
some case which requires to be gone into and is not liable to thrown at the threshold. "Principle of balance of convenience" is also in favour of Smt. Nirmal. If *ad interim* injunction is not allowed to her and the property is conveyed still further by Lakhpat Singh or the remaining land measuring 10 kanal 15-1/2 marla minus 7 kanal 2 marla is conveyed by Kalawati, Smt. Nirmal will have to involve herself in litigations with them to get back the property from them. If *ad interim* injunction is not granted to her, Smt. Nirmal will suffer irreparable injury. At the stage of grant of temporary injunction, court cannot pre-judge the case of either party but the court has to go on the pleadings of the parties and the material brought on record in support of the grant of temporary injunction/or against the grant of temporary injunction.

(10) For the reasons given above, this revision is allowed. Temporary injunction is granted to Smt. Nirmal restraining Lakhpat Singh from alienating, in any manner, land measuring 7 kanal 2 marla which he has purchased from Kalawati,—*vide* sale deed dated 13th/14th March, 1997. Kalawati is restrained from alienating land measuring 3 kanal 13-1/2 marla which still remains with her i.e. land measuring 10 kanal 15-1/2 marla minus 7 kanal 2 marla which she has sold to Lakhpat Singh,—*vide* sale deed dated 13th/14th March, 1997. Temporary injunction shall ensure till the disposal of the suit.

S.C.K.

Before Jawahar Lal Gupta & Ashutosh Mohunta, JJ

AMARJEET SINGH—*Petitioner*

versus

ZONAL MANAGER, FCI, NEW DELHI & ANOTHER—
Respondents

C.W.P. No. 15676 of 1999

20th July, 2001

Constitution of India, 1950—Art.226—Contract Act, 1872—S.6—Acceptance of petitioner's tender beyond the period of validity—Petitioner asking for refund of the earnest money—Denial of—Respondents failing

to substantiate their claim that the offer was accepted within the prescribed time—Offer of petitioner stood revoked by lapse of time—Action of the respondents in forfeiting the earnest money illegal.

Held, that there was no absolute and unqualified acceptance of the petitioner's offer. There can be no contract without consensus *ad idem*. The respondents had yet to satisfy themselves about the financial status of the petitioner. The value of his land had yet to be checked. The non-encumbrances certificate as also the profit and loss statement had still to be examined. Various formalities had to be complied with. The fax message militates against an absolute and unconditional acceptance of the petitioner's offer. Thus the petitioner's offer had not been unconditionally accepted within the period of its validity. It stood revoked by the lapse of time.

(Para 20, 21 & 22)

Further held, that a public authority has to act fairly. Its actions must conform to the rules of fair-play and justice. Whenever the contending claims of the citizen against a public authority are examined, the Courts are guided by the principles of equity. The Food Corporation of India which is admittedly a public authority is wanting to forfeit a substantial amount of money deposited by the citizen. The terms laid down in the tender have to be strictly construed. Despite opportunity, the respondents did not produce any document on record to substantiate their claim that the petitioner's offer had been accepted within the prescribed time. Thus, it would be inequitable and unjust to deny the petitioner the refund of the amount deposited by him.

(Para 24)

Rajesh Garg, Advocate for the Petitioner

Hemant Kumar, Advocate for the Respondents

JUDGMENT

Jawahar Lal Gupta, J.

(1) Is the action of the Food Corporation of India in forfeiting the amount of Rs. 2,60,000 deposited by the petitioner as earnest money alongwith his tender arbitrary, illegal and unfair ? This is the short

question that arises for consideration in this case. The relevant facts may be briefly noticed.

(2) The Food Corporation of India invited tenders for loading/unloading/handling transport of food-grains. The tenders had to be submitted by 2 PM on May 12, 1999. These were to be opened at 2.30 PM. The offer was to remain open for acceptance "upto and inclusive of 26th June, 1999".

(3) The petitioner submitted a tender. He offered to work at 98% above the schedule of rates. He deposited an amount of Rs. 2,60,000 by way of earnest money.

(4) In the tender form, it had been *inter alia* stipulated as under :—

"C. Tender to remain open for acceptance up to and inclusive of 26 June, 1999.

NOTE (1) The Senior Regional Manager, Food Corporation of India, Punjab Region, Chandigarh may at his discretion, extend this day by a fortnight and such extension shall be binding on the tenderer".

(5) Vide letter dated 25th June, 1999, a copy of which has been produced as Annexure P.1 with the writ petition, the petitioner was informed that the validity period of acceptance of his tender had been "extended for fortnight beyond 26th June, 1999 as per tender terms". Thus, the tender was to remain valid till 10th July, 1999. Vide letter dated 5th July, 1999, a copy of which has been produced as Annexure P.3, the petitioner was asked to give his consent to keep his "offer open further upto 15th August, 1999 for taking decision". The petitioner alleges that this letter was actually sent by registered post on July 8, 1999 and had reached him on 13th July, 1999. A copy of the envelope has been produced as Annexure P.4. The petitioner did not agree to extend his offer. However, on 14th July 1999, the petitioner received "a telegram dated 13th July, 1999 from the office of respondent No. 1" (Zonal Manager, Food Corporation of India, New Delhi) informing him that the tender had been accepted. A copy of this telegram has been produced as Annexure P.5.

(6) The petitioner alleges that the period of validity had expired on 10th July, 1999. The action of the respondents in accepting the tender beyond the date of validity was illegal and invalid. However, after the telegram, he received a letter dated 17th July, 1999 informing him that an amount of Rs. 6,49,000 be deposited by way of security. He was also asked to contact the District Manager, Food Corporation of India, Sangrur for completion of formalities. A copy of the letter has been produced as Annexure P.6. The petitioner has also produced a copy of the envelope to show that the letter dated 17th July, 1999 had been actually despatched on 22nd July, 1999.

(7) On receipt of the above mentioned communication, the petitioner sent a letter dated 5th August, 1999 asking for refund of the earnest money. He stated that the telegram sent on 13th July, 1999 was inconsequential as he "had not consented for the extension of the validity period of his tender beyond 10th July, 1999". A copy of the communication has been produced as Annexure P.8. Since the respondents did not respond, he filed CWP No. 13391 of 1999 for a direction to the respondents to refund the amount. This petition was disposed of by a Bench of this court,—*vide* order dated 21st September, 1999 with the direction that the petitioner's claim for refund shall be decided "within 15 days of the submission of certified copy of the order together with a copy of the writ petitionkeeping in view the fact that he had not given consent in pursuance of the telegram dated 5th July, 1999". Thereafter, the respondents passed the order dated 22nd October, 1999 (Annexure P.10) and rejected the petitioner's claim for refund of the money. It was observed that the tender offer "was valid upto 10th July, 1999 including the fortnight period extended by the Regional Office, Punjab. Since 10th and 11th July, 1999 were closed holidays in FCI, the contract was awarded on 12th July, 1999 (the next working day) accordingly,—*vide* Z.O. telegram No. S&C/13/14/99/Cont./NZ dated 12th July, 1999". As such, it was maintained that the contract had been validly accepted. The petitioner was called upon to deposit the requisite security and take up the work of handling and transport of food grains. Aggrieved by the order, the petitioner has approached this court through the present writ petition. He prays that the respondents be directed to refund the amount of Rs. 2,60,000 and that the order at Annexure P.10 be quashed.

(8) The respondents contest the petitioner's claim. It has been *inter alia* averred that the contract was required to be finalised by the Zonal Manager at New Delhi. The validity period was extended till 10th July, 1999. The 10th and 11th of July 1999 were holidays. On "the next working day i.e. 12th July 1999.....the tender of the petitioner was opened for acceptance. A copy of the telegram sent by the Zonal Office to the petitioner is attached herewith as Annexure R.1". A copy of the receipt No. 278 dated 12th July, 1999 has been produced as Annexure R.2. On the same day, the Zonal Office had informed the Regional Office about the acceptance of the tender of the petitioner vide fax dated 12th July, 1999. A copy of the fax message has been produced as Annexure R.3. The petitioner was advised by the Regional Office as well. According to the terms of the tender, the acceptance was to be conveyed through telegram. The Zonal Office having conveyed the acceptance on 12th July, 1999, it was within the period of the validity of the tender. As the petitioner had failed to deposit the requisite security amount, the earnest money was rightly forfeited. On these premises, the respondents claim that the writ petition should be dismissed with costs.

(9) The petitioner has filed a detailed replication. Besides controverting the preliminary objections (which have not been pressed at the hearing), it has been averred that the acceptance was not conveyed on 12th July, 1999. The petitioner has specifically alleged that the telegram is dated 13th July, 1999 and was received by him on 14th July, 1999. It has been averred that the original telegram shall be produced in court. Thus, the petitioner claims that the contract was not accepted by the respondents within the period of the validity of the offer. Resultantly, he reiterates his claim for the refund of the money.

(10) This case was posted for hearing before a Bench of this Court (Jawahar Lal Gupta and N.K. Sud, JJ.) on 15th January, 2001. The following order was passed :—

"Mr. Garg contends that the offer of the petitioner was valied till 10th July, 1999. The telegram was received by the petitioner indicating acceptance of the offer on 14th July, 1999. The petitioner did not accept the offer made by the respondents. Thus, the petitioner is entitled to refund of the money. Counsel for the respondents submits that the

telegram had been despatched on 12th July, 1999. He prays for an adjournment to enable him to place the documents on record.

Adjourned to 30th May, 2001”.

(11) On 30th May, 2001, the case was adjourned to 31st May, 2001 and then to 17th July, 2001. However, during all this period, the respondents did not place any document on record to substantiate their claim that the telegram had been despatched on 12th July, 1999. On the other hand, the petitioner produced before us the original telegram as also a certificate from the Sub Post Master, Moonak to show that the telegram had been despatched on 13th July, 1999. It has been taken on record by us as Mark ‘A’.

(12) Counsel for the parties have been heard.

(13) Mr. Rajesh Garg, counsel for the petitioner contended that the petitioner’s offer was valid till 10 July, 1999. The telegram was despatched by the first respondent on 13th July, 1999. Even if July 10th and 11, 1999 are assumed to be holidays, the offer was not accepted by the respondents within the period of its validity. Thus, the respondents were not entitled to forfeit the earnest money. He also contended that in view of the provisions of Section 6 of the Contract Act, 1872, the offer shall be deemed to have been revoked by the lapse of time.

(14) On the other hand, Mrs. Hemant Gupta, counsel for the respondents contended that the offer had been accepted on 12th July, 1999. Since the telegram had been despatched on 12th July, 1999, the petitioner’s claim for refund of the earnest money could not be accepted. He placed reliance on the decision of their Lordships of the Supreme Court in *Bhagwandas Goverdhandas Kedia vs. M/S Girdharlal Parshottamas and Co., and others* (1)

(15) The short question that arises for consideration is—Did the respondents accept the petitioner’s offer within the prescribed time and is their action in forfeiting the amount legal and valid ?

(16) Admittedly, the offer was valid till 10th July, 1999. It is also not disputed that July 10th and 11, 1999 were holidays. Thus, it may be reasonable to assume that the offer could have been accepted on 12th July, 1999. It is also the admitted position that the acceptance was communicated by the first respondent through a telegram. The petitioner claims that this telegram had been despatched on 13th July, 1999. On the other hand, the claim on behalf of the respondents is that the telegram had been sent on 12th July, 1999. The Post Office had issued receipt No. 278 dated 12th July, 1999. The respondents were given an opportunity to produce the documents which may show that the petitioner's claim regarding the telegram having been sent on 13th July, 1999 was not correct. Despite the grant of time, no document has been produced. On the other hand, the petitioner has produced the telegram before us which indicates that it had been sent on 13th July, 1999. A certificate from the Sub Post Master, Moonak has also been produced which shows that it was delivered to the petitioner on 14th July. The year has been mentioned as 2000 instead of 1999. That appears to be a clerical mistake. Thus, factually, it appears that the telegram had been sent on 13th July, 1999 and was received by the petitioner on 14th July, 1999. This was beyond the period of the validity of the offer. Thus, by the lapse of time, the offer shall be deemed to have been revoked.

(17) Mr. Gupta contended that in para 7 of the written statement, it has been specifically averred that the offer had been accepted within the validity period on 12th July, 1999. The telegram was sent to the petitioner on that day.

(18) We have carefully perused the averments. The relevant part may be usefully reproduced. It reads as under :-

“It is incorrect that the telegram is dated 13th July, 1999. In fact, the *acceptance of telegram* was conveyed to the petitioner by the Zonal Office itself on 12th of July, 1999 A copy of the telegram sent by the Zonal Office to the petitioner is attached herewith as Annexure R-1. The said telegram was sent to the petitioner by the Zonal Office,— *vide* postal receipt No. 278 dated 12th July, 1999, Post Office Eastern Court, Jan Path, New Delhi Annexure R-2. On 12th of July itself, the Zonal Office informed the Regional

Office about the acceptance of the tender of the petitioner,—
vide Fax dated 12th July, 1999 Annexure R-3”.

(19) The above averments have been categorically controverted by the petitioner in the replication. Irrespective of that, it deserves notice that in para 7 of the written statement, it has been suggested that “the acceptance of the telegram was conveyed to the petitioner by the Zonal Office”. It has been further averred that on 12th July, 1999, “the tender of the petitioner was opened for acceptance”. Still further, in the Fax message, a copy of which was not attached with the written statement but was subsequently produced with CM No. 3664 of 2000, it was *inter alia* stated as under:—

“FOOD CORP.
CHANDIGARH

S&C/13(14)/99-CONST/NZ STOP REFYRSET S&C/2/10/
17/98/MOONAK DATED 5TH JULY, 1999 REGARDING
HTC AT MOONAK STOP COMPETENT AUTHORITY
ACCEPTED THE RATE OF 98% ASOR QUOTED BY
AMARJIT SINGH AND TELEGRAM ISSUED TO THIS
PARTY FROM THIS OFFICE TODAY STOP COMPLETE
ALL TENDER FORMALITIES AND OBTAIN VALUATION
OF LAND NON-ENCUMBRANCES CERTIFICATE
PROFIT & LOSS STATEMENT RC OF REMAINING OF
TWO TRUCKS AND SATISFY FS/BC OF THE PARTY AT
YOUR LEVEL STOP TENDER FOLLOWS WITH PCC.

ZONEFCI ND

Dt. 12th July, 1999.

(Sd/.)...,
(K.L. ARORA),
DY. MANAGER (CONT.)
for ZONAL MANAGER (N)”.

(20) From the material on record, it is clear that there was no absolute and unqualified acceptance of the petitioner’s offer.

(21) It is a settled principle of law that there can be no contract without consensus *ad idem*. The respondents had yet to satisfy themselves about the financial status of the petitioner. The value of his land had yet to be checked. The non-encumbrances certificate as also the profit and loss statement had still to be examined. Various formalities had to be complied with. The Fax message militates against an absolute and unconditional acceptance of the petitioner's offer.

(22) Mr. Rajesh Garg submitted that Post Office was the agent of the respondents. Mr. Gupta contended that since the respondents are not stationed at Moonak, the communication had to be by post. Thus, the Post Office was the agent of the petitioner. Be that as it may, we are satisfied that in the present case, the petitioner's offer had not been unconditionally accepted within the period of its validity. Thus, it stood revoked by the lapse of time.

(23) Mr. Gupta placed reliance on the decision of their Lordships of the Supreme Court in **Bhagwandas's case** (*supra*) to contend that the contract becomes complete "as soon as the acceptance is made by the acceptor.....". In this case, their Lordships were considering the communication of acceptance "by long distance telephone". However, while examining the issue, it was observed in paragraph 8 that "acceptance and intimation of acceptance of offer are, therefore, both necessary to result in a binding contract". It was further observed that "when by agreement, course of conduct, or usage of trade, acceptance by post or telegram is authorised, the bargain is struck and the contract is complete when the acceptance is put into a course of transmission by the offeree by posting a letter or despatching a telegram". On a perusal of the photo copy of the telegram which is at Mark 'A' on the record, it is clear that it was despatched on 13th July, 1999 from New Delhi. Thus, the acceptance can be on 13th July, 1999. This was beyond the period of validity of the offer.

(24) There is another aspect of the matter. It is well settled that a public authority has to act fairly. Its actions must conform to the rules of fair-play and justice. Whenever the contending claims of the citizen against a public authority are examined, the courts are guided by the principles of equity. In the present case, the Food Corporation of India which is admittedly a public authority is wanting to forfeit a substantial amount of money deposited by the citizen. The terms laid down in the tender have to be strictly construed. The original tender

form has not been produced by the respondents. However, it is clear from clause (C) that the respondents had reserved the power to extend the offer by a fortnight. This period had expired on 10th July, 1999. Any further extension of time has to be strictly construed so that the rights of the citizen to recover the money are not jeopardised. Despite opportunity, the respondents have not produced the original record to show that the telegram had been actually despatched on 12th July, 1999. Still further, it is the admitted position that the tenders were opened on 12th May, 1999. So far as the petitioner is concerned, it is the respondent's own case in para 7 of the written statement that "12th July, 1999 was the date on which..... the tender of the petitioner was opened for acceptance". In the circumstances of the case, we are satisfied that it would be inequitable and unjust to deny the petitioner the refund of the amount deposited by him.

(25) No other point has been raised.

(26) In view of the above, the question as posed above is answered in favour of the petitioner. The writ petition is allowed. It is directed that the amount of Rs. 2,60,000 shall be paid to the petitioner within one month of the receipt of a copy of this order. In case of failure to pay the amount within the aforesaid time, the petitioner shall be entitled to the amount alongwith interest @ 10% from 1st August, 1999 to the date of actual payment. In the circumstances, the parties are left to bear their own costs.

R.N.R.

Before G.S. Singhvi & Nirmal Singh, JJ

HARYANA AGRO INDUSTRIES CORPORATION LTD,—
Petitioner

versus

STATE OF HARYANA & OTHERS—*Respondents*

C.W.P. No. 12124 of 2000

18th May, 2001

Haryana General Sales Tax Act, 1973—Ss. 31 & 40—Revisional Authority initiating proceedings under Section 40 for revision of the assessment orders in a case of 'escaped assessment'—Section 40(1)