Union of India

Vs

Maddala Thathiah

Civil Appeal No. 53 of 1961

(K. Subha Rao, Raghuvar Dayal, J. K. Mudholkar JJ)

09.05.1963

JUDGMENT

RAGHUBAR DAYAL J. –

The facts giving rise to this appeal, by special leave, are these :

> The Dominion of India, as the owner of the Madras and Southern Mahratta Railway, represented by the General Manager of that railway, invited tenders for the supply of jaggery to the railway grain shops. The respondent submitted his tender for the supply of 14,000 imperial maunds of cane jaggery during the months of February and March 1948. The tender form contained a note in paragraph 2 which was meant for the quantity required and the described dates of delivery. This note was :
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> "This Administration reserves the right to cancel the contract at any stage during the tenure of the contract without calling up the outstandings on the unexpired portion of the contract."

The Deputy General Manager of the Railways, by his letter dated January 29, 1948, accepted this tender. The letter asked the respondent to remit a sum of Rs. 7,900/- for security and said that on receipt of the remittance, official order would be placed with the respondent. In his letter dated February 16, 1948, the Deputy General Manager reiterated the acceptance of the tender subject to the respondent's acceptance of the terms and conditions printed on the reverse of that letter. Among these terms, the terms of delivery stated : Programme of delivery to be 3,500 maunds on March 1, 1948; 3,500 maunds on March 22, 1948; 3,500 on April 5, 1948; and 3,500 maunds on April 21, 1948. At the end of the terms and conditions was a note that the administration reserved the right to cancel the contract at any stage during the tenure of the contract without calling up the outstandings on the unexpired portion of the contract. The date for the delivery of the four instalments were slightly changed by a subsequent letter dated February 28, 1948.

By his letter dated March 8, 1948, the Deputy General Manager informed the respondent that the balance quantity of jaggery outstanding on date against the order dated February 16, 1948, be treated as cancelled and the contract closed. The protests of the respondent were of no avail as the railway administration took its stand against the stipulation that the right to cancel the contract at any stage was reserved to it. Ultimately, the respondent instituted the suit against the Union of India for recovering damages resulting from breach of contract. The trial Court dismissed the suit holding that the railway administration could cancel the contract without giving any reason whenever it liked, without making itself liable to pay any damages. The High Court held that the clause

reserving the right in the appellant to cancel the contract was void and in view of the trial Court having not decided the issue about damages, remanded the suit for disposal after dealing with that matter. It is against this decree that the Union of India has filed this appeal after obtaining special leave.

The contentions raised for the appellant are two. One is that on a proper construction of the terms of the contract, the appellant had agreed to but only such quantity of jaggery as it might require, up to a maximum of 14,000 maunds and therefore there was no enforceable obligation to purchase the entire quantity. The other contention is that the respondent had expressly agreed to the impugned clause and that therefore the appellant was at liberty to terminate the contract at any stage of the duration of the contract with respect to the outstanding obligations under it. The stipulation is valid and binding on the parties and it amounted to a provision in the contract itself for its discharge or determination. On the other hand it is contended for the respondent that the contract was a complete contract of the supply of a definite quantity of jaggery viz., 14,000 maunds, on the dates mentioned in the order dated February 16, 1948, to start with, and ultimately on the dates mentioned in the subsequent letter dated February 28, and that the stipulation relied on was repugnant to the contract and, even if valid, the appellant could rescind the contract only for good and reasonable ground and not arbitrarily.

To decide the contentions raised it is necessary to construe the true nature of the contract between the parties which has given rise to these proceedings. The relevant conditions of tender are described in paragraphs 2, 8 and 9 and are set out below :

> "2. Quantity required and described dates of delivery. - 14,000 imperial maunds of cane jaggery are required for the months of December 1947 and January 1948 and should be delivered in equal lots of 1,750 imperial maunds each commencing from 10th December 1947 and completed on 31st January 1948.
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> Note : This Administration reserves the right to cancel the contract at any stage during the tenure of the contract without calling up the outstandings on the unexpired portion of the contract.
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> 8. Security deposit. - Five percent of the tender value will be required to be paid by the successful tenderer as security deposits towards proper fulfilment of the contract. This amount will carry no interest. This should be paid in cash in addition to the earnest money already paid to the Paymaster and Cashier of this Railway, Madras, and his official receipt obtained therefor. Cheques and drafts will not be accepted in payment of security deposit. In the case of contracts or the supply of gingelly oil, the security deposit will be arranged only after 90 days have elapsed from the date of the last supply against the order.
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> 9. Placing of order. - A formal order for supply will be placed on the successful tenderer only on the undersigned being furnished with the receipt issued by the Paymaster and Cashier of this Railway for the security deposit referred to in paragraph 8."

Paragraph 12 provides for the rejection of supplies if they be of unacceptable quality. Paragraph 13 deals with penalties and reads thus :

"13. Penalties. - When supplies are not effected on the dates as laid down in the Official Order or when acceptable replacement of the whole or part of any consignment which is rejected in accordance with paragraph 12 is not made within the time prescribed the administration will take penal action against the supplier in one or more of the following ways :-

(a) Purchase in the open market at the risk and expenses of the supplier goods of quality contracted for, to the extent due;

(b) Cancel any outstandings on the contract and;

(c) Forfeit the security deposit."

The respondent made an offer to supply the necessary quantity of jaggery during the period it was wanted and expressed its readiness to abide by the terms and conditions of the tender. He agreed to supply the jaggery at the rate mentioned in his letter. This tender was accepted by the letter dated January 29, 1948. So far, the offer of a supply of a definite quantity of jaggery during a specified period at a certain rate and the acceptance of the offer would constitute an agreement, but would fall short of amounting to a legal contract inasmuch as the date of delivery of the jaggery was not specified. Only the period was mentioned. The agreement arrived at therefore could be said, as urged for the appellant, to be a contract in a popular sense with respect to the terms which would govern the order for supply of jaggery. The acceptance of the tender did not amount to the placing of the order for any definite quantity of jaggery on a definite date. Paragraph 9 of the tender referred to the placing of a formal order for the supply of jaggery, after the respondent had not only made a security deposit as required by the provisions of paragraph 8 but had also furnished a receipt issued for that deposit to the Deputy General Manager, Grain Shops. So construed, the note in paragraph 2 of the tender would refer to cancel this agreement, loosely called a contract, at any stage during the tenure of that agreement without calling up the outstandings on the unexpired portion of the contract.

The various expressions used in this note point to the same conclusion. The expression 'tenure of the contract' contemplates the contract being of a continuing nature. It is only a contract with a sort of a tenure. The contract is to be cancelled at any stage during such a tenure, that is, it could be cancelled during the period between the acceptance of the tender and March 31, 1948, the last date for the delivery of the jaggery under the contract. The note further provided that as a result of the cancellation, the appellant will not call up the outstandings on the unexpired portion of the contract. This expression can only mean "without ordering the supply of jaggery which was to be delivered within the remaining period of the contract", that is, the period between the date of cancellation and March 31, 1948.

Paragraph 13 dealing with penalties draws a distinction between outstandings on the contract and the purchase of the goods to the extent not supplied by the respondent. The provision about penalty comes into operation when the supplies are not effected on the dates laid down in the official order, or when acceptable replacement of the whole or part of any consignment which is rejected is not made within the time prescribed. Clause (a) of para 13 contemplates penal action by purchasing in the open market at the risk and expenses of the supplier, goods of the quality contracted for to the extent due, either due to the failure to supply or due to failure to replace rejected goods which had been supplied in compliance of an order. Clause (b) of para 13 contemplates a further penal action in the form of cancellation of any outstandings on the contract. Such a cancellation could only be of

the balance of the supplies agreed upon but not yet supplied. If this expression was meant to cover the goods for which order had been placed but whose date of delivery had not arrived, a different expression would have been more appropriately used.

The appellant's letter dated January 29, 1948, which conveyed the acceptance of the tender, directed the respondent to remit a certain sum for the security deposit and stated that on receipt of advice of remittance official order would be placed. This is the order contemplated by para 9 of the tender.

By his letter dated February 16, 1948, the Deputy General Manager repeated in paragraph 1 of the letter that the tender dated January 27, 1948, was accepted for the supply of jaggery, only subject to the respondent's acceptance of the terms and conditions printed on the reverse. The tender had already been accepted. There was no occasion to re-open the question of the acceptance of the tender or to re-inform the respondent about the acceptance of the tender or to obtain a second acceptance of the respondent to the terms and conditions of the tender. No occasion could have arisen for imposing any fresh conditions for the acceptance of the tender which had been accepted earlier.

> Paragraph 2 of the letter contains a definite order for despatching and delivering of the consignment to the Assistant Controller of Grain Shops. The details given in the letter provided for the entire supply of 14,000 maunds to be in four equal instalments, each instalments to be delivered on a particular date. The only other condition or term in this letter is :
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> "This administration reserves the right to cancel the contract at any stage during the tenure of the contract without calling up the outstandings on the unexpired portion of the contract."

This is identical in terms with the note in paragraph 2 of the tender can bear the same construction with respect to that portion of the goods to be supplied for which no formal order had been placed. If this note had a particular reference to the cancellation of the orders, if that was possible in law, its language would have been different. It would have referred to the right to cancel the orders about the delivery of the consignments and would have provided that the orders for such supplies which were to be made on dates subsequent to the date of cancellation would stand cancelled or that the appellant would not be bound to take delivery of such consignments which were to be delivered on dates subsequent to the cancellation of the orders. There is nothing in this letter that the formal order placed is subject to this condition. The condition governed the acceptance of the tender according to the content of para 1 of this letter.

It appears that the order has been placed on a printed form which could be used also for placing an order for delivery of part of the commodity which the tenderer has agreed to supply. That seems to be the reason why that particular recital appears in the letter. It cannot possibly have any bearing on a case like the present where the railway administration has definitely placed an order for the supply of the entire quantity of the commodity for which a tender had been called.

In this connection we may refer to the language of the letter of the Deputy General Manager dated March 8, 1948, which informed the respondent about the cancellation of the contract. The letter states that the balance quantity of jaggery outstanding on date against the above order, i.e., the order dated February 16, 1948, is treated as cancelled and the contract closed. This letter itself draws a distinction between the order and the contract. The contract has a reference to the agreement

consisting of the offer of supply of jaggery and acceptance of the offer by the Deputy General Manager.

We are therefore of the view that the condition mentioned in the note to para 2 of the tender or in the letter dated February 16, 1948, refers to a right in the appellant to cancel the agreement for such supply of jaggery about which no formal order had been placed by the Deputy General Manager with the respondent and does not apply to such supplies of jaggery about which a formal order had been placed specifying definite amount of jaggery to be supplied and the definite date or definite short period for its actual delivery. Once the order is placed for such supply on such dates., that order amounts to a binding contract making it incumbent on the respondent to supply jaggery in accordance with the terms of the order and also making it incumbent on the Deputy General Manager to accept the jaggery delivered in pursuance of that order.

We may refer to what was said by this Court in Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram [[1954] S.C.R. 817], in connection with an arrangement arrived at between the Central Government and a firm of bidi manufacturers, Moolji Sickka & Company. The arrangement under which the firm was to sell and the Government was to buy from the firm from time to time two brands of bidis manufactured by it. The contention raised before the Court was that this arrangement amounted to a contract for the supply of goods within the meaning of that section. The contract was said to be embodied in four letters. This Court said :

> "But except for this the letters merely set out the terms on which the parties were ready to do business with each other if and when orders were placed and executed. As soon as an order was placed and accepted a contract arose. It is true this contract would be governed by the term set out in the letters but until an order was placed and accepted there was no contract."

Reference may also be made to what is said in 'Law of Contract', by Cheshire & Fifoot (5th Edition) at p. 36.

> "There is no doubt, of course, that the tender is an offer. The question, however, is whether its 'acceptance' by the corporation is an acceptance in the legal sense so as to produce a binding contract. This can be answered only by examining the language of the original invitation to tender. There are at least two possible cases. First, the corporation may have stated that it will definitely require a specified quantity of goods, no more and no less, as, for instance, where it advertises for 1,000 tons of coal to be supplied during the period January 1st to December 31st. Here the 'acceptance' of the tender is an acceptance in the legal sense, and it creates an obligation. The trader is bound to deliver, the corporation is bound to accept, 1,000 tons, and the fact that delivery is to be by instalments as and when demanded does not disturb the existence of the obligation."

On the basis of this note, the acceptance of the respondent's tender by the Deputy General Manager may even amount to a contract in the strict sense of the term, but we do not consider it in that sense in view of the provisions of paragraphs 8 and 9 of the tender requiring a deposit of security and the placing of the formal order.

The other case illustrated by Cheshire and Fifoot is :

> "Secondly, the corporation advertises that it may require articles of a specified description up to a maximum amount, as, for instance, where it invites tenders for the supply during the coming year of coal not exceeding 1,000 tons altogether, deliveries to be made if and when demanded, the effect of the so-called 'acceptance' of the tender is very different. The trader has made what is called a standing offer. Until revocation he stands ready and willing to deliver coal up to 1,000 tons at the agreed price when the corporation from time to time demands a precise quantity. The 'acceptance' of the tender, however, does not convert the offer into a binding contract, for a contract of sale implies that the buyer had agreed to accept the goods. In the present case the corporation has not agreed to take 1,000 tons, or indeed any quantity of coal. It has merely stated that it may require supplies up to a maximum limit."
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> "In this latter case the standing offer may be revoked at any time provided that it has not been accepted in the legal sense; and acceptance in the legal sense is complete as soon as a requisition for a definite quantity of goods is made. Each requisition by the offeree is an individual act of acceptance which creates a separate contract."

We construe the contract between the parties in the instant case to be of the second type. The note below para 2 of the tender form, reserving a right to cancel an outstanding contract is then consistent with the nature of the agreement between the parties as a result of the offer of the respondent accepted by the appellant and a similar note in the formal order dated February 16, 1948, had no reference to the actual order but could refer only to such contemplated supplies of goods for which no orders had been placed.

In view of the construction we have placed on the contract between the parties it is not necessary to decide the other contention urged for the appellant that the stipulation in the not amounted to a term in the contract itself for the discharge of the contract and therefore was valid, a contention to which the reply of the respondent is that any such term in a contract which destroys the contract itself according to the earlier terms is void as in that case there would be nothing in the alleged contract which would have been binding on the appellant.

We are of opinion that the order of the High Court is correct and therefore dismiss the appeal with costs.

Appeal dismissed.

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