and 78, Lot No. 77 consists of two units namely Unit No. 962 Chitrangi and Unit No. 984 Niwas, and Lot No. 78 consists of 3 Units, namely Unit No. 967 Ramgarh. 973 Jamgarhi and 976 Chhatouli, and the offer of the petitioner related

to Lot No. 77 and 78. The petitioner offered his tender not for the entire Lot No. 77 but only for the leaves collected from Unit No. 962 Chitrangi and likewise, he offered the tender not for the entire Lot No. 78 but only for the leaves collected from one Unit i.e. Unit No. 973 Jamgarhi. Thus, the tender of the petitioner was not according to the terms and conditions contained in Clauses 4 and 6 thereof, as under the terms and conditions of the tender, the tender had to be given for the entire lot and not for any particular unit of the lot. The tenders so invited in respect of the above lots, were opened on 30-7-1987. The petitioner, before opening of the tenders, moved an application, the fact of which is not in dispute, expressing his desire to withdraw his tender and he prayed that his tender may not be opened. The concerned authority without paying need to it, opened the tender, taking shelter of the terms and conditions under the tender notice, that offered tender has to be opened.

The tender of the petitioner was not in accordance with the requirement under the tender notice. The requirement under the tender notice is contained in Para 6(1) which is as extracted below. --

" "

According to the respondents, there has been violation of the condition that the earnest money as fixed was not accompanied with the tender notice and such a tender was not to be considered and the whole of the amount of earnest money deposited along with the tender was liable to be forfeited and accordingly, the amount as deposited by the petitioner was forfeited under the orders dated 16-10-1987 - Annexures - G-I and G-II. The petitioner thereafter made representation which was rejected vide letter dated 2-3-1988 - Annexure- I, and was not communicated the reasons for rejection.

Heard the learned Counsel for the petitioner Shri V. S. Dabir and the learned Counsel for the respondents Shri, S.L. Saxena.

Learned counsel for the petitioner submitted that the terms and conditions regarding forfeiture of the earnest money and rejection of tender are contained in Para 6(1) of the terms and conditions of the Tender - Annexure-A to the petition. He further submitted that the forfeiture of the earnest money was illegal as the same was contrary to the settled principles of law, as a person's right to withdraw from the contest before the opening of the tender cannot be taken away. Secondly, the tender itself was invalid, not being for the whole lot and as such was no tender in the eye of law and the forfeiture of earnest money could not be for an invalid tender. It related to the Unit of the lot and such a tender has to be excluded from the consideration instead of being considered and rejected, particularly when the petitioner in advance had moved the authority that his tender may not be opened obviously it was not the tender in the eye of law and he withdrew the same and the authority should not have opened the same and should not have taken into consideration. Consequently, the forfeiture of security amount is bad. Learned counsel for the petitioner relied on a decision of this

Court in Misc. Petition No. 765/92 Dayabhai vs. State of Madhya Pradesh and others (DB) and also placed reliance on the decision reported in Rajendra Kumar Verma Vs. State of Madhya Pradesh and Others, . It is also a D.B. case and this case has been considered in the judgment in M.P. No. 765/92 mentioned above.

Learned counsel for the respondents submitted that the tender was rightly rejected and the forfeiture was rightly done as it was under the terms and conditions already notified earlier to the petitioner who accepted the terms and conditions and the petitioner came forward offering his bid and therefore, he is not entitled for any relief by this Court.

So far as this submission is concerned, it has not substance as the tender was invited for the entire lot and not for the Unit and if it was for the Unit, then, such a tender could not be taken to be a tender in the eyes of law for the purpose of consideration of the same.

So far as the position regarding the application for not opening of the tender and withdrawn by the petitioner of his tender is concerned, it is not in dispute. The aforesaid decision cited by the petitioner support the case of the petitioner and in view of this decision the argument as advanced by learned counsel for the respondents deserves to be rejected.

In view of the above, I find that the tender as submitted by the petitioner was illegally rejected and the security amount was illegally forfeited. The writ petition deserves to be allowed.

Accordingly, the writ petition is allowed. The impugned orders Annexures - G-I and G-II dated 16-10-1987 are hereby quashed and the respondents are directed for refund of the security amount as deposited by the petitioner. In the circumstances of the case, no order as to costs. Security amount deposited, if any, in the Court may be refunded.