

**HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**APPEAL SUIT No.1742 of 1995**

**JUDGMENT:**

The Defendant in O.S.No.164 of 1987 on the file of Additional Subordinate Judge, Tirupathi, preferred this appeal challenging the Decree and Judgment dated 06.04.1995.

For the sake of convenience, the parties will be referred to as ranked in the trial court.

The first plaintiff by name K. Muni Reddi filed the suit claiming Rs.40,000/- towards damages for the loss of profit and interest on investment, alleging that the Defendant-Sri Venkateswara University invited tenders by publishing the same in the news paper on 13.04.1987 from the experienced catering contractors for running the vegetarian canteen in the earmarked premises in its campus for a period of one year with a condition to extend the period by one more year subject to satisfactory performance during the first year on lease basis.

The first plaintiff, who is both an experienced catering contractor and a reputed hotelier having more than 30 years experience in the field, included in the list of the said category having rendered service to it, purchased the tender form, from the defendant and filed before the authority in time, duly enclosing the earnest money deposit of Rs.5,000/- by Demand Draft on 13.04.1987. The plaintiff possessed all the requirements to run the canteen.

By Letter No.1000/D-1/87-88, dated 02.05.1987, the defendant unconditionally accepted the plaintiff's tender as the rates quoted by him being the least and permitted him to run the vegetarian canteen in the campus for a period of one year from 01.06.1987 in the first instance and called upon him to make payment of further earnest money deposit of Rs.5,000/- and execute the agreement on a non-judicial stamp, as per the draft enclosed with the letter. The defendant also drawn the attention of

the plaintiff to certain conditions of the tender.

In compliance of the directions, the plaintiff purchased Pay Order No.580346 drawn on Andhra Bank for Rs.5000/- in favour of the defendant, towards additional earnest money deposit and engrossed the agreement, as prescribed by the defendant on non-judicial stamp paper, signed on it and delivered both the pay order and the agreement along with letter dated 04.05.1987 to the defendant.

The plaintiff informed the defendant that he is making arrangement for purchase of crockery utensils etc., and employment of the necessary staff to run the canteen from 01.06.1987. Accordingly, he purchased Crockery utensils for an amount of Rs.20,000/-, engaged staff by paying advance to a tune of Rs.5000/- and placed order for provisions, duly intimated the same to the defendant by letter dated 07.05.1987.

When the Plaintiff left Tirupathi and returned 3 days prior to 28.05.1987, learnt that the defendant without any right is trying to resile from the concluded contract. Later, the plaintiff issued notice to the In-charge Vice Chancellor and Registrar on 23.05.1987 to signify willingness within 48 hours after the receipt of the said notice, handover the earmarked premises of the canteen to the plaintiff to facilitate him to run a canteen from 01.06.1987. On receipt of the above said Notice, the Registrar of the defendant University sent a reply letter dated 26.05.1987 refusing to abide by the contract and thereby committed breach of contract. Thus, breach of contract committed by the defendant resulted in loss to the plaintiff. In the reply Notice, the defendant contended that the tender was accepted subject to final approval of competent authority, but no such condition was imposed in the tender. Therefore, the alleged breach of concluded contract by the defendant is against the provisions of the Contract Act. Hence, he claimed Rs.500/- per day towards loss of profit and claimed total damages of Rs.40,000/- for breach of contract by the defendant university. The defendant returned to the plaintiff, the pay order and demand draft paid towards earnest money deposit together

with the duly executed agreement of the plaintiff by letters dated 25.05.1987 and 26.05.1987 respectively.

During the pendency of the suit, the first plaintiff died, plaintiff Nos. 2 to 5 are impleaded as legal heirs of the deceased first plaintiff.

The defendant filed Written Statement denying the material allegations while admitting forwarding a letter to the plaintiff along with the prescribed proforma of agreement calling upon the plaintiff to send a demand draft towards additional earnest money and specifically contended that there was no concluded contract, since the acceptance of tender was subject to final approval by the competent authority. Therefore, there is no concluded contract, since the offer made by the plaintiff was not confirmed by the competent authority under the provisions of Section 19 (3) of the Andhra Pradesh University Act, 1991.

The defendant specifically admitted about publication of Notice in Udayam Telugu daily News Paper, calling for tenders from the experienced catering contractors and hoteliers to run the canteen and in pursuance of the Notification, 13 tenders were received, out of them, 11 tenders were in order and later accepted the tender of the plaintiff. In the meanwhile, there was exchange of notices between the plaintiff and the defendant and later the defendant accepted the tender of the plaintiff vide letter bearing No. 1000/D.1-87-88 dated 02.05.1987. As per the terms and conditions of the tender, the acceptance of tender is only subject to confirmation by competent authority and unless the competent authority confirmed the tender, there is no concluded contract.

The defendant denied existence of any concluded contract between the plaintiff and the defendant while admitting the deposit of earnest money as pleaded by him. Since the defendant reserves right to accept or reject the tenders and in the present case, the tender though accepted subject to confirmation by the competent authority, the agreement could not be concluded in view of the resolution passed by the Syndicate, bearing No. 417(E-6) dt. 22.05.1987 and in the said

meeting, it is resolved to call for fresh tenders enhancing rent at Rs.2000/- per month. Therefore, the letter dated 02.05.1987 addressed to the plaintiff by the defendant cannot be treated as concluded contract.

The in-charge Vice-Chancellor reconstituted the committee on 04.05.1987, and the plaintiff cannot rely on the letter dated 02.05.87 received from the Registrar and taking advantage of the letter, it is not open to the plaintiff to contend that there is a concluded contract as it was not finally approved by the competent authority of the University.

It is further contended that the plaintiff did not sustain any loss much less the loss quantified at Rs.40,000/- and finally prayed to dismiss the suit.

Basing on the above pleadings, the trial court framed the following issues:

1. Whether the contract between the 1<sup>st</sup> plaintiff and the defendant was a concluded contract ?
2. Whether the plaintiffs are entitled to claim damages against the defendant ? If so, to what amount ?
3. Whether the suit filed by the plaintiff is not maintainable ? If so, whether the plaintiffs are not entitled for any damages ?

To what relief ?

During the course of trial, on behalf of the Plaintiffs, PWs. 1 and 2 were examined and EXs. A.1 to 18 were marked. On behalf of the defendant, DW.1 was examined and EXs. B.1 to B. 9 were marked.

Upon hearing argument of both counsel and considering oral and documentary evidence available on record, the trial court held that there is a concluded contract between the plaintiff and the defendant, awarded compensation of Rs.34,500/- calculating loss at Rs.100/- per day by calculating for 25 days in a month for a period of one year commencing from 01.06.87 to 31.05.88 and an amount of Rs.4,500/- towards damages.

Aggrieved by the said decree and judgment passed in O.S.No.164 of 1987, the appellant/defendant preferred this appeal challenging the same on various grounds and he mainly questioned the decree on the ground that the Registrar has no authority to enter into an agreement in view of Section 19 of the A.P. Universities Act and therefore, the agreement, if any, entered into, itself is invalid and that in the absence of any approval by the competent authority, the agreement cannot be said to be concluded. Therefore, the question of breach of contract does not arise.

It is further contended that the damages quantified by the trial court is excessive and the calculation of profit at Rs.100/- per day by the trial court is without any basis and finally prayed this Court to set aside the decree and judgment of the trial court.

During the course of arguments, the learned counsel for the appellant/defendant vehemently contended that the decree and judgment under challenge are erroneous for the reason that according to Section 19 (3) of A.P. Universities Act, the Executive Counsel alone is competent to enter into, vary, carry out and cancel contracts on behalf of the University in the exercise of performance of the powers and duties assigned to it by this Act and the statutes. Hence, the agreement, if any, entered into by the Registrar of the defendant University with the plaintiff is not enforceable. It is further contended that the plaintiff did not produce any material before the Trial Court to assess the loss of profit at Rs.100/- per day for 25 days in a month and apart from that the plaintiff claimed only interest on investment, not otherwise. Hence, grant of damages of Rs.34,500/- by the trial court is erroneous on the face of record and thereby, the decree and judgment of the trial court are liable to be set aside and finally prayed this Court to allow the appeal by dismissing the suit.

No Advocate appeared and advanced arguments on behalf of the respondents/plaintiffs.

Considering the contentions, oral and documentary evidence and the decree and judgment of the trial court, the points that arise for consideration are :

- 1) Whether contract between the plaintiff and defendant for running the canteen in the earmarked premises in the Defendant's campus is concluded ?
- 2) Whether the defendant committed breach of contract, if so, is the plaintiff entitled to claim damages for breach of contract and at what rate ?

**Point No.1 :**

The undisputed facts are that the plaintiff is an experienced catering contractor having experience of 30 years in the field. On noticing the advertisement published in Udayam daily news paper inviting tenders from the prospective contractors to run canteen in the defendant University, he purchased the tender form from the defendant and after compliance of the requirements, he submitted the tender form along with earnest money deposit and later the defendant accepted the offer made by the plaintiff to run the canteen, as he is the lowest tenderor and conveyed the same by sending a letter, calling upon him to furnish additional earnest money deposit and enclosing form of agreement, but later the acceptance was revoked canceling the contract by the defendant one ground or the other.

The total dispute is based on the documentary evidence. Therefore, the oral evidence has no much relevance to decide the controversy between the parties. Ex.A.1 is the Chit Tendor Notice issued by the defendant calling offers from experienced catering contractors and reputed Hotliers for running the Vegetarian Canteen in Sri Venkateswara University, Tirupathi, initially for a period of one year on condition that the contract may be extended for one more year, if the performance of the contractor is found to be satisfactory during the first year. It is further intimated in the Tender notice that the tender form shall be obtained from

the Registrar on payment of Rs.100/- in the shape of Challan or crossed Demand Draft during working days from 27.03.1987 to 13.04.1987 and that each tender must be accompanied by an earnest money deposit of Rs.5000/- and that on acceptance of tender, the tenderor should deposit additional earnest money of Rs.5000/- at the time of entering into an agreement. The tender notice itself is silent about the acceptance of the tender is subject to confirmation by the competent authority. The tender notice was issued by the Registrar, who is authorized by the Committee or the Vice Chancellor to act on behalf of defendant. Along with the chit tender notice, the terms and conditions of the agreement were also annexed. As per condition No.11, the Registrar reserves the right to accept or reject any tender without assigning any reason thereof. If really, the Registrar was not authorized by the Vice Chancellor or committee, the question of issuing chit tender by the Registrar of the defendant and reserving right by the Registrar to accept or reject the tender does not arise. According to Section 19 (25) of A.P. Universities Act, 1991, the Vice Chancellor or the Committee may delegate its power from among its own members or any employee of the University. The Registrar is an employee in the university and he is the highest authority on administrative side. Therefore, by exercising powers of Vice Chancellor or Committee delegated to him, the Registrar of the defendant issued chit tender notification calling offers from experienced caterers and reputed hoteliers for running the canteen in the University. It was not the case of the defendant before the trial court that the Committee or the Vice Chancellor did not authorize the Registrar to act on their behalf in dealing with the 3<sup>rd</sup> parties. Therefore, by exercising the power, which was delegated under Section 19 (25) of the Act, 1991, the Registrar issued Ex.A.1 Chit Tender Notice. Hence, the Registrar cannot be said to be incompetent to issue Ex.A.1 chit tender notice.

According to their admission made in the Written Statement and in the evidence of the defendant-University, the competent authority i.e., the Committee, scrutinized 13 tenders received within the time fixed under

Ex.A.1 and found 11 tenders were in order, and later accepted the tender of the plaintiff as he being the lowest bidder and the same was communicated by letter dated 02.05.1987 under Ex.A.2. In the letter addressed by the Registrar, to the plaintiff, it is clearly mentioned that the tender of the plaintiff was accepted by the University and permitted him to run vegetarian canteen in S.V. University for a period of one year from 01.06.1987 to 31.05.1988 at the first instance, subject to compliance of certain conditions i.e., execution of formal agreement on stamp paper worth Rs.5/- and payment of rent to the building at the rate of Rs.1000/- etc., The Letter under Ex.A.2 is not sufficient to hold that there is a concluded contract between the plaintiff and the defendant, as it is subject to terms and conditions in Ex.A.2. The plaintiff addressed a Letter dated 04.05.1987 to the defendant stating about the compliance of the requirements made in Ex.A.2. Thereafter, a notice was addressed to the defendant dt. 04.05.1987 by the plaintiff demanding to deliver, vacant possession of the building for running the canteen, as agreed under the agreement. EX.A.3 is the agreement engrossed on stamp paper worth Rs.20/- duly signed by the plaintiff contractor, but not signed by the Registrar. The acceptance under Ex.A.2 is subject to compliance of certain terms and conditions mentioned therein. One of the conditions is to enter an agreement engrossing the same on Rs.5/- stamp paper, which is marked as Ex.A.3. The plaintiff sent a letter to the Registrar dated 04.05.1987 stating about sending of Pay Order No.580346, dt. 02.05.87 towards additional earnest money deposit and making arrangements to purchase Crockery Utilities and engaging of experienced supervisors and supporting staff. At this stage, it is appropriate to advert to the condition contained in Ex.A.2 regarding execution of contract. As per the Tender condition No.3, the plaintiff has to pay rent for building @ Rs.1000/- before 5<sup>th</sup> of every month, failing which, he has to pay interest besides bearing electrical and water charges by the contractor himself. At the same time, condition No.1 of Ex.A.2 says that before the contract comes into force, as per tender condition, the plaintiff has to execute an agreement on non-judicial stamp paper worth Rs.5/-. In compliance of



Condition No.1, he engrossed articles of agreement, which is marked as Ex.A.3, duly signed by him, but it was not forwarded to the Registrar so as to enable the defendant's university to sign on it. Thus, Ex.A.3 is not a concluded contract because it was not signed by the person, who is authorized by the University i.e., the Registrar. If really, Ex.A.3 was sent to the Registrar, the question of producing the same before the Trial Court by the plaintiff does not arise. Production of Ex.A.3 before the trial court itself indicates that Ex.A.3 was not forwarded to the defendant, so as to complete the contract.

Since the acceptance is subject to compliance of certain terms and conditions annexed to the letter Ex. A.2, such acceptance cannot be said to be unequivocal and it is only a conditional acceptance. If the conditions contained in Ex.A.2 are complied, then there will be a concluded contract.

As seen from Ex.A.3, the agreement engrossed on the stamp paper, produced by the plaintiff himself before the trial court, shows that the plaintiff is not complied with the condition No.1. Unless Ex.A.3 is signed by the Registrar, it sufficient to hold that there is no concluded contract strictly adhering to the terms and conditions contained in Ex.A.2 letter.

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The trial court came to the conclusion that there is a concluded contract basing on Ex.A.2 letter addressed by the defendant to the plaintiff and did not look into the evidence on record to find out whether the plaintiff has complied with the terms and conditions contained in Ex.A.2 so as to create a contractual obligation between the plaintiff and the defendant. The finding of the trial court that there is a concluded contract between the plaintiff and the defendant cannot be accepted.

According to Section 2 (b) of the Indian Contract Act, 1872, when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a

promise. In the present case, the defendant called for tenders by issuing Ex.A.1 Chit Tender Notice, it is nothing but invitation of offers or it is in the nature of choffer. As such Ex.A.1 does not amount to any offer and it is only invitation to offer. In pursuance of Ex.A.1, the plaintiff made an offer or proposal, as defined under Section 2 (a) of Indian Contract Act, 1872, and the same was accepted by the defendant University subject to certain terms and conditions contained in Ex.A.2. When the acceptance is conditional, unless the conditions are complied strictly by the person, who made proposal, there shall not be any concluded contract between the plaintiff and the defendant. According to Section 7 of the Indian Contract Act, 1872, acceptance must be absolute to convert a proposal into a promise. The acceptance must absolute and unqualified and be expressed in some usual and reasonable manner in which it is to be accepted and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance.

In view of Section 7 of the Indian Contract Act, 1872, the cardinal principle is that the offer and acceptance of an offer must be absolute without giving any room of doubt. It is well settled that the offer and acceptance must be based or founded on three components i.e., certainty, commitment and communication. If any one of three components is lacking either in the offer or in the acceptance, there cannot be a valid contract.

When the acceptor puts in a new condition while accepting, the contract already signed by the proposer is not complete, until the proposer accepted the condition. In the present case on hand, the agreement was signed by the proposer i.e., the first plaintiff, but not signed by the Registrar on behalf of the defendant. Therefore, there is no concluded contract as held by the Apex Court in a judgment in **Haridwar Singh v. Begum Sumbui**<sup>[1]</sup>. The principle laid down in the above

judgment is applicable to the present facts of the case on hand. In the instant case when Ex.A.3 is signed only by the proposer i.e., first plaintiff, but not signed by the Registrar on behalf of the defendant, and retained Ex.A.3 with the plaintiff, it can be safely held that there is no concluded contract between the first plaintiff and the defendant.

The trial court did not consider Ex.A.3 in proper perspective and based its findings on Ex.A.2 Letter and admissions of DW.1 about the acceptance of proposal made by the plaintiff with the approval of Vice Chancellor or the Committee.

Yet, there is evidence on record that before conclusion of the contract between the plaintiff and the defendant, the defendant issued Ex.B.2 Modification letter and returned the demand draft furnished by the plaintiff towards additional earnest money deposit under Ex.B.3. In the said Letter, the defendant returned the demand draft dated 02.05.1997 for Rs.5000/- before signing on the agreement under Ex.A.3. Addressing Letter under Ex.B.2 and B.3 directly amounts to revocation of conditional acceptance under Ex.A.2. According to Section 3 of Indian Contract Act, the communication of proposal and acceptance of proposal and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it. Section 3 of the Act, 1872, is squarely applies to the present facts of the case because before signing on the agreement, under Ex.A.3, the Registrar revoked the acceptance. However, Section 4 of the Act, 1872, says that communication of acceptance is complete as against the proposer when it is put in a course of transmission to him so as to be out of the power of the acceptor; as against the acceptor or when it comes to the knowledge of the proposer. Similarly, the acceptance can be revoked as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of power of

the person who makes it; as against the person to whom it is made, when it comes to his knowledge.

In the instant case, the defendant accepted the tender subject to certain conditions and such acceptance is not an unqualified or unequivocal acceptance, but it is subject to certain conditions contained in the tender schedule in Ex.A.1 and conditions in Ex.A.2 letter. Therefore, before compliance of the terms and conditions contained in Ex.A.2, acceptance can be revoked at any time, as such, the defendant revoked the acceptance and communicated the same to the plaintiff by addressing letters under Ex.B.2 and B.3 impliedly.

The Trial Court only basing on the documentary evidence, more particularly Ex.A.2 and A.3, held that there is a concluded contract between the plaintiff and the defendant and did not discuss anything about the conditional acceptance i.e., the conditions contained in Ex.A.2 and tender schedule, erroneously concluded that there is a concluded contract.

On discerning fact that the entire documentary and oral evidence on record and appreciating the evidence with reference to the provisions of the contract Act, the plaintiff though furnished pay order for Rs.5000/- in partial compliance of condition in Ex.A.2, did not comply the other conditions before the agreement came into force. But before compliance of the other terms and conditions of the tender schedule and also the condition mentioned in Ex.A.2, the defendant addressed letters under Ex.B.2 and B.3 impliedly revoking the acceptance, as such, there is no concluded contract between the plaintiff and the defendant creating contractual obligations between them. Accordingly, the point is answered in favour of the appellant and against the respondents/plaintiffs.

**Point No:2:** In view of the finding on Point No.1, there is no concluded contract between the plaintiff and the defendant, the question

of committing breach of contract by the defendant does not arise. Consequently, the plaintiffs are not entitled to claim any compensation or damages against the defendant. Even otherwise, the plaintiff claimed loss of profit @ Rs.500/- and interest on investment, but the trial court estimated the loss of profit @ Rs.100/- per day for 25 days in a month and awarded the amount of Rs.4500/-, which the plaintiff paid to the Manager and Master Cook to be engaged in the canteen. The grant of Rs.4500/- towards damages in favour of the plaintiff so as to composite the loss incurred by him is beyond the claim and the trial court traveled beyond the pleadings and granted relief, which the plaintiff did not seek, and such approach is perverse.

As far as profits are concerned, the second plaintiff was examined as witness and spoke about the estimated profit and to corroborate his evidence, plaintiff examined PW.2, who is running a similar canteen in the premises, who testified about the total sale in the canteen per day is about Rs.4000/- and expected profit would be 10 to 15% on the total sale. PW.2 is Manager of a canteen supposed to maintain books of account and if those books are produced before the Court, it is useful to the court to accept the evidence. But, he did not produce the books of account maintained in the business or at least sales tax returns submitted by him to the department, so, as to know the actual profit he was getting during the said period while running the canteen in the defendant's university.

When the plaintiff claimed expected profits by way of damages, it is for the plaintiff to establish that his expected profits at a particular rate by producing cogent and satisfactory evidence. In normal course of event, it is difficult for the plaintiff to prove expected profit. However the court may draw inference from the proved facts basing on the evidence available on record, but absolutely there is no evidence even to draw any inference that the plaintiff is supposed to get not less than Rs.100/- per day for the future period. Profit and loss in the business would depend

upon the fluctuations in the business in the market. Therefore, the plaintiff is not expected to earn certain amount as profit since the price of the food is fixed in the tender itself. If for any reasons, there is hike in the price of goods to be utilized for preparation of food items to be supplied in the canteen, there is a possibility of incurring loss. Hence, there is no guarantee for earning of profit in the business by the plaintiff. Therefore, it is difficult to hold that the plaintiff supposed to earn profit in the business. However, the finding of the trial court on this aspect is without any basis and opposed to the provisions of the Indian Contract Act i.e., Section 54 of the Indian Contract Act. Hence, the point is answered in favour of the appellant/defendant and against the respondents.

In view of the finding on Point Nos. 1 and 2 that the decree and judgment of the trial court are erroneous and the findings arrived by the trial court are not based on any oral or documentary evidence. Hence, the decree and judgment are liable to be set aside.

In the result, the appeal is allowed setting aside the decree and judgment passed by the Additional Subordinate Judge, Tirupathi in O.S.No.164 of 1987 and the suit is dismissed. No costs in the appeal.

As a sequel, miscellaneous applications pending, if any shall stand closed.

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**M. SATYANARAYANA MURTHY, J**

Dt. 11 /09/2014

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[\[1\]](#) AIR 1972 SC 1242