

MANU/MP/0038/1972

Equivalent/Neutral Citation: AIR1972MP131, ILR[1975]MP480, 1972JLJ345, 1972MPLJ648

IN THE HIGH COURT OF MADHYA PRADESH

Misc. Petn. No. 132 of 1970

Decided On: 18.01.1972

Rajendra Kumar Verma **Vs.** State of Madhya Pradesh and Ors.

Hon'ble Judges/Coram:

Bishambhar Dayal, C.J. and A.P. Sen, J.

Counsels:

For Appellant/Petitioner/Plaintiff: R.L. Sharma and C.K. Adaliya, Adv.

For Respondents/Defendant: M.V. Tamaskar, Deputy Govt. Adv.

JUDGMENT

Bishambhar Dayal, C.J.

This is a writ petition under Article 226 of the Constitution of India challenging the recovery being made against the petitioner in the following circumstances:--

The respondents advertised for receiving tenders for the sale of Tendu-Patta. (leaves) from unit No. 7, Budni. The petitioner gave a tender in pursuance of the tender notice No. 1972-X. 69 dated 25-3-1969 at the rate of Rs. 38.25 p per standard bag. He also deposited some amount as security. The tenders were to be opened on 9th April 1969 but before they were actually opened, the petitioner made an application (Annexure 'A') resiling from his tender and requested that since he has withdrawn his tender it may not be opened at all. The tender was, however, opened as this was the only tender submitted for that unit.

It is contended that subsequently the unit was also auctioned but since no offers were received, the tender of the petitioner was sent to the Government for acceptance. The Government accepted the tender and since the petitioner did not execute the purchaser's agreement, proceedings were now being taken for recovery of Rs. 24,846.12 p. on the allegation that the Tendu leaves of the unit were sold to somebody else later and the balance was recoverable from the petitioner.

The contention of the petitioner is two-fold. In the first place, as he had withdrawn his tender before it was opened and accepted, there was no tender on behalf of the petitioner. The other contention is that there being no valid contract executed by the petitioner under Article 299 of the Constitution, there was no enforceable contract between the petitioner and the State Government and, therefore, no recovery on the ground of the existence of a contract could be made from the petitioner.

The reply on behalf of the respondents is that under the tender condition No. 10 (b) (i) a tenderer may be allowed to withdraw his tender of any unit of a division before the commencement of the opening of tenders of that division on the condition 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. In this case, since there was

no other tender, the tender given by the petitioner could not be withdrawn. We are unable to accept this contention. A person who makes an offer is entitled to withdraw his offer or tender before its acceptance is intimated to him. The Government, by merely providing such a clause in tender notice could not take away that legal right of the petitioner. The fact that the petitioner had applied for withdrawal of the tender is not denied. It is, therefore, quite clear that when the tenders were opened, there was really no offer by the petitioner and, therefore, there could be no contract either impliedly or explicitly between the parties.

It has been repeatedly held by this Court and by the Supreme Court that unless there is a valid contract executed as envisaged by Article 299(1) where the Government is a party, there could be no enforceable contract at all. In *K.P. Chowdhry v. State of M. P.* (MANU/SC/0023/1966 : AIR 1967 SC 203:1966 MPLJ 1057), their Lordships of the Supreme Court specifically laid down as follows:--

"The provisions of Article 299(1) of the Constitution are mandatory. There can be no implied contract between the Government and another person. If such implied contracts are allowed, they would in effect make that article useless, for then a person having a contract with Government which was not executed at all in the manner provided in Article 299(1) could get away by saying that an implied contract may be inferred on the facts and circumstances of a particular case"

Learned counsel for the respondents further contended that these tender notices were issued under Section 12 of the M.P. Tendu Patta (Vyapar Viniyaman) Adhinyam of 1964 and consequently, the terms thereof should be treated as law on the subject and enforceable as such. We are unable to agree with this contention. No rules have been framed for the disposal of the tendu leaves. Section 12 of the M.P. Tendu Patta (Vyapar Viniyaman) Adhinyam of 1964 only authorises the Government to dispose of Tendu leaves as it considered proper. The terms given in the tender notice are merely executive directions laid down for the purposes of receiving offers. From a perusal of the tender notice, it is clear that a tender notice cannot have the status of law and could not be enforced as such.

Lastly, the learned counsel for the respondent relied upon the case reported in *Century Spinning and Manufacturing Co. Ltd. v. Ulhasnagar Municipal Council* (MANU/SC/0397/1970 : AIR 1971 SC 1021:1971 MPLJ 16). In that case, the situation was entirely different and it was not a matter which could possibly cover a dispute between the parties in this case. There, the Municipal Council wanted to include a particular land within the municipal area on which several factories had been set up. Objections were raised by the factory owners on the ground that by such inclusion, octroi tax would become chargeable on the articles imported by the factory owners and their work would become impossible. An undertaking was given to the effect that no octroi would be charged from them for a particular time and on that assurance, the area was included within the municipal limits. Before that Period expired, the Municipality imposed octroi and in those circumstances, their Lordships of the Supreme Court observed as follows:--

"Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice: The obligation arising against an individual out of his representation amounting to a promise may be enforced ex contractu by a person who acts upon the promise: when the law

requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation if the contract be not in that form may be enforced against it in appropriate cases in equity."

That was a case where the fundamental rights of the factory owners to carry on their business were to be greatly affected by imposition of the tax upon them. If a promise had been given that such imposition of tax would not take place for a certain period and against that fact, it started levying octroi duty amounting to lacs of rupees, it was considered that imposition of tax contrary to that promise was an unreasonable restriction and on that basis, it was said that the public body would be bound by its undertaking. That was not a case which was amenable to the law of contracts and the provisions of Article 299 of the Constitution were wholly irrelevant. The principles laid down in that case cannot, therefore, be applicable to the facts of this case which is clearly governed by the law of contract and consequently by the provisions of Article 299 of the Constitution. We, see no force in this contention also. Moreover there is no equity ill favour of the respondents either.

The result, therefore, is that the writ petition is allowed and the demand against the petitioner is quashed. Parties shall bear their own costs. The outstanding amount of the security deposit shall be refunded to the petitioner.

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