

ORISSA HIGH COURT: CUTTACK

O.J.C. No. 12427 of 1998

In the matter of an application under Articles 226 & 227 of the Constitution of India.

Dibakar Swain

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Petitioner

-versus-

Cashew Development Corporation, Orissa
Represented through its Managing Director
and another

.....

Opp. Parties

For Petitioner : M/s. P.K. Mohanty, Sr. Adv.
D.N. Mohapatra, G.S.Satpathy,
Smt. J. Mohanty.

For Opp.Parties : M/s. Srimanta Das,
S. Rath & A. Pattnaik.

P R E S E N T :

THE HONOURABLE DR. JUSTICE B.R.SARANGI

Date of hearing: 10.09.2014| Date of judgment : 26.09.2014

Dr. B.R.Sarangi, J. The petitioner has filed this application challenging the order of forfeiture dated 19.05.1998 vide Annexure-9 passed by the Manager, Land and Administration, Orissa State Cashew Development Corporation Ltd. due to non-deposit of balance amount in respect of Landei Hill Cashew Plantation under the Divisional Manager, Khurda.

2. The factual matrix of the case in hand are that opposite party no.1 used to lease out the right of plucking of cashew nuts by tender or negotiation for a particular crop of a particular year. For the year 1997-98 (1998 crops) sealed tenders were invited during the month of January, 1998 and as none applied, the same was cancelled. For second time, when the tender was called, the petitioner deposited Rs.100/-, purchased the tender paper and submitted his tender in a sealed cover along with initial deposit of Rs.1,00,000/- in shape of Bank Draft. As the same was single tender, the same was cancelled. On 3rd occasion, when the tender was called, the petitioner submitted his sealed tender and with regard to initial deposit of Rs.1,00,000/- such sum having already been deposited by him pursuant to earlier tender call, the same was adjusted. On the 3rd occasion, since the tender could not be finalized, the same was accepted through negotiation and it was agreed to give the field to the petitioner for Rs. 2,43,270/- inclusive of tender amount of Rs.2,25,000/-, 5% security amounting to Rs.11,250/- and watchman wages of Rs.7020/-. Since the petitioner had already deposited Rs.1,00,000/-, after adjusting the said amount, he was required to pay the rest amount of Rs.1,43,270/-. The petitioner deposited the said amount of Rs.1,43,270/- on 12.03.1998 and acknowledging the same, a money receipt was granted to him vide Annexure-3. Thereafter, instead of issuing any work order

in his favour, again the amount was negotiated in the Board meeting of the opposite parties, and there was an enhancement of the amount by Rs.5000/-. Consequence thereof, tender acceptance order was issued on 6.3.1998 vide Annexure-4 requiring the petitioner to deposit Rs. 1,48,520/- as against the total negotiated amount of Rs. 2,48,520/-. As in the meantime, Rs.1,00,000/- had already been deposited earlier to participate in the tender process and subsequently vide Annexure-3 a sum of Rs.1,43,270/- has already been deposited, thereby as against demand of Rs.2,48,520/- in Annexure-4 the opposite parties acknowledged receipt of Rs.2,43,270/-. Accordingly, balance amount of Rs.5250/- was to be paid by the petitioner towards full and final tender amount. On depositing of the said amount, necessary work order to be issued in favour of the petitioner to operate the cashew field in question. But on 15.03.1998, due to heavy cyclone/tornado with halestone the Landei Hill Cashew Plantation with its contiguous area and the trees was destroyed and cashew nuts were totally damaged. Therefore, instead of executing the agreement and obtaining the work order, the petitioner had requested opposite party no.1 on 16.03.1998 to refund his money amounting to Rs.2,43,270/- which he had already deposited before opposite party no.1 for such plantation. But the claim of the petitioner was not accepted and on the other hand he was called upon to deposit the balance amount of

Rs.5250/- to get the work order after execution of deed of agreement vide letter dated 24.03.1998, Annexure-7. In response to letter dated 24.03.1998, the petitioner by its letter dated 29.03.1998 expressed his desire not to go for any agreement for Landei Hill Cashew Plantation and requested to refund of the amount. Consequent upon that, he was intimated as per Annexure-9 that his entire deposit of Rs.2,43,270/- was forfeited by the authorities, and hence this writ application.

3. The opposite parties in their counter affidavit though have acknowledged the factum of receipt of Rs.2,43,270/- by the Corporation from the petitioner submitted that because of proposed settlement of the cashew plantation field in favour of the petitioner in respect of Landei Hill area and also application dated 16.03.1998 vide Annexure-5 petitioner intimating that due to heavy cyclone the said plantation had been damaged and requesting for refund of the amount deposited by him, have stated that as per Clause-4 under the head 'General' of the terms and conditions of tender for 1997-98 (98 Crops), no complaint with regard to the damage in any form by any tenderer could be considered after issuance of Acceptance Order. Therefore, the Corporation was not liable to consider the application of the petitioner as per the above terms and conditions of the tenders.

It is further stated that when the petitioner did not deposit the balance amount of Rs.5250/- on or after the due date, the Corporation requested him vide letter dated 24.03.1998 Annexure-7 to deposit the same immediately and execute Deed of Agreement so as to issue work order for plucking of cashew nuts of Landei Hill. As the petitioner did not deposit the said amount within the time stipulated, the Corporation vide order dated 19.05.1998, Annexure-9 forfeited the entire tender amount of Rs.2,43,270/- deposited by him as per the provisions under the head "MODE OF PAYMENT" of the terms and conditions of tender by cancelling the Acceptance Order issued in his favour.

4. Mr. P.K. Mohanty, learned Senior Counsel appearing for the petitioner strenuously urged that the action taken by opposite party forfeiting the amount of Rs.2,43,270/- without affording opportunity of hearing to the petitioner was in gross violation of principles of natural justice, inasmuch as the same was arbitrary, unreasonable and contrary to the provisions of law and thereby such action of the opposite party was in violation of Article 14 and 21 of the Constitution.

5. Mr. Srimanta Das, learned counsel appearing for the opposite parties submitted that since the Corporation has acted in terms of the agreement, the action so taken for

forfeiture of the amount cannot be faulted with. Therefore, the reliefs sought by the petitioner cannot be granted to him.

6. Considering the above pleaded facts, after hearing the learned counsel for the parties as well as perusing the records, it appears that it is admitted fact that there was a tender for Landei Hill Plantation but the same having not been successful, the petitioner was called upon for negotiation and in such negotiation, an amount of Rs.2,43,270/- was settled. Accordingly the petitioner deposited the said amount in two spell i.e. Rs.1,00,000/- to participate in the proceeding and subsequently deposited Rs.1,43,270/- vide Annexure-2. But at this point of time, the Board wanted to have further negotiation for enhancement of the bid amount and finally the same was settled at Rs.2,48,520/- vide Annexure-4 and communication was made to the petitioner on 06.03.1998 that since he had already deposited Rs.2,43,270/-, he was required to deposit a further sum of Rs.5250/- pursuant to the acceptance order dated 6.3.1998. On the basis of the said acceptance order, the petitioner was to deposit the balance amount and on deposit of full amount within three days he had to execute the Deed of Agreement in the prescribed form in presence of two witnesses along with court fee of Rs.7.50 after which only the work order was to be issued in his favour. In compliance with the said

acceptance order, admittedly the petitioner neither deposited the balance amount nor executed any agreement or any work order was issued in his favour. On the contrary, the petitioner expressed his desire not to proceed with the contract pursuant to Annexure-4 due to damage of the plantation in storm and cyclone and sought refund of the amount already deposited by him with the Corporation vide Annexure-5. But instead of refunding the said amount, the authorities arbitrarily forfeited the said amount vide Annexure-9 on the ground that as per Clause-4 under the head 'General' of the terms and conditions of tender for 1997-98 (98 Crops), no complaint with regard to damage in any form from any tenderer could be considered after issuance of Tender Acceptance Order. Mere sending an acceptance order, it cannot be said that the contract was concluded unless the parties entered into an agreement and became bound by its terms and condition.

7. Admittedly, no agreement was executed between the parties nor the petitioner had deposited the balance amount and as a consequence thereof no work order was issued in his favour. Thereby the basic norms of the contract were not complied with. Without entering into an agreement, its terms and conditions cannot bind the petitioner and any action taken pursuant to such agreement cannot have any effect as the parties

had not entered to any contract by signing agreement. Before entering into an agreement as a token of acceptance of the tender, the tenderer can also express his view not to accept the tender what has exactly happened in this case. The letter of acceptance order, Annexure-4, only stated the intention of the authorities with regard to acceptance of offer of the petitioner but without the same being reduced to writing and entering into an agreement, it cannot be said that the contract had already been concluded. As per the provisions of the Contract Act, there must be an acceptance and that acceptance has to be made by executing an agreement between the parties. When the parties enter into an agreement, the same is binding on them. In absence of such agreement and expression of willingness to accept the tender by way of acceptance order, the amount deposited by the tenderer cannot be /could not have been forfeited by the opposite parties.

8. In the aforesaid facts and circumstances, this Court directs that the amount so forfeited pursuant to Annexure-9 be refunded by the opposite parties to the petitioner with interest thereon @6% per annum from the date of his acceptance till payment to the petitioner as the tender of the petitioner has not been acted on execution of an agreement for issuance of work order in his favour. Mere issuance of acceptance order is to

be construed intention to accept subject to compliance of payment of balance amount. The contract having not been concluded, the same can be rescinded before such acceptance. This order shall be complied with by the opposite parties by 30th November, 2014.

9. With the above observation and direction, the writ application is disposed of.

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Dr.B.R.Sarangi, J.

Orissa High Court, Cuttack
The 26th September, 2014/Jagdev